

HB

324

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
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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

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.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

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

Identifier (file name): 0910-DOA-PDA-01-08-10
 Title: An Act relating to the crime of failure to appear....
 Sponsor: Rules Committee
 Requester: Governor

Dept. Affected: Administration
 RDU: Legal and Advocacy Services
 Component: Public Defender Agency
 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
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

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

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

See attached.

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

Phone 907 334-4414
 Date/Time 1/8/10 4:00 PM
 Date 1/8/2010

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: 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.

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

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES ()							
-------------------------------	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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 Phone (907) 465-3339
 Division Administration and Support Date/Time 1/8/10 2:00 PM
 Approved by: Dwayne Peoples, Deputy Commissioner Date 1/8/2010
Department of Corrections

(Revised 11/6/2009 OMB)

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES ()							
-------------------------------	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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: _____
 Bill Version: _____
 () Publish Date: _____

Identifier (file name): HB324-DPS-AST-03-24-10

Dept. Affected: Public Safety

Title "An Act relating to failure to appear, release conditions, material witnesses, and domestic violence prohibitions."

RDU Alaska State Troopers
 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
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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: _____
 Bill Version: HB 324
 () Publish Date: _____

Identifier (file name): _____ Dept. Affected: _____
 Title Failure to appear; release procedures RDU Alaska Court System
 Component Trial Courts
 Sponsor House Rules
 Requester Governor Component Number _____

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
OPERATING EXPENDITURES								
Personal Services	628.1	628.1	628.1	628.1	628.1	628.1	628.1	628.1
Travel	23.9	23.9	23.9	23.9	23.9	23.9	23.9	23.9
Contractual	18.8	18.8	18.8	18.8	18.8	18.8	18.8	18.8
Supplies	39.8	39.8	6.0	6.0	6.0	6.0	6.0	6.0
Equipment								
Land & Structures	94.0	94.0						
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	804.6	804.6	676.8	676.8	676.8	676.8	676.8	676.8
CAPITAL EXPENDITURES								
CHANGE IN REVENUES ()								

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	804.6	804.6	676.8	676.8	676.8	676.8	676.8	678.8
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	804.6	804.6	676.8	676.8	676.8	676.8	676.8	678.8

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time	4.0	4.0	4.0	4.0	4.0	4.0	4.0
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

HB 324 makes several changes to the bail statutes. At least two of the changes will have a direct fiscal impact on the court system. The first requires court clerks to produce a criminal history report on each defendant who is seeking a second or subsequent bail review hearing. The second change impacting the court system is a provision that subjects certain defendants to a rebuttable presumption that no bail conditions will be sufficient to reasonably assure the presence of the defendant or the safety of the victim. A similar provision requires a showing by the defendant that he or she may be released on bail following a petition to revoke probation.

Prepared by: Doug Wooliver, Administrative Attorney Alaska Court System
 Division: Alaska Court System
 Approved by: Doug Wooliver for Chrstine Johnson, Administrative Director
Alaska Court System

Phone 907-463-4750
 Date/Time 3/22/10 @ 12:00 pm
 Date 3/22/2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 324

ANALYSIS CONTINUATION

Criminal History Reports

Section 3 of the bill includes a provision that requires a judge to have received from a court clerk a report from court records that describes any previous criminal charges against the person and the person's history of compliance with conditions of release. Because there are many thousands of such hearings and because this is work not currently required of court clerks, this provision will have a fiscal impact on the court system. This note reflects the costs associated with the clerk time necessary to complete this task.

This note further assumes that the criminal history report contemplated by the bill is one that can be run on records the court has in its computer system, though the current version of the bill is not limited to computer records. Should the bill not be amended to clarify this point, this fiscal note will be substantially higher as many defendants have many hundreds or even thousands of pages of criminal history records that would have to be searched by hand.

Rebuttable Presumption

Section 4 establishes a rebuttable presumption that no condition or combination of bail conditions will reasonably assure the presence of the defendant or the safety of the victim for those defendants charged with certain specified offenses and those with specified criminal histories. A similar provision in section 12 of the bill states that a person appearing in court on a petition to revoke probation also has no right to be released unless the person can establish by a preponderance of the evidence that the proposed release conditions will reasonably assure the appearance of the person and the safety of the victim, other persons and the community.

It is difficult to determine how many cases this rebuttable presumption will impact. There is significant overlap between the various categories of those subject to the presumptions. For example, a person subject to the presumption because the person was charged with a felony within five years of being unconditionally released from another felony conviction, would also be subjected to the presumption if he or she was subject to a petition to revoke probation. Because many offenders subject to this presumption are likely to also be subject to a petition to revoke probation, and in order to avoid double counting, this note only counts those who are subject to a petition to revoke probation. That means that it will apply to roughly 18,000 cases a year.

The next difficult estimate to make is the number of bail hearings that will actually be impacted by the change in the law. Not all bail hearings are currently contested and, presumably, not all will be contested under the new provisions.

This note conservatively estimates that 85% of those 18,000 cases subject to the presumption will continue to be resolved in the same amount of time as under current practice. These will be the cases where there is up-front agreement between the prosecution and the defense as to the appropriate bail conditions. This note estimates that in about 10% of the cases (1,800) the hearings will last an additional 15 minutes. This is similar to the extra time currently needed when a bail provision is contested. Finally, this note assumes that 5% of the cases (900) subject to the presumption will result in evidentiary hearings where the defendant must put on evidence and witnesses in an attempt to overcome the presumption. These hearings are each estimated to last three hours.

This fiscal note reflects the judicial and clerical resources necessary for the additional time spent on bail issues.

Alaska Court System
 Fiscal Note Calculations for HB 324

Personal Services

Superior Court Judge - Anchorage	257,300
In-Court Clerk - Anchorage, Range 12A	61,400
Law Clerk - Anchorage, Range 13D	60,400
Administrative Assistant - Anchorage Range 12A	61,400
Pro Tems Superior Court Judge (167days) - Various Court Locations	136,454
Clerical Staffing In-Court for pro tems (1,255 hours - Various Court Locations)	34,844
Clerical Staffing Criminal History (590 hours - Various Court Locations)	<u>16,322</u>

Subtotal Personal Services 628,100

Travel for Pro Tem Judges

Airfare - 19 trips @\$400/trip	7,600
Per Diem - 90 Days X \$60/day	5,400
Lodging - 90 nights X \$110/night	9,900
Airport Parking/Ground Transportation (\$50/trip)	<u>950</u>

Subtotal Travel for Pro Tem Judges 23,900

Supplies (desk, computer, courtroom electronics, and chair)

39,800

WAN Fees, Software & Licensing

18,800

Remodeling Costs within Nesbett Courthouse for New Judge

94,000

Fiscal Note Total 804,600

Breakdown by Expense Category:

Personal Services Total	628,100
Travel Total	23,900
Contractual Total	18,800
Supplies Total	39,800
Land & Structures Total	<u>94,000</u>

Total 804,600

Representative Jay Ramras
Chair, Judiciary
Chair, Economic
Development, Trade &
Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Alaska State Legislature



House of Representatives

Interim:
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 456-3346
Toll Free: (877) 465-3004

House District 10

Fax

To: Jerry Luckhaupt

Fax #: (907) 465-2029

Number of pages including cover:

From: Jane W. Pierson

Date: March 26, 2010

Re: Final HJUD CS for Hb324 version 26-GH2910\R

Today, the House Judiciary Committee passed out the HJUD CS for HB324 (26-GH2910\R) with the following amendments:

1. 26-GH2910\R.9 as amended, change five to three.
2. 26-GH2910\R.10
3. Conceptual amendment p.12, L.4 following "residence" insert "or place of employment"

Representative_Jay_Ramras@legis.state.ak.us

H.B. 324 - Pub. Test closed.

* Amend #1 * FAILS

* Amend #2 - W/D

AMEND #3 - Defn. objects - Employment
terms for rail. W/D

AMEND #4 W/D

AMEND #5 - FAILS

~~AMEND #6 - Conceptual~~

- AMEND #6 - FAILS

AMEND #7 - AMEND 5-3 - Passed

AMEND #8 - MATERIAL WITNESS W/D

AMEND #9 - Passed.

AMEND #10 - FAILS

AMEND #11 - FAILS

Jeff Wittman - APLD

Page 2 line

P. 2 line 4-6 failure to appear in
out mental state, felony w/
out mental state
P. 3 - L. 24-26 24-48 hrs.

P. 6 L. 2-4 maintenance/seat employment
presumed innocence,

P. 6, L. 22-26 red care/medication -
appearance threat to
pub safety

P. 7 L. R-22 rebuttable presumption
AK Const. by history
SC over turn

P. 8 L. 18-22 } Warrantless search
P. 9 L. 7-12 } Presumption of innocence
Reduction of Rts

Gen Purpose

- Streamline user friendly & easier to use.

Herron concurrence w/ CT SYST / DEF BAR.

Sec 1. Failure to appear - Addresses MSJ bit
Def Bar - ? issue w/ creating new law. Admin clarify.

Sec 2. Non-cont

Sec 3. Release Procedures

Sec 4. Release before TC.

Sim current law

Changes and of release re: meds.

Rebuttable Presumption

(d) Rebuttable Presumption:

* federal law - changed i affirmed
(2) (CTS have prob.) rebuttable presumption
(preponderance of evidence)

5th Circuit
Widenthal
at 1051
Panel 1

12.30.016 - \$1m to disburse +
turn

(F) new condition

(lower standard)

Reasonable suspicion vs. Prob. cause

5.) 3rd Party

(c) (1) & (2)

- ET concern NO

- SA/DV

6.) Confession

(2006)

7.) DV - Williams v. State 151 P3 460

- DV release - Doesn't believe anyone.

Misuses of DV orders.

8.)

Sec 8 - Same

Sec 9 - Temp. release "before tl"

Sec 10 - Release before sentence; after conviction
DU/SIA Retro butior

Sec 11 - Clarifying release of material dit.
OSO * concern re: REBEST * Amend

Sec 12 - same as current law

Sec 13 - Conform

Sec 14 - guilty upon conviction - Max Penj
Answers as to when applies -

15 - Def

16-18 - Conform

Sec 19 - inc DU petition along w/ order
- DU/SIA -

20 - Rule 5 corp. 24 to 48 hrs.
DU/SIA Necess Delay does not inc 48 hrs.

23 - Conforms

1 1/4"

24 - Amend OEP 41

Rail Re

25 - Conforms

26 - Amend APR 603(b)

27 - 29 Repeaters

Unmodified
eff date

p. 10 - li 28 -

3rd Party cust.
intend as alternative
not add conditions

AMEND # 12 - Conceptual P. 7, L. 18-21
- FAILS - Delete all (B)

AMEND # 13 P. 12, L. 4
following residence add "or place of
Residence employment"

AMENDMENT #1

FAILS

OFFERED IN THE HOUSE

BY REPRESENTATIVE HOLMES

TO: CSHB 324(JUD), Draft Version "R"

1 Page 2, line 4, following "(3)":

2 Insert "knowingly"

3

4 Page 2, lines 5 - 6:

5 Delete "; in this paragraph, the person's act of not appearing is conduct that does not
6 require a culpable mental state"

AMENDMENT

#2
w/d

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: HB 324

RAMRAS

1 Page 1, line 1, following "arrest for":

2 Insert "certain crimes and for"

3

4 Page 3, line ⁴ 3:

5 Delete "or"

6 Insert "[OR]"

7

8 Page 3, line ⁴ 3, following "12.30.027;":

9 Insert "or"

10 (D) committed a misdemeanor crime against a person

11 under AS 11.41;"

AMENDMENT #3 w/D

OFFERED IN THE HOUSE

BY REPRESENTATIVE HOLMES

TO: CSHB 324(JUD), Draft Version "R"

- 1 Page 5, lines 28 - 31:
- 2 Delete all material.
- 3
- 4 Renumber the following paragraphs accordingly.

AMENDMENT #4 w/D

OFFERED IN THE HOUSE

BY REPRESENTATIVE HOLMES

TO: CSHB 324(JUD), Draft Version "R"

1 Page 6, line 18, following "recommendations":

2 Insert "if the treatment recommendations are necessary to prevent the defendant from
3 being a danger to others"

4

5 Page 6, line 20, following "authority":

6 Insert "if the medication is necessary to prevent the defendant from being a danger to
7 others"

AMENDMENT #5

OFFERED IN THE HOUSE

BY REPRESENTATIVE HOLMES

TO: CSHB 324(JUD), Draft Version "R"

- 1 Page 7, lines 9 - 29:
- 2 Delete all material.

Amended

AMENDMENT

#6

OFFERED IN THE HOUSE

WARRANTLESS SEARCHES
BY REPRESENTATIVE HOLMES

TO: CSHB 324(JUD), Draft Version "R"

- 1 Page 8, lines 11 - 15:
- 2 Delete all material.
- 3
- 4 Renumber the following paragraphs accordingly.
- 5
- 6 Page 8, line 31, through page 9, line 4:
- 7 Delete all material.
- 8
- 9 Renumber the following paragraphs accordingly.

AMENDMENT

#7 Passed

OFFERED IN THE HOUSE

BY REPRESENTATIVE RAMRAS

TO: CSHB 324(JUD), Draft Version "R"

1 Page 11, following line 10:

2 Insert a new paragraph to read:

3 "(2) the proposed custodian has been convicted in the previous ~~two~~ ^{three}
4 years of a crime under AS 11.41 or a similar crime in this or another jurisdiction;"

5

6 Renumber the following paragraphs accordingly.

AMENDMENT # 8 w/D

OFFERED IN THE HOUSE

BY REPRESENTATIVE HOLMES

TO: CSHB 324(JUD), Draft Version "R"

- 1 Page 14, line 14:
- 2 Delete ", unless further detention is necessary to prevent a failure of justice"

AMENDMENT #9 Passed.

OFFERED IN THE HOUSE

BY REPRESENTATIVE RAMRAS

TO: CSHB 324(JUD), Draft Version "R"

1 Page 16, line 14, following "chapter.":

2 Insert "A judge may not order a peace officer to serve a petition that has been

3 denied by the court."

AMENDMENT #10 FAILED

OFFERED IN THE HOUSE

BY REPRESENTATIVE HOLMES

TO: CS HB 324(JUD), Draft Version "R"

1 Page 16, lines 15 - 26:

2 Delete all material.

3

4 Renumber the following bill sections accordingly.

5

6 Page 20, line 31:

7 Delete "amendments"

8 Insert "amendment"

9

10 Page 20, line 31, through page 21, line 1:

11 Delete "secs. 20 and 21 of this Act apply"

12 Insert "sec. 20 of this Act applies"

13

14 Page 21, lines 2 - 3:

15 Delete "sec. 24"

16 Insert "sec. 23"

17

18 Page 21, line 5:

19 Delete "sec. 26"

20 Insert "sec. 25"

AMENDMENT

#11

FAILS

OFFERED IN THE HOUSE

BY REPRESENTATIVE HOLMES

TO: CSHB 324(JUD), Draft Version "R"

1 Page 16, line 27, through page 17, line 17:

2 Delete all material.

3

4 Renumber the following bill sections accordingly.

5

6 Page 20, line 31:

7 Delete "amendments"

8 Insert "amendment"

9

10 Page 20, line 31, through page 21, line 1:

11 Delete "secs. 20 and 21 of this Act apply"

12 Insert "sec. 20 of this Act applies"

13

14 Page 21, lines 2 - 3:

15 Delete "sec. 24"

16 Insert "sec. 23"

17

18 Page 21, line 5:

19 Delete "sec. 26"

20 Insert "sec. 25"

26-GH2910\R
Luckhaupt
3/26/10

CS FOR HOUSE BILL NO. 324(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY 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) does not appear before the court or judicial officer at the time and
5 place of the scheduled hearing; in this paragraph, the person's act of not appearing is
6 conduct that does not require a culpable mental state.

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

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

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

17 (2) class A misdemeanor if the person was released in connection with

18 a

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

21 (B) requirement to appear as a material witness in a criminal
22 proceeding.

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

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

25 (1) shall make an arrest under the circumstances described in
26 AS 18.65.530;

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

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

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

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

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

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

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

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

19 * Sec. 3. AS 12.30 is amended by adding a new section to read:

20 **Sec. 12.30.006. Release procedures.** (a) At the first appearance before a
21 judicial officer, a person charged with an offense shall be released or detained under
22 the provisions of this chapter.

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

28 (c) A person who remains in custody 48 hours after appearing before a judicial
29 officer because of inability to meet the conditions of release shall, upon application, be
30 entitled to have the conditions reviewed by the judicial officer who imposed them. If
31 the judicial officer who imposed the conditions of release is not available, any judicial

1 officer in the judicial district may review the conditions.

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

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

13 (2) the prosecuting authority and any surety, if applicable, have at least
14 48 hours' written notice before the time set for the review requested under this
15 subsection; the defendant shall notify the surety; and

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

18 (e) Before a person may be released under this chapter, the person must sign
19 and file a release agreement with the clerk of the court. The release agreement must
20 describe the terms and conditions of the person's release and include the person's
21 promise to abide by the terms and conditions.

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

26 (g) The judicial officer shall issue written or oral findings that explain the
27 reasons the officer imposed the particular conditions of release or modifications or
28 additions to conditions previously imposed. The judicial officer shall inform the
29 person that a law enforcement officer may arrest the person without a warrant for
30 violation of the court's order establishing conditions of release.

31 (h) Information offered or introduced at a bail hearing to determine conditions

1 of release need not conform to the rules governing the admissibility of evidence.

2 * **Sec. 4.** AS 12.30 is amended by adding new sections to read:

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

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

8 (2) appear in court when ordered;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (2) the weight of the evidence against the person;

28 (3) the nature and extent of the person's family ties and relationships;

29 (4) the person's employment status and history;

30 (5) the length and character of the person's past and present residence;

31 (6) the person's record of convictions;

- 1 (7) the person's record of appearance at court proceedings;
2 (8) assets available to the person to meet monetary conditions of
3 release;
4 (9) the person's reputation, character, and mental condition;
5 (10) the effect of the offense on the victim, any threats made to the
6 victim, and the danger that the person poses to the victim;
7 (11) any other facts that are relevant to the person's appearance or the
8 person's danger to the victim, other persons, or the community.

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

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

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

16 (A) charged with an unclassified felony, a class A felony, or a
17 sexual felony;

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

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

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

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

30 **Sec. 12.30.016. Release before trial in certain cases.** (a) A judicial officer
31 may impose, in addition to those required or authorized under AS 12.30.011,

1 conditions of release for offenses described in this section, if necessary to reasonably
2 assure the person's appearance or the safety of the victim, other persons, or the
3 community.

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

6 (1) to refrain from

7 (A) consuming alcohol beverages; or

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

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

16 (3) to submit to a breath test when requested by a law enforcement
17 officer;

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

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

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

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

26 (1) to refrain from

27 (A) consuming a controlled substance; or

28 (B) possessing on the person, in the person's residence, or in
29 any vehicle or other property over which the person has control, a controlled
30 substance or drug paraphernalia;

31 (2) to submit to a search without a warrant of the person, the person's

1 personal property, the person's residence, or any vehicle or other property over which
2 the person has control, for the presence of a controlled substance or drug paraphernalia
3 by a peace officer who has reasonable suspicion that the person is violating the terms
4 of the person's release by possessing controlled substances or drug paraphernalia;

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

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

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

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

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

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

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

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

30 (3) engage in counseling; if available in the community, the judicial
31 officer shall require that counseling ordered include counseling about alternatives to

1 aggressive behavior.

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

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

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

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

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

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

17 * **Sec. 5.** AS 12.30 is amended by adding a new section to read:

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

23 (b) A judicial officer may appoint an individual as a third-party custodian if
24 the proposed custodian

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

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

29 (3) either personally or by telephone, appears in court with the person
30 and acknowledges to the judicial officer orally and in writing that the proposed
31 custodian

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

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

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

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

11 (2) criminal charges are pending in this state or another jurisdiction
12 against the proposed custodian;

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

15 (4) the proposed custodian may be called as a witness in the
16 prosecution of the person;

17 (5) the proposed custodian resides out of state; however a nonresident
18 may serve as a custodian if the nonresident resides in the state while serving as
19 custodian.

20 * Sec. 6. AS 12.30.027(a) is amended to read:

21 (a) Before ordering release before or after trial, or pending appeal, of a person
22 charged with or convicted of a crime involving domestic violence, the judicial officer
23 [COURT] shall consider the safety of the [ALLEGED] victim or other household
24 member. To protect the [ALLEGED] victim, household member, other persons, and
25 the community [PUBLIC] and to reasonably assure the person's appearance, the
26 judicial officer shall impose conditions required under AS 12.30.011, and
27 [COURT] may impose [BAIL AND] any of the conditions authorized under
28 AS 12.30.011 [AS 12.30.020], any of the provisions of AS 18.66.100(c)(1) - (7) and
29 (11), and any other condition necessary to protect the [ALLEGED] victim, household
30 member, other persons, and the community [PUBLIC], and to ensure the appearance
31 of the person in court, including ordering the person to refrain from the consumption

1 of alcohol.

2 * **Sec. 7.** AS 12.30.027(b) is amended to read:

3 (b) A **judicial officer** [COURT] may not order or permit a person released
4 under (a) of this section to return to the residence of the [ALLEGED] victim or the
5 residence of a petitioner who has a protective order directed to the person and issued
6 or filed under AS 18.66.100 - 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;**

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 does not pose a danger to the victim or petitioner.**

15 * **Sec. 8.** AS 12.30.030 is repealed and reenacted to read:

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

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

25 * **Sec. 9.** AS 12.30 is amended by adding a new section to read:

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

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

30 (2) the release is requested because of the

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

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

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

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

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

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

15 * **Sec. 10.** AS 12.30.040 is repealed and reenacted to read:

16 **Sec. 12.30.040. Release before sentence; release after conviction.** (a) Except
17 as provided in (b) of this section, a person who has been convicted of an offense and is
18 awaiting sentence or who has filed an appeal may be released under the provisions of
19 this chapter if the person establishes, by clear and convincing evidence, that the person
20 can be released under conditions that will reasonably assure the appearance of the
21 person and the safety of the victim, other persons, and the community.

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

24 (1) an unclassified or class A felony;

25 (2) a sexual felony;

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

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

31 (c) A person who has been convicted of an offense and who has filed an

1 application for post-conviction relief may not be released under this section until the
2 court enters an order vacating all convictions against the person. A person who has
3 prevailed in an application for post-conviction relief may seek release before trial in
4 accordance with the provisions of this chapter.

5 * **Sec. 11.** AS 12.30.050 is repealed and reenacted to read:

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

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

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

17 * **Sec. 12.** AS 12.30 is amended by adding a new section to read:

18 **Sec. 12.30.055. Persons appearing on petition to revoke.** A person who is in
19 custody in connection with a petition to revoke probation does not have a right to be
20 released under this chapter. A judicial officer may, however, release the person under
21 the provisions of this chapter, if the person establishes by a preponderance of evidence
22 that the proposed release conditions will reasonably assure the appearance of the
23 person and the safety of the victim, other persons, and the community.

24 * **Sec. 13.** AS 12.30.075(a) is amended to read:

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

31 * **Sec. 14.** AS 12.30 is amended by adding a new section to read:

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

3 * **Sec. 15.** AS 12.30.080 is amended by adding new paragraphs to read:

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

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

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

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

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

10 * **Sec. 16.** AS 12.55.155(c)(12) is amended to read:

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

14 * **Sec. 17.** AS 12.80.060(g)(2) is amended to read:

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

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

19 (B) under AS 12.25.180;

20 (C) under AS 11.56.730 [AS 12.30.060]; or

21 (D) under AS 12.70.

22 * **Sec. 18.** AS 18.65.530(a) is amended to read:

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

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

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

31 (3) violated a condition of release imposed under AS 12.30.016(e) or

1 ~~(f) or 12:30.027~~ [AS 12:30.025, 12:30.027, OR 12:30.029].

2 * Sec. 19. AS 18.66.160(a) is amended to read:

3 (a) Unless, on the record in court, the person has already been provided a
4 copy of the court's order, process [PROCESS] issued under this chapter shall be
5 promptly served and executed. If process is to be served upon a person believed to be
6 present or residing in a municipality, as defined in AS 29.71.800, or in an
7 unincorporated community, process shall be served by a peace officer of that
8 municipality or unincorporated community who has jurisdiction within the area of
9 service. If a peace officer of the municipality or unincorporated community who has
10 jurisdiction is not available, a superior court, district court, or magistrate may
11 designate any other peace officer to serve and execute process. A state peace officer
12 shall serve process in any area that is not within the jurisdiction of a peace officer of a
13 municipality or unincorporated community. A peace officer shall use every reasonable
14 means to serve process issued under this chapter.

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

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

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

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

27 * Sec. 21. The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

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

31 (2) If

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

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

6 (iii) The arrested person is not represented by counsel,
7 and

8 (iv) The arrested person has not previously had a bail
9 review, and

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

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

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

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

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

20 DIRECT COURT RULE AMENDMENT. Rule 41(a), Alaska Rules of
21 Criminal Procedure, is amended to read:

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

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

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

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

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

31 (2) the execution of an appearance bond in a specified amount and the

1 deposit in the registry of the court, in cash [or other security], of a sum not to exceed
2 10 percent of the amount of the bond;

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

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

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

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

11 (c) **Separate Bonds.**

12 (1) If a performance bond is required, it must be enforced separately
13 from any appearance or bail bond. Appearance in court may not be a condition of a
14 performance bond.

15 (2) The court may not change or add to a bond requirement that
16 was ordered in a previous proceeding unless the surety has been notified and
17 agrees to the change or addition.

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

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

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

31 (1) The full name of the appellant; the trial court case number; the

1 offenses of which the appellant was convicted, if applicable; the date of sentencing;
2 and the complete terms of the sentence;

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

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

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

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

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

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

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

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

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

29 (b) **Criminal Appeals.** If a sentence of imprisonment is imposed, the court
30 may admit the defendant to bail and stay the sentence as provided by law and by
31 these rules [ADMISSION TO BAIL WILL BE ALLOWED AND THE SENTENCE

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

9 * **Sec. 27.** AS 12.30.010, 12.30.020, 12.30.023, 12.30.025, 12.30.027(g), 12.30.029, and
10 12.30.060 are repealed.

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

13 **APPLICABILITY.** (a) AS 11.56.730, enacted in sec. 1 of this Act, applies to acts
14 committed on or after the effective date of this Act.

15 (b) The amendments to AS 12.25.030(b) made by sec. 2 of this Act apply to arrests
16 for violation of conditions of release occurring on or after the effective date of this Act for
17 offenses occurring before, on, or after the effective date of this Act.

18 (c) AS 12.30.006 - 12.30.021, enacted in secs. 3 - 5 of this Act; AS 12.30.030,
19 repealed and reenacted in sec. 8 of this Act; AS 12.30.031, enacted in sec. 9 of this Act;
20 AS 12.30.040, repealed and reenacted in sec. 10 of this Act; AS 12.30.055, enacted in sec. 12
21 of this Act; and AS 12.30.078, enacted in sec. 14 of this Act apply to bail proceedings
22 occurring on and after the effective date of this Act for offenses occurring on or after the
23 effective date of this Act.

24 (d) AS 12.30.050, repealed and reenacted in sec. 11 of this Act, applies to bail
25 proceedings occurring on or after the effective date of this Act for offenses occurring before,
26 on, or after the effective date of this Act.

27 (e) The amendments to AS 12.30.027(a) and (b) made by secs. 6 and 7 of this Act; to
28 AS 12.30.075 made by sec. 13 of this Act and to 12.30.080 made by sec. 15 of this Act apply
29 to bail proceedings occurring on or after the effective date of this Act for offenses occurring
30 before, on, or after the effective date of this Act.

31 (f) The amendments to Rule 5, Alaska Rules of Criminal Procedure, made by secs. 20

1 and 21 of this Act apply to offenses occurring on or after the effective date of this Act.

2 (g) The amendment to Rule 41(c), Alaska Rules of Criminal Procedure, made by sec.
3 24 of this Act applies to bail proceedings occurring on or after the effective date of this Act.

4 (h) The amendment to Rule 603(b), Alaska Rules of Criminal Procedure, made by
5 sec. 26 of this Act applies to convictions occurring on or after the effective date of this Act.

6 * Sec. 29. This Act takes effect July 1, 2010.

Representative Jay Ramras
Chair, Judiciary
Chair, Economic
Development, Trade &
Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Alaska State Legislature



House of Representatives

Interim:
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 456-3346
Toll Free: (877) 465-3004

House District 10

Fax

To: Leg. Legal
Attn: Jerry Luckhaupt

Fax #:(907) 465-2029

Number of pages including cover: 1

From: Jane W. Pierson

Date: March 24, 2010

Re: HB324

Jerry,

DOL has done up a red-line version of HB324. I have asked that they send the word document to you guys at legal for drafting. We are trying to move this bill out of HJUD on Friday. Anne Carpeneti should be contacting you.

Jane

Representative_Jay_Ramras@legis.state.ak.us

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

SEAN PARNELL,
GOVERNOR

Mailing: PO Box 110300
Juneau, AK 99811-0300
Physical: 123 4th Street, Ste 717
Juneau, AK 99801
Phone: (907) 465-3428
Fax: (907) 465-4043

February 3, 2010

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

Re: House Bill 324 – Bail Reform

Dear Chairman Ramras:

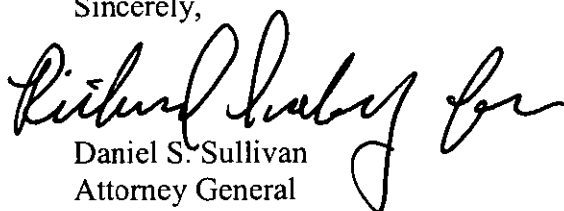
I am writing to respectfully request that you schedule House Bill 324 for a hearing in the House Judiciary Committee at your earliest convenience. HB 324 is one of several bills that the Governor has introduced to confront and help reduce the alarming and discouraging rate of sex offenses and crimes involving domestic violence in our state. This bill specifically relates to bail including bail in sex and domestic violence offenses.

This bill makes several important changes in Alaska's law relating to bail. In 1966 the Alaska Legislature enacted the Alaska Bail Act modeled after SB 1357, 89 Congress First Session. There have been only piecemeal revisions to this nearly 50 year old law. In 1984, the Federal government revised their bail statutes. This bill requires a person charged with a serious sex offense to prove that release conditions before trial will protect the victim and the public. It adopts standards for persons who may be appointed as third party custodians for the person released on bail. The bill prohibits a person found guilty of a serious sex offense from being released before sentencing or during an appeal of a conviction. It protects victims of domestic violence by setting standards that the court must find before allowing a perpetrator of domestic violence to return to the victims' residence. Additionally, it allows more time between a defendant's arrest and first appearance in court so that the police can investigate more fully, so that the prosecutor can make informed charging decision, present of better information and bail arguments in court and more time to contact the victim so he or she can appear at the bail hearing.

A sectional analysis is attached that describes each provision of the bill.

Thank you for your consideration of this request.

Sincerely,


Daniel S. Sullivan
Attorney General

DSS:ADC: sf

RELEASE BEFORE TRIAL AND AFTER CONVICTION
Sectional Analysis of Proposed Legislation

- **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, except that the bill adopts a violation for failure to appear in connection with a violation.

- **Section 2** includes a conforming amendment to AS 12.25.030(b). It also 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 subsection 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's custodian reports that the person has violated his or her release conditions.

- **Section 3** adopts a new section that describes release procedures for a person charged with a crime. Although the procedures are similar to those provided 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 elapsing 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 a release 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** rewrites 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.
 1. 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.
 2. 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.
 3. 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 may be overcome by a preponderance of evidence, 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 felony, and less than 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; or (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.

- 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.
 1. 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.
 2. 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.
 3. 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.
 4. 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.
 5. 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 victims 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, or the person has recent charges or a conviction for violating the law.
- **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 the 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 from hearing at any time a motion to amend the release order. Rather, the bill requires the person to follow the procedures adopted 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.

- **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 or C 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 or C felonies who have a prior 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 clear and convincing 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 in 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.
- **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 allow more time to locate and inform the victim of the right to be present at release procedures.
- **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.

DRAFT

Formatted: Font: 13 pt

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."

* Section 1. AS 11.56 is amended by adding a new section to read:

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

(1) is released under the provisions of AS 12.30.006 - 12.30.080;

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

(3) does not appear before the court or judicial officer at the time and place of the scheduled hearing; in this paragraph, the person's act of not appearing is conduct that does not require a culpable mental state.

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

Deleted: or judicial officer

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

(1) class C felony if the person was released in connection with a

1

CHANGES MADE TO HB324 BY
DOL

charge of a felony, or while awaiting sentence or appeal after conviction of a felony;

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

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

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

Deleted: ;

Deleted: (3) violation if the person fails to appear in connection with a charge of a violation.

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

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

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

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

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

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

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

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

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

(B) violated AS 04.16.050 or an ordinance with similar

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

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

* **Sec. 3.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.006. Release procedures. (a) At the first appearance before a judicial officer, a person charged with an offense shall be released or detained under the provisions of this chapter.

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

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

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

(1) the person provides to the court and the prosecuting authority a

written statement that new information not considered at the previous review will be presented at the hearing; the statement must include a description of the information and the reason the information was not presented at a previous hearing; in this paragraph, "new information" does not include the inability to post the required bail;

(3) the prosecuting authority and any surety, if applicable, have at least 48 hours written notice before the time set for the review requested under this subsection; the defendant must notify the surety; and

Deleted: (2) the court obtains a report from the clerk of court that describes any previous criminal charges against the person and the person's history of compliance with conditions of release that are in the records of the court;

Formatted: Font: 13 pt

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

(e) Before a person may be released under this chapter, the person must sign and file a release agreement with the clerk of the court. The release agreement must describe the terms and conditions of the person's release and include the person's promise to abide by the terms and conditions.

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

Formatted: Font: 13 pt

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

(h) Information offered or introduced at a bail hearing, to determine conditions of release need not conform to the rules governing the admissibility of evidence,

Deleted: review

Deleted: before a judicial officer

Deleted: in a court of law.

* Sec. 4. AS 12.30 is amended by adding new sections to read:

Sec. 12.30.011. Release before trial. (a) Except as otherwise provided in

this chapter, a judicial officer shall order a person charged with an offense to be released on the person's personal recognizance or upon execution of an unsecured appearance bond, on the condition that the person

- (1) obey all court orders and all federal, state, and local laws;
- (2) appear in court when ordered;
- (3) if represented, maintain contact with the person's lawyer; and

(4) ~~notify the person's lawyer, who shall notify the prosecuting authority and the court,~~ no more than 24 hours after the person changes residence.

Deleted: and

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

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

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

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

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

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

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

(7) require the person to notify the person's lawyer and the

prosecuting authority within two business days of any change in employment;

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

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

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

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

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

Deleted: an office of the Alaska State Troopers or with a village public safety

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

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

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

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

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

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

- (1) the nature and circumstances of the offense charged;
- (2) the weight of the evidence against the person;
- (3) the nature and extent of the person's family ties and

relationships;

(4) the person's employment status and history;

(5) the length and character of the person's past and present residence;

(6) the person's record of convictions;

(7) the person's record of appearance at court proceedings;

(8) assets available to the person to meet monetary conditions of release;

(9) the person's reputation, character, and mental condition;

(10) the effect of the offense on the victim, any threats made to the victim, and the danger that the person poses to the victim;

(11) any other facts that are relevant to the person's appearance or the person's danger to the victim, other persons, or the community.

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

Deleted: or detention

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

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

Deleted: ¶

Deleted: , that may be overcome by a preponderance of evidence,

(A) charged with an unclassified felony, a class A felony, or a sexual felony;

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

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

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

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

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

(b) In a prosecution charging a violation of AS 04.11.010, 04.11.499, AS 28.35.030, or 28.35.032, a judicial officer may

(1) order the person to refrain from

(A) consuming alcohol beverages; or

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

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

(3) order the person to submit to a breath test when requested by a law enforcement officer;

(4) order the person to provide a sample for a urinalysis or blood test when requested by a law enforcement officer;

(5) order the person to take a drug or combination of drugs intended to prevent substance abuse;

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

(c) In a prosecution charging a violation of AS 11.71 or AS 11.73, a judicial officer may

(1) order the person to refrain from

(A) consuming a controlled substance; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, a controlled substance or drug paraphernalia;

(2) order the person to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of a controlled substance or drug paraphernalia by a peace officer who has reasonable suspicion that the person is violating the terms of the person's release by possessing controlled substances or drug paraphernalia;

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) shall assure that the victim and a minor victim's parent or guardian have been notified by a law enforcement agency or the prosecuting

Deleted: mail

Formatted: Font: 13 pt

authority of a hearing where release is being considered, or that a reasonable effort at notification has been made; and

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

* **Sec. 5.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.021. Third-party custodians. (a) In addition to other conditions imposed under AS 12.30.011 or 12.30.016, 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.

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

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

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

(3) either personally or by telephone appears in court with the person and acknowledges to the judicial officer orally and in writing that the proposed custodian

Deleted: personally

Formatted: Font: 13 pt

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

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

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

Deleted: one or more of the following apply

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

Deleted: (2) the proposed custodian has been convicted of a class A misdemeanor in the previous five years or a felony in the previous 10 years in this state or another jurisdiction;

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

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

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

(6) the proposed custodian resides out of state; however, a non-resident may serve as a custodian if the non-resident resides in the state while serving as custodian.

Deleted:

* Sec. 6. AS 12.30.027(a) is amended to read:

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

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

(b) A **judicial officer** [COURT] may not order or permit a person released under (a) of this section to return to the residence of the [ALLEGED] victim or the residence of a petitioner who has a protective order directed to the person and

issued or filed under AS 18.66.100 - 18.66.180 unless

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

(2) the victim or petitioner consents to the person's return to the residence;

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

(4) the court finds by clear and convincing evidence that the return to the residence does not pose a danger to the victim or petitioner.

* **Sec. 8.** AS 12.30.030 is repealed and reenacted to read:

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

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

* **Sec. 9.** AS 12.30 is amended by adding a new section to read:

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

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

(2) the release is requested because of the

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

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

(C) person's need for a mental health or substance abuse

assessment that the court finds cannot be accommodated in the facility or telephonically; or

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

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

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

* **Sec. 10.** AS 12.30.040 is repealed and reenacted to read:

Sec. 12.30.040. Release before sentence; release after conviction. (a)

Except as provided in (b) of this section, a person who has been convicted of an offense and is awaiting sentence or who has filed an appeal may be released under the provisions of this chapter if the person establishes, by clear and convincing evidence, that the person can be released under conditions that will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

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

(1) an unclassified or class A felony;

(2) a sexual felony;

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

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

(c) A person who has been convicted of an offense and who has filed an

Deleted: or C

application for post-conviction relief may not be released under this section until the court enters an order vacating all convictions against the person. A person who has prevailed in an application for post-conviction relief may seek release before trial in accordance with the provisions of this chapter.

* **Sec. 11.** AS 12.30.050 is repealed and reenacted to read:

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

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

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

* **Sec. 12.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.055. Persons appearing on petition to revoke. A person who is in custody in connection with a petition to revoke probation does not have a right to be released under this chapter. A judicial officer may, however, release the person under the provisions of this chapter, if the person establishes by a preponderance of evidence that the proposed release conditions will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

* **Sec. 13.** AS 12.30.075(a) is amended to read:

(a) Cash or other security posted by a **person** [DEFENDANT] under **AS 12.30.011** [AS 12.30.020] that would otherwise be forfeited shall be held by the court in trust for the benefit of the victim if, within 30 days after an order of

the court establishing a failure to appear or a violation of conditions of release, the prosecuting authority gives notice that restitution may be requested as part of the sentence if the person [DEFENDANT] is convicted.

* **Sec. 14.** AS 12.30 is amended by adding a new section to read:

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

* **Sec. 15.** AS 12.30.080 is amended by adding new paragraphs to read:

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

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

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

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

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

* **Sec. 16.** AS 12.55.155(c)(12) is amended to read:

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

* **Sec. 17.** AS 12.80.060(g)(2) is amended to read:

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

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

(B) under AS 12.25.180;

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

(D) under AS 12.70.

* **Sec. 18.** AS 18.65.530(a) is amended to read:

(a) Except as provided in (b) or (c) of this section, a peace officer, with or without a warrant, shall arrest a person if the officer has probable cause to believe

the person has, either in or outside the presence of the officer, within the previous 12 hours,

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

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

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

* **Sec. 19.** AS 18.66.160(a) is amended to read:

(a) **Unless, on the record in court, the person has already been provided a copy of the court's order, process** [PROCESS] issued under this chapter shall be promptly served and executed. If process is to be served upon a person believed to be present or residing in a municipality, as defined in AS 29.71.800, or in an unincorporated community, process shall be served by a peace officer of that municipality or unincorporated community who has jurisdiction within the area of service. If a peace officer of the municipality or unincorporated community who has jurisdiction is not available, a superior court, district court, or magistrate may designate any other peace officer to serve and execute process. A state peace officer shall serve process in any area that is not within the jurisdiction of a peace officer of a municipality or unincorporated community. A peace officer shall use every reasonable means to serve process issued under this chapter.

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

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

(a) Appearance Before the Judge or Magistrate.

(1) Except when the person arrested is issued a citation for a misdemeanor or a violation and immediately thereafter released, the arrested

person shall be taken before the nearest available judge or magistrate without unnecessary delay. This appearance may be accomplished by the use of telephonic or television equipment pursuant to Criminal Rules 38.1 and 38.2. ~~Necessary~~ delay within the meaning of this paragraph (a) is defined as a period not to exceed **forty-eight** [TWENTY-FOUR] hours after arrest, including Sundays and holidays.

Deleted: Unnecessary

Formatted: Font: 13 pt

* **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to read: - -

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

(2) If

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

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

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

(iv) The arrested person has not previously had a bail review, and

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

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

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

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

* **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new

section to read:

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

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

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

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

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

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

(2) the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash [OR OTHER SECURITY], of a sum not to exceed 10 percent of the amount of the bond;

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

(4) the execution of a performance bond in a specified amount and the deposit in the registry of the court of cash [OR OTHER SECURITY].

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

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

(c) **Separate Bonds.**

(1) If a performance bond is required, it must be enforced separately from any appearance or bail bond. Appearance in court may not be a condition of a performance bond.

(2) The court may not change or add to a bond requirement

that was ordered in a previous proceeding unless the surety has been notified and agrees to the change or addition.

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

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

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

(1) The full name of the appellant; the trial court case number; the offenses of which the appellant was convicted, if applicable; the date of sentencing; and the complete terms of the sentence;

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

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

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

(5) Employment and financial circumstances: name of employer at time of arrest and during pre-trial release; type of work; how long so employed;

and offer or promise of employment if released pending appeal; assets of the appellant or of relatives or friends relevant to the ability to post money bail;

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

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

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

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

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

(b) **Criminal Appeals.** If a sentence of imprisonment is imposed, the court may admit the defendant to bail and stay the sentence as provided by law and by these rules [ADMISSION TO BAIL WILL BE ALLOWED AND THE SENTENCE STAYED], pending appeal. A sentence to pay a fine or a fine and costs may be stayed, if an appeal is taken, by the district judge or magistrate or by the superior court upon such terms as the court deems proper. During appeal the court may require the defendant to deposit the whole or any part of the fine and costs in the registry of the superior court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his or her assets. An order placing the defendant on probation will be stayed if an appeal is taken.

* **Sec. 27.** AS 12.30.010, 12.30.020, 12.30.023, 12.30.025, 12.30.027(g), 12.30.029,

and 12.30.060 are repealed.

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

APPLICABILITY. (a) AS 11.56.730, enacted in sec. 1 of this Act, applies to acts committed on or after the effective date of this Act.

(b) The amendments to AS 12.25.030(b), enacted in sec. 2 of this Act, apply to arrests-for-violation of conditions of release occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(c) AS 12.30.006 - 12.30.021, enacted in secs. 3 - 5 of this Act; AS 12.30.030, repealed and reenacted in sec. 8 of this Act; AS 12.30.031, enacted in sec. 9 of this Act; AS 12.30.040, repealed and reenacted in sec. 10 of this Act; AS 12.30.055, enacted in sec. 12 of this Act; and AS 12.30.078, enacted in sec. 14 of this Act; apply to bail proceedings occurring on and after the effective date of this Act for offenses occurring on or after the effective date of this Act.

(d) AS 12.30.050, repealed and reenacted in sec. 11 of this Act, applies to bail proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(e) The amendments to AS 12.30.027(a) and (b), enacted in secs. 6 and 7 of this Act; and to AS 12.30.075 and 12.30.080, enacted in secs. 13 and 15 of this Act; apply to bail proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(f) The amendments to Rule 5, Alaska Rules of Criminal Procedure, enacted in secs. 20 and 21 of this Act, apply to offenses occurring on or after the effective date of this Act.

(g) The amendment to Rule 41(c), Alaska Rules of Criminal Procedure, enacted in sec. 24 of this Act, applies to bail proceedings occurring on or after the effective date of this Act.

(h) The amendment to Rule 603(b), Alaska Rules of Criminal Procedure, enacted in sec. 26 of this Act, applies to convictions occurring on or after the effective date of this

Act.

* **Sec. 29.** This Act takes effect July 1, 2010.

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

SEAN PARNELL,
GOVERNOR

Mailing: PO Box 110300
Juneau, AK 99811-0300
Physical: 123 4th Street, Ste 717
Juneau, AK 99801
Phone: (907) 465-3428
Fax: (907) 465-4043

March 18, 2010

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

Re: House Bill 324 -- Bail Reform

Dear Chairman Ramras:

In 1966 the Alaska Legislature enacted a revision of Alaska's bail statutes. 20 SLA 1966. From time to time there have been amendments to these statutes but no comprehensive review has occurred. On December 30, 1994, the Declaration of Rights to the Alaska Constitution was amended adding section 24 -- Rights of Crime Victims. This constitutional provision (along with other rights granted to victims) deals directly with bail. The pertinent language of the constitution reads:

Crime victims . . . shall have the following rights . . . the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to obtain information about and be present of all criminal or juvenile proceeding where the accused has a right to be present; the right to be allowed to be heard . . . at any proceeding where the accused's release from custody is considered.

HB 324 is a look at the statute as a whole and an implementation of the 1994 constitutional amendment. The draft copy of the bill which is attached to this letter highlights the parts of the bill that directly affect victims of domestic violence and victims of sexual assault and sexual abuse. The color coding highlights the provisions of the bill that specifically relates to sexual assault and domestic violence, along with setting out provisions which are helpful to all victims including these violent crimes.

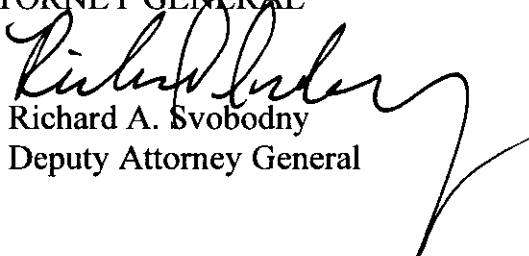
Yellow highlights the provisions of the bill that directly affect cases charging sexual assault, sexual abuse, or domestic violence;

Pink highlights provisions of the bill that, while they apply to all prosecutions, would be very helpful to victims of sexual assault, sexual abuse, or domestic violence;

When this bill was being heard in the other body, there was testimony regarding section 20, which expands the time for an initial bail hearing from 24 to 48 hours. The testimony was that if this change were made, Alaska would be the only state to have more than a 24 hours time to set bail. I am attaching a chart of each of the 50 states. As you can see Alaska is one of only 3 states that uses 24 hours including weekends and holidays.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: 
Richard A. Svobodny
Deputy Attorney General

cc: Members of the House Judiciary Committee

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 1st 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	See, <i>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)	See, <i>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	See, <i>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	<i>See, 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
Iowa	without unnecessary delay	I.C.A. 804.22	
Kansas	without unnecessary delay	KSA 2003 Supp. 22- 2901	<i>See, 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"
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)	Although statute does not specifically state "including weekends", it is clear from case law. <i>See, e.g., Odum v. State</i> , 846 A. 2d 145 (Md. App. 2004)
Massachusetts	24 hours, excluding weekends and holidays (see judicial interpretation re probable cause determination)	Mass. R. Crim. P. 7	"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. <i>See, 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.
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 See, <i>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	See, <i>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	See, <i>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 –	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.
	72 hours for appearance before magistrate 48 hrs for probable cause, but hearing unnecessary		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"	Va. Code Ann. § 19.2-82	Accused and officer appear together "forwith" for probable cause hearing. Does not apply to arrests with warrant
Washington	(Warrantless arrest only) 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)	

BILL NO.

~~IN THE LEGISLATURE OF THE STATE OF ALASKA~~

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:
Referred:

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 12.30.006 - 12.30.080;

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) does not appear before the court or judicial officer at the time and~~
5 ~~place of the scheduled hearing; in this paragraph, the person's act of not appearing is~~
6 ~~conduct that does not require a culpable mental state.~~

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

12 (c) A person who commits failure to appear incurs a forfeiture of any security
13 that was given or pledged to the court for the person's 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 (3) violation if the person fails to appear in connection with a charge of
23 a violation.

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

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

26 (1) shall make an arrest under the circumstances described in
27 AS 18.65.530;

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

30 (A) committed a crime involving domestic violence, whether
31 the crime is a felony or a misdemeanor; in this subparagraph, "crime involving

1 domestic violence" has the meaning given in AS 18.66.990;

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

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

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

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

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

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

20 * **Sec. 3.** AS 12.30 is amended by adding a new section to read:

21 **Sec. 12.30.006. Release procedures.** (a) At the first appearance before a
22 judicial officer, a person charged with an offense shall be released or detained under
23 the provisions of this chapter.

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

29 (c) A person who remains in custody 48 hours after appearing before a judicial
30 officer because of inability to meet the conditions of release shall, upon application, be
31 entitled to have the conditions reviewed by the judicial officer who imposed them. If

1 the judicial officer who imposed the conditions of release is not available, any judicial
2 officer in the judicial district may review the conditions.

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

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

14 (2) the court obtains a report from the clerk of court that describes any
15 previous criminal charges against the person and the person's history of compliance
16 with conditions of release;

17 (3) the prosecuting authority and any surety, if applicable, have at least
18 48 hours written notice before the time set for the review requested under this
19 subsection; and

20 (4) at least seven days have elapsed between the previous review and
21 the time set for the requested review.

22 (e) Before a person may be released under this chapter, the person must sign
23 and file a release agreement with the clerk of the court. The release agreement must
24 describe the terms and conditions of the person's release and include the person's
25 promise to abide by the terms and conditions.

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

30 (g) The judicial officer shall issue written or oral findings that explain the
31 reasons the officer imposed the particular conditions of release. The judicial officer

1 shall inform the person that a law enforcement officer may arrest the person without a
2 warrant for violation of the court's order establishing conditions of release.

3 (h) Information offered or introduced at a bail review hearing before a judicial
4 officer to determine conditions of release need not conform to the rules governing the
5 admissibility of evidence in a court of law.

6 * **Sec. 4.** AS 12.30 is amended by adding new sections to read:

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

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

12 (2) appear in court when ordered;

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

14 (4) notify the person's lawyer and the prosecuting authority no more
15 than 24 hours after the person changes residence.

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

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

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

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

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

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

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

3 (7) require the person to notify the prosecuting authority and the
4 person's attorney within two business days of any change in employment;

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

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

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

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

15 ~~(12) require the person to keep regular contact with an office of the~~
16 ~~Alaska State Troopers or with a village public safety officer;~~

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

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

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

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

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

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

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

31 (2) the weight of the evidence against the person;

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

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

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

18 (2) there is a rebuttable presumption, that may be overcome by a
19 preponderance of evidence, that no condition or combination of conditions will
20 reasonably assure the appearance of the person or the safety of the victim, other
21 persons, or the community, if the person is charged with

22 (A) an unclassified felony, a class A felony, or a sexual felony;

23 (B) a felony, was previously convicted of a felony in this state
24 or a similar offense in another jurisdiction, and less than five years have
25 elapsed between the date of the person's unconditional discharge on the
26 immediately preceding offense and the commission of the present offense;

27 ~~(C) an offense committed while the person was on release~~
28 ~~under this chapter for a charge or conviction of another offense;~~

29 (D) a crime involving domestic violence, and has been
30 convicted in the previous five years of a crime involving domestic violence in
31 this state or a similar offense in another jurisdiction.

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

6 (b) In a prosecution charging a violation of AS 04.11.010, 04.11.499,
7 AS 28.35.030, or 28.35.032, a judicial officer may

8 (1) order the person to refrain from

9 (A) consuming alcohol beverages; or

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

13 (2) order the person to submit to a search without a warrant of the
14 person, the person's personal property, the person's residence, or any vehicle or other
15 property over which the person has control, for the presence of alcoholic beverages by
16 a peace officer who has reasonable suspicion that the person is violating the conditions
17 of the person's release by possessing alcoholic beverages;

18 (3) order the person to submit to a breath test when requested by a law
19 enforcement officer;

20 (4) order the person to provide a sample for a urinalysis or blood test
21 when requested by a law enforcement officer;

22 (5) order the person to take a drug or combination of drugs intended to
23 prevent substance abuse;

24 (6) order the person to follow any treatment plan imposed by the court
25 under AS 28.35.028.

26 (c) In a prosecution charging a violation of AS 11.71 or AS 11.73, a judicial
27 officer may

28 (1) order the person to refrain from

29 (A) consuming a controlled substance; or

30 (B) possessing on the person, in the person's residence, or in
31 any vehicle or other property over which the person has control, a controlled

1 substance or drug paraphernalia;

2 (2) order the person to submit to a search without a warrant of the
3 person, the person's personal property, the person's residence, or any vehicle or other
4 property over which the person has control, for the presence of a controlled substance
5 or drug paraphernalia by a peace officer who has reasonable suspicion that the person
6 is violating the terms of the person's release by possessing controlled substances or
7 drug paraphernalia;

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

12 (4) order the person to refrain from entering or remaining in a place
13 where a controlled substance is being used, manufactured, grown, or distributed;

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

18 (6) order the person to refrain from the use or possession of an
19 inhalant.

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

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

31 (1) follow the provisions of any protective order to which the person is

1 respondent;

2 (2) refrain from contacting in any manner, including by telephone or
3 electronic mail, the victim;

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

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

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

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

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

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

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

22 * Sec. 5. AS 12.30 is amended by adding a new section to read:

23 Sec. 12.30.021. Third-party custodians. (a) In addition to other conditions

24 imposed under AS 12.30.011 or 12.30.016, a judicial officer may appoint a third-party

25 custodian if the officer finds that the appointment will, singly or in combination with

26 other conditions, reasonably assure the person's appearance and the safety of the

27 victim, other persons, and the community

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

29 the proposed custodian

30 (1) provides information to the judicial officer about the proposed

31 custodian's residence, occupation, ties to the community, and relationship with the

1 person, and provides any other information requested by the judicial officer;

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

3 (3) appears in court with the person and acknowledges to the judicial
4 officer personally and in writing that the proposed custodian

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

9 (B) understands that failure to perform those duties may result
10 in the custodian being held criminally liable under AS 09.50.010 or
11 AS 11.56.758.]

12 (c) A judicial officer may not appoint a person as a third-party custodian if one
13 or more of the following apply:

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

16 (2) the proposed custodian has been convicted of a class A
17 misdemeanor in the previous five years or a felony in the previous 10 years in this
18 state or another jurisdiction;

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

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

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

25 (6) the proposed custodian resides out of state.

26 * **Sec. 6.** AS 12.30.027(a) is amended to read:

27 (a) Before ordering release before or after trial, or pending appeal, of a person
28 charged with or convicted of a crime involving domestic violence, the **judicial officer**
29 [COURT] shall consider the safety of the [ALLEGED] victim or other household
30 member. To protect the [ALLEGED] victim, household member, **other persons**, and
31 the **community** [PUBLIC] and to reasonably assure the person's appearance, the

1 judicial officer shall impose conditions required under AS 12.30.011, and
2 [COURT] may impose [BAIL AND] any of the conditions authorized under
3 AS 12.30.011 [AS 12.30.020], any of the provisions of AS 18.66.100(c)(1) - (7) and
4 (11), and any other condition necessary to protect the [ALLEGED] victim, household
5 member, other persons, and the community [PUBLIC], and to ensure the appearance
6 of the person in court, including ordering the person to refrain from the consumption
7 of alcohol.

8 * **Sec. 7.** AS 12.30.027(b) is amended to read:

9 (b) A judicial officer [COURT] may not order or permit a person released
10 under (a) of this section to return to the residence of the [ALLEGED] victim or the
11 residence of a petitioner who has a protective order directed to the person and issued
12 or filed under AS 18.66.100 - 18.66.180 unless

13 (1) 20 days have elapsed following the date the person was
14 arrested;

15 (2) the victim or petitioner consents to the person's return to the
16 residence;

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

19 (4) the person establishes by clear and convincing evidence that
20 the return to the residence does not pose a danger to the victim or petitioner.

21 * **Sec. 8.** AS 12.30.030 is repealed and reenacted to read:

22 **Sec. 12.30.030. Appeal from conditions of release.** (a) A person who remains
23 in custody after a review provided for in AS 12.30.006(c) or (d) may appeal the order
24 to the court having appellate jurisdiction over the court imposing the conditions. The
25 appellate court shall affirm the order unless it finds that the lower court abused its
26 discretion.

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

31 * **Sec. 9.** AS 12.30 is amended by adding a new section to read:

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

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

5 (2) the release is requested because of the

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

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

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

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

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

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

21 * **Sec. 10.** AS 12.30.040 is repealed and reenacted to read:

22 **Sec. 12.30.040. Release before sentence; release after conviction.** (a) Except
23 as provided in (b) of this section, a person who has been convicted of an offense and is
24 awaiting sentence or who has filed an appeal may be released under the provisions of
25 this chapter if the person establishes, by clear and convincing evidence, that the person
26 can be released under conditions that will reasonably assure the appearance of the
27 person and the safety of the victim, other persons, and the community.

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

30 (1) an unclassified or class A felony;

31 (2) a sexual felony; or

1 (3) a class B or C felony if the person has been convicted within the
2 previous 10 years of a felony committed in this state or a similar offense committed in
3 another jurisdiction.

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

9 * **Sec. 11.** AS 12.30.050 is repealed and reenacted to read:

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

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

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

21 * **Sec. 12.** AS 12.30 is amended by adding a new section to read:

22 **Sec. 12.30.055. Persons appearing on petition to revoke.** A person who is in
23 custody in connection with a petition to revoke probation does not have a right to be
24 released under this chapter. A judicial officer may, however, release the person under
25 the provisions of this chapter, if the person establishes by clear and convincing
26 evidence that the proposed release conditions will reasonably assure the appearance of
27 the person and the safety of the victim, other persons, and the community.

28 * **Sec. 13.** AS 12.30.075(a) is amended to read:

29 (a) Cash or other security posted by a **person** [DEFENDANT] under
30 AS 12.30.011 [AS 12.30.020] that would otherwise be forfeited shall be held by the
31 court in trust for the benefit of the victim if, within 30 days after an order of the court

1 establishing a failure to appear or a violation of conditions of release, the prosecuting
2 authority gives notice that restitution may be requested as part of the sentence if the
3 **person** [DEFENDANT] is convicted.

4 * **Sec. 14.** AS 12.30 is amended by adding a new section to read:

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

7 * **Sec. 15.** AS 12.30.080 is amended by adding new paragraphs to read:

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

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

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

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

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

14 * **Sec. 16.** AS 12.55.155(c)(12) is amended to read:

15 (12) the defendant was on release under AS 12.30 [AS 12.30.020 OR
16 12.30.040] for another felony charge or conviction or for a misdemeanor charge or
17 conviction having assault as a necessary element;

18 * **Sec. 17.** AS 12.80.060(g)(2) is amended to read:

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

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

23 (B) under AS 12.25.180;

24 (C) under AS 11.56.730 [AS 12.30.060]; or

25 (D) under AS 12.70.

26 * **Sec. 18.** AS 18.65.530(a) is amended to read:

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

31 (1) committed domestic violence, except an offense under

1 AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;

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

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

6 * **Sec. 19.** AS 18.66.160(a) is amended to read:

7 (a) **Unless, on the record in court, the person has already been provided a**
8 **copy of the court's order, process** [PROCESS] issued under this chapter shall be
9 promptly served and executed. If process is to be served upon a person believed to be
10 present or residing in a municipality, as defined in AS 29.71.800, or in an
11 unincorporated community, process shall be served by a peace officer of that
12 municipality or unincorporated community who has jurisdiction within the area of
13 service. If a peace officer of the municipality or unincorporated community who has
14 jurisdiction is not available, a superior court, district court, or magistrate may
15 designate any other peace officer to serve and execute process. A state peace officer
16 shall serve process in any area that is not within the jurisdiction of a peace officer of a
17 municipality or unincorporated community. A peace officer shall use every reasonable
18 means to serve process issued under this chapter.

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

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

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

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

31 * **Sec. 21.** The uncoded law of the State of Alaska is amended by adding a new section to

1 read:

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

4 (2) If

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

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

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

10 (iv) The arrested person has not previously had a bail review,
11 and

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

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

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

19 (cc) in order for [THE] counsel to be appointed, if
20 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
5 exceed 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.**

15 (1) If a performance bond is required, it must be enforced separately
16 from any appearance or bail bond. Appearance in court may not be a condition of a
17 performance bond.

18 ~~(2) The court may not change or add to a bond requirement that~~
19 ~~was ordered in a previous proceeding unless the surety agrees to the change or~~
20 ~~addition.~~

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

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

25 (b) **Release Pending Appeal.** When an appeal on the merits is pending, an
26 appeal under AS 12.30.030 [AS 12.30.030(b)] from an order refusing bail pending
27 appeal or imposing conditions of release pending appeal shall be in the form of a
28 motion filed in the merit appeal. The motion must be filed with the clerk of the
29 appellate courts within 30 days after the date of the notice of the order from which
30 review is sought. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule
31 32.3(c). The motion shall comply with Rule 503, and shall contain specific factual

1 information relevant to AS 12.30.011(c) [AS 12.30.020(c)], including but not limited
2 to the following:

3 (1) The full name of the appellant; the trial court case number; the
4 offenses of which the appellant was convicted, if applicable; the date of sentencing;
5 and the complete terms of the sentence;

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

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

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

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

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

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

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

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

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

1 (b) **Criminal Appeals.** If a sentence of imprisonment is imposed, **the court**
2 **may admit the defendant to bail and stay the sentence as provided by law and by**
3 **these rules** [ADMISSION TO BAIL WILL BE ALLOWED AND THE SENTENCE
4 STAYED], pending appeal. A sentence to pay a fine or a fine and costs may be stayed,
5 if an appeal is taken, by the district judge or magistrate or by the superior court upon
6 such terms as the court deems proper. During appeal the court may require the
7 defendant to deposit the whole or any part of the fine and costs in the registry of the
8 superior court, or to give bond for the payment thereof, or to submit to an examination
9 of assets, and it may make an appropriate order to restrain the defendant from
10 dissipating his or her assets. An order placing the defendant on probation will be
11 stayed if an appeal is taken.

12 * **Sec. 27.** AS 12.30.010, 12.30.020, 12.30.023, 12.30.025, 12.30.027(g), 12.30.029, and
13 12.30.060 are repealed.

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

16 APPLICABILITY. (a) AS 11.56.730, enacted in sec. 1 of this Act, applies to acts
17 committed on or after the effective date of this Act.

18 (b) The amendments to AS 12.25.030(b), enacted in sec. 2 of this Act, apply to arrests
19 for violation of conditions of release occurring on or after the effective date of this Act for
20 offenses occurring before, on, or after the effective date of this Act.

21 (c) AS 12.30.006 - 12.30.021, enacted in secs. 3 - 5 of this Act; AS 12.30.030,
22 repealed and reenacted in sec. 8 of this Act; AS 12.30.031, enacted in sec. 9 of this Act;
23 AS 12.30.040, repealed and reenacted in sec. 10 of this Act; AS 12.30.055, enacted in sec. 12
24 of this Act; and AS 12.30.078, enacted in sec. 14 of this Act; apply to bail proceedings
25 occurring on and after the effective date of this Act for offenses occurring on or after the
26 effective date of this Act.

27 (d) AS 12.30.050, repealed and reenacted in sec. 11 of this Act, applies to bail
28 proceedings occurring on or after the effective date of this Act for offenses occurring before,
29 on, or after the effective date of this Act.

30 (e) The amendments to AS 12.30.027(a) and (b), enacted in secs. 6 and 7 of this Act;
31 and to AS 12.30.075 and 12.30.080, enacted in secs. 13 and 15 of this Act; apply to bail

1 proceedings occurring on or after the effective date of this Act for offenses occurring before,
2 on, or after the effective date of this Act.

3 (f) The amendments to Rule 5, Alaska Rules of Criminal Procedure, enacted in secs.
4 20 and 21 of this Act, apply to offenses occurring on or after the effective date of this Act.

5 (g) The amendment to Rule 41(c), Alaska Rules of Criminal Procedure, enacted in
6 sec. 24 of this Act, applies to bail proceedings occurring on or after the effective date of this
7 Act.

8 (h) The amendment to Rule 603(b), Alaska Rules of Criminal Procedure, enacted in
9 sec. 26 of this Act, applies to convictions occurring on or after the effective date of this Act.

10 * **Sec. 29.** This Act takes effect July 1, 2010.



March 22, 2010

AMERICAN CIVIL
LIBERTIES UNION OF
ALASKA
1057 W. Fireweed, Suite 207
Anchorage, AK 99503
(907) 258-0044
(907) 258-0288 (fax)
WWW.AKCLU.ORG

OFFICERS AND DIRECTORS
SUSAN WINGROVE, Anchorage
PRESIDENT

RICH CURTNER, Anchorage
VICE PRESIDENT

LLOYD EGGAN, Anchorage
TREASURER

TONY STRONG, Juneau
SECRETARY

WILLIE ANDERSON, Juneau
AFFIRMATIVE ACTION OFFICER

KIRSTEN BEY, Nome
PAUL GRANT, Juneau
SCOTT HENDERSON, Anchorage
MICHAEL KING, Anchorage
CONNIE OZER, Anchorage
JOHN NEVILLE, Anchorage
GALEN PAINE, Sitka
STEPHANIE PAWLOWSKI, Anchorage
JUNE PINNELL-STEPHENS, Fairbanks
JIM WHITAKER, Fairbanks
NADINE WINTERS, Fairbanks

ZACH FICK, Anchorage
NOELANI KAMAHELE, Anchorage
STUDENT ADVISORS

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 (9th 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 (9th 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.

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

STATE OF ALASKA

DEPARTMENT OF LAW CRIMINAL DIVISION

**SEAN PARNELL,
GOVERNOR**

Mailing: PO Box 110300
Juneau, AK 99811-0300
Delivery: 123 4th Street, Ste 717
Juneau, AK 99801
Phone: (907) 465-3428
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. Spenser 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

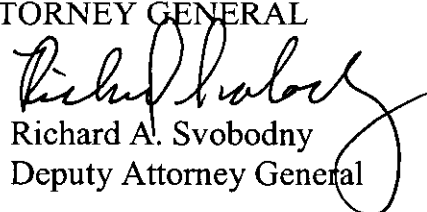
majority of other states. As can be seen by the attached memorandum and chart, Alaska is one of only three states who require a first appearance within 24 hours. The remaining states have later deadlines. There are many good reasons to change this deadline. It would give all parties a chance to gather 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. Svobodny
Deputy Attorney General

Enclosures

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 1st 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	" 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	<i>See, 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
Iowa	without unnecessary delay	I.C.A. 804.22	
Kansas	without unnecessary delay	KSA 2003 Supp. 22- 2901	<i>See, 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"
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)	Although statute does not specifically state "including weekends", it is clear from case law. <i>See, e.g., Odum v. State</i> , 846 A. 2d 145 (Md. App. 2004)
Massachusetts	24 hours, excluding weekends and holidays (see judicial interpretation re probable cause determination)	Mass. R. Crim. P. 7	"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. <i>See, 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.
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 (Ok. 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 –	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.
	72 hours for appearance before magistrate 48 hrs for probable cause, but hearing unnecessary		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"	Va. Code Ann. § 19.2-82	Accused and officer appear together "forthwith" for probable cause hearing. Does not apply to arrests with warrant
Washington	(Warrantless arrest only) 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 [Errors 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

Jane Pierson

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 Cntact 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

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/IIIA 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

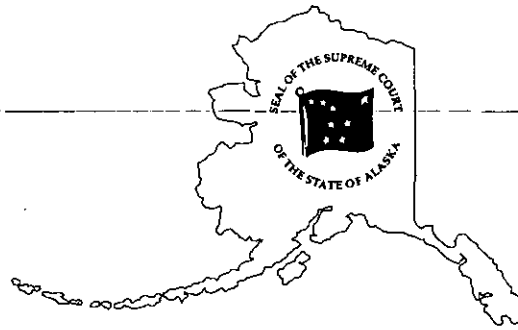
NOTE: One case could have more than one charge but is only counted once in this total.

End of Report

Petitions to Revoke Probation - Criminal Cases

Fiscal Year: 2009
CourtView 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
Total	10,841	2,464	2,032	122	632	9	821	16,921



ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

Doug Wooliver
Administrative Attorney

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8265
FAX (907) 264-8291

March 24, 2010

The Honorable Jay Ramras
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Ramras:

During the House Judiciary Committee meeting on Monday, March 22nd Representative Gruenberg asked that I respond to two questions. His first question was whether a judge has the authority to appoint a guardian for a minor crime victim. The question arose in connection with a discussion of the right of a crime victim, or the parent or guardian of a minor victim, to comment during a defendant's bail hearing. The specific language is found on page 10, lines 24 and 25 of the bill. The answer to Representative Gruenberg's question is yes.

Although a minor will necessarily have either a parent or guardian, in those cases where the court must appoint a guardian for purposes of this statute (such as some cases when the defendant is the child's parent) AS 12.45.046(a) (attached) gives the court the authority to appoint a guardian ad litem for a minor under the age of 16 who is a victim of or a witness to a crime against a person.

Representative Gruenberg's second question was whether the repeal and reenactment of AS 12.30.030 (Appeal from conditions of release) (attached) under section 8 of the bill adds a new duty for the court with its provision that the "appeal shall be determined promptly." The answer to this question is no. This language is found in the existing statute and has been a requirement for many years.

I hope that this answers the questions. Please let me know if you would like any additional information.

Sincerely,


Doug Wooliver
Administrative Attorney
Alaska Court System

Citation/Title

AK ST Sec. 12.45.046, Testimony of children in criminal proceedings

*9676 AS § 12.45.046

**WEST'S ALASKA STATUTES ANNOTATED
TITLE 12. CODE OF CRIMINAL PROCEDURE
CHAPTER 45. TRIAL, EVIDENCE, COMPROMISE
ARTICLE 2. DISCOVERY, TESTIMONY, AND EVIDENCE**

Current through the 2009 First Regular Session and First Special Session of the 26th Legislature

§ 12.45.046. Testimony of children in criminal proceedings

(a) In a criminal proceeding under AS 11.41 involving the prosecution of an offense committed against a child under the age of 16, or witnessed by a child under the age of 16, the court

(1) may appoint a guardian ad litem for the child;

(2) on its own motion or on the motion of the party presenting the witness or the guardian ad litem of the child, may order that the testimony of the child be taken by closed circuit television or through one-way mirrors if the court determines that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate.

(b) In making a determination under (a)(2) of this section, the court shall consider factors it considers relevant, including

(1) the child's chronological age;

(2) the child's level of development;

(3) the child's general physical health;

(4) any physical, emotional, or psychological injury experienced by the child; and

(5) the mental or emotional strain that will be caused by requiring the child to testify under normal courtroom procedures.

(c) If the court determines under (a)(2) of this section that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the defendant, the court, and the finder of fact in the proceeding. If the court authorizes use of closed circuit televised testimony under this subsection,

(1) each of the following may be in the room with the child when the child testifies:

(A) the prosecuting attorney;

(B) the attorney for the defendant; and

*9677 (C) operators of the closed circuit television equipment;

(2) the court may, in addition to persons specified in (1) of this subsection, admit a person whose presence, in the opinion of the court, contributes to the well-being of the child.

(d) When a child is to testify under (c) of this section, only the court and counsel may question the child. The persons operating the equipment shall do so in as unobtrusive a manner as possible. If the defendant requests, the court shall excuse the defendant from the courtroom, shall permit the defendant to attend in another location, and shall afford the defendant a means of viewing the child's testimony and of communicating with the defendant's attorney throughout the proceedings. Upon request of the

defendant or the defendant's attorney, the court shall permit a recess to allow them to confer. The court shall provide a means of communicating with the attorneys during the questioning of the child. Objections made by the attorneys to questions of a child witness may be resolved in the courtroom if the court finds it necessary.

(e) If the court determines under (a)(2) of this section that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate, the court may authorize the use of one-way mirrors in conjunction with the taking of the child's testimony. The attorneys may pose questions to the child and have visual contact with the child during questioning, but the mirrors shall be placed to provide a physical shield so that the child does not have visual contact with the defendant and jurors.

(f) If the court does not find under (a)(2) of this section that the testimony by the child victim or witness under normal court procedures will result in the child's inability to effectively communicate, the court may, after taking into consideration the factors specified in (b) of this section, supervise the spatial arrangements of the courtroom and the location, movement, and deportment of all persons in attendance so as to safeguard the child from emotional harm or stress. In addition to other procedures it finds appropriate, the court may

- (1) allow the child to testify while sitting on the floor or on an appropriately sized chair;
- (2) schedule the procedure in a room that provides adequate privacy, freedom from distractions, informality, and comfort appropriate to the child's developmental age; and
- *9678 (3) order a recess when the energy, comfort, or attention span of the child warrants.

CREDIT(S)

SLA 1988, ch. 92, § 2; SLA 1994, ch. 78, § 1.

<General Materials (GM) - References, Annotations, or Tables>

REFERENCES

LAW REVIEW AND JOURNAL COMMENTARIES

Protection of child witnesses and the right of confrontation. James S. Rowe, 7 Alaska L. Rev. 223 (June 1990).

REFERENCES

LIBRARY REFERENCES

Infants ☞20.

Witnesses ☞228.

Westlaw Key Number Searches: 211k20; 410k228.

C.J.S. Infants §§ 125 to 137.

C.J.S. Witnesses §§ 396 to 398, 404 to 405.

REFERENCES

RESEARCH REFERENCES

Treatises and Practice Aids

Hearsay Handbook § 44:2, State Courts.

© 2009 Thomson Reuters. No claim to original U.S. Govt. works.

Citation/Title

AK ST Sec. 12.30.030, Appeal from conditions of release

*9496 AS § 12.30.030

**WEST'S ALASKA STATUTES ANNOTATED
TITLE 12. CODE OF CRIMINAL PROCEDURE
CHAPTER 30. BAIL**

Current through the 2009 First Regular Session and First Special Session of the 26th Legislature

§ 12.30.030. Appeal from conditions of release

(a) A person who remains in custody after a review provided for in AS 12.30.020(f) or (j) may move the court having original jurisdiction over the offense to amend the order. The motion shall be determined promptly.

(b) When a court denies a motion under (a) of this section or conditions of release have been imposed by the court having original jurisdiction over the offense, an appeal may be taken to the court having appellate jurisdiction over the court denying the motion or imposing the conditions subject to the applicable court rules. The order of the lower court shall be affirmed unless it is found that the lower court abused its discretion. If it is held that the lower court did abuse its discretion, the appellate court may modify, vacate, set aside, reverse, remand the action for further proceeding, or remand the action directing entry of the appropriate order, which may include ordering the person to be released under AS 12.30.020(a). The appeal shall be determined promptly.

CREDIT(S)

SLA 1962, ch. 34, § 3.01; SLA 1966, ch. 20, § 1; SLA 1970, ch. 69, § 12; SLA 1991, ch. 21, § 12; SLA 2005, ch. 65, § 2.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES**HISTORICAL AND STATUTORY NOTES**

SLA 2005, ch. 65, § 2, added reference to subsec. (j) of section 12.30.020.

REFERENCES**CROSS REFERENCES**

Bail in civil actions, see § 09.40.120 et seq.

Bail, jurisdiction of court of appeals, see § 22.07.020.

Bail, rights of an accused, see Const. Art. 1, §§ 11 and 12.

turned to a correctional facility. (Sec. 3.03 ch 34 SLA 1962; am § 1 ch 20 SLA 1966; am § 9 ch 63 SLA 1997; am §§ 5, 6 ch 57 SLA 2006)

Sec. 12.30.020. Release before trial. (a) A person charged with an offense shall, at that person's first appearance before a judicial officer, be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the offense is an unclassified felony or class A felony or unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required or will pose a danger to the alleged victim, other persons, or the community. If the offense with which a person is charged is a felony, on motion of the prosecuting attorney, the judicial officer may allow the prosecuting attorney up to 48 hours to demonstrate that release of the person on the person's personal recognizance or upon the execution of an unsecured appearance bond will not reasonably assure the appearance of the person or will pose a danger to the alleged victim, other persons, or the community.

(b) If a judicial officer determines under (a) of this section that the release of a person will not reasonably assure the appearance of the person, or will pose a danger to the alleged victim, other persons, or the community, the judicial officer may

(1) place the person in the custody of a designated person or organization agreeing as a custodian to supervise the person; the court shall, personally and in writing, inform the custodian about the duties required of a custodian, and that failure to report immediately in accordance with the terms of the order that the person released has violated a condition of release may result in the custodian's being held criminally liable under AS 11.56.758;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) *[Repealed, § 8 ch 57 SLA 2006.]*

(4) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security, a sum not to exceed 10 percent of the amount of the bond; the deposit to be returned upon the performance of the condition of release;

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

(6) require the execution of a performance bond in a specified amount and the deposit in the registry of the court, in cash or other security; the performance bond must be imposed and enforced separately from any appearance bond, and the deposit to be returned upon the performance of the condition of release; or

(7) impose any other condition considered reasonably necessary to assure the defendant's appearance as required and the safety of the alleged victim, other persons, or the community.

(c) In determining the conditions of release under (b) of this section, the judicial officer shall take into account

(1) the nature and circumstances of the offense charged, including the effect of the offense upon the alleged victim;

(2) the weight of the evidence against the person;

(3) the person's family ties;

(4) the person's employment;

(5) the person's financial resources;

(6) the person's character and mental condition;

(7) the length of the person's residence in the community;

(8) the person's record of convictions;

(9) the person's record of appearance at court proceedings;

(10) the flight of the accused to avoid prosecution or the person's failure to appear at court proceedings; and

(11) threats the person has made, and the danger the person poses, to the alleged victim.

(d) A judicial officer authorizing the release of a person under this section shall issue an order containing a statement of the conditions imposed.

(e) The judicial officer shall inform the person of the penalties that may be imposed for a violation of the conditions of release and advise the person that a warrant for the person's arrest will be issued immediately upon a violation or that the person may be arrested without a warrant for a violation of conditions of release as set out in AS 12.25.030(b).

(f) A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If the judicial officer who imposed the conditions of release is not available, any other judicial officer in the district may review the conditions. If the conditions are not amended and the person remains in custody, the judicial officer shall set out in writing the reasons for requiring the conditions imposed.

(g) A judicial officer who orders the release of a person on a condition specified in (b) of this section may at any time amend the order to impose additional or different conditions of release, or to release the person under (a) of this section.

(h) Information offered or introduced at a hearing before a judicial officer to determine the conditions of release need not conform to the rules governing the admissibility of evidence in a court of law.

(i) The court shall issue written or oral findings to demonstrate why conditions provided under (b)(1) of this section needed to be imposed.

(j) If a person remains in custody after review of conditions by a judicial officer under (f) of this section, a subsequent review of conditions may be held at the request of the person. Unless the prosecuting authority stipulates otherwise or a defendant has been incarcerated for a period equal to the maximum sentence for the most serious charge for

which the defendant is being held, a judicial officer may not schedule a bail review hearing under this subsection unless

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

(2) the prosecuting authority has at least 48 hours' notice before the time set for the review requested under this subsection; and

(3) at least seven days have elapsed between the previous review and the time set for the review requested under this subsection. (Sec. 3.04 ch 34 SLA 1962; am § 1 ch 20 SLA 1966; am §§ 1, 2 ch 112 SLA 1967; am §§ 1, 2 ch 39 SLA 1974; am § 16 ch 143 SLA 1982; am § 4 ch 115 SLA 1994; am §§ 10 — 12 ch 63 SLA 1997; am § 4 ch 124 SLA 2000; am §§ 18, 19 ch 124 SLA 2004; am § 1 ch 65 SLA 2005; am § 8 ch 57 SLA 2006; am § 19 ch 24 SLA 2007)

Sec. 12.30.023. Release before trial in cases involving controlled substances or alcohol.

(a) In determining the conditions of release under AS 12.30.020 in cases involving a violation of AS 04.11.010, 04.11.499, AS 11.71, or AS 11.73, the court shall consider the conditions specified in AS 12.30.020 and the following conditions and impose one or more conditions it considers reasonably necessary to protect the public safety and security, including ordering the defendant

(1) to obey all laws;

(2) to submit to a search of the defendant's person, personal property, residence, vehicle, or any vehicle over which the defendant has control, for the presence of alcoholic beverages or illegal drugs and drug paraphernalia by a peace officer who has reasonable suspicion that the defendant is violating the terms of the defendant's bail release by possessing alcoholic beverages or illegal drugs and drug paraphernalia;

(3) in

(A) controlled substances offenses, to enroll in a random drug testing program, at the defendant's expense, to detect the presence of an illegal drug, with testing to occur not less than once a week, and with the results being submitted to the court and the district attorney's office;

(B) alcoholic beverage offenses, to submit to a breath test when requested by a law enforcement officer;

(4) to not have on the defendant's person, in the defendant's residence, or in any vehicle over which the defendant has control, any alcoholic beverages, controlled substances, or related paraphernalia;

(5) to not use, manufacture, possess, handle, purchase, give, or administer any controlled substance or alcoholic beverage;

(6) to not associate with persons involved in using, manufacturing, growing, or distributing controlled substances or alcoholic beverages;

(7) to not enter or remain in places where controlled substances or alcoholic beverages are being used, manufactured, grown, or distributed;

(8) to not be physically present, within a two-block area of, or within a designated area near, the location at which the offense occurred or at other designated locations, unless the defendant actually resides within that area;

(9) to not use or possess a paging device, cellular phone, or other portable communicative device on the defendant's person, in any vehicle over which the defendant has control, or in the defendant's residence;

(10) to be physically inside the defendant's residence, or in the residence of the defendant's third-party custodian, between time periods set by the court, except as otherwise required by employment, education, counseling, or treatment and as specifically authorized by the court;

(11) to not

(A) have a firearm in the defendant's possession, or control, in any vehicle over which the defendant has control, or in the defendant's residence;

(B) possess a knife, other than an ordinary pocket knife, on the defendant's person;

(12) to engage in any conduct or to refrain from any conduct that the court considers reasonably necessary to protect the public.

(b) In addition to conditions the court may impose under (a) of this section and notwithstanding other provisions in this chapter, if the defendant is charged with manufacturing methamphetamine under AS 11.71.020(a)(2), unless the defendant proves to the satisfaction of the court that the defendant's only role in the offense was as an aider or abettor and that the defendant did not stand to benefit financially from the manufacturing, the court shall require the posting of a minimum of \$250,000 cash bond if the defendant has previously been convicted in this or another jurisdiction of manufacturing, delivering, or possessing methamphetamine. (§ 1 ch 37 SLA 1996; am § 13 ch 53 SLA 2006)

Sec. 12.30.025. Release before trial in cases involving stalking.

(a) In determining the conditions of release under AS 12.30.020 in cases involving stalking but not domestic violence, the court shall consider the conditions specified in AS 12.30.020 and the following conditions and impose one or more conditions it considers reasonably necessary to protect the alleged victim of the stalking, including ordering the defendant

(1) not to subject the victim to further stalking;

(2) not to contact the victim other than through counsel;

(3) to engage in counseling; if the court directs the defendant to engage in personal counseling, the court shall provide in the order that the counseling

must propose alternatives to aggression if that type of counseling is available;

(4) to refrain from the consumption of alcohol or the use of drugs.

(b) As used in this section,

(1) "domestic violence" has the meaning given in AS 18.66.990;

(2) "stalking" means a violation of AS 11.41.260 or 11.41.270. (§ 35 ch 102 SLA 1980; am § 12 ch 61 SLA 1982; am § 4 ch 64 SLA 1991; am § 6 ch 40 SLA 1993; am § 2 ch 37 SLA 1996; am § 10 ch 64 SLA 1996)

Sec. 12.30.027. Release in domestic violence cases.

(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the court shall consider the safety of the alleged victim or other household member. To protect the alleged victim, household member, and the public and to reasonably assure the person's appearance, the court may impose bail and any of the conditions authorized under AS 12.30.020, any of the provisions of AS 18.66.100(c)(1) — (7) and (11), and any other condition necessary to protect the alleged victim, household member, and the public, and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

(b) A court may not order or permit a person released under (a) of this section to return to the residence of the alleged victim or the residence of a petitioner who has a protective order directed to the person and issued or filed under AS 18.66.100 — 18.66.180.

(c) If the court imposes conditions of release under (a) of this section, it shall

(1) issue a written order specifying the conditions of release;

(2) provide a copy of the order to the person arrested or charged; and

(3) immediately distribute a copy of the order to the law enforcement agency that arrested the person.

(d) When a person is released from custody under (a) of this section,

(1) from a correctional facility, the correctional facility shall notify the prosecuting authority and the prosecuting authority shall make reasonable efforts to immediately notify the alleged victim of the release, and to furnish the alleged victim with a copy of the order setting any conditions of release;

(2) from other than a correctional facility, the arresting authority shall make reasonable efforts to immediately notify the alleged victim of the release, and to furnish the alleged victim with a copy of the order setting any conditions of release.

(e) A person arrested for a crime involving domestic violence may not be released from custody until the person has appeared in person before a judicial officer or telephonically for arraignment.

(f) A person may not bring a civil action for damages for a failure to comply with the provisions of this section.

(g) In this section, "crime involving domestic violence" has the meaning given in AS 18.66.990. (§ 11 ch 64 SLA 1996)

Sec. 12.30.029. Release in sexual abuse and sexual assault cases.

(a) Before ordering release before trial of a person charged with a crime under AS 11.41.410 — 11.41.438 or 11.41.450 — 11.41.458, the court shall consider the safety of the alleged victim. The court may impose bail and any of the conditions authorized under AS 12.30.020 and any other condition necessary to protect the alleged victim and the public and to assure the appearance of the person in court.

(b) The court may impose any of the following conditions on a person charged with an offense under AS 11.41.410 — 11.41.438 or 11.41.450 — 11.41.458

(1) that the person have no contact with the alleged victim except as specifically allowed by the court;

(2) that the person reside in a place where the person is not likely to come into contact with the alleged victim of the offense; and

(3) if the person is on medication, that the person take the medication as prescribed.

(c) Before a judicial officer releases a person charged with an offense under AS 11.41.410 — 11.41.438 or 11.41.450 — 11.41.458, the court shall

(1) assure that the alleged victim, or the alleged victim's parent or guardian if the alleged victim is under 18 years of age, has been notified by a law enforcement agency or the prosecuting attorney of the hearing where the release is being considered, or a reasonable effort at notification has been made;

(2) solicit comments from the victim or the victim's parent or guardian who is present and wishes to comment and consider those comments before making a decision to release the person. (§ 1 ch 95 SLA 2000)

Sec. 12.30.030. Appeal from conditions of release.

(a) A person who remains in custody after a review provided for in AS 12.30.020(f) or (j) may move the court having original jurisdiction over the offense to amend the order. The motion shall be determined promptly.

(b) When a court denies a motion under (a) of this section or conditions of release have been imposed by the court having original jurisdiction over the offense, an appeal may be taken to the court having appellate jurisdiction over the court denying the motion or imposing the conditions subject to the applicable court rules. The order of the lower court shall be affirmed unless it is found that the lower court abused its discretion. If it is held that the lower court did abuse its discretion, the appellate court may modify, vacate, set aside, reverse, remand

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 3, 2010

FURTHER REFERRALS: Finance

Date of Committee Action: 3/26/10

The JUDICIARY Committee considered:

HB 324

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

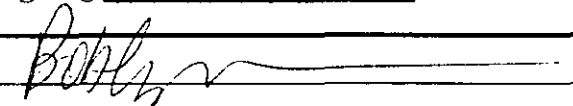
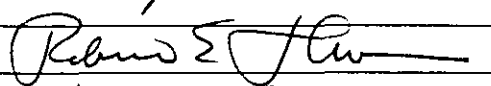
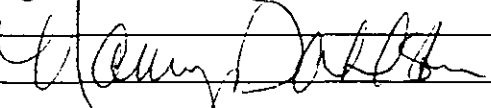


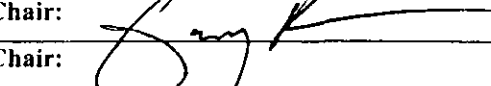
Recommends it be replaced with HCS or CS for HB 324 (JUD)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- 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

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DPS	5			✓
CTS	6	✓		

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
DOA	1			✓
DOA	2			✓
DOC	3			✓
LAW	4			✓

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	HERRON			X	
	Dakshin	X			
	Holmes				X
	Galt	X			
Chair: 	RAMRAS	X			
Chair:					