

**HB**

**324**

<target><bill>HB 324</bill><subject>HB  
324</subject><comm>HFIN26</comm></target>

STATE CAPITOL  
PO Box 110001  
Juneau, Alaska 99811-0001  
907-465-3500  
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Governor Sean Parnell  
STATE OF ALASKA

February 1, 2010

The Honorable Mike Chenault  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Chenault,

Under the authority of Art. III, Sec. 18, of the Alaska Constitution, I am transmitting a bill that revises State bail statutes and provides better direction to judicial officers in making decisions about the release of a person charged with a crime.

A judicial officer's decision to release or detain a person who has been charged with a crime is critical to the justice system and the safety of the community. The guidance currently provided in the State's bail statutes was in effect before statehood, and is in many respects outdated. The bill includes a general revision of the procedures and standards in AS 12.30.

Although the bill retains many of the general guidelines in current law for release of persons charged with crimes, there are important differences that would greatly improve the safety of Alaskans. For example, in cases where a person is charged with a serious crime such as sexual assault, the bill would adopt a rebuttable presumption that no release condition or combination of release conditions would assure the appearance of the defendant or the safety of others. This would result in a more serious inquiry into the release conditions that would reasonably assure that the person charged would appear in court and would not pose a danger to the victim or the public.

The bill would impose standards on persons who may serve as a third-party custodian for a defendant. Appointment of a third-party custodian is useful in certain cases, but only if the custodian takes their duties seriously. The bill requires a person to appear in court and acknowledge the responsibilities of a custodian, and be notified that failure to undertake these responsibilities can result in the custodian being charged with a crime or being held in contempt. It also prohibits a person from serving as a custodian if the person is a witness in the defendant's case, has recent criminal convictions, or is on probation.

Under current law, a person found guilty of an unclassified or class A felony may not be released before sentencing or during an appeal. The bill extends this prohibition to include persons convicted of a sexual felony, or of a class B or C felony if the person has a previous felony conviction within

The Honorable Mike Chenault  
February 1, 2010  
Page 2

the past 10 years. There are several reasons for these changes. First, a person convicted of a sexual felony is subject to a potential maximum term of imprisonment of 99 years, and for that reason poses a higher flight risk. Second, the high recidivism rate for sex offenders raises the danger to the public if the person is released. Further, the provision addressing persons convicted of a class B or C felony with a prior conviction responds to a decision by the Alaska Court of Appeals, *Bourdon v. State*, 28 P.3d 319 (Alaska App. 2001). *Bourdon* found the current law on release of persons with prior convictions to violate the equal protection clause of the Alaska Constitution. The bill corrects the concerns noted by the court in *Bourdon*.

The bill also would clarify how to deal with material witnesses that are unlikely to appear for trial even if served with a subpoena. Under current law a material witness may be arrested. Currently, there are no standards allowing for release from confinement. This bill would allow the witness to be released after providing deposition.

Current law requires a person who is arrested for a crime to be brought before a judicial officer within 24 hours of arrest. Many states and the federal law require the first appearance within 48 hours, and this deadline is proposed in the bill. There are good reasons for the change. Forty-eight hours would allow the prosecutor adequate time to see the police report, make informed charging decisions, and to make more rational bail arguments to the judicial officer. It would also allow time to contact a victim for input about whether the defendant would present a danger if released without particular conditions. A victim has a right to be heard at a bail hearing; 48 hours gives the prosecution time to make this right meaningful.

The bill addresses the safety of a victim of domestic violence by adopting tough standards for when a domestic violence offender may return to the victim's residence. The current statute forbids an offender from returning to the victim's residence. However, this prohibition was overturned by the court in *Williams v. State*, 151 P.3d 460 (Alaska App. 2006). The court found that the absolute prohibition violated the constitutional guarantee of equal protection of the law. In response to *Williams*, the bill adopts standards for the court to apply in deciding whether it is safe and appropriate to allow the person to return to the home of the victim. These standards emphasize the safety of the victim.

Passage of this bill would protect all Alaskans, and particularly many of our most vulnerable friends and neighbors. I urge your prompt and favorable consideration of this bill.

Sincerely,



Sean Parnell  
Governor

Enclosure

**HOUSE COMMITTEE REPORT**

(11)

Date Referred to Committee: March 29, 2010

FURTHER REFERRALS:

Date of Committee Action: 4/12/10

The FINANCE Committee considered:

HOUSE BILL NO. 324

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

**HB 324-FAILURE TO APPEAR; RELEASE PROCEDURES**

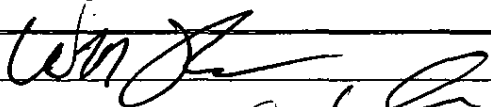
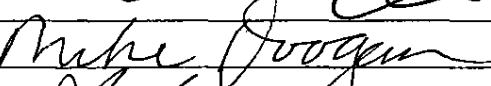
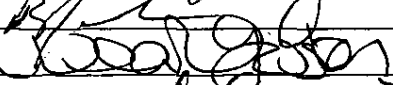
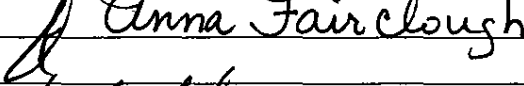
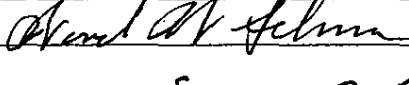
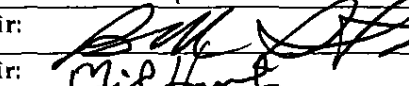
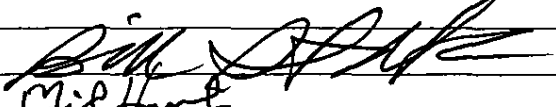
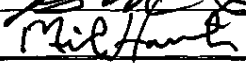
Recommends it be replaced with [ ] HCS or [X] HCS for HB 324 (FIN)  
 For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_ [X] Same Title [ ] New Title

- [ ] attach amendments
- [ ] add new referral to \_\_\_\_\_ Committee
- [ ] Letter of Intent \_\_\_\_\_ Committee

- List of Abbrev for Depts.:
- ADM
  - CED
  - COR
  - CRT
  - EED
  - DEC
  - DFG
  - GOV
  - DHS
  - LWF
  - LAW
  - LEG
  - MVA
  - DNR
  - DPS
  - REV
  - DOT
  - UA

<u>NEW FISCAL NOTES</u>				
<small>*Assigned by Chief Clerk's Office</small>				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
ADM				✓
HFIN/CRT				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
DPS	5			✓
LAW	4			✓
COR	3			✓
ADM	1			✓

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Thomas	✓			
	DOOBAN	✓			✓
	Foster	✓			
	FAIRCLOUGH	✓			✓
	KELLY	✓			
	Salmon	X			
Chair: 	Siffert				
Chair: 	Hawken				

# FISCAL NOTE

STATE OF ALASKA  
2009 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CS HB 324(FIN)  
( ) Publish Date: \_\_\_\_\_

Identifier (file name): CSHB324(FIN)-04-12-10

Title: FAILURE TO APPEAR; RELEASE PROCEDURES Dept. Affected: Alaska Court System  
RDU: \_\_\_\_\_  
Component: Trial Courts  
Sponsor: House Rules Committee by Request of the Governor  
Requester: House Finance Committee Component Number: \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>							
<b>CHANGE IN REVENUES ( )</b>							

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other-AHFC Receipts							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2009) cost: \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Co-Chair Rep. Stoltze  
House Finance Committee  
Co-Chair Rep. Hawker  
House Finance Committee

Phone 465-4958  
Date/Time 4/12/2010 6:00PM  
Date 4/12/2010

# FISCAL NOTE

**STATE OF ALASKA**  
**2010 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB324(JUD)  
 () Publish Date: \_\_\_\_\_

Identifier (file name): CSHB324(JUD)-DOA-PDA-04-12-10 Dept. Affected: DOA  
 Title An Act relating to the crime of failure to appear; relating to RDU Legal and Advocacy Services  
arrest for violating certain conditions of release . . . . Component Public Defender Agency  
 Sponsor HRLS by Request  
 Requester HFIN Component Number 1631

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2010) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

**ANALYSIS:** (Attach a separate page if necessary)

See attached analysis page 2.

Prepared by: Quinlan Steiner, Director  
 Division: Public Defender Agency  
 Approved by: Rachael Petro, Deputy Commissioner  
Department of Administration

Phone 907 334-4414  
 Date/Time 04/12/10, 9:30 AM  
 Date 4/12/2010

**FISCAL NOTE**

**STATE OF ALASKA  
2010 LEGISLATIVE SESSION**

**BILL NO. CSHB324(JUD)**

**ANALYSIS CONTINUATION**

This bill revises the procedures and standards of the bail statutes, moves the substantive crime of failure to appear from Title 12 to Title 11, and eliminates the culpable mental state for failure to appear.

The bill creates a rebuttable presumption that may be overcome by a preponderance of evidence that no release condition or combination of release conditions would reasonably assure the appearance of a person or the safety of others for certain higher level offenses. The bill also imposes stricter standards on who may act as a third-party custodian. It also provides that a person found guilty of a sexual felony, or of a class B or C felony with a prior felony conviction, may not be released pending sentence or appeal.

The bill changes current law on the time limit for bringing an arrestee before a judicial officer from 24 hours to 48 hours; changes the law that prohibits a court from allowing a person charged with a crime involving domestic violence from returning to the residence of the victim adopting standards for court to apply in deciding whether it is appropriate to allow the person to return to the home of the victim.

The agency does not predict a significant fiscal impact as a result of the proposed statute. Accordingly, the agency submits a zero fiscal note.

# FISCAL NOTE

**STATE OF ALASKA**  
**2010 LEGISLATIVE SESSION**

Fiscal Note Number: 5  
 Bill Version: CSHB 324(JUD)  
 (H) Publish Date: 3/29/10

Identifier (file name): HB324-DPS-AST-03-24-10 Dept. Affected: Public Safety  
 Title: "An Act relating to failure to appear, release conditions, RDU Alaska State Troopers  
material witnesses, and domestic violence prohibitions." Component: AST Detachments  
 Sponsor: Rules by Request of the Governor  
 Requester: House Judiciary Component Number: 2325

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2010) cost: 0.0

**POSITIONS**

Full-time								
Part-time								
Temporary								

**ANALYSIS:** (Attach a separate page if necessary)

This legislation would revise Alaska's bail law in the following ways: Changes the burden of proof in a bail hearing for persons considered a flight risk or a danger to others, moves the crime of failure to appear to Title 11 and changes the culpable mental state, for serious crimes adopts a presumption that no release condition(s) would assure the appearance of the person or safety of others, imposes a stricter standard on who may be a third party custodian, changes the deadline for bringing a person before a judicial officer from 24 to 48 hours, allows for a material witness to be arrested, changes domestic violence law to comply with current case law.

Passage of this legislation will not significantly change the daily operations of the department. This legislation will have no fiscal impact on the department.

Prepared by: Lt. Rodney Dial  
 Division: Alaska State Troopers  
 Approved by: Joseph Masters, Commissioner  
Department of Public Safety

Phone 907-247-4480  
 Date/Time 3/24/10 10:00 AM  
 Date 3/24/2010

# FISCAL NOTE

**STATE OF ALASKA**  
**2010 LEGISLATIVE SESSION**

Fiscal Note Number: 4  
 Bill Version: HB 324  
 (H) Publish Date: 2/3/10

Identifier (file name): 0910-Law-Crim-01-08-10 Dept. Affected: Law  
 Title: An act relating to the crime of failure to appear; arrest for RDU: Criminal  
violating certain conditions of release and timing of release. Component: Criminal Justice Litigation  
 Sponsor: Rules  
 Requester: Governor Component Number: 2202

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2010) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

**ANALYSIS:** (Attach a separate page if necessary)

The bill is a revision of out-of-date bail statutes. For persons who present a higher flight risk or greater danger to the community the bill requires that the offender must establish that they may be released with conditions that will reasonably assure their appearance and the safety of the community. It will change from 24 to 48 hours the deadline for bringing a person before a judicial officer after arrest. This should result in better charging decisions, more coherent bail arguments, and ultimately fewer bail hearings. It will also reduce the number of bail hearings on holidays and weekends. The fiscal impact will be positive but there is no way of quantifying this.

Prepared by: Eileen Donahue, Division Operations Manager  
 Division: Administrative Services  
 Approved by: Daniel S. Sullivan, Attorney General  
Department of Law

Phone 465-5427  
 Date/Time 1/8/10 12:00 AM  
 Date 1/8/2010

# FISCAL NOTE

**STATE OF ALASKA**  
**2010 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
 Bill Version: HB 324  
 (H) Publish Date: 2/3/10

Identifier (file name): "An act relating to the crime of failure to appear;  
 Title relating to arrest for violating certain conditions of release...." Dept. Affected: DOC  
 RDU Administration & Support  
 Component Office of the Commissioner  
 Sponsor Rules Committee  
 Requester Governor Component Number 694

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2010) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

**ANALYSIS:** (Attach a separate page if necessary)  
 SEE PAGE 2

Prepared by: Leslie Houston, Director  
 Division Administration and Support  
 Approved by: Dwayne Peeples, Deputy Commissioner  
Department of Corrections

Phone (907) 465-3339  
 Date/Time 1/8/10 2:00 PM  
 Date 1/8/2010

FISCAL NOTE #3

STATE OF ALASKA  
2010 LEGISLATIVE SESSION

BILL NO. HB 324

**ANALYSIS CONTINUATION**

This legislation relates to the crime of failure to appear, arrest for violating certain conditions of release, release before trial, before sentence, and pending appeal, material witnesses, temporary release, petition to revoke probation, first appearances, and domestic violence protective orders.

DOC projects there will be a shift of burden from the sentenced facilities to the State and Community Jails that house the unsentenced population during the adjudication process. While the total impact of the mandays of incarceration may not be significant when calculating time served for those convicted, there will be a significant increased number of mandays in the small jails. It is difficult for DOC to quantify the impact due to the multiple variables under this scenario, e.g. transportation costs from rural areas, medical costs based on need, plea bargains, dismissed cases, etc.

# FISCAL NOTE

**STATE OF ALASKA**  
**2010 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 324  
 (H) Publish Date: 2/3/10

Identifier (file name): 0910-DOA-OPA-12-10-09 Dept. Affected: DOA  
 Title An Act relating to the crime of failure to appear; relating to RDU Legal and Advocacy Services  
arrest for violating certain conditions of release . . . . Component Office of Public Advocacy  
 Sponsor Rules Committee  
 Requester Governor Component Number 43

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2010) cost: 0.0

**POSITIONS**

Full-time								
Part-time								
Temporary								

**ANALYSIS:** (Attach a separate page if necessary)

This bill makes changes and additions to the statutes applicable to bail in criminal cases, reduces the proof requirements to obtain convictions for failure to appear, expands the circumstances under which a material witness may be detained, and increases the maximum amount of time between arrest and initial appearance before a judicial officer from twenty-four to forty-eight hours.

Analysis continued on the second page.

Prepared by: Rachel Levitt, Director  
 Division Office of Public Advocacy  
 Approved by: Rachael Petro, Deputy Commissioner  
Department of Administration

Phone 907 269-3504  
 Date/Time 12/10/09, 4:30 p.m.  
 Date 12/15/2009

**FISCAL NOTE #1**

**STATE OF ALASKA  
2010 LEGISLATIVE SESSION**

**BILL NO. HB 324**

**ANALYSIS CONTINUATION**

Among the changes to the bail statutes, the bill includes a list of mandatory conditions of release for all defendants and a list of additional conditions of release that the court may impose. Under this legislation, a defendant will not be given a second bail review until the Court System provides information regarding a defendant's previous criminal charges and history of compliance with release. The bill will also codify a rebuttable presumption against release in certain categories of pretrial cases. Additionally, it will exclude certain categories of people from becoming third party custodians.

The agency does not predict a significant fiscal impact as a result of the proposed statute. Accordingly, the agency submits a zero fiscal note.

Adopted 4/12/10

26-GH2910AS  
Luckhaupt  
4/11/10

**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:  
Referred:**

**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 uncoded 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 uncoded 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.

\*\*\*\*\*  
 \* P. 01 \*  
 \* TRANSACTION REPORT \*  
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 \* FOR: house finance 4656813 \*  
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*Adopted 4/12/10*

AMENDMENT #1

OFFERED IN THE HOUSE BY REPRESENTATIVE GARA  
 TO: House CS for CSSB 110 (JUD)

Page 8, lines 19-20:

Delete "(A) is not inconsistent with a defense presented at trial; and  
 (B)"

*Adopted  
4/12/10*

26-GH2910S  
Luckhaupt  
4/11/10

**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:  
Referred:**

**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.

# STATE OF ALASKA

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26-GH2910E

## **CSHB 324 (BAIL REFORM)** **Sectional Analysis**

**Section 1** of the bill moves the crime of failure to appear at a court appearance from Title 12 to Title 11. The proposed law is similar to current law with one exception -- it provides that if a person knows that he or she is required to appear, the prosecution does not have to prove an additional culpable mental state regarding the conduct of not appearing. It also provides an affirmative defense that the defendant, due to unforeseeable circumstances outside his or her control, was prevented from appearing at the hearing, and that the defendant notified the court orally and in writing immediately upon being able to make the contact.

The penalties are the same as under current law.

**Section 2** includes a conforming amendment to AS 12.25.030(b). It changes the standard for a law enforcement officer to make an arrest without a warrant in certain cases from "reasonable cause" to "probable cause". The standard in AS 12.25.030(b) would then be the same as in AS 12.25.030(a). Reasonable cause and probable cause are similar.

Section 2 also allows a law enforcement officer to arrest a person for violation of conditions of release if the officer has probable cause to believe the person has violated conditions in connection with release under AS 12.30. Law enforcement supports this change because it avoids, for example, an officer having to get an arrest warrant for a person if the person is ordered not to drink alcohol and is found intoxicated.

**Section 3** adopts a new section, AS 12.20.006, that describes release procedures for a person charged with a crime. Although the procedures are similar to those under various sections of existing law, there are a few differences, which include:

- Before the third and subsequent bail hearings, current law and the bill require that certain prerequisites are met – such as seven days elapse between bail hearings unless certain other factors are present. Current law requires 48 hours notice to the prosecuting authority, and the bill requires

the same notice, but it also requires 48 hours notice to any surety involved so that the surety has an opportunity to attend the hearing.

- The bill specifically requires the person being released to sign an agreement that describes the terms of the release and includes the person's promise to abide by the terms.
- The bill eliminates a provision in current law that allows a judicial officer to change, add to, or eliminate conditions of release at any time. The law already provides a process for asking the court to change conditions, and allowing a change at any time, without following the required procedures, has the potential of being unfair to the defendant, the prosecuting authority, or to the victim.

**Section 4** revises the law addressing release before trial of a person charged with a crime. Proposed AS 12.30.011 adopts standards and conditions for release in general, and AS 12.30.016 adopts standards and conditions for release for specific crimes.

Proposed AS 12.30.011 first adopts conditions that must be imposed on all persons released pending trial. They are very general – including a requirement that the person obey all laws, appear in court when ordered, and keep in contact with the person's attorney.

- Subsection (b) provides conditions that a court may impose on a person charged with a crime if, in the court's discretion the condition will reasonably assure the person's appearance and the safety of the victim, other persons, and the community. Many of these conditions are in current law. Others are included in federal bail law. Several were suggested by a retired judge who is doing contract work for the court system. There is also a general authorization for additional reasonable conditions.
- Subsection (c) describes the various circumstances that the court should consider in deciding what conditions are reasonable to impose on the person. These are similar to current law.
- Subsection (d) provides the evidentiary burdens that a court must apply in making a decision about the release of a person. Generally, the burden of proof is on the prosecuting authority to establish that particular conditions are reasonable to assure the defendant's appearance and the safety of the victim and others. However, the bill proposes a rebuttable presumption, that no condition or combination of conditions will assure the defendant's appearance or the safety of the victim or others if (1) the defendant is charged with an unclassified felony, a class A felony, or a sexual felony;

(2) the person is charged with a felony, has a previous conviction for a felony, and less that five years have elapsed since his or her unconditional release for the prior conviction; (3) the offense was committed while the defendant was on release for another offense; (4) the charge is for a crime involving domestic violence, and the defendant has been convicted within the previous five years of a crime involving domestic violence; or (5) the defendant has been arrested in connection with a felony warrant from another state that alleges that the defendant is a fugitive from justice from that state.

Proposed AS 12.30.016 adopts conditions that may be imposed in particular cases. These conditions are in addition to the general conditions authorized under AS 12.30.011(a) and (b). Most of these additional conditions are found in current law.

- Subsection (b) provides additional conditions that may be imposed on persons charged with Title 04 violations such as selling alcohol without a license or bootlegging, and with drunk driving and refusal to submit to a breath test. These conditions include, for example, a judicial officer ordering a person to submit to a breath test when requested to do so by a law enforcement officer.
- Subsection (c) provides additional conditions that may be imposed on a person charged with violation of the drug laws, and include, for example, prohibiting the person from entering or remaining in a place where a controlled substance is being used, manufactured, grown, or distributed.
- Subsection (d) is a provision that was enacted in 2006, that adopts a mandatory requirement of \$250,000 cash bond for a person charged with manufacturing methamphetamine, unless the defendant proves to the court that his or her role was only as an aider or abettor and that the defendant did not stand to gain financially from the offense.
- Subsection (e) adopts specific conditions for a person charged with stalking that is not a crime involving domestic violence. The conditions are similar to those in current law.
- Subsection (f) adopts specific conditions that a court may impose on a person charged with a sex offense. The conditions are similar to current law, except that it adds a condition that the court may order the defendant to have no contact with person under 18 years of age, except for contact made during the normal course of business in a public place. It requires the court, as does current law, to assure that the victim has been notified of the

hearing or reasonable efforts to do so have been made, and to consider the victim's comments in making a release decision.

**Section 5** adopts standards for the appointment of a third-party custodian for a person released before trial. It requires a court to obtain information about the proposed custodian including the person's ties to the community and his or her relationship with the defendant. It also sets minimum standards for custodians such as requiring the person to be physically able to perform the duties of custodian, and requires the person to agree to report immediately if the defendant has violated conditions. The bill also prohibits a person from acting as third-party custodian under certain circumstances, such as if the person may be called as a witness in the case, the person is on probation, or resides out of state.

**Section 6** amends the statute addressing the general release conditions of a person charged with a crime involving domestic violence by conforming it to the language used in the newly adopted sections of the bill. It does not include a substantive change.

**Section 7** amends the law that prohibits a court from allowing a person charged with a crime involving domestic violence from returning to the residence of the victim or to the residence of a person who has a protective order directed at the defendant. This prohibition was found to violate equal protection of the law in *Williams v. State*, 151 P.3d 460 (Alaska App. 2006). This section is in response to *Williams*, and would overturn it to the extent that it would prohibit a person from returning to the residence of the victim unless certain conditions were met. These include requiring that 20 days have elapsed since the arrest, the victim or petitioner consents to the return, the defendant does not have a prior conviction for a domestic violence crime against a person, and the defendant establish by clear and convincing evidence that return to the residence does not pose a danger to the victim or petitioner.

**Section 8** rewrites the provision addressing appeal from conditions of release. Current law and the bill provide specific procedures for requesting the court to change conditions of release. The bill does not reenact the provision in current law that allows the court that imposed the conditions to hear at any time a motion to amend the release order. Rather, the bill requires the person to follow the procedures provided in the bill for asking the court to amend conditions.

The appeal procedure from the trial court's bail decision is similar in the bill to current law. The standard for review is the same as current law – the appellate court shall affirm the lower court unless it finds that the lower court abused its discretion. The bill allows the appellate court to modify the order, remand the case for further proceedings, or to direct the entry of an appropriate release order. This is also similar to current law.

7

**Section 9** adds a new section addressing the temporary release of a person for an emergency such as the death of a family member. It is similar to current law under AS 12.30.010(a).

**Section 10** addresses the release of persons who have been found guilty but not yet sentenced or whose conviction is being appealed. It allows release under the general provisions of AS 12.30, but it requires the person seeking release to establish by clear and convincing evidence that the release sought will reasonably assure the person's appearance and the safety of the victim, other persons, and the community.

Under current law certain defendants may not be released after being found guilty, including a person convicted of an unclassified or class A felony. The current statute also prohibits release of persons convicted of class B or C felonies if they have a previous conviction for certain serious felonies. This later category was found by the court of appeals to violate the constitutional guarantee of equal protection of law. *Bourdon v. State*, 28 P. 3d 319 (Alaska App. 2001). The bill would prohibit release of a person found guilty of all sexual felonies, and a person found guilty of a class B felony who has been convicted of a felony in the prior 10 years. It avoids the problem in *Bourdon* by applying the prohibition to all persons convicted of class B felonies who have a conviction of a felony in the previous 10 years.

**Section 11** makes clarifying changes to the law for the retention or release of a material witness who is not expected to respond to a subpoena to appear. The bill does not change the substance of current law to a great degree. It does, however, specify that the court may order a material witness who is not expected to respond to a subpoena to be arrested and released under the bail law. As does current law, it allows a material witness to be detained for enough time to take a deposition and then released, unless justice requires the person be personally present at trial.

**Section 12** specifies that a person who is in custody in connection with a petition to revoke probation does not have a right to release under AS 12.30. This is the same as current law. *Burt v. State*, 823 P.2d 14 (Alaska App. 1991). However, a probationer may request release under AS 12.30. The bill provides that the probationer must establish by a preponderance of evidence that conditions on his or her release will reasonably assure the appearance of the probationer and the safety of the victim, other persons, and the community.

**Section 13** is a conforming amendment to current law.

**Section 14** provides that for purposes of the bail statutes, a conviction occurs at the time a person is found guilty, either by verdict or by plea.

**Section 15** adds definitions to the bill.

**Sections 16 – 18** are conforming amendments.

**Section 19** provides that service of domestic violence protective orders on respondents need not be made by law enforcement officers if the respondent has already been served with the protective order on the record in court. It also specifies that when a judicial officer has denied a petition for a protective order, the order denying the petition need not be served on anyone.

**Sections 20 and 21** amend Rule 5, Alaska Rules of Criminal Procedure. Current law requires a person who has been arrested to be brought before a judicial officer within 24 hours of being arrested. The bill changes this from 24 hours to 48 hours. Although the preferred procedure is to have persons arrested be brought as soon as possible before a judicial officer, the change in the deadline will give prosecutors and the police more time to gather information to provide the court in making a release decision, and allows more time to locate and inform the victim of the right to be present at release hearings.

**Sections 22 and 23** are conforming amendments.

**Section 24** amends Rule 41(c), Alaska Rules of Criminal Procedure, by providing that a court may not change or add to a bond requirement without the agreement of the surety.

**Section 25** is a conforming amendment.

**Section 26** amends Rule 603(b), Alaska Rules of Appellate Procedure, to clarify that release of a person whose conviction is being appealed may be allowed as provided by the provisions of AS 12.30.

**Sections 27 – 29** include the repealers, the applicability sections, and the effective date provision.

# STATE OF ALASKA

## DEPARTMENT OF LAW CRIMINAL DIVISION

**SEAN PARNELL,  
GOVERNOR**

**Mailing:** PO Box 110300  
Juneau, AK 99811-0300  
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March 10, 2010

Hon. Jay Ramras  
Chair, House Judiciary Committee  
Alaska State Capitol, Room 118  
Juneau, Alaska 99801

Re: House Bill 324 – Bail Reform

Dear Chairman Ramras:

I am writing first to thank you for the thoughtful and thorough hearings that you held for HB 298 (sexual assault and abuse) and HB 316 (evidence retention and post-conviction DNA testing). I am also writing to ask again that you consider scheduling House Bill 324, the bail reform bill, for a hearing in the House Judiciary Committee. I hope you will not think we are too demanding, but there are good reasons to hear the bail bill: in addition to protection of the public and other victims, victims of sexual assault and sexual abuse will greatly benefit from the passage of the bill. Although bail reform is not directly targeted at sexual assault or sexual abuse in the state, the bill would provide additional protection to victims of these crimes.

### **The Problems with current law:**

Our bail laws date back to 1966. It is clear that when the legislature adopted these statutes, times were not as difficult as present. For example, unless a person has been convicted of an unclassified felony or a class A felony, our bail laws allow a person found guilty of any other crime, either by plea or by verdict, to be released pending imposition of sentence or during an appeal. The following scenarios are only a few of many examples of the danger that can result from the application of the current law.

Larry Berryhill, IJU-07-992CR, was convicted of two counts of Sexual Abuse of a Minor in the Second Degree for having sexual contact with a young boy who worked for him at his lodge in Gustavus. After being found guilty, and over the state's objection, the court released him on an unsecured signature bond, in lieu of posting bail, in the amount of \$25,000. Mr. Berryhill did not appear for his sentencing. Alaska State Troopers and law enforcement agents from other states

(Mr. Berryhill had committed similar crimes in other states) found that Mr. Berryhill had fled to Argentina, and was vacationing in New Zealand and Europe when he should have appeared in court for his sentencing. Mr. Berryhill died before the Troopers were able to arrest him. He did not spend a single day in jail for his sexual abuse of that young boy.

Michael Williams, 3AN-10-166CR, has been convicted of a felony five times, two of the felonies were federal armed bank robbery convictions from the late 1980s. In January, 2008, he was charged with the Robbery in the First Degree for a home invasion robbery with multiple victims. The state proceeded with the prosecution under the three strikes law – with a 99 year sentence possible if convicted. This potential sentence is higher than most people convicted of homicide would receive. Over the state's objection, bail was set at \$5,000 cash appearance bond and a third party custodian was appointed. The state requested several times that his bail be increased, but were unsuccessful. Mr. Williams skipped out soon after release, and a bench warrant was issued for his arrest. He has not been found.

James Spencer, 3AN-09-2113CR, was charged with Robbery in the First Degree after confronting a Carr's employee with a handgun. Over the state's objection, his bail was set at \$1,000 cash performance bond, and \$5,000 cash or corporate appearance bond. Last week, Mr. Spencer was arrested and charged with a new Robbery in the First Degree for an armed robbery at the Burger King (3AN010-2471CR).

Jack Lee Espinoza, Jr., 3AN-10-2113CR, was charged with two counts of Robbery in the First Degree. He had been convicted of more than 10 crimes in the past, several of them were felonies. Over the state's objection, Mr. Espinoza had been released on bail of \$2,500 cash or corporate appearance bond and ankle monitoring. Within 48 hours of his release, Mr. Espinoza had cut off his ankle monitor, and with another person committed another armed robbery at a trailer in Anchorage. The victim was shot, allegedly by the other person, during the robbery.

#### **How HB 324 will help avoid these problems**

Section 10 of HB 324 (page 13, beginning at line 26) provides that a person found guilty of a sexual felony may not be released pending imposition of sentence or appeal. The legislature has raised the maximum term of imprisonment for a person convicted of a sexual felony to 99 years; with that maximum term the danger of flight is high. Additionally, the

danger of sex offenders victimizing others is significant. Mr. Berryhill would not have been released after being found guilty of sexual abuse under HB 324.

HB 324 is similar to federal law in part because it would adopt a presumption, that is rebuttable, that no combination of conditions or monetary bail would ensure the safety of the public and the appearance of the defendant in cases where the person is either charged with an unclassified or a class A felony (similar to current law), or the defendant is a higher risk of flight or danger to the public (new in HB 324). The bill provides that other persons with higher risk include the following:

- persons charged with a felony who have a prior felony conviction and less than five years have elapsed since unconditional release for the prior felony;
- persons charged with a crime committed while the person was on release for another charge or conviction;
- persons charged with a domestic violence crime if the person has a conviction for a domestic violence crime within the previous five years;
- persons arrested in connection with a felony charge or conviction out of state and the person is fugitive from the other jurisdiction.

The individuals described in the scenarios above (except for Mr. Berryhill), would have burden of going forward under HB 324 with suggestion for release conditions. For example, Mr. Williams would have to present information and suggestions for conditions of release that would satisfy a judicial officer that he would not be a danger to the public and he would not be a flight risk. Mr. Williams still has the constitutional right to have bail set for him.

Additionally, HB 324 would adopt standards for third party custodians so that, for example, a person charged with crimes, on probation, or with recent convictions could not act as a third party custodian. HB 324 would require a judicial officer to do basic screening of a person before appointing the person as a custodian. Defendants have taken advantage of third party custodians in the past. There have been advertisements on Craig's list for third party custodians (see attached).

#### **Misconceptions about HB 324**

We have heard several comments about HB 324 that are simply not accurate. For example, the bill changes the deadline for the first appearance before a court of a person arrested from 24 to 48 hours. This change has been described as contrary to the practice of a

Honorable Jay Ramras  
Re: House Bill 324 Bail Reform

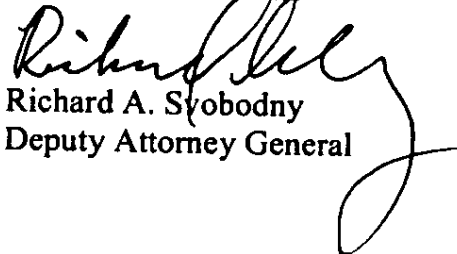
March 10, 2010  
Page 4

majority of other states. As can be seen by the attached memorandum and chart, Alaska is one of only three states who require a first appearance within 24 hours. The remaining states have later deadlines. There are many good reasons to change this deadline. It would give all parties a chance to gather information for better informed bail hearings. Even more important is that victims in Alaska have a constitutional right to appear at arraignments and bail hearings. Often we are unable to notify them of a hearing that must be held within 24 hours of arrest; other times the victim is still in the hospital at this time. The change to a 48 hour deadline will help the system make the victim's right to be present much more meaningful.

We also have heard people say that HB 324 would prohibit certain people from being released on bail. This is not correct. Defendants have a constitutional right to have bail set for their release. HB 324 simply changes certain procedures for the courts to follow in setting bail. In doing so, it would protect the public and discourage bail jumping much better than does current law.

Sincerely,

DANIEL S. SULLIVAN  
ATTORNEY GENERAL

By:   
Richard A. Syobodny  
Deputy Attorney General

# MEMORANDUM

# STATE OF ALASKA

Department of Law - Criminal Division

To: Senate Judiciary Committee

Date: March 1, 2010

Thru: Richard Svobodny, Deputy Attorney General  
Anne Carpeneti, Assistant Attorney General

From: Susan S. McLean *SMc*  
Director, Criminal Division

Subject: **Other State Rules - First  
Appearance After Arrest**

## General Considerations

The Fourth Amendment requires that a person must be released from custody after 48 hours if a court has not determined that there is probable cause for the arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44, 57-59, 111 S.Ct. 1661, 1670-1671 (1991). Violation of the rule is but one factor to consider in determining whether to suppress a defendant's in-custody statements.

- Since probable cause (and the amount of bail) must be determined before an arrest warrant issues, a probable cause determination only applies to warrantless arrests.
- Since probable cause may be determined on the basis of affidavits and sworn testimony after a warrantless arrest, the defendant's presence is not required at a probable cause hearing.
- Many states require appearance before a magistrate without unnecessary delay, but most courts have not defined "without unnecessary delay" as a specific amount of time, and determine meaning on a case by case basis.

**Only 3 of the 24 states which set specific time limits mandate appearance within 24 actual hours of arrest.**

## Summary - First Appearance Following Warrantless Arrest, By Total Number of States

- 3 states - 24 hours, calculated including weekends and holidays (AK, FL, MD)
- 1 state - 24 hours, weekends and holidays *may* be included or excluded (WA)
- 6 states - 24 hours, calculated *excluding* weekends and holidays (AZ, CT, DE, ID, MA, NH)
- 1 state - 36 hours, calculated *excluding* day of arrest, Sundays and holidays (MN)
- 7 states - 48 hours, including weekends and holidays (AL, AR, GA, HI, MS, NE, TX)
- 1 state - 48 hours, *excluding* Sunday, holiday, and days when court not in session (CA)
- 1 state - 48 hours, *excluding* Saturday, Sunday and holidays (ME)
- 1 state - 48 hours if 1<sup>st</sup> appearance is combined w/prob. cause hearing (court decision) (WI)
- 2 states - 72 hours, including weekends and holidays (NJ, WY)
- 1 state - 72 hours, *excluding* Saturday, Sunday and holidays (LA)
- 1 state - 72 hours is "without delay", if probable cause w/in 48 hours (court decision) (TN)
- 21 states - "without unnecessary delay" (CO, IL, IA, KS, KY, MI, MT, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, UT, VT, WV)
- 2 states - "forthwith" (SC, VA)
- 1 state - "promptly" (repealed a 24- hour rule in 1995) (IN)
- 1 state - person must be released if not "charged" within 20 hours, but no provision for first appearance (MO)

## State Time Limits for Initial Appearance Before Magistrate

State	Time Limit	Authority	Statutory language/construction
Alabama	48 hours - Warrantless arrest 72 hours - Arrest w/ warrant	Ala. R. Crim. P. 4.3(a)(1)(iii) Ala. R. Crim. P. 4.3(b)(2)(i)	
Alaska	24 hours, including weekends and holidays	Alaska R. Crim. P. 5(a)(1)	
Arizona	24 hours, excluding Sat., Sun and holidays	Ariz. R. Crim. P. 4.1(b) and Ariz. R. Crim. P. 1.3	<i>See, State v. Watkins</i> , 2008 WL 3171651 * 3 (Ariz. App. Aug.5, 2008) (Sat. Sun. and legal holiday excluded from calculation of 24 hrs; citing Rules 4.1(b) and 1.3))
Arkansas	48 hours  Case law suggests that exception may exist for weekends and holidays	Ark. R. Crim. P. 4.1(e)	<i>See, Larson v. Dorney</i> , ___ F.Supp. ___, Slip. Op. 2009WL 903392 *4 (W.D. Ark, April 1, 2009)(delay between arrest on Good Friday and appearance on Monday was "as promptly as calendar would allow")
California	48 hours, excluding Sundays and holidays. If 48 hours expires when court is not in session, then next judicial day.	CA Penal Code § 825(a)(1) CA Penal Code § 825(a)(2)	
Colorado	without unnecessary delay	CRSA. § 16-2-112 Colo. R. Crim. P. 5	
Connecticut	24 hours, excluding Sat., Sun. and holidays	CRS 54-1(g) Conn. Practice Book R. 37-1	Statutory language "promptly before the court sitting next regularly" means the next court day, excluding weekends and holidays. <i>State v. Pirowski</i> , 11 Conn. App. 238,240, 526 A.2d 562 (1996)
Delaware	24 hours, excluding Sundays and holidays	11 Del. C. § 1909	
Florida	24 hours, including weekends and holidays	Fla. R. Crim. P 3.130	
Georgia	48 hours -warrantless arrest 72 hours - arrest with warrant	Ga. Uniform St. Ct. R. 26.1 Ga. St § 17-4-62; Ga. St § 117-4-26	
Hawaii	48 hours	H.R.S. 803-9(5)	
Idaho	24 hours, excluding Sat., Sun. and holidays	I.C.R., Rule 5(b)	
Illinois	without unnecessary delay	I.L.C.S. § 109-1	<i>See, People v. Willis</i> , 831 N.E.2d, 531, 538 (Ill., 2005) Ill Court cites <i>McLaughlin</i> as requiring 48 hours, but delay is only one factor to be examined in deciding whether confession is voluntary. Court has not otherwise defined "unnecessary delay".

Indiana	<p>"promptly"</p> <p>24 hr. rule repealed, 1995</p> <p>Ct. decision implies that more than 48 hours can pass before initial appearance before magistrate</p>	Ind. Code § 35-33-7-1	<p>See, <i>State v. Larson</i>, 776 N.W.2d, 254, 258 (Ind. 2009) – probable cause must be determined with 48 hours, but can be based on hearsay and written testimony. "Arrested person has no right to be physically present at probable cause hearing." Ind. law does not provide for a specific period of time in defining how "promptly" a person is brought before magistrate</p>
Iowa	without unnecessary delay	I.C.A. 804.22	
Kansas	without unnecessary delay	KSA 2003 Supp. 22- 2901	<p>See, <i>State v. Carrow</i>, 2006 WL 399251 *4 (Kan. App., Feb. 17, 2006) - cites <i>McLaughlin</i> as defining "without unreasonable delay" to mean that period of delay "cannot be longer than 48 hours, excluding weekends and holidays"</p>
Kentucky	without unnecessary delay	Ky. R. Crim. P. 3.02(2)	
Louisiana	<p>72 hours excluding Sat., Sun, holidays</p> <p>48 hours probable cause hearing, which is not adversarial and conducted without presence of defendant</p>	<p>LSA – C.Cr. P. Art. 230-1(A)</p> <p>LSA –C. Cr. P. Art. 230.2(A)</p>	
Maine	48 hours, excluding Sat., Sun and holidays	Me. R. Crim. P. 5(a)	
Maryland	24 hours, including weekends and holidays	Md. Rule 4-212(e) and (f)	<p>Although statute does not specifically state "including weekends", it is clear from case law. See, e.g., <i>Odum v. State</i>, 846 A. 2d 145 (Md. App. 2004)</p>
Massachusetts	<p>24 hours, excluding weekends and holidays</p> <p>(see judicial interpretation re probable cause determination)</p>	Mass. R. Crim. P. 7	<p>"accused shall be brought before court then in session, and, if not at its next session".</p> <p>Language at the court's "next session" suggests that if an accused is arrested on Friday, the next session would be a regular court day.</p> <p>See, <i>Jenkins v. Chief Justice of Dist. Court Dept.</i>, 619 N.E.2d 324, 337,339 (Mass, 1993) holding that probable cause must be determined within 24 hours but that the determination may be made ex parte upon written documents.</p>
Michigan	without unnecessary delay	M.C.L.A. § 764.13	
Minnesota	36 hours, excluding day of arrest, Sun and holidays	49 M.S.A. R. Crim. P. 4.02(5)	

Mississippi	without unnecessary delay, within 48 hours	M.C.A. 99-3-17 Uniform Cnty and Cir R 6.03	
Missouri	None – must be charged within 20 hours, but no requirement of personal appearance	V. Ann. Mo. C. Art. 544.170	All persons who are arrested without warrant shall be released if not charged and held by warrant within 20 hours of arrest  <i>See, St. v. Brown</i> , 933 P.2d 672, 675-676 (Mont. 1999) acknowledging <i>McLaughlin</i> 48 hour time limit for probable cause determination, and holding that to be one factor in deciding voluntariness of confession.
Montana	without unnecessary delay	MCA 46-7-101	
Nebraska	48 hours	Neb. Crim. Rule 5.1(b)(1)	
Nevada	without unnecessary delay -warrantless arrest  72 hours- arrest with warrant	N.R.S. 171-1771  N.R.S. 171-178	<i>See, Powell v. State</i> , 930 P.2d 1123 (Nev. 1997), acknowledging that <i>McLaughlin</i> requires probable cause hearing within 48 hours
New Hampshire	24 hours, excluding Sat., Sun. and holidays	N.R.S. § 594:20(a)	
New Jersey	72 hours, provided that complaint showing probable cause is filed within 12 hours of arrest	N.J. Crim. Rules 3:4-1 and 3:4-2	
New Mexico	without unnecessary delay	NMSA § 31-1-5	
New York	without unnecessary delay	McKinney's CPL § 140.20 sub1	
North Carolina	without unnecessary delay	N.C.G.S.A. § 15A-511	
North Dakota	without unnecessary delay	N.D.C.C. 2906-25 N.D. Crim. Rule 5(a)	
Ohio	without unnecessary delay	O.R.C. § 29.35.05 Ohio Crim. Rule 4(e)	
Oklahoma	without unnecessary delay	22 Okl. Stat. Ann. § 181	<i>See, Black v. State</i> , 871 P.2d 35, 39 (Okl. Cr. 1994). Citing <i>McLaughlin</i> , court recognized that delay longer than 48 hours in taking defendant to probable cause hearing is unreasonable.
Oregon	without unnecessary delay		
Pennsylvania	without unnecessary delay	Pa.R.Crim.P. 519	
Rhode Island	without unnecessary delay (unless charged w/ offense under RI Gen Law. 12.13.1.1*)	Super. R. Crim. P., Rule 5 Dist R. Crim. P., Rule 9	*Unless charged w/ offense under RI Gen Laws, 12.13.1.1 (charges carrying life sentence or firearm offenses committed by persons previously convicted of offense carrying life sentence), in which case 48 hrs., excluding Sat., Sun. and holidays
South Carolina	Shall be forthwith carried before a magistrate and a warrant of arrest procured	S.C. Code 1976§ 22-5-200	

South Dakota	without unnecessary delay	SDCL § 23A-4-1	<i>State v. Larson</i> , 776 N.W. 2d 254, 258 (S.D., 2009) persons arrested without warrant are constitutionally entitled to probable cause determination within 24 hours.
Tennessee	"without unnecessary delay" – Judicially defined –  72 hours for appearance before magistrate  48 hrs for probable cause, but hearing unnecessary	Tenn. R. Crim. P. 5(a)	Due process is violated if probable cause is not determined within 48 hours, but a full adversarial hearing is not necessary.  If an individual is not brought before a magistrate within 72 hours there has been an unnecessary delay within the definition of Tenn. R. Crim. P. 5.1. <i>State v. Carter</i> , 16 SW 762, 766 (Tenn. 2000)
Texas	48 hours	V. Ann. Tex. C.C.P. Art 14.06	
Utah	without unnecessary delay  48 hours probable cause, but arrestee need not be present	U.C.A. 1953 § 77-723  Utah Criminal Rule 7	
Vermont	without unnecessary delay	Vt. R. Crim. P. 3(g)	
Virginia	"forthwith"  (Warrantless arrest only)	Va. Code Ann. § 19.2-82	Accused and officer appear together "forthwith" for probable cause hearing. Does not apply to arrests with warrant
Washington	24 hours, including weekends and holidays  48 hours prob. cause, but hearing not required	Wash. Cr.RLJ 3.2.1 (c)  Wash. Cr.RLJ 3.2.1(a)	"must be brought before a court of limited jurisdiction as soon as practicable after the detention is commenced, but in any event before the close of business on the next court day." Sat, Sun and holidays may be considered court days
West Virginia	Without unnecessary delay	W.Va. Code Sex. 62-1-5 W.Va. R. Crim. P. 5	
Wisconsin	Within a reasonable time  Judicial definition - 48 hours implicitly the reasonable time	W.S.A. § 970.01	If the initial appearance also serves as the <i>Riverside</i> probable-cause hearing it must be held within 48 hours barring extraordinary circumstances. In cases where a defendant's <i>Riverside</i> ( <i>v. McLaughlin</i> ) determination was properly made in a proceeding prior to the initial appearance, court looks at the individual circumstances of the case to determine a "reasonable time" from the defendant's arrest <i>State v. Evans</i> , 522 N.W. 2d, 554, 563 (Wis. App., 1994) (Held: 4 days over a weekend not unreasonable)
Wyoming	without unnecessary delay and in no event more than 72 hours	W. R Crim P 5(a)	

**From:** Henderson, Robert E (LAW)  
**Sent:** Tuesday, January 19, 2010 5:09 PM  
**To:** Carpeneti, R Anne D (LAW); Svobodny, Richard (LAW)  
**Cc:** Novak, John J (LAW)  
**Subject:** FW: Third Party Custodian Craigslist ad

Annie and Rick:

Laurie Eller is an LOA in our office who saw the craigslist posting asking someone to come forward as a TPC.

Robert E. Henderson  
Assistant District Attorney  
907.269.6300 (office)  
907.269.6321 (fax)

---

**From:** Eller, Laurie A (LAW)  
**Sent:** Tuesday, January 19, 2010 5:00 PM  
**To:** Henderson, Robert E (LAW)  
**Subject:** Third Party Custodian Craigslist ad

Rob, I finally remembered to look for that Craigslist ad from last summer about someone wanting to pay for a TPC. I found it and it is shown below. Let me know if I can be of further help. ☺

---

Date: 2009-08-24, 11:19AM AKDT  
Reply to: [job-k7j6y-1339990957@craigslist.org](mailto:job-k7j6y-1339990957@craigslist.org) {Error: when replying to ads?}

---

Looking for third party in court case , court case is non violent, non-sexual,non- abusive. Its is a Misdemeanor , but requires THIRD PARTY for 30 days until next court date. Will pay handsomely\$\$\$\$\$\$

- Location: ANCHORAGE
- Compensation: Will Pay Handsomely\$\$\$\$\$\$\$\$
- Principals only. Recruiters, please don't contact this job poster.
- Please, no phone calls about this job!
- Please do not contact job poster about other services, products or commercial interests.

PostingID: 1339990957

# STATE OF ALASKA

## DEPARTMENT OF LAW CRIMINAL DIVISION

**SEAN PARNELL,  
GOVERNOR**

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Juneau, AK 99801  
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**Fax:** (907) 465-4043

March 10, 2010

Hon. Jay Ramras  
Chair, House Judiciary Committee  
Alaska State Capitol, Room 118  
Juneau, Alaska 99801

Re: House Bill 324 – Bail Reform

Dear Chairman Ramras:

I am writing first to thank you for the thoughtful and thorough hearings that you held for HB 298 (sexual assault and abuse) and HB 316 (evidence retention and post-conviction DNA testing). I am also writing to ask again that you consider scheduling House Bill 324, the bail reform bill, for a hearing in the House Judiciary Committee. I hope you will not think we are too demanding, but there are good reasons to hear the bail bill: in addition to protection of the public and other victims, victims of sexual assault and sexual abuse will greatly benefit from the passage of the bill. Although bail reform is not directly targeted at sexual assault or sexual abuse in the state, the bill would provide additional protection to victims of these crimes.

### **The Problems with current law:**

Our bail laws date back to 1966. It is clear that when the legislature adopted these statutes, times were not as difficult as present. For example, unless a person has been convicted of an unclassified felony or a class A felony, our bail laws allow a person found guilty of any other crime, either by plea or by verdict, to be released pending imposition of sentence or during an appeal. The following scenarios are only a few of many examples of the danger that can result from the application of the current law.

Larry Berryhill, IJU-07-992CR, was convicted of two counts of Sexual Abuse of a Minor in the Second Degree for having sexual contact with a young boy who worked for him at his lodge in Gustavus. After being found guilty, and over the state's objection, the court released him on an unsecured signature bond, in lieu of posting bail, in the amount of \$25,000. Mr. Berryhill did not appear for his sentencing. Alaska State Troopers and law enforcement agents from other states

(Mr. Berryhill had committed similar crimes in other states) found that Mr. Berryhill had fled to Argentina, and was vacationing in New Zealand and Europe when he should have appeared in court for his sentencing. Mr. Berryhill died before the Troopers were able to arrest him. He did not spend a single day in jail for his sexual abuse of that young boy.

Michael Williams, 3AN-10-166CR, has been convicted of a felony five times, two of the felonies were federal armed bank robbery convictions from the late 1980s. In January, 2008, he was charged with the Robbery in the First Degree for a home invasion robbery with multiple victims. The state proceeded with the prosecution under the three strikes law – with a 99 year sentence possible if convicted. This potential sentence is higher than most people convicted of homicide would receive. Over the state's objection, bail was set at \$5,000 cash appearance bond and a third party custodian was appointed. The state requested several times that his bail be increased, but were unsuccessful. Mr. Williams skipped out soon after release, and a bench warrant was issued for his arrest. He has not been found.

James Spencer, 3AN-09-2113CR, was charged with Robbery in the First Degree after confronting a Carr's employee with a handgun. Over the state's objection, his bail was set at \$1,000 cash performance bond, and \$5,000 cash or corporate appearance bond. Last week, Mr. Spencer was arrested and charged with a new Robbery in the First Degree for an armed robbery at the Burger King (3AN010-2471CR).

Jack Lee Espinoza, Jr., 3AN-10-2113CR, was charged with two counts of Robbery in the First Degree. He had been convicted of more than 10 crimes in the past, several of them were felonies. Over the state's objection, Mr. Espinoza had been released on bail of \$2,500 cash or corporate appearance bond and ankle monitoring. Within 48 hours of his release, Mr. Espinoza had cut off his ankle monitor, and with another person committed another armed robbery at a trailer in Anchorage. The victim was shot, allegedly by the other person, during the robbery.

#### **How HB 324 will help avoid these problems**

Section 10 of HB 324 (page 13, beginning at line 26) provides that a person found guilty of a sexual felony may not be released pending imposition of sentence or appeal. The legislature has raised the maximum term of imprisonment for a person convicted of a sexual felony to 99 years; with that maximum term the danger of flight is high. Additionally, the

danger of sex offenders victimizing others is significant. Mr. Berryhill would not have been released after being found guilty of sexual abuse under HB 324.

HB 324 is similar to federal law in part because it would adopt a presumption, that is rebuttable, that no combination of conditions or monetary bail would ensure the safety of the public and the appearance of the defendant in cases where the person is either charged with an unclassified or a class A felony (similar to current law), or the defendant is a higher risk of flight or danger to the public (new in HB 324). The bill provides that other persons with higher risk include the following:

- persons charged with a felony who have a prior felony conviction and less than five years have elapsed since unconditional release for the prior felony;
- persons charged with a crime committed while the person was on release for another charge or conviction;
- persons charged with a domestic violence crime if the person has a conviction for a domestic violence crime within the previous five years;
- persons arrested in connection with a felony charge or conviction out of state and the person is fugitive from the other jurisdiction.

The individuals described in the scenarios above (except for Mr. Berryhill), would have burden of going forward under HB 324 with suggestion for release conditions. For example, Mr. Williams would have to present information and suggestions for conditions of release that would satisfy a judicial officer that he would not be a danger to the public and he would not be a flight risk. Mr. Williams still has the constitutional right to have bail set for him.

Additionally, HB 324 would adopt standards for third party custodians so that, for example, a person charged with crimes, on probation, or with recent convictions could not act as a third party custodian. HB 324 would require a judicial officer to do basic screening of a person before appointing the person as a custodian. Defendants have taken advantage of third party custodians in the past. There have been advertisements on Craig's list for third party custodians (see attached).

#### **Misconceptions about HB 324**

We have heard several comments about HB 324 that are simply not accurate. For example, the bill changes the deadline for the first appearance before a court of a person arrested from 24 to 48 hours. This change has been described as contrary to the practice of a

Honorable Jay Ramras  
Re: House Bill 324 Bail Reform

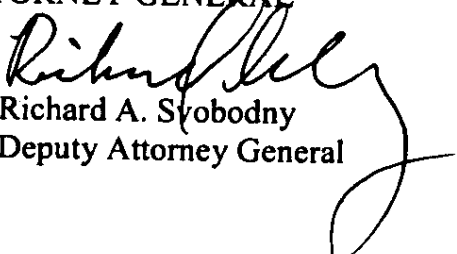
March 10, 2010  
Page 4

majority of other states. As can be seen by the attached memorandum and chart, Alaska is one of only three states who require a first appearance within 24 hours. The remaining states have later deadlines. There are many good reasons to change this deadline. It would give all parties a chance to gather information for better informed bail hearings. Even more important is that victims in Alaska have a constitutional right to appear at arraignments and bail hearings. Often we are unable to notify them of a hearing that must be held within 24 hours of arrest; other times the victim is still in the hospital at this time. The change to a 48 hour deadline will help the system make the victim's right to be present much more meaningful.

We also have heard people say that HB 324 would prohibit certain people from being released on bail. This is not correct. Defendants have a constitutional right to have bail set for their release. HB 324 simply changes certain procedures for the courts to follow in setting bail. In doing so, it would protect the public and discourage bail jumping much better than does current law.

Sincerely,

DANIEL S. SULLIVAN  
ATTORNEY GENERAL

By:   
Richard A. Syobodny  
Deputy Attorney General

# MEMORANDUM

## STATE OF ALASKA

Department of Law - Criminal Division

To: Senate Judiciary Committee

Date: March 1, 2010

Thru: Richard Svobodny, Deputy Attorney General  
Anne Carpeneti, Assistant Attorney General

From: Susan S. McLean *SMc*  
Director, Criminal Division

Subject: **Other State Rules - First  
Appearance After Arrest**

### General Considerations

The Fourth Amendment requires that a person must be released from custody after 48 hours if a court has not determined that there is probable cause for the arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44, 57-59, 111 S.Ct. 1661, 1670-1671 (1991). Violation of the rule is but one factor to consider in determining whether to suppress a defendant's in-custody statements.

- Since probable cause (and the amount of bail) must be determined before an arrest warrant issues, a probable cause determination only applies to warrantless arrests.
- Since probable cause may be determined on the basis of affidavits and sworn testimony after a warrantless arrest, the defendant's presence is not required at a probable cause hearing.
- Many states require appearance before a magistrate without unnecessary delay, but most courts have not defined "without unnecessary delay" as a specific amount of time, and determine meaning on a case by case basis.

**Only 3 of the 24 states which set specific time limits mandate appearance within 24 actual hours of arrest.**

### Summary - First Appearance Following Warrantless Arrest, By Total Number of States

- 3 states - 24 hours, calculated including weekends and holidays (AK, FL, MD)
- 1 state - 24 hours, weekends and holidays *may* be included or excluded (WA)
- 6 states - 24 hours, calculated *excluding* weekends and holidays (AZ, CT, DE, ID, MA, NH)
- 1 state - 36 hours, calculated *excluding* day of arrest, Sundays and holidays (MN)
- 7 states - 48 hours, including weekends and holidays (AL, AR, GA, HI, MS, NE, TX)
- 1 state - 48 hours, *excluding* Sunday, holiday, and days when court not in session (CA)
- 1 state - 48 hours, *excluding* Saturday, Sunday and holidays (ME)
- 1 state - 48 hours if 1<sup>st</sup> appearance is combined w/prob. cause hearing (court decision) (WI)
- 2 states - 72 hours, including weekends and holidays (NJ, WY)
- 1 state - 72 hours, *excluding* Saturday, Sunday and holidays (LA)
- 1 state - 72 hours is "without delay", if probable cause w/in 48 hours (court decision) (TN)
- 21 states - "without unnecessary delay" (CO, IL, IA, KS, KY, MI, MT, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, UT, VT, WV)
- 2 states - "forthwith" (SC, VA)
- 1 state - "promptly" (repealed a 24- hour rule in 1995) (IN)
- 1 state - person must be released if not "charged" within 20 hours, but no provision for first appearance (MO)

## State Time Limits for Initial Appearance Before Magistrate

State	Time Limit	Authority	Statutory language/construction
Alabama	48 hours - Warrantless arrest 72 hours - Arrest w/ warrant	Ala. R. Crim. P. 4.3(a)(1)(iii) Ala. R. Crim. P. 4.3(b)(2)(i)	
Alaska	24 hours, including weekends and holidays	Alaska R. Crim. P. 5(a)(1)	
Arizona	24 hours, excluding Sat., Sun and holidays	Ariz. R. Crim. P. 4.1(b) and Ariz. R. Crim. P. 1.3	<i>See, State v. Watkins</i> , 2008 WL 3171651 * 3 (Ariz. App. Aug.5, 2008) (Sat. Sun. and legal holiday excluded from calculation of 24 hrs; citing Rules 4.1(b) and 1.3))
Arkansas	48 hours  Case law suggests that exception may exist for weekends and holidays	Ark. R. Crim. P. 4.1(e)	<i>See, Larson v. Dorney</i> , ___ F.Supp. ___, Slip. Op. 2009WL 903392 *4 (W.D. Ark, April 1, 2009)(delay between arrest on Good Friday and appearance on Monday was "as promptly as calendar would allow")
California	48 hours, excluding Sundays and holidays. If 48 hours expires when court is not in session, then next judicial day.	CA Penal Code § 825(a)(1) CA Penal Code § 825(a)(2)	
Colorado	without unnecessary delay	CRSA. § 16-2-112 Colo. R. Crim. P. 5	
Connecticut	24 hours, excluding Sat., Sun. and holidays	CRS 54-1(g) Conn. Practice Book R. 37-1	Statutory language "promptly before the court sitting next regularly" means the next court day, excluding weekends and holidays. <i>State v. Pirowski</i> , 11 Conn. App. 238,240, 526 A.2d 562 (1996)
Delaware	24 hours, excluding Sundays and holidays	11 Del. C. § 1909	
Florida	24 hours, including weekends and holidays	Fla. R. Crim. P 3.130	
Georgia	48 hours –warrantless arrest 72 hours – arrest with warrant	Ga. Uniform St. Ct. R. 26.1 Ga. St § 17-4-82; Ga. St § 117-4-26	
Hawaii	48 hours	H.R.S. 803-9(5)	
Idaho	24 hours, excluding Sat., Sun. and holidays	I.C.R, Rule 5(b)	
Illinois	without unnecessary delay	I.L.C.S. § 109-1	<i>See, People v. Willis</i> , 831 N.E.2d, 531, 538 (Ill., 2005) Ill Court cites <i>McLaughlin</i> as requiring 48 hours, but delay is only one factor to be examined in deciding whether confession is voluntary. Court has not otherwise defined "unnecessary delay".

Indiana	"promptly"  24 hr. rule repealed, 1995  Ct. decision implies that more than 48 hours can pass before initial appearance before magistrate	Ind. Code § 35-33-7-1
Iowa	without unnecessary delay	I.C.A. 804.22
Kansas	without unnecessary delay	KSA 2003 Supp. 22- 2901
Kentucky	without unnecessary delay	Ky. R. Crim. P. 3.02(2)
Louisiana	72 hours excluding Sat., Sun, holidays  48 hours probable cause hearing, which is not adversarial and conducted without presence of defendant	LSA – C.Cr. P. Art. 230-1(A)  LSA –C. Cr. P. Art. 230.2(A)
Maine	48 hours, excluding Sat., Sun and holidays	Me. R. Crim. P. 5(a)
Maryland	24 hours, including weekends and holidays	Md. Rule 4-212(e) and (f)
Massachusetts	24 hours, excluding weekends and holidays  (see judicial interpretation re probable cause determination)	Mass. R. Crim. P. 7
Michigan	without unnecessary delay	M.C.L.A. § 764.13
Minnesota	36 hours, excluding day of arrest, Sun and holidays	49 M.S.A. R. Crim. P. 4.02(5)

See, *State v. Larson*, 776 N.W.2d, 254, 258 (Ind. 2009) – probable cause must be determined with 48 hours, but can be based on hearsay and written testimony. "Arrested person has no right to be physically present at probable cause hearing." Ind. law does not provide for a specific period of time in defining how "promptly" a person is brought before magistrate

See, *State v. Carrow*, 2006 WL 399251 \*4 (Kan. App., Feb. 17, 2006) - cites *McLaughlin* as defining "without unreasonable delay" to mean that period of delay "cannot be longer than 48 hours, excluding weekends and holidays"

Although statute does not specifically state "including weekends", it is clear from case law. See, e.g., *Odum v. State*, 846 A. 2d 145 (Md. App. 2004)

"accused shall be brought before court then in session, and, if not at its next session".

Language at the court's "next session" suggests that if an accused is arrested on Friday, the next session would be a regular court day.

See, *Jenkins v. Chief Justice of Dist. Court Dept.*, 619 N.E.2d 324, 337,339 (Mass, 1993) holding that probable cause must be determined within 24 hours but that the determination may be made ex parte upon written documents.

Mississippi	without unnecessary delay, within 48 hours	M.C.A. 99-3-17 Uniform Cnty and Cir R 6.03	
Missouri	None – must be charged within 20 hours, but no requirement of personal appearance	V. Ann. Mo. C. Art. 544.170	All persons who are arrested without warrant shall be released if not charged and held by warrant within 20 hours of arrest  <i>See, St. v. Brown</i> , 933 P.2d 672, 675-676 (Mont. 1999) acknowledging <i>McLaughlin</i> 48 hour time limit for probable cause determination, and holding that to be one factor in deciding voluntariness of confession.
Montana	without unnecessary delay	MCA 46-7-101	
Nebraska	48 hours	Neb. Crim. Rule 5.1(b)(1)	
Nevada	without unnecessary delay -warrantless arrest	N.R.S. 171-1771	<i>See, Powell v. State</i> , 930 P.2d 1123 (Nev. 1997), acknowledging that <i>McLaughlin</i> requires probable cause hearing within 48 hours
	72 hours- arrest with warrant	N.R.S. 171-178	
New Hampshire	24 hours, excluding Sat., Sun. and holidays	N.R.S. § 594:20(a)	
New Jersey	72 hours, provided that complaint showing probable cause is filed within 12 hours of arrest	N.J. Crim. Rules 3:4-1 and 3:4-2	
New Mexico	without unnecessary delay	NMSA § 31-1-5	
New York	without unnecessary delay	McKinney's CPL § 140.20 sub1	
North Carolina	without unnecessary delay	N.C.G.S.A. § 15A-511	
North Dakota	without unnecessary delay	N.D.C.C. 2906-25 N.D. Crim. Rule 5(a)	
Ohio	without unnecessary delay	O.R.C. § 29.35.05 Ohio Crim. Rule 4(e)	
Oklahoma	without unnecessary delay	22 Okl. Stat. Ann. § 181	<i>See, Black v. State</i> , 871 P.2d 35, 39 (Okla. Cr. 1994). Citing <i>McLaughlin</i> , court recognized that delay longer than 48 hours in taking defendant to probable cause hearing is unreasonable.
Oregon	without unnecessary delay		
Pennsylvania	without unnecessary delay	Pa.R.Crim.P. 519	
Rhode Island	without unnecessary delay (unless charged w/ offense under RI Gen Law. 12.13.1.1*)	Super. R. Crim. P., Rule 5 Dist. R. Crim. P., Rule 9	*Unless charged w/ offense under RI Gen Laws, 12.13.1.1 (charges carrying life sentence or firearm offenses committed by persons previously convicted of offense carrying life sentence), in which case 48 hrs., excluding Sat., Sun. and holidays
South Carolina	Shall be forthwith carried before a magistrate and a warrant of arrest procured	S.C. Code 1976§ 22-5-200	

South Dakota	without unnecessary delay	SDCL § 23A-4-1	<i>State v. Larson</i> , 776 N.W. 2d 254, 258 (S.D., 2009) persons arrested without warrant are constitutionally entitled to probable cause determination within 24 hours.
Tennessee	"without unnecessary delay" – Judicially defined –  72 hours for appearance before magistrate  48 hrs for probable cause, but hearing unnecessary	Tenn. R. Crim. P. 5(a)	Due process is violated if probable cause is not determined within 48 hours, but a full adversarial hearing is not necessary.  If an individual is not brought before a magistrate within 72 hours there has been an unnecessary delay within the definition of Tenn. R. Crim. P. 5.1. <i>State v. Carter</i> , 16 SW 762, 766 (Tenn. 2000)
Texas	48 hours	V. Ann. Tex. C.C.P. Art 14.06	
Utah	without unnecessary delay-  48 hours probable cause, but arrestee need not be present	U.C.A. 1953 § 77-723  Utah Criminal Rule 7	
Vermont	without unnecessary delay	Vt. R. Crim. P. 3(g)	
Virginia	"forthwith"  (Warrantless arrest only)	Va. Code Ann. § 19.2-82	Accused and officer appear together "forwith" for probable cause hearing. Does not apply to arrests with warrant
Washington	24 hours, including weekends and holidays  48 hours prob. cause, but hearing not required	Wash. Cr.RLJ 3.2.1 (c)  Wash. Cr.RLJ 3.2.1(a)	"must be brought before a court of limited jurisdiction as soon as practicable after the detention is commenced, but in any event before the close of business on the next court day." Sat, Sun and holidays may be considered court days
West Virginia	Without unnecessary delay	W.Va. Code Sex. 62-1-5 W.Va. R. Crim. P. 5	
Wisconsin	Within a reasonable time  Judicial definition - 48 hours implicitly the reasonable time	W.S.A. § 970.01	If the initial appearance also serves as the <i>Riverside</i> probable-cause hearing it must be held within 48 hours barring extraordinary circumstances. In cases where a defendant's <i>Riverside</i> ( <i>v. McLaughlin</i> ) determination was properly made in a proceeding prior to the initial appearance, court looks at the individual circumstances of the case to determine a "reasonable time" from the defendant's arrest <i>State v. Evans</i> , 522 N.W. 2d, 554, 563 (Wis. App., 1994) (Held: 4 days over a weekend not unreasonable)
Wyoming	without unnecessary delay and in no event more than 72 hours	W. R Crim P 5(a)	

**From:** Henderson, Robert E (LAW)  
**Sent:** Tuesday, January 19, 2010 5:09 PM  
**To:** Carpeneti, R Anne D (LAW); Svobodny, Richard (LAW)  
**Cc:** Novak, John J (LAW)  
**Subject:** FW: Third Party Custodian Craigslist ad

Annie and Rick:

Laurie Eller is an LOA in our office who saw the craigslist posting asking someone to come forward as a TPC.

Robert E. Henderson  
Assistant District Attorney  
907.269.6300 (office)  
907.269.6321 (fax)

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**From:** Eller, Laurie A (LAW)  
**Sent:** Tuesday, January 19, 2010 5:00 PM  
**To:** Henderson, Robert E (LAW)  
**Subject:** Third Party Custodian Craigslist ad

Rob, I finally remembered to look for that Craigslist ad from last summer about someone wanting to pay for a TPC. I found it and it is shown below. Let me know if I can be of further help. ☺

---

Date: 2009-08-24, 11:19AM AKDT  
Reply to: [job-k7j6y-1339990957@craigslist.org](mailto:job-k7j6y-1339990957@craigslist.org) [Errors when replying to ads?]

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Looking for third party in court case , court case is non violent, non-sexual,non- abusive. Its is a Misdemeanor , but requires THIRD PARTY for 30 days until next court date. Will pay handsomely\$\$\$\$\$\$

- Location: ANCHORAGE
- Compensation: Will Pay Handsomely\$\$\$\$\$\$\$\$
- Principals only. Recruiters, please don't contact this job poster.
- Please, no phone calls about this job!
- Please do not contact job poster about other services, products or commercial interests.

PostingID: 1339990957

## Jane Pierson

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**From:** Cindy Smith  
**Sent:** Thursday, March 04, 2010 8:55 AM  
**To:** Jane Pierson  
**Subject:** FW: Court Statiscs for Bail Bill  
**Attachments:** cases w charges filed in fy09.pdf; ptrp actions fy09 - criminal cases.pdf

Fyi.

**From:** ~~Doug Wooliver~~ [mailto:dwooliver@courts.state.ak.us]  
**Sent:** Wednesday, March 03, 2010 2:12 PM  
**To:** Carpeneti, R Anne D (LAW); Svobodny, Richard (LAW); Peeples, Dwayne B (DOC); Steiner, Quinlan G (DOA); Levitt, Rachel E (DOA); Cindy Smith; McLean, Susan S (LAW)  
**Subject:** Court Statiscs for Bail Bill

Hello all. Our tech people have gone through our CourtView courts (all courts except those in the first district; first district cases are not included in these numbers) and come up with numbers for the various categories of offenses that will be subject to the rebuttable presumption of no bail. Now I have to figure out how to make sense of all of it. We have broken down the numbers by category, but because there will be a lot of overlap (for example a person counted in the category for any of the particular offense categories may also be counted in the category of persons subject to a petition to revoke probation), we can't just add up the categories and come to a number. Once I go through all of this I will let you know how I plan to assess the impact. Please let me know if you have any questions or comments about these data. Doug

These data are arranged by statute reference in sections 4 and 12 of the bill.

AS 12.30.011(d)(2)(A): See attached. Note that there is a difference between the number of offenses and the number of cases. I think that we need to look at the number of cases because one person may be charged with more than one offense that would trigger the presumption. I think that once the presumption is triggered, the presumption attaches and other offenses don't need to be counted.

AS 12.30.011(d)(2)(B): There were 4,134 defendants charged with a felony (other than a felony from the bill's list of specific offenses) during FY09.

Of those, 1,403 had been convicted of a felony in the prior 10 years. (7/1/1998 or later) This was our measure of those who commit a felony within five years of the date of their unconditional discharge. We can't directly track by unconditional discharge date, but we can track by conviction date. This search assumed that each felony defendant served 5 years probation and thus five years following their unconditional discharge would be ten years from the date of their conviction. Some of the periods of probation will be longer than 5 years and some less, but this was the average we settled on. This number does not include those with an out-of-state conviction

AS 12.30.011(d)(2)(C): We don't have a way to track those who commit an offense while on bail from an earlier charge.

AS 12.30.011(d)(2)(D): There were 3148 defendants charged with a DV related crime during FY09. Of those, 919 were previously convicted of a DV related crime in the prior 5 years.

AS 12.30.011(d)(2)(E): In CourtView locations during FY09 there were 96 cases where the defendant was charge with the following: AS12.70.120: Arrest Prior To Requisition (Fugitive from Justice)

AS 12.30.055 (in section 12 of the bill): See attached.

Alaska Court System  
**Cases/Charges Filed for Specified Action Codes**  
 CourtView Locations  
 FY09

Charge Description	# of Cases Charged
AS11.41.100: Murder 1	4
AS11.41.100(a)(1)(A): Murder 1-Intent To Cause Death	26
AS11.41.100(a)(2): Murder 1- Repeat Phys Injury To Child	1
AS11.41.100(att): Attempted Murder 1	10
AS11.41.110: Murder 2	1
AS11.41.110(a)(1): Murder 2-Intend Serious Injury	13
AS11.41.110(a)(2): Murder 2-Extreme Indifference	7
AS11.41.110(a)(3): Murder 2-Felony Murder	8
AS11.41.120: Manslaughter	1
AS11.41.120(a)(1): Manslaughter -Death Not Murder 1 Or 2	7
AS11.41.120(a)(1): Manslaughter	1
AS11.41.160: Manslaughter of Unborn Child	1
AS11.41.200: Assault 1	18
AS11.41.200(a)(1): Assault 1- Serious Injury, Weapon	101
AS11.41.200(a)(2): Assault 1- Serious Injury, Intent	17
AS11.41.200(a)(3): Assault 1- Serious Injury, Extreme Indif	5
AS11.41.200(a)(4): Assault 1- Serious Injury, Weap, Repeat	1
AS11.41.280(a)(2): Assault Unborn Child 1 - w/ intent	1
AS11.41.300(a): Kidnapping	10
AS11.41.300(a)(1)(B): Kidnapping- Use Victim As Shield/Hostage	1
AS11.41.300(a)(1)(C): Kidnapping- Injury Or Sexual Assault	31
AS11.41.300(a)(1)(c): Kidnapping	2
AS11.41.300(a)(1)(E): Kidnapping- To Commit Felony Or Escape	4
AS11.41.300(a)(1)(e): Kidnapping	1
AS11.41.300(a)(2)(B): Kidnapping- Risk Of Serious Injury	4
AS11.41.410: Sexual Assault 1	2
AS11.41.410(a)(1): Sex Assault 1- Penetrate w/o Consent	57
AS11.41.410(a)(2): Sex Assault 1- Att. Penetrate, Injure	1
AS11.41.420: Sexual Assault 2	3
AS11.41.420(a)(1): Sex Assault 2- Contact w/o Consent	48
AS11.41.420(a)(3): Sex Assault 2- Penetrate Incap Victim	26
AS11.41.425: Sexual Assault 3	2
AS11.41.425(a)(1)(A): Sex Assault 3- Contact w/ Ment Incapable	1
AS11.41.425(a)(1)(B): Sex Assault 3- Contact w/ Incapacitated	6
AS11.41.425(a)(1)(C): Sex Assault 3- Contact w/ Unaware Victim	2
AS11.41.434(a)(1): Sex Abuse Minor 1- Penetrate Vic Undr 13	28
AS11.41.434(a)(2): Sex Abuse Minor 1-Penetr Own Chld Undr 18	8
AS11.41.434(a)(3)(A): Sex Abuse Minor 1-Penetr Undr 16, Hshld	4
AS11.41.434(a)(3)(B): Sex Abuse Minor 1-Auth Fig Penetr Undr 16	3
AS11.41.436: Sexual Abuse Of Minor 2	4
AS11.41.436(a)(1): Sex Abuse Minor 2- Penetrate, Vic 13-15	37
AS11.41.436(a)(2): Sex Abuse Minor 2-Contact, Vict Undr 13	29
AS11.41.436(a)(3): Sex Abuse Minor 2- Contact, By Parent	8
AS11.41.436(a)(5)(A): Sex Abuse Minor 2-Contact Undr 16, Hshld	2
AS11.41.436(a)(5)(B): Sex Abuse Minor 2-Auth Fig Contact Undr 16	1
AS11.41.436(a)(6): Sex Abuse Minor 2-Auth Fig 18 yrs+	2
AS11.41.438: Sexual Abuse of Minor 3	11
AS11.41.450(a)(1): Incest- Penetr Ancestor Or Descendant	3

inted 3/2/2010 at 8:28 am

Alaska Court System  
**Cases/Charges Filed for Specified Action Codes**  
 CourtView Locations  
 FY09

Charge Description	# of Cases Charged
AS11.41.450(a)(1): Incest	2
AS11.41.450(a)(2): Incest- Penetr Brother Or Sister	4
AS11.41.450(a)(3): Incest- Penetr Uncle, Aunt, Neph Or Niece	1
AS11.41.452(d): Online Enticement of a Minor	1
AS11.41.455(a)(7): Exploit Minor-Make Porn, Sado/Masochism	1
AS11.41.455(b): Exploit Minor-Make Porn, Parent Allows	1
AS11.41.458: Indecent Exposure 1	1
AS11.41.458(a)(1): Indecent Exp 1-vic under 16, masturbate	2
AS11.41.500: Robbery 1	9
AS11.41.500(a)(1): Robbery 1- Armed w/ Deadly Weapon	70
AS11.41.500(a)(2): Robbery 1- Use Weapon	9
AS11.41.500(a)(3): Robbery 1- Cause/ Attempt Serious Injury	18
AS11.46.400: Arson 1- Danger Of Serious Injury	8
AS11.56.300: Escape 1	1
AS11.61.190(a)(1): Misc/Weapons 1- Involving Drug Crime	3
AS11.61.190(a)(2): Misc/Weapons 1- From Vehicle	10
AS11.71.010: Misconduct- Controlled Substance 1	1
AS11.71.010(a)(1): Cntrld Substc 1-Deliv 1A To Minor	2
AS11.71.010(a)(2): Cntrld Substc 1-Dliv II/III/A To Minr, Age Diff 3+	1
AS11.71.020: Misconduct-Controlled Substance 2	20
AS11.71.020(a)(1): Cntrld Substc 2- Manuf/Deliv IA	80
AS11.71.020(a)(2): Cntrld Substc 2- Manuf Meth	1
AS11.71.020(a)(2)(A): MICS 2- Manuf Meth	2
AS11.71.020(a)(3): MICS 2- Poss Precursor, Intnd Make Meth	3
AS11.71.020(a)(4): MICS 2- Poss Chem, Intnd Make Meth	1
AS11.71.020(a)(4)(A): MICS 2- Poss Chem, Intnd Make Meth	2
AS11.71.020(a)(6)(B): Cntrld Substc 2 - Deliver Listed Chem	1

**Total number of cases: 610**

**Total Number of Charges: 1374**

*NOTE: One case could have more than one charge but is only counted once in this total.*

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End of Report

Petitions to Revoke Probation - Criminal Cases

Fiscal Year: 2009  
Court/View Locations

	Petition to Revoke Probation	PTRP - ASAP	PTRP - Community Work Service	PTRP - DV Interv. Program	PTRP - New Criminal Charge	PTRP - Restitution	PTRP - Volunteers of America	Total
Felony	5,579	213	85	9	91	1	2	5,980
Misdemeanor	5,262	2,251	1,947	113	541	8	819	10,941
<b>Total</b>	<b>10,841</b>	<b>2,464</b>	<b>2,032</b>	<b>122</b>	<b>632</b>	<b>9</b>	<b>821</b>	<b>16,921</b>





March 22, 2010

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The Honorable Jay Ramras  
Chair, House Judiciary Committee  
Alaska State House of Representatives  
State Capitol, Room 118  
Juneau, AK 99801-1182

Re: **House Bill 324**  
**Constitutional Issues**

Chair Ramras:

Thank you for the opportunity to submit written testimony regarding House Bill 324. The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. From that perspective, we have several concerns with the proposed legislation.

#### **Section 4 Unconstitutional Restrictions on Pre-Trial Release**

Section Four of the Bill proposes a new section AS 12.30.011 with a myriad of constitutional infirmities.

The Alaska Constitution states that "an accused is entitled . . . to be released on bail, except for capital offenses when the proof is evident or the presumption great." Alaska Const., Art. I, Sec. 11. Subsection (d) of Section 4 of the Bill, however, proposes that for a wide group of defendants *the court should presume, subject to rebuttal by the defendant, that no amount of bail and no conditions of release will ensure the appearance of the defendant and protect the victim and the public.* The language used for the presumption, that "no condition or combination of conditions will reasonably assure" public safety or the defendant's appearance, is a phrase used to

describe the basis by which a judge can deny bail entirely to a defendant. *See, e.g.*, 18 U.S.C.A. § 3142(e)(1); Pa. Const. Art. 1, § 14.

While the proposed new statutory language does not specifically state that those who cannot be safely released shall be held without bail, the language leaves no clear alternative. Thus *it proposes to impermissibly negate the dictates of the Alaska Constitution and to deny bail entirely to many defendants*, while imposing on them the burden to refute the denial of bail. The categories of defendants to whom this denial would apply includes those arrested for class A or unclassified felonies, any sexual felony, anyone previously convicted of a felony except if the complete term (including any parole or probation term) had terminated more than five years ago, anyone also under charge in another case, anyone arrested for a domestic violence charge who had previously been convicted of a domestic violence charge within the last five years, or anyone arrested “in connection with” an allegation of commission of an offense outside the state or being a fugitive from justice in another state.

**The Alaska Supreme Court has clearly and unequivocally held that the outright denial of bail violates the Alaska Constitution.** *Martin v. State*, 517 P.2d 1389 (Alaska 1974) (holding that the refusal of bail to a person arrested on a charge of forgery who had three outstanding cases of forgery against him violated both Alaska statutes and Article I, Section 11 of the Alaska Constitution). In fact, the *Martin* court discussed a very similar argument by the Department of Law in these terms:

“The State urges that these amendments [to the bail statutes] permit the detention of defendants without bail when the judicial officer determines that the defendant ‘will pose a danger to other persons and the community.’ . . . The legislature could not, of course, infringe upon the constitutional right of bail. . . . [A] legislative enactment expressly permitting the detention of persons without right to bail would be unconstitutional unless a constitutional amendment were adopted.” *Martin*, 517 P.2d at 1396-97 (emphasis added).

Should the plain language of Article I, Section 11 be insufficient to inform the State that pretrial bail is a right not subject revocation by the legislature or the courts, the history of the enactment of the bail clauses to the Alaska Constitution should make clear that any and all defendants should receive a bail hearing. Victor Fischer, delegate to the Constitutional Convention, commented during the convention that the phrase “when the proof is evident and the presumption great” had been enacted in Alaska, as in other states, to show that even defendants in capital offenses should generally be eligible for bail: “The actual determination of when a person is released on bail, if charged with a capital offense, is still up to the judge.” 2 Proceedings of the Alaska Constitutional Convention 1344-45 (Jan. 6, 1956) *cited in State v. Wassillie*, 606 P.2d 1279, 1282 (Alaska 1980).

If the Constitutional Convention drafted Article I, Section 11 with the intent that even those charged with capital cases should receive a bail hearing, then the Governor’s bill that defendants

charged with felonies should be presumed not to be eligible for bail must surely violate the terms of the bail clauses of the Alaska Constitution. The proposed amendments in Section 4 of H.B. 324 do not pass constitutional review, as they contradict both the language of Article I, Section 11, which vests all defendants except those in capital cases with the right to bail, and the Supreme Court's analysis in *Martin*.

Even were a finding that "no condition or combination of conditions" support release somehow constitutional, the burden-shifting provision of the statute is inappropriate in the context of a bail hearing conducted within hours of arrest. These hearings may be conducted in the absence of counsel; even where the defendant obtains counsel within a few hours of arrest, defense counsel will not likely be capable of carrying the burden to show that the defendant is not a danger and not likely to fail to appear. *See Stack v. Boyle*, 342 U.S. 1, 11 (1951) (stating that an initial bail hearing "must be done in haste – the defendant may be taken by surprise, counsel has just been engaged, or for other reasons the bail is fixed without that full inquiry and consideration which the matter deserves," Jackson, J., concurring). Bearing that burden would require witnesses and documentation on the defense side, resources likely impossible for even a privately retained counsel.

The ACLU of Alaska requests that this Committee delete or appropriately revise these clearly unconstitutional provisions in HB 324.

#### **Section 4 Improper Proposed Expansion of Court Authority**

The primary purpose of bail is to ensure the appearance of the accused. A judge may consider public safety or the safety of individuals in setting conditions for release. However, beyond specific findings relating to an individual defendant and specific reasons for concern that he may fail to appear or endanger others, **a judge does not have more interest in supervising an arrestee, who is presumed innocent, than he does over a member of the general public.** *U.S. v. Scott*, 450 F.3d 863, 874 (9<sup>th</sup> Cir. 2006).

Thus, certain provision in Section Four, subsection (b) of H.B. 324 violate the constitutional protections regarding granting of bail. Subsection (b)(6) permitting a judge to "require the person to maintain employment, or if unemployed, actively seek employment" has no bearing on either the likelihood of the individual to appear in court nor on any danger posed to the victim or the public. Pretrial supervision is not a period of "pre-probation" when the State may broadly supervise an accused. The State's legitimate interests are limited to ensuring public safety and ensuring the appearance of the accused. These kinds of provisions infringe on the right of the defendant to be considered an innocent person. Excessive bail conditions, unjustified by traditional state interests, resemble probationary supervision and thus constitute unconstitutional punishment prior to adjudication.

While other provisions in subsection (b) could have conceivable use in specific individual cases, the long list of bail conditions set forth essentially invites judges to overuse them. Prohibitions

on the use of alcohol and entry to licensed premises, for instance, are currently imposed excessively and frequently without the individualized inquiry required in *Scott*. Overuse of alcohol-related restrictions for Alaska Native defendants has been a basis of criticism for ethnic disparities in the criminal justice system. Instead of minimizing these existing disparities, H.B. 324 would institutionalize them.

Another area of particular concern in the enumerated bail conditions are two provisions relating to health care, subsections (b)(15) and (b)(16) which purport to permit a judge to require a defendant to adhere to courses of psychiatric and medical treatment and to compel a defendant to take prescription medications. The right to bodily privacy is an integral part of the right to privacy under the Alaska Constitution. Allowing the criminal justice system to shortcut the elaborate existing framework by which a person may be committed to psychiatric care would present serious constitutional problems. For instance, in a commitment proceeding, the individual has a right to notice of what treatment specifically has been proposed and then may line up appropriate experts to contest the treatment plan. Under this statute, the defendant has no notice of such a request, no opportunity to bring appropriate experts to court, and thus no way to contest whether the proposed plan of treatment is proper or not. The bill also invites an infringement of the right to privacy in one's medical information and records, since a judge must naturally inquire into the current medical and psychiatric treatment of the accused in order to ensure that the orders are carried out. In order to make sense, the provisions relating to medical care presuppose exposure of the accused's sensitive medical information in open court.

Again, given these important constitutional interests, the ACLU recommends the Committee delete or revise Section 4, subsection (b) of HB 324.

**Section One's Proposed Addition of AS Sec. 11.56.730  
Offends the Due Process Clause of the Alaska Constitution**

Section One of H.B. 324 proposes creation of the offense of "failure to appear," and requires the state to show no mental state other than the knowledge that one should have been in court. Thus, a person could be convicted of a serious felony for inadvertently or accidentally failing to appear.

Generally, the criminal law requires "not only the doing of some act by the person to be held liable, but also the existence of a guilty mind *during the commission of the act.*" *Speidel v. State*, 460 P.2d 77, 80 (Alaska 1969) (emphasis added). The Alaska courts have held that, for major felonies, a mental state requirement is mandatory, while some *minor* offenses, such as hunting or public health related offenses may be strict liability offenses without a mental state requirement. *Speidel*, 460 P.2d 77 (holding that the statute declaring the failure to return a car to be a crime, regardless of mental state, violated due process); *see also State v. Guest*, 583 P.2d 836 (Alaska 1978); *State v. Fremgen*, 914 P.2d 1244 (Alaska 1996). In some cases, the courts have avoided declaring a statute unconstitutional by creating a mental state requirement where a statute has no provision for mental state. *Kimoktoak v. State*, 584 P.2d 25 (Alaska 1978); *Alex v. State*, 484

P.2d 677 (Alaska 1971). However, given the explicit statement that no mental state is required in Section One, the courts would not be able to avoid the constitutional conflict and must rule the statute unconstitutional.

On a policy basis, the Committee should consider the impact of H.B. 324 on the prison population of the state. The ACLU of Alaska's recent review of the prison system showed that over the past seven years the population of prisoners in custody for most types of crimes (e.g., property offenses, offenses against the person, sex offenses) has remained largely stable. The expansion of the prison population from 2002 to 2008 was due almost exclusively to the *tripling* of the number of prisoners incarcerated for two types of offenses: for violations of probation and parole and for public order and administration offenses. Public order and administration offenses include victimless offenses relating to criminal justice administration, and the largest group of these offenders consists of those serving time for failure to appear in court. The state can hardly argue in the face of a tripling of the number of offenders incarcerated on those types of offenses that the judiciary has been too lenient on those who fail to appear. Passing this bill will ensure an even greater expansion in the Alaska prison population as a result of more prosecutions and more convictions for failures to appear.

The Committee should also take note that the equivalent federal rule, as well as many state rules, requires a showing that the defendant "*deliberately*" or "*willfully*" missed court. *Hutchison v. State*, 27 P.3d 774, 777-79 (Alaska App. 2001) (noting that the federal bail statute, 18 U.S.C. § 3150, as well as Connecticut, California, and Illinois statutes, require a showing of "willful" failure to appear). Given that the federal court system and several large state court systems do not find themselves facing large numbers of non-appearing defendants, even when only "willful" failures to appear are prosecuted, the current, stricter Alaska standard of "knowing" failure to appear should adequately ensure appearance of defendants.

The Committee should also consider the potential negative effects of this policy on judicial efficiency. As the law stands now, a defendant who misses court through neglect or confusion has a strong interest in appearing in court immediately upon realizing the mistake to have his bench warrant lifted, since that response will tend to show an innocent mental state and a sincere desire to participate in the court process. Under the proposed bill, a defendant who misses court through neglect or confusion will face the same penalty for turning himself in the next day as if he disappears for the next six months. Creating a stiffer penalty and eliminating any meaningful defense will encourage those who do miss court to absent themselves from court indefinitely. No policy or penalty is ever going to prevent neglect, mistake, and confusion. A flexible, and in some cases forgiving, policy will serve judicial efficiency best.

#### **Problematic Extension of Time for Bail Hearing**

Section Three proposes to extend the window of detention prior to a bail hearing to 48 hours. Under current Alaska law, a defendant must be brought before a judicial officer within 24 hours.

Under *Gerstein v. Pugh*, a probable cause hearing must be held without unreasonable delay. 420 U.S. 103 (1975).

After a standard of 24 hours was adopted by most states and most circuits, a narrowly divided US Supreme Court stated that the initial appearance must be made only within 48 hours. *Riverside v. McLaughlin*, 500 U.S. 44 (1991). However, *Riverside* does not bind the states in their interpretation of their own constitutions. In one accounting of state responses to *Gerstein*, most states had concluded that 24 hours was the appropriate term under the case, and only seven states explicitly permitted more than 24 hours prior to an initial hearing. *Jenkins v. Chief Justice of Dist. Court Dept.*, 619 N.E.2d 324, 333-34 (Mass. 1993).

Since Alaska has guaranteed a 24-hour window for initial appearances for *18 years* since the *Riverside* decision, the state courts may be hard pressed to see why a 48-hour window would not likely permit “unreasonable delay.” The Alaska courts have not yet had a chance to rule on the dimensions of the “speedy trial” provision of Article I, section 11 as it relates to initial appearances, since Rule 5 has long guaranteed a 24-hour window of appearance. The Supreme Court could very well decide that the state constitutional provisions relating to speedy trial and due process require a 24-hour window prior to initial appearance, just as the Massachusetts Supreme Court did in *Jenkins*.

Given that the currently existing rules of criminal procedure already provide an exception for defendants arrested far from urban centers and allow the prosecution to request a delay to gather more information where necessary for a bail hearing, the state’s success over the last 18 years in providing a hearing within 24 hours strongly suggests that a delay of more than 24 hours would represent unnecessary delay, making the statute unconstitutional.

### Unconstitutional Imposition of Warrantless Search

Section Four’s proposed addition of A.S. Sec. 12.30.016 seeks to allow unconstitutional warrantless searches. Subsections (b)(2), (c)(2). Compared to probationers and parolees, the rights of pretrial defendants against unreasonable search and seizure are strong.

While comparatively little case law exists in Alaska courts, a recent Ninth Circuit case strongly endorsed the rights of pretrial defendants against warrantless searches. In *United States v. Scott*, the defendant had been arrested on drug charges and his release was conditioned on his “consent” to suspicionless search of his home and random drug tests. 450 F.3d 863 (9<sup>th</sup> Cir. 2006). After a positive urine test for methamphetamine, officers searched his home and found a shotgun. *Id.* at 866. The Ninth Circuit held that his consent was not valid, as he would have been placed in custody if he had declined. *Id.* at 870. Most importantly, the court said: “if a defendant is to be released subject to bail conditions that will help protect the community from the risk of crimes he might commit while on bail, the conditions must be justified by a showing that defendant poses a heightened risk of misbehaving while on bail. The government cannot, as it is

trying to do in this case, short-circuit the process by claiming that the arrest itself is sufficient to establish that the conditions are required.” *Id.* at 874.

Creating a blanket rule that a court may impose bail conditions that violate rights against unreasonable search without requiring any kind of individualized finding would violate the rule enunciated in *Scott*. A provision that states that such conditions may only be imposed after a written finding of the reasons particular to the individual defendant as to why such bail conditions are necessary may render this section constitutional.

### **Overly Broad Imposition of Third Party Custodians**

Section 5 of the Bill unconstitutionally proposes to limit a pre-trial defendant’s liberty. A pretrial defendant enjoys a right to be considered innocent; he also enjoys a default right to his liberty. *Stack v. Boyle*, 342 U.S. 1. (“This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.”). No showing of proof, no adversarial proceeding is required for the filing of a complaint. As such, the court should require a showing from the prosecution to impose a condition of bail on the accused. Yet the third-party custodian provision imposes no restraint on the court’s authority.

Contrast, for instance, the language from Section 5, “a judicial officer may appoint a third-party custodian if the officer finds that the appointment will, singly or in combination with other conditions, reasonably assure the person’s appearance and the safety of the victim, other persons, and the community” to the language from Section 4, “the officer shall impose *the least restrictive condition* or conditions that will reasonably assure the person’s appearance.” The term “least restrictive,” or any sense that a bail condition should be “necessary” rather than simply the court’s preference, is missing from Section 5.

Arguably, the imposition of a third party custodian requirement would enhance the likelihood of *any* defendant’s appearance in court. However, the courts are not free to impose any quantity of bail they like or to impose any conditions that seem like a good idea. Such conditions may be imposed only when found to be necessary.

The Committee should note that in a recent Alaska Judicial Council survey on the criminal justice system, excessive and arbitrary use of the third-party custodian requirement was one of the most frequent complaints. The original purpose of the third-party requirement – to ensure that impoverished defendants incapable of making cash bail could be released in a manner that assured community safety and court appearance – has been almost totally lost. A third-party custodian is now often imposed as a matter of course, rather than after specific findings, and in addition to, not in lieu of, cash bail. To prevent more abuse, a court should be required to make specific, written findings as to why a third-party custodian is necessary.

House Judiciary Committee  
*H.B. 324 – Constitutional Issues*  
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### **Conclusion**

We hope that the Judiciary Committee will note these are just some of the constitutional infirmities in House Bill 324.

While the ACLU of Alaska supports appropriate revisions to the criminal justice system to address the special circumstances of our State, and its evolving needs, this Bill is not well-crafted to vindicate the state's purposes.

The sections we have identified present substantial Constitutional problems and will likely entangle the state in lengthy and costly litigation, should H.B. 324 pass as currently written.

Thank you again for the opportunity to share our concerns. And please feel free to contact the undersigned should you require any additional information.

Sincerely,



Jeffrey Mittman  
*Executive Director*  
ACLU of Alaska

cc: Representative Nancy Dahlstrom, Vice-Chair  
Representative Carl Gatto  
Representative Bob Herron  
Representative Bob Lynn  
Representative Max Gruenberg  
Representative Lindsey Holmes