

**HB**

**324**

# SENATE COMMITTEE REPORT

DATE: 4/15/10

FURTHER: Rules

DATE TURNED IN TO OFFICE: 4/16/10

Judiciary Committee considered CS FOR HOUSE BILL NO. 324(FIN)

## HB 324 FAILURE TO APPEAR; RELEASE PROCEDURES

"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."

and recommends:

- be replaced with  SCS or  CS HB 324 (JUD)
- adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

<b>SENATE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
<b>HOUSE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input checked="" type="checkbox"/>	New Title w/ SCR # <u>22</u>

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
DoA/OPA				✓	1
KFIN				✓	2
DOC				✓	3
LAW				✓	4
DPS/ASF				✓	5

APPROPRIATION - no fiscal note

Admin ✓ 7

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Coghill			✓	
	Wielechowski			✓	
	Egan	✓			
	McElwain	✓			
CHAIR:	French	✓			

**SENATE CONCURRENT RESOLUTION NO.**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SIXTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Introduced:**  
**Referred:**

**A RESOLUTION**

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**  
2 **Legislature, concerning House Bill No. 324, relating to the crime of failure to appear;**  
3 **relating to arrest for violating certain conditions of release; relating to release before**  
4 **trial, before sentence, and pending appeal; relating to material witnesses; relating to**  
5 **temporary release; relating to release on a petition to revoke probation; relating to the**  
6 **first appearance before a judicial officer after arrest; relating to service of process for**  
7 **domestic violence protective orders; making conforming amendments; and amending**  
8 **Rules 5 and 41, Alaska Rules of Criminal Procedure, and Rules 206 and 603, Alaska**  
9 **Rules of Appellate Procedure.**

10 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

11 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of  
12 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding  
13 changes to the title of a bill, are suspended in consideration of House Bill No. 324, relating to

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

# LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 15, 2010

**SUBJECT:** Conceptual Amendment to SCS CSHB 324(JUD)  
(Work Order No. 26-GH2910\P)

**TO:** Senator Hollis French  
Chair of the Senate Judiciary Committee  
Attn: Cindy Smith

**FROM:** Gerald P. Luckhaupt   
Legislative Counsel

The SCS CSHB 324(JUD) that you requested is enclosed. As you requested, bill secs. 3 and 5 of CSHB 283(FIN) were added without change. Bill sec. 4 of CSHB 283(FIN) was added with your requested changes.<sup>1</sup> In addition to the changes noted in footnote 1, there was a conceptual amendment adopted to provide that a court could order a defendant to refrain from consuming "**or purchasing**" alcohol. Apparently, it was felt that this addition was needed to bring this new provision in line with AS 04.16.160(a), which deals with restrictions on purchasing alcohol. In my opinion, this change is not needed and the conceptual purpose of the amendment is already accomplished in the bill.

AS 04.16.160(a)<sup>2</sup> provides that persons who have "been ordered to refrain from consuming alcoholic beverages" may not purchase alcoholic beverages. The existing

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<sup>1</sup> In bill sec. 4 of CSHB 283(FIN), new paragraph AS 12.55.015(a)(13) was shortened considerably. Specifically, on p.3, line 16, following "**time**" the ";" was replaced by "." and then remaining material on that line was deleted. Then the material on p.3, lines 17 - 29, was also deleted.

<sup>2</sup> AS 04.16.160(a) provides:

(a) Except as otherwise provided by law, a person who is 21 years of age or older may not purchase alcoholic beverages if the person has been ordered to refrain from consuming alcoholic beverages as part of a sentence for conviction of a crime under AS 28.35.030, 28.35.032, or a similar municipal ordinance or as a condition of probation or parole from a conviction under AS 28.35.030, 28.35.032, or a similar municipal ordinance. The restriction on purchasing alcoholic beverages applies during the period that the person is required to refrain from consuming alcoholic beverages under the sentence or condition of probation or parole.

Senator Hollis French

April 15, 2010

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statute already ties a court order that restricts consumption<sup>3</sup> to a blanket prohibition on purchase. In bill sec. 4 of CSHB 283(FIN), when a court imposes an order restricting a person from consuming alcoholic beverages that person is automatically restricted from purchasing alcoholic beverages under AS 04.16.160.<sup>4</sup> The restriction on purchasing alcoholic beverages remains in effect for the period of time the person is restricted from consuming alcoholic beverages under the sentence. There is no need to add a separate provision providing that a court may order that a person not purchase alcohol when that is accomplished automatically by operation of law in AS 04.16.160(a) when the person is restricted from consuming alcohol.<sup>5</sup> Therefore, in accordance with your instructions, I have not added "or consuming" to bill sec. 4.

GPL:ljw  
10-280.ljw

Enclosure

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Bill sec. 3 of CSHB 283(FIN) amends this subsection by adding the new material of bill sec. 4 as follows:

(a) Except as otherwise provided by law, a person who is 21 years of age or older may not purchase alcoholic beverages if the person has been ordered to refrain from consuming alcoholic beverages **under AS 12.55.015(a)(13) or** as part of a sentence for conviction of a crime under AS 28.35.030, 28.35.032, or a similar municipal ordinance or as a condition of probation or parole from a conviction under AS 28.35.030, 28.35.032, or a similar municipal ordinance. The restriction on purchasing alcoholic beverages applies during the period that the person is required to refrain from consuming alcoholic beverages under the sentence or condition of probation or parole.

<sup>3</sup> In connection with the person's conviction of a crime.

<sup>4</sup> As that section is amended by bill sec. 3 of CSHB 283(FIN).

<sup>5</sup> The only time a separate restriction on purchasing would be needed is if it was the committee's intent by the amendment to allow a court to allow a person to continue to consume alcohol but not to purchase alcohol. In that case, other amendments to AS 04.16 would be necessary. I have been informed that this was not the committee's intent.

**CS FOR HOUSE BILL NO. 283(FIN)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SIXTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Offered: 4/12/10**

**Referred: Rules**

**Sponsor(s): REPRESENTATIVES CRAWFORD, Lynn**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the purchasing of and restrictions concerning alcoholic beverages."**

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

3 **\* Section 1.** AS 04.16.047(a) is amended to read:

4 (a) A person who is restricted from purchasing alcohol under AS 04.16.160  
5 may not

6 **(1) knowingly enter or remain in premises licensed under this title to**  
7 **obtain or consume alcohol;**

8 **(2) solicit another to purchase alcoholic beverages for the person;**

9 **(3) offer or present to a licensee or an agent or employee of the**  
10 **licensee identification that misrepresents that the person is restricted from**  
11 **purchasing alcoholic beverages, for the purpose of inducing the licensee or an**  
12 **agent or employee of the licensee to sell, give, serve, or furnish alcoholic**  
13 **beverages contrary to law.**

14 **\* Sec. 2.** AS 04.16.047 is amended by adding a new subsection to read:

15 (d) A person may not purchase alcoholic beverages for a person who is

1 restricted from purchasing alcoholic beverages under AS 04.16.160.

2 \* Sec. 3. AS 04.16.160(a) is amended to read:

3 (a) Except as otherwise provided by law, a person who is 21 years of age or  
4 older may not purchase alcoholic beverages if the person has been ordered to refrain  
5 from consuming alcoholic beverages under AS 12.55.015(a)(13) or as part of a  
6 sentence for conviction of a crime under AS 28.35.030, 28.35.032, or a similar  
7 municipal ordinance or as a condition of probation or parole from a conviction under  
8 AS 28.35.030, 28.35.032, or a similar municipal ordinance. The restriction on  
9 purchasing alcoholic beverages applies during the period that the person is required to  
10 refrain from consuming alcoholic beverages under the sentence or condition of  
11 probation or parole.

12 \* Sec. 4. AS 12.55.015(a) is amended to read:

13 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing  
14 sentence on a defendant convicted of an offense, may singly or in combination

15 (1) impose a

16 (A) fine when authorized by law and as provided in  
17 AS 12.55.035; or

18 (B) [REPEALED]

19 (2) order the defendant to be placed on probation under conditions  
20 specified by the court that may include provision for active supervision;

21 (3) impose a definite term of periodic imprisonment, but only if an  
22 employment obligation of the defendant preexisted sentencing and the defendant  
23 receives a composite sentence of not more than two years to serve;

24 (4) impose a definite term of continuous imprisonment;

25 (5) order the defendant to make restitution under AS 12.55.045;

26 (6) order the defendant to carry out a continuous or periodic program  
27 of community work under AS 12.55.055;

28 (7) suspend execution of all or a portion of the sentence imposed under  
29 AS 12.55.080;

30 (8) suspend imposition of sentence under AS 12.55.085;

31 (9) order the forfeiture to the commissioner of public safety or a

1 municipal law enforcement agency of a deadly weapon that was in the actual  
2 possession of or used by the defendant during the commission of an offense described  
3 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

4 (10) order the defendant, while incarcerated, to participate in or  
5 comply with the treatment plan of a rehabilitation program that is related to the  
6 defendant's offense or to the defendant's rehabilitation if the program is made available  
7 to the defendant by the Department of Corrections;

8 (11) order the forfeiture to the state of a motor vehicle, weapon,  
9 electronic communication device, or money or other valuables, used in or obtained  
10 through an offense that was committed for the benefit of, at the direction of, or in  
11 association with a criminal street gang;

12 (12) order the defendant to have no contact, either directly or  
13 indirectly, with a victim or witness of the offense until the defendant is  
14 unconditionally discharged;

15 (13) order the defendant to refrain from consuming alcoholic  
16 beverages for a period of time, including during the term of any sentence and as a  
17 condition of probation, suspended sentence, and suspended imposition of  
18 sentence, if

19 (A) the defendant was convicted of a felony and the court  
20 finds by clear and convincing evidence that the defendant's conduct  
21 constituting the offense was substantially influenced by the consumption  
22 of alcoholic beverages; or

23 (B) the defendant was convicted of a misdemeanor and the  
24 defendant has been previously convicted of crimes two or more times and  
25 the court finds by clear and convincing evidence that, based on the  
26 defendant's history, there is reason to believe that imposing a requirement  
27 that the defendant refrain from consuming alcoholic beverages is  
28 necessary to protect the public; in this subparagraph, "previously  
29 convicted" has the meaning given in AS 28.35.030.

30 \* Sec. 5. AS 12.55.015 is amended by adding a new subsection to read:

31 (k) Nothing in (a)(13) of this section limits or restricts the authority of a court

1 to order a person to refrain from the consumption of alcohol as a condition of sentence  
2 or probation.

# STATE OF ALASKA

## DEPARTMENT OF LAW CRIMINAL DIVISION

**SEAN PARNELL,  
GOVERNOR**

**Mailing:** PO Box 110300  
Juneau, AK 99811-0300  
**Delivery:** 123 4<sup>th</sup> Street, Ste 717  
Juneau, AK 99801  
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April 5, 2010

The Honorable Hollis French  
Chair, Senate Judiciary Committee  
Alaska State Capitol, Room 417  
Juneau, Alaska 99801

Re: Senate Bill 252 – Bail Reform

Dear Chairman French:

Thank you for the thoughtful and thorough hearing that you held for SB 252 (sexual assault and abuse) today and for our meeting on other criminal law legislation. I am writing to ask that you consider scheduling Senate Bill 252, the bail reform bill, for a hearing in the Senate Judiciary Committee as soon as practical. I hope you will not think this is presumptuous, but there are good reasons to hear the bail bill: in addition to protection of the public and other victims, victims of sexual abuse and domestic violence will greatly benefit from the passage of the bill. Although bail reform is not directly targeted at sexual abuse or domestic violence 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 the 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-07-992 CR, 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-10-166 CR, 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 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 was 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-09-2113 CR, 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 month, Mr. Spencer was arrested and charged with a new Robbery in the First Degree for an armed robbery at the Burger King (3AN010-2471 CR).

Jack Lee Espinoza, Jr., 3AN-10-2113 CR, 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 SB 252 will help avoid these problems**

Section 10 of SB 252 (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 SB 252.

SB 252 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 SB 252). 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 a fugitive from the other jurisdiction.

The individuals described in the scenarios above (except for Mr. Berryhill) would have the burden of going forward, under SB 252, with suggestions 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, SB 252 would adopt standards for third party custodians so that, for example, a person charged with crimes, a person who is on probation, or a person with recent convictions could not act as a third party custodian. SB 252 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).

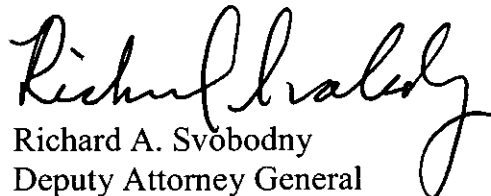
### **Misconceptions about SB 252**

We have heard several comments about SB 252 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 that 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. It also allows for a cooling down time in many cases.

We also have heard people say that SB 252 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. SB 252 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

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

Annie and Rick:

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

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

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

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

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

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

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

PostingID: 1339990957

# MEMORANDUM

## STATE OF ALASKA

Department of Law - Criminal Division

To: Senate Judiciary Committee

Date: March 1, 2010

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

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

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

### General Considerations

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

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

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

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

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

## State Time Limits for Initial Appearance Before Magistrate

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

Indiana	" 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	See, <i>State v. Larson</i> , 776 N.W.2d, 254, 258 (Ind. 2009) – probable cause must be determined with 48 hours, but can be based on hearsay and written testimony. "Arrested person has no right to be physically present at probable cause hearing." Ind. law does not provide for a specific period of time in defining how "promptly" a person is brought before magistrate
Iowa	without unnecessary delay	I.C.A. 804.22	
Kansas	without unnecessary delay	KSA 2003 Supp. 22- 2901	See, <i>State v. Carrow</i> , 2006 WL 399251 *4 (Kan. App., Feb. 17, 2006) - cites <i>McLaughlin</i> as defining "without unreasonable delay" to mean that period of delay "cannot be longer than 48 hours, excluding weekends and holidays"
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. See, e.g., <i>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. See, <i>Jenkins v. Chief Justice of Dist. Court Dept.</i> , 619 N.E.2d 324, 337,339 (Mass, 1993) holding that probable cause must be determined within 24 hours but that the determination may be made ex parte upon written documents.
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	N.R.S. 171-1771	<i>See, Powell v. State</i> , 930 P.2d 1123 (Nev. 1997), acknowledging that <i>McLaughlin</i> requires probable cause hearing within 48 hours
	72 hours- arrest with warrant	N.R.S. 171-178	
New Hampshire	24 hours, excluding Sat., Sun. and holidays	N.R.S. § 594:20(a)	
New Jersey	72 hours, provided that complaint showing probable cause is filed within 12 hours of arrest	N.J. Crim. Rules 3:4-1 and 3:4-2	
New Mexico	without unnecessary delay	NMSA § 31-1-5	
New York	without unnecessary delay	McKinney's CPL § 140.20 sub1	
North Carolina	without unnecessary delay	N.C.G.S.A. § 15A-511	
North Dakota	without unnecessary delay	N.D.C.C. 2906-25 N.D. Crim. Rule 5(a)	
Ohio	without unnecessary delay	O.R.C. § 29.35.05 Ohio Crim. Rule 4(e)	
Oklahoma	without unnecessary delay	22 Okl. Stat. Ann. § 181	<i>See, Black v. State</i> , 871 P.2d 35, 39 (Okl. Cr. 1994). Citing <i>McLaughlin</i> , court recognized that delay longer than 48 hours in taking defendant to probable cause hearing is unreasonable.
Oregon	without unnecessary delay		
Pennsylvania	without unnecessary delay	Pa.R.Crim.P. 519	
Rhode Island	without unnecessary delay (unless charged w/ offense under RI Gen Law. 12.13.1.1*)	Super. R. Crim. P., Rule 5 Dist. R. Crim. P., Rule 9	*Unless charged w/ offense under RI Gen Laws, 12.13.1.1 (charges carrying life sentence or firearm offenses committed by persons previously convicted of offense carrying life sentence), in which case 48 hrs., excluding Sat., Sun. and holidays
South Carolina	Shall be forthwith carried before a magistrate and a warrant of arrest procured	S.C. Code 1976§ 22-5-200	

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

*H. m.v. changes*  
*passed in red*

26-GH2910\S  
Luckhaupt  
4/11/10

**CS FOR HOUSE BILL NO. 324(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:  
Referred:

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

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

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

- 1 (1) is released under the provisions of AS 12.30;
- 2 (2) knows that the person is required to appear before a court or
- 3 judicial officer at the time and place of a scheduled hearing; and
- 4 (3) with criminal negligence does not appear before the court or
- 5 judicial officer at the time and place of the scheduled hearing.

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

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

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

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

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

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

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

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

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

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

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

31 (B) committed the crime of violating a protective order in

1 violation of AS 11.56.740; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (g) Information offered or introduced at a bail hearing to determine conditions  
27 of release need not conform to the rules governing the admissibility of evidence.

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

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

1 bond, on the condition that the person

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

3 (2) appear in court when ordered;

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

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

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

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

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

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

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

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

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

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

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

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

31 (10) require the person to refrain from the use of a controlled substance

1 as defined by AS 11.71, unless prescribed by a licensed health care provider with  
2 prescriptive authority;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 release;

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

31 (10) the effect of the offense on the victim, any threats made to the

1 victim, and the danger that the person poses to the victim;

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

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

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

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

11 (A) charged with an unclassified felony, a class A felony, a  
12 sexual felony, or a felony under AS 28.35.30 or 28.35.032;

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

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

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

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

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

No  
DUI  
—

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

3 (1) to refrain from

4 (A) consuming alcohol beverages; or

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

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

13 (3) to submit to a breath test when requested by a law enforcement  
14 officer;

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

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

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

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

23 (1) to refrain from

24 (A) consuming a controlled substance; or

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

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

1 of the person's release by possessing controlled substances or drug paraphernalia;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (3) personally, by telephone, or by other technology approved by the  
27 court, appears in court with the person and acknowledges to the judicial officer orally  
28 and in writing that the proposed custodian

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

1 condition of release; and

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

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

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

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

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

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

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

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

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

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

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

2 (b) A **judicial officer** [COURT] may not order or permit a person released  
3 under (a) of this section to return to the residence **or place of employment** of the  
4 [ALLEGED] victim or the residence **or place of employment** of a petitioner who has  
5 a protective order directed to the person and issued or filed under AS 18.66.100 -  
6 18.66.180 **unless**

7 **(1) 20 days have elapsed following the date the person was**  
8 **arrested;**

9 **(2) the victim or petitioner consents to the person's return to the**  
10 **residence or place of employment;**

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

13 **(4) the court finds by clear and convincing evidence that the return**  
14 **to the residence or place of employment does not pose a danger to the victim or**  
15 **petitioner.**

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

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

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

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

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

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

31 (2) the release is requested because of the

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

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

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

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

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

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

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

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

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

25 (1) an unclassified or class A felony;

26 (2) a sexual felony;

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

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

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

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

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

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

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

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

19 **Sec. 12.30.055. Persons appearing on petition to revoke.** A person who is in  
20 custody in connection with a petition to revoke probation for a felony crime against a  
21 person under AS 11.41 does not have a right to be released under this chapter. A  
22 judicial officer may, however, release the person under the provisions of this chapter,  
23 if it is established by a preponderance of the evidence that the proposed release  
24 conditions will reasonably assure the appearance of the person and the safety of the  
25 victim, other persons, and the community.

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

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

1 person [DEFENDANT] is convicted.

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

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

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

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

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

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

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

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

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

13 (12) the defendant was on release under AS 12.30 [AS 12.30.020 OR  
14 12.30.040] for another felony charge or conviction or for a misdemeanor charge or  
15 conviction having assault as a necessary element;

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

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

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

21 (B) under AS 12.25.180;

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

23 (D) under AS 12.70.

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

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

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

31 (2) committed the crime of violating a protective order in violation of

1 AS 11.56.740;

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

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

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

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

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

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

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

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

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

3 (2) If

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (2) the execution of an appearance bond in a specified amount and the  
4 deposit in the registry of the court, in cash [or other security], of a sum not to exceed  
5 10 percent of the amount of the bond;

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

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

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

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

14 (c) **Separate Bonds.** If a performance bond is required, it must be enforced  
15 separately from any appearance or bail bond.

16 (1) Appearance in court may not be a condition of a performance bond.  
17 A court may not order that an appearance bond be concurrent with an  
18 appearance bond in a pending case unless the surety who posed the first  
19 appearance bond approves.

20 (2) The court may not change a performance or appearance bail  
21 requirement without agreement by the surety, unless

22 (A) the surety waives the requirement for agreement in  
23 advance and in writing; or

24 (B) the court, in writing, finds that the change in the  
25 condition of bail poses no increase in risk of loss to the surety and the  
26 court sets out in writing the reason for finding that there is no increase in  
27 the risk of loss to the surety.

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

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

1 (b) **Release Pending Appeal.** When an appeal on the merits is pending, an  
2 appeal under AS 12.30.030 [AS 12.30.030(b)] from an order refusing bail pending  
3 appeal or imposing conditions of release pending appeal shall be in the form of a  
4 motion filed in the merit appeal. The motion must be filed with the clerk of the  
5 appellate courts within 30 days after the date of the notice of the order from which  
6 review is sought. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule  
7 32.3(c). The motion shall comply with Rule 503, and shall contain specific factual  
8 information relevant to AS 12.30.011(c) [AS 12.30.020(c)], including but not limited  
9 to the following:

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

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

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

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

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

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

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

29 (8) Criminal history: criminal convictions within ten years prior to the  
30 present arrest; if the appellant has ever forfeited bail, or had release, probation, or  
31 parole revoked, the date, the name and location of the court, and a brief description of

1 the circumstances; whether the present offense was committed while the appellant was  
2 on bail or other release or on probation or parole; any other criminal charges pending  
3 against the appellant at the time [OF] the motion is filed.

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

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

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

19 \* **Sec. 27.** AS 12.30.010, 12.30.020, 12.30.023, 12.30.025, 12.30.027(g), 12.30.029, and  
20 12.30.060 are repealed.

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

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

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

28 (c) AS 12.30.006 - 12.30.021, enacted in secs. 3 - 5 of this Act; AS 12.30.030,  
29 repealed and reenacted in sec. 8 of this Act; AS 12.30.031, enacted in sec. 9 of this Act;  
30 AS 12.30.040, repealed and reenacted in sec. 10 of this Act; AS 12.30.055, enacted in sec. 12  
31 of this Act; and AS 12.30.078, enacted in sec. 14 of this Act apply to bail proceedings

1 occurring on and after the effective date of this Act for offenses occurring on or after the  
2 effective date of this Act.

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

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

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

12 (g) The amendment to Rule 41(c), Alaska Rules of Criminal Procedure, made by sec.  
13 24 of this Act applies to bail proceedings occurring on or after the effective date of this Act.

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

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

on ts  
Clerk/Background

→ violation for violation  
→ failure to appear  
about in court rule

26-GH2910AE

**CS FOR HOUSE BILL NO. 324(JUD)**

→ changed 3rd party page 11 - line 7.

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/29/10  
Referred: Finance

took out C on

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?

presiding holds.

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 *Court* (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;

*against  
a person.*

22 (C) charged with an <sup>felony</sup> 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;

*(DUI ~~20~~ a lot)*

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

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

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

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

19 (6) the proposed custodian resides out of state; however a nonresident  
20 may serve as a custodian if the nonresident resides in the state while serving as  
21 custodian.

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

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

1 member, other persons, and the community [PUBLIC], and to ensure the appearance  
 2 of the person in court, including ordering the person to refrain from the consumption  
 3 of alcohol.

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

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

10 (1) 20 days have elapsed following the date the person was  
 11 arrested;

12 (2) the victim or petitioner consents to the person's return to the  
 13 residence or place of employment;

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

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

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

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

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

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

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

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

3 (2) the release is requested because of the

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

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

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

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

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

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

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

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

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

28 (1) an unclassified or class A felony;

29 (2) a sexual felony;

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

1 another jurisdiction; or

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

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 <sup>it is</sup> the person establishes by a preponderance of evidence  
26 that the proposed release conditions will reasonably assure the appearance of the  
27 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. **A judge may not order a peace**  
19 **officer to serve a petition that has been denied by the court.**

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

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

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

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

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

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

5 (2) If

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

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

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

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

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

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

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

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

*Handwritten signature and initials*

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

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

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

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

31 DIRECT COURT RULE AMENDMENT. Rule 41(b), Alaska Rules of

1 Criminal Procedure, is amended to read:

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

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

5 (2) the execution of an appearance bond in a specified amount and the  
6 deposit in the registry of the court, in cash [or other security], of a sum not to exceed  
7 10 percent of the amount of the bond;

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

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

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

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

16 (c) **Separate Bonds.**

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

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

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

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

27 (b) **Release Pending Appeal.** When an appeal on the merits is pending, an  
28 appeal under AS 12.30.030 [AS 12.30.030(b)] from an order refusing bail pending  
29 appeal or imposing conditions of release pending appeal shall be in the form of a  
30 motion filed in the merit appeal. The motion must be filed with the clerk of the  
31 appellate courts within 30 days after the date of the notice of the order from which

1 review is sought. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule  
 2 32.3(c). The motion shall comply with Rule 503, and shall contain specific factual  
 3 information relevant to AS 12.30.011(c) [AS 12.30.020(c)], including but not limited  
 4 to the following:

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

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

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

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

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

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

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

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

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

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

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

14 \* **Sec. 27.** AS 12.30.010, 12.30.020, 12.30.023, 12.30.025, 12.30.027(g), 12.30.029, and  
15 12.30.060 are repealed.

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

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

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

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

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

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

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

7 (g) The amendment to Rule 41(c), Alaska Rules of Criminal Procedure, made by sec.  
8 24 of this Act applies to bail proceedings occurring on or after the effective date of this Act.

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

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