

HB

175

<TARGET><BILL>HB 175</BILL><SUBJECT>HB
175</SUBJECT><COMM>HJUD27</COMM></TARGET>

★ This bill was absorbed into the Omnibus Crime bill (HB 127) passed last yr.

27-LS0579A

HOUSE BILL NO. 175

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced: 2/28/11
Referred: Judiciary, Finance

Melanie

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to an appearance before a judicial officer after arrest; relating to
2 penalties for operating a vehicle without possessing proof of motor vehicle liability
3 insurance or a driver's license; relating to penalties for certain arson offenses; amending
4 Rule 5(a)(1), Alaska Rules of Criminal Procedure, and Rule 43.10, Alaska Rules of
5 Administration; and providing for an effective date."

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

7 * **Section 1.** AS 12.25.150(a) is amended to read:

8 (a) A person arrested shall be taken before a judge or magistrate without
9 unnecessary delay, and in any event within 48 [24] hours after arrest, including
10 Sundays and holidays. This requirement applies to municipal police officers to the
11 same extent as it does to state troopers.

12 * **Sec. 2.** AS 12.70.130 is amended to read:

13 **Sec. 12.70.130. Arrest without warrant.** The arrest of a person may also be

received
2-13-12



This bill was
reported out of
HJUD on
3/18/11

Business Manager

Joseph Young
Anchorage

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Wrangell

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February 20, 2012

Representative Carl Gatto
Judiciary Chair
House of Representatives
State Capitol
Juneau AK 99801-1182

2/16/12

Dear Representative Gatto:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for considering HB 175 an act relating to an appearance before a judicial officer after arrest; relating to penalties for operating a vehicle without possessing proof of motor vehicle liability insurance or a driver's license; relating to penalties for certain arson offenses; amending Rule 5(a)(1), Alaska Rules of Criminal Procedure, and Rule 43.10, Alaska Rules of Administration; and providing for an effective date

The APOA Executive Board's Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

John Lucking, Jr.
State President



FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

cost # codes

Bill Version

CSHB 175(JUD)

Fiscal Note Number

Publish Date

Identifier (file name) CSHB175(JUD)-DOC-OC-01-09-12

Dept. Affected DOC

Title "An Act relating to an appearance before judicial officer
after arrest; relating to penalties for perating a vehicle..."

Appropriation Admin & Support

Allocation Commissioner's Office

Sponsor Judiciary by Request

Requester House Finance Committee

OMB Component Number 694

Expenditures/Revenues

(Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

(Thousands of Dollars)

	FY13	FY13	FY14	FY15	FY16	FY17	FY18
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Prgm (DGF)							
1037 GF/MH (UGF)							
1178 temp code (UGF)							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES

Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated to reflect current fiscal year.

Prepared by Leslie Houston, Director
Division Department of Corrections - Administrative Services
Approved by Joseph D. Schmidt, Commissioner
Department of Corrections

Phone 907-465-3339
Date/Time 01/09/12 1:30pm
Date 1/9/2012

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. CSHB 175(JUD)

Analysis

This bill provides clarifying changes to statute. The potential impacts of this change was previously identified and accounted for when the original legislation passed in 2010. Therefore, this bill has no additional fiscal impacts to the Department of Corrections.

FISCAL NOTE

STATE OF ALASKA cost # codes
 2012 LEGISLATIVE SESSION

Bill Version HB 175
 Fiscal Note Number _____
 Publish Date _____

Identifier (file name) HB175CS(JUD)-LAW-CRIM-12-07-11 Dept. Affected Law
 Title An Act relating to court appearances; arson; and infractions. Appropriation Criminal
 Allocation Criminal Justice Litigation
 Sponsor House Judiciary Committee
 Requester (H) Finance OMB Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES

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Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated for new fiscal year form.

Prepared by Eileen Donahue, Division Operations Manager
 Division Administrative Services
 Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
 Date/Time 12/07/11 5:10PM
 Date 12/7/2011

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. HB 175

Analysis

HB 175 makes two corrections in the law to conform to the changes in the bail statutes adopted last year. It also makes conforming amendments to statutes that are in conflict with the bail schedules in the court rules.

Passage of this legislation would have no foreseeable fiscal impact on the Department of Law.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version HB175
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) HB175CS(JUD)-DPS-DET-01-11-12 Dept. Affected Public Safety
 Title "An Act relating to appearance after arrest, penalties for some offenses, and amending criminal rules." Appropriation Alaska State Troopers
 Allocation AST Detachments
 Sponsor House Judiciary by Request
 Requester (H) FIN OMB Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES

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Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated on new fiscal note form.

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

Phone (907) 247-4480
 Date/Time 1/11/12 11:55 AM
 Date 12/15/2011

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. HB175

Analysis

This legislation would do the following:

Amends AS 12.25.150(a) by changing the requirement to bring arrested persons before a judge or magistrate from the current 24 hours to 48 hours.

Amends AS 28.15.131 (License to be carried and exhibited on demand) by adding a new subsection stating that violation of this section is an infraction.

Amends AS 28.22.019(c) (Proof of insurance) by reducing violation of this section to an infraction and requiring a mandatory fine of \$500.

Amends AS 41.23.220 by defining penalties; except for conduct that is a violation of AS 11.46.420 (Arson in the third degree).

Amends the Alaska Rules of Criminal Procedures, Rule 5(s)(1), regarding appearance before a judge or magistrate.

Amends the Alaska Rules of Criminal Procedures, Sec. 7, regarding the disposition of violations, and Sec. 8 regarding the applicability of this Act.

It is not estimated that this bill will significantly increase the workload of the division of Alaska State Troopers. There is no fiscal cost to the AST as a result of this legislation.

STATE OF ALASKA

DEPARTMENT OF LAW CRIMINAL DIVISION

**SEAN PARNELL,
GOVERNOR**

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

March 2, 2011

The Honorable Carl Gatto
Chairman
House Judiciary Committee
State Capitol Room 118
Juneau, AK 99801

Re: House Bill 175 – relating to criminal procedures following an arrest

Dear Representative Gatto:

The Department of Law respectfully requests a hearing in the House Judiciary Committee on HB 175, at your earliest convenience. HB 175 is a bill that makes important updates to the existing criminal process that occurs following a person's arrest.

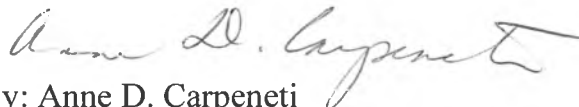
Last year the legislature adopted a major revision to the bail law in our state. One of the important revisions was to change from 24 to 48 hours the deadline for bringing a person who is arrested before a judicial officer. The change last year included the court rule change, but neglected to change the statute. HB 175 corrects this. The bill also corrects inconsistencies in the bail schedules and the statutes for several offenses, including operating a motor vehicle without possessing proof of insurance or possessing a driver's license, and for certain arson offenses.

A sectional analysis is attached that describes each section of the bill. I expect Annie Carpeneti, Legislative Liaison from the Department of Law, Criminal Division and Sue Stancliff, Legislative Liaison from the Department of Public Safety to testify regarding this legislation.

Thank you for your consideration of this request.

Sincerely,

JOHN J. BURNS
ATTORNEY GENERAL



By: Anne D. Carpeneti
Assistant Attorney General

HOUSE BILL 175 – BAIL CLEANUP
Sectional Analysis

Section 1 amends AS 12.25.150(a) (relating to arrest) to conform to the provision in the bail reform legislation last year that changed the deadline for bringing a person arrested before a judicial officer from 24 hours to 48 hours of arrest.

Section 2 amends AS 12.70.130 (relating to extraditions) to conform to the provision in the bail reform legislation last year that changed the deadline for bringing a person arrested before a judicial officer from 24 to 48 hours of arrest.

Section 3 changes the penalty for the offense of failure to possess and present upon request to a peace officer a person's driver's license when driving from a misdemeanor, similar to a class B misdemeanor, to an infraction. The offense currently is correctible, and would continue to be correctible. This offense is also currently on the bail schedule (Rule 43.1, Alaska Rules of Administration) at a \$50 bail. It is not consistent to have an offense at the same time a misdemeanor, which generally requires a court appearance, and at the same time disposable under the bail schedule for a \$50 bail amount. The bill removes this inconsistency.

Section 4 changes the penalty for the crime of failure to carry and present upon request to a peace officer proof of automobile insurance when driving from a class B misdemeanor to an infraction. Current law in statute requires a mandatory fine for this offense of at least \$500; at the same time the offense is on the bail schedule for a bail amount of \$500. It is correctible under current law and would continue to be correctible under this bill. Again, it is inconsistent to have a class B misdemeanor on the bail schedule for disposition without court appearance. The bill removes the inconsistency, and at the same time retains the bail amount of \$500.

Section 5 resolves a similar inconsistency in the penalty for burning a vehicle on the Knik River Public Use Area. In 2006 the legislature created the Knik River Public Use Area. The law authorizes the Department of Natural Resources to adopt regulations governing conduct in the area. AS 41.23.220(a) provides that a person who violates the new law or a regulation under the new law commits a violation. AS 41.23.220(b) requires the Alaska Supreme Court to establish a bail schedule for violations of the statutes and regulations. The law specifically requires that the violations be disposed of without court appearance. One of the regulations adopted prohibits burning a vehicle in the area; the bail was adopted in Supreme Court Order 1711 at \$50.

In 2008 the legislature enacted AS 11.46.420, which adopted a new crime, arson in the third degree. This prohibits burning a vehicle on state or municipal land. The penalty for this crime is a class C felony.

These sections correct this inconsistency by excluding burning a vehicle on state land from the prohibitions that are effective in the Knik River Public Use Area.

Section 6 redrafts Rule 5(a)(1), Alaska Rules of Criminal Procedure, to correct a drafting error and to make the rule more readable. The rule was changed last year to extend the deadline from 24 to 48 hours for bringing an arrested person before a judicial officer. This change corrects the drafting error, which currently defines a term that is not used in the rule.

Section 7 notes that the changes included in **Section 5** of the bill have the effect of changing Rule 43.10, Alaska Rules of Administration (the bail schedule) by prohibiting the disposition of cases involving burning a vehicle on state land without a court appearance by mailing to the court a bail amount of \$50.

Sections 8 and 9 include applicability and effective date sections.

FISCAL NOTE

**STATE OF ALASKA
2011 LEGISLATIVE SESSION**

Fiscal Note Number _____
 Bill Version HB175 IA
 () Publish Date _____

Identifier (file name): HB175-LAW-CRIM-03-04-11
 Title An Act relating to court appearances; arson; and infractions.
 Dept. Affected Law
 Appropriation Criminal
 Allocation Criminal Justice Litigation
 Sponsor House Judicial Committee
 Requester (H) Judiciary
 OMB Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES							
CHANGE IN REVENUES							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by Eileen Donahue, Division Operations Manager
 Division Administrative Services
 Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
 Date/Time 3/4/11 4:30 PM
 Date 3/4/2011

FISCAL NOTE

**STATE OF ALASKA
2011 LEGISLATIVE SESSION**

BILL NO. HB 175

Analysis

HB 175 makes two corrections in the law to conform to the changes in the bail statutes adopted last year. It also makes conforming amendments to statutes that are in conflict with the bail schedules in the court rules.

Passage of this legislation would have no foreseeable fiscal impact on the Department of Law.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version HB175
 () Publish Date _____

Identifier (file name) HB175-DPS-DET-03-04-11 Dept. Affected Public Safety
 Title "An Act relating to appearance after arrest, penalties for some
some offenses, and amending criminal rules." Appropriation Alaska State Troopers
 Allocation AST Detachments
 Sponsor Judiciary
 Requester House Judiciary OMB Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

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

Phone (907) 247-4480
 Date/Time 3/4/11 11:30 AM
 Date 3/4/2011

FISCAL NOTE

**STATE OF ALASKA
2011 LEGISLATIVE SESSION**

BILL NO. HB175

Analysis

This legislation would do the following:

Amend AS 12.25.150(a) by changing the requirement to bring arrested persons before a judge or magistrate from the current 24 hours, to 48 hours.

Amends AS 28.15.131 (License to be carried and exhibited on demand) by adding a new subsection stating that violation of this section is an infraction.

Amends AS 28.22.019(c) (Proof of insurance) by reducing violation of this section to an infraction and requiring a mandatory fine of \$500.

Amends AS 41.23.220 by defining penalties; except for conduct that is a violation of AS 11.46.420 (Arson Third Degree).

Amends the Alaska Rules of Criminal Procedures, Rule 5(s)(1) regarding appearance before a judge or magistrate.

Amends the Alaska Rules of Criminal Procedures, Sec 7. regarding the disposition of violations, and Sec. 8 regarding applicability of this act.

It is not estimated that this bill will significantly increase the workload of the division of Alaska State Troopers. There is no fiscal cost to the AST as a result of this legislation.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
Bill Version HB175
() Publish Date _____

Identifier (file name) HB175-DOC-OC-03-04-11 Dept. Affected DOC
Title "An Act relating to an appearance before judicial officer after Appropriation Administration & Support
Allocation Office of the Commissioner
Sponsor House Judiciary Committee
Requester House Judiciary Committee OMB Component Number 694

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version; not applicable

Prepared by Leslie Houston, Director
Division Dept. of Corrections - Administrative Services
Approved by Joseph D. Schmidt, Commissioner
Dept. of Corrections

Phone 465-3339
Date/Time 3/4/11 12:00 PM
Date 3/4/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB175

Analysis

This bill provides clarifying changes to statute. The potential impacts of this change was previously identified and accounted for when the original legislation passed in 2010. Therefore, this bill has no additional fiscal impact to the Department of Corrections.

1 jurisdiction is not available, a superior court, district court, or magistrate may
2 designate any other peace officer to serve and execute process. A state peace officer
3 shall serve process in any area that is not within the jurisdiction of a peace officer of a
4 municipality or unincorporated community. A peace officer shall use every reasonable
5 means to serve process issued under this chapter. **A judge may not order a peace**
6 **officer to serve a petition that has been denied by the court.**

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

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

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

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

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

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

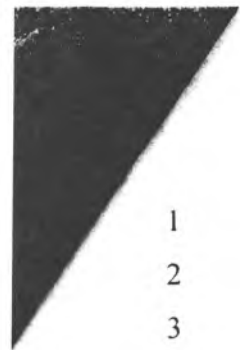
23 (2) If

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

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

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

31 (iv) The arrested person has not previously had a bail



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review, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2

28.15.160. A license may not display the licensee's social security number and is not valid until signed by the licensee. If facilities are not available for the taking of the photograph required under this section, the department shall endorse on the license, the words "valid without photograph."

(b) The department shall provide a method, at the time that an operator's license is issued, by which the owner of a license may make an anatomical gift under AS 13.52. The method must provide a means by which the owner may cancel the anatomical gift. The department shall inform each applicant in writing that, if the applicant executes a gift under AS 13.52 and if the gift is made with the license, the department will transmit the information on the license to a donor registry created under AS 13.50.110. The department shall also direct the applicant to notify a procurement organization or the department under AS 13.50.140 if the license is destroyed or mutilated or the gift is revoked under AS 13.52.183. The department shall carry out the requirements of AS 13.50.100 — 13.50.190. (§ 19 ch 78 SLA 1978; am § 2 ch 50 SLA 1993; am § 21 ch 10 SLA 1997; am § 2 ch 40 SLA 2001; am § 7 ch 68 SLA 2004; am § 7 ch 83 SLA 2004; am § 27 ch 24 SLA 2007; am § 34 ch 100 SLA 2008)

Sec. 28.15.120. Expiration. [Repealed, § 19 ch 78 SLA 1978.]

Sec. 28.15.121. Restricted driver's license.

(a) The department, upon issuing a driver's license, may for good cause impose restrictions suitable to the licensee's driving ability with respect to special mechanical control devices required on a motor vehicle that the licensee drives. The department may impose other restrictions applicable to the licensee that it determines to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The department may issue a special restricted license or may set out restrictions on the usual license form.

(c) The department may, upon receiving satisfactory evidence of a violation of the restrictions on a license restricted or issued under this section, suspend the restricted license for a period not to exceed 30 days.

(d) A person may not drive a motor vehicle in violation of the restrictions imposed on a restricted license. (§ 19 ch 178 SLA 1978)

Sec. 28.15.130. School bus drivers. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.131. License to be carried and exhibited on demand. A licensee shall have the licensee's driver's license in immediate possession at all times when driving a motor vehicle, and shall present the license for inspection upon the demand

of a peace officer or other authorized representative of the Department of Public Safety identified as such to the licensee by the officer or representative. However, a person charged with violating this section may not be convicted if the person produces in court or in the office of the arresting or citing officer, a driver's license previously issued to the person that was valid at the time of the person's arrest or citation. (§ 19 ch 178 SLA 1978; am E.O. No. 99 § 46 (1997))

Sec. 28.15.140. Change of name. [Repealed, § 25 ch 144 SLA 1977.]

Sec. 28.15.141. Duplicate driver's license. If a valid driver's license issued under this chapter is lost or destroyed, the person to whom the license was issued may, upon payment of the required fee, obtain a duplicate license. A person who recovers an original license for which a duplicate has been issued shall immediately surrender the duplicate to the department. (§ 19 ch 178 SLA 1978)

Sec. 28.15.150. Records. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.151. Records to be kept by the department. (a) The department shall maintain a file of

(1) every driver's license application, license or permit, and duplicate driver's license issued by it;

(2) every license that has been suspended, revoked, canceled, limited, restricted, or denied, and the reasons for those actions;

(3) all accident reports required to be forwarded to the department under this title; and

(4) every disqualification of an individual from operating a commercial motor vehicle.

(b) The department shall also maintain and update within 10 days after receipt by the department a file of all accident reports, abstracts of court records of convictions of vehicle, driver, and traffic offenses, and other information that the department considers necessary to carry out the purposes of this chapter.

(c) The department shall, upon request, subject to the applicable provisions of AS 12.62 and (f) of this section and without charging a fee, furnish (1) a municipal, state, or federal administrative or judicial agency with a certified abstract of the driving record of a driver within 10 days after receipt of the request by the department; and (2) a parent, foster parent, or guardian of a driver who is under 18 years of age and not an emancipated minor an abstract of the driving record of that driver; the department may refuse to release the driver's address to the parent, foster parent, or guardian if the department determines that the release of the driver's address poses a threat to the health or safety of the driver. The abstract must include a listing of accidents in

(9) "season" means one calendar year beginning October 1 and ending September 30;

(10) "snowmobile" means a self-propelled vehicle primarily designed or altered for travel on snow or ice when supported in part by skis, belts, or cleats; "snowmobile" does not include machinery used strictly for the grooming of snowmobile trails or ski slopes. (§ 1 ch 134 SLA 1998)

Chapter 40.

General Provisions.

Sec. 28.40.050. [Renumbered as AS 28.90.010.]

Sec. 28.40.060. [Renumbered as AS 28.90.020.]

Sec. 28.40.070. [Renumbered as AS 28.90.030.]

Sec. 28.40.072. [Renumbered as AS 28.90.035.]

Sec. 28.40.075. [Renumbered as AS 28.90.040.]

Sec. 28.40.100. [Renumbered as AS 28.90.990.]

Sec. 28.40.110. [Renumbered as AS 28.90.995.]

Chapter 90.

General and Miscellaneous Provisions.

Article

1. Miscellaneous Provisions (§§ 28.90.010 — 28.90.040)
2. General Provisions (§§ 28.90.990, 28.90.995)

Article 1.

Miscellaneous Provisions.

Section

10. Penalties for violations of law, regulations, and municipal ordinances
20. Breath test result validity
30. Fines for offenses committed within highway work zones and traffic safety corridors doubled
35. Prohibition of damage claims regarding highway work zone signs
40. Administration of highway safety program

Sec. 28.90.010. Penalties for violations of law, regulations, and municipal ordinances.

(a) It is a misdemeanor for a person to violate a provision of this title unless the violation is by this title or other law declared to be a felony or an infraction.

(b) A person convicted of a misdemeanor for a violation of a provision of this title for which another penalty is not specifically provided is punishable by

a fine of not more than \$500, or by imprisonment for not more than 90 days, or by both. In addition, the privilege to drive or the registration of vehicles may be suspended or revoked.

(c) Unless otherwise specified by law a person convicted of a violation of a regulation adopted under this title, or a municipal ordinance regulating vehicles or traffic when the municipal ordinance does not correspond to a provision of this title, is guilty of an infraction and is punishable by a fine not to exceed \$300.

(d) An infraction, as provided for in (c) of this section, is not considered a criminal offense and may not result in imprisonment, nor is a fine imposed for the commission of an infraction considered a penal or criminal punishment; nor may the commission of a single infraction result in the loss of a driver's license or privilege to drive in this state except as may result from the accumulation of points under AS 28.15.221 — 28.15.261, or the registration of vehicles; nor does a person cited with an infraction have a right to trial by jury or to court-appointed counsel.

(e) *[Repealed, § 5 ch 85 SLA 1987.]* (§ 50-1-8 ACLA 1949; am § 12 ch 241 SLA 1976; am §§ 22, 23 ch 144 SLA 1977; am § 5 ch 85 SLA 1987)

Sec. 28.90.020. Breath test result validity.

Except for an offense under AS 28.35.280, if an offense described under this title requires that a chemical test of a person's breath produce a particular result, and the chemical test is administered by a properly calibrated instrument approved by the Department of Public Safety, the result described by statute is not affected by the instrument's working tolerance. (§ 17 ch 143 SLA 1996)

Sec. 28.90.030. Fines for offenses committed within highway work zones and traffic safety corridors doubled.

(a) Whenever a person violates a provision of this title or a regulation adopted under the authority of this title within a highway work zone or traffic safety corridor, notwithstanding the amount of the fine or the maximum fine set under this title, the fine, or maximum fine, is double the amount provided in this title.

(b) Fines imposed and collected under this section for offenses that are committed in a traffic safety corridor shall be separately accounted for under AS 37.05.142.

(c) Notwithstanding the requirements of (b) of this section and AS 37.05.142, the Alaska Court System shall deposit fines collected under this section for offenses committed in a traffic safety corridor in the general fund if the fine is collected at a court location where separate accounting for traffic safety corridor fines is not achievable.

(d) The administrative director of the Alaska Court System shall notify the Department of Administration

Tealy	4TF
Hooper Bay (closed)	4TB
Kasigluk (closed)	4KS
McGrath	4MC
Mekoryuk (closed)	4ME
Mt. Village (closed)	4MV
Nenana	4NE
Qunhagak (closed)	4QU
Rampart (closed)	4RA
Scammon Bay (closed)	4SB
St. Mary's	4SM
Tanana	4TA
Tok	4TO
Tununak (closed)	4TU

(Adopted by SCO 478 effective August 17, 1981; amended by SCO 541 effective October 1, 1982; by SCO 564 effective April 4, 1983; by SCO 565 effective May 3, 1983; by SCO 617 effective May 15, 1985; by SCO 672 effective June 15, 1986; by SCO 1034 effective June 14, 1990; by SCO 1035 effective nunc pro tunc February 1, 1991; by SCO 1132 effective July 15, 1993; and by SCO 1493 effective September 26, 2002)

Cross References

CROSS REFERENCE: Administrative Bulletins No. 7 and 7.1 (Case Numbering)

Rule 42. Docketing. (Reserved).

Note: Former Rule 42 was deleted and the rule was reserved by SCO 1481, effective October 15, 2002.

Rule 43. Bail Forfeiture Schedules.

(a) Procedure for Adopting Bail Forfeiture Schedule.

The supreme court will consider adopting a bail forfeiture schedule only when so authorized by statute. The agency charged with enforcement under a statute for which a bail forfeiture schedule has been authorized shall forward to the administrative director its recommendations for a proposed schedule, listing offenses by number, describing the offenses, and proposing a bail forfeiture amount. The proposed schedule shall be accompanied by commentary explaining the basis for the agency's recommendation, and by a copy of the proposed citation form. The supreme court shall consider the recommendation, and shall determine whether to adopt a bail forfeiture schedule, and if so, shall determine which offenses are amenable to disposition by bail forfeiture and whether the bail forfeiture amounts are appropriate. The administrative director shall notify the agency when an order adopting the schedule is issued.

(b) Procedures for Amending Bail Forfeiture Schedules.

(1) By July 1 of each year, each agency charged with enforcement under a statute for which a bail forfeiture schedule has been authorized shall forward to the administrative director of the Alaska Court System its recommendation concerning whether the schedule must be

amended to reflect any legislative and regulatory changes, or whether policy considerations warrant revisions. Any proposed amendments shall be accompanied by commentary. The supreme court shall consider the agency's recommendations and determine by October 1 whether to adopt them. If it will be impractical for the court to respond by that date, the administrative director will inform the agency of the date by which the response can be expected. The administrative director shall notify the agency when an order amending the schedule is issued.

(2) In addition to the provisions of paragraph (b)(1), an agency may request a bail forfeiture schedule amendment whenever the need arises.

(3) Any person or agency may request a bail forfeiture schedule amendment at any time by proposing an amendment in writing to the chief justice or to the administrative director.

(Adopted by SCO 651 effective July 1, 1985; amended by SCO 1180 effective July 15, 1995)

Rule 43.1. Traffic Bail Forfeiture Schedule.

Pursuant to AS 28.05.151, the following vehicle and traffic offenses are amenable to disposition without court appearance upon payment and forfeiture of the bail amounts listed. If a person charged with one of these offenses appears in court and is found guilty, the penalty imposed for the offense may not exceed the bail amount for that offense listed below. An offense for which a bail forfeiture amount has been established shall be charged on a citation which meets the requirements of District Court Criminal Rule 8(c) and shall not be filed, numbered, or processed as a criminal case.

Effective April 30, 1999, the bail amounts listed below are doubled for violations of AS 28 and regulations adopted under AS 28 committed within a highway work zone, as that term is defined in AS 28.90.990 and 13 AAC 40.010(b). Effective May 27, 2006, the bail amounts listed below are doubled for violations of AS 28 and regulations adopted under AS 28 committed within a traffic safety corridor, as that term is defined in AS 28.90.990.

Pursuant to AS 28.15.131 and 13 AAC 04.008, a citation for an offense listed as "Corr" must be dismissed (or voided) if proof of correction is presented to an inspection official within the time allowed. If the required repair is not made, the offense may be disposed of without court appearance upon payment and forfeiture of the bail amount listed.

Effective August 27, 1998, as a condition of the disposition of an offense without appearance, the defendant shall pay the surcharge prescribed in AS 12.55.039 in addition to the bail forfeiture amount listed below. A court may allow a defendant who is unable to pay the surcharge to perform community work under AS 12.55.055(e) in lieu of the surcharge. The surcharge must be deposited into the general fund in a separate account designated for such surcharges.

Effective September 1, 2003, pursuant to AS 28.05.151(c), an offense listed on this schedule may not be disposed of without court appearance if the offense is an

Rule 43.1

ALASKA COURT RULES

#3

Statute or Regulation	Description of Offense	Bail	Statute or Regulation	Description of Offense	Bail	Statute or Regulation
AS 11.46.462	Unlawful possession of an official traffic control device	\$ 200		which illegally passes a school bus		13 AAC
AS 19.10.300(a)	Commercial vehicle (intrastate): failure to maintain minimum insurance	500	AS 28.35.155	Operating vehicle w/studded/chained tires when prohibited	Corr/50	13 AAC
AS 28.05.095(a)	Failure to wear safety belt (age 16 and older: passenger or driver)	15	AS 28.35.180	Disobedience to signal of officer regulating traffic	75	13 AAC
AS 28.05.095(b)	Failure to provide child safety device. (Note: First charge may be dismissed by court upon proof of correction, but second or subsequent charge is not dismissible)	50	AS 28.35.185(b)(2)	Overtaking and passing a parked emergency vehicle - if no personal injury	150	13 AAC
AS 28.05.095(b)	Failure to properly secure child in child safety device	50	AS 28.35.235	Unauthorized use of parking reserved for persons with disabilities		13 AAC
AS 28.05.095(d)	Illegal removal of vehicle seatbelt	15		-First offense	125	13 AAC
AS 28.10.451	Failure to register vehicle	90	AS 28.35.235	-Second or more offense	250	13 AAC
AS 28.10.461	Plates/decals/permits must be properly attached and displayed	75	AS 28.35.251	Unauthorized use of parking reserved for persons with disabilities while displaying special license plate or permit		13 AAC
AS 28.10.461	Failure to carry certificate of registration in vehicle	40	AS 28.35.253	-First offense	250	13 AAC
AS 28.10.471	Operating vehicle w/expired registration	90	AS 28.35.261	-Second or more offense	500	13 AAC
AS 28.10.471	Operating a vehicle w/suspended/revoked registration	300	AS 28.39.010	Contained or confined loads	300	13 AAC
AS 28.15.011(b)	Driving with license expired less than one year	75	AS 28.39.010	Anti-spray devices required	Corr/60	13 AAC
AS 28.15.021(2)	Driving with out-of-state license after 90 days in state	75	AS 28.39.040(e)	Low-speed vehicle on highway with limit above 35 mph	100	13 AAC
AS 28.15.021(6)	Driving a motor-driven cycle with out-of-state driver's license after 90 days in state	75	AS 28.39.040(f)	Operating an unregistered snowmobile	50	13 AAC
AS 28.15.057(b)	Operating a vehicle in violation of a provisional license	200	02 AAC 90.030	Failure to display snowmobile numbered registration decal	50	13 AAC
AS 28.15.131	License to be carried and exhibited on demand	Corr/50	02 AAC 90.200	Failure to carry snowmobile certificate of registration or provide identifying information	50	13 AAC
AS 28.15.281(a)	Unlawful use of a driver's license	200	13 AAC 02.005(a)	School bus driver permit must be carried and displayed upon demand	Corr/50	13 AAC
AS 28.22.019	Proof of insurance to be carried and exhibited on demand	Corr/500	13 AAC 02.010(a)(1)	Unlawful use of classified license	50	13 AAC
AS 28.35.029	Open container of alcoholic beverage in motor vehicle	200	13 AAC 02.010(a)(1)(A)-(B)	Disobedience to traffic control devices	100	13 AAC
AS 28.35.031(c)	Refusal to submit to a preliminary breath test	100	13 AAC 02.010(a)(1)(A)-(B)	FTY to vehicle in intersection after green signal	150	13 AAC
AS 28.35.135(b)	Failure to notify dept. of change of name/address	25	13 AAC 02.010(a)(3)(A)	FTY to pedestrian in crosswalk after green signal	150	13 AAC
AS 28.35.140(a)	Obstructing or blocking traffic	75	13 AAC 02.010(a)(3)(B)	Failure to stop for steady red traffic signal	150	13 AAC
AS 28.35.140(b)	Turn off required when 5 or more vehicles are behind	100	13 AAC 02.010(a)(3)(C)	FTY when turning on red signal	150	13 AAC
AS 28.35.145(e)	Ownership of a vehicle	75	13 AAC 02.010(b)	Turning on red signal when prohibited	75	13 AAC
			13 AAC 02.010(b)	Failure to stop for steady red arrow	150	13 AAC
			13 AAC 02.015	Position of vehicle stopping at intersection	75	13 AAC
				Failure to obey pedestrian control signal	10	13 AAC

Healy	4HE
Hooper Bay (closed)	4HB
Kasigluk (closed)	4KS
McGrath	4MC
Mekoryuk (closed)	4ME
Mt. Village (closed)	4MV
Nenana	4NE
Quinhagak (closed)	4QU
Rampart (closed)	4RA
Scammon Bay (closed)	4SB
St. Mary's	4SM
Tanana	4TA
Tok	4TO
Tununak (closed)	4TU

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(Adopted by SCO 651 effective July 1, 1985; amended by SCO 1180 effective July 15, 1995)

Rule 43.1. Traffic Bail Forfeiture Schedule.

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Effective September 1, 2003, pursuant to AS 28.05.151(e), an offense listed on this schedule may not be disposed of without court appearance if the offense is in

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property that is damaged must be a building, while under the first degree provision any property can be damaged. However, while the first degree provision requires that a person be placed in danger of injury, a similar requirement does not exist under the second degree statute.

An affirmative defense to arson in the second degree is provided in subsection (b). The defense recognizes that in some instances the most economical method of removing a building is to burn it. Such conduct is exempted from the coverage of the statute if the defendant establishes that no other person had an interest in the property, or if they did, that they consented to the burning, and that the burning was for a lawful purpose. Burning a building to defraud an insurance company would not be a burning for a lawful purpose. Note that a similar defense does not apply to the first degree statute. If the burning recklessly places another person in danger of serious physical injury, the defendant has committed first degree arson even if he acted for a lawful purpose.

From 1983 House Journal at 1250 & 1699 (May 10 & June 13, 1983) and 1983 Senate Journal at 106-107 (February 1, 1983):

The [House Judiciary] Committee does not intend that the mere presence at the scene of a fire of a firefighter or other emergency responder would be sufficient in all cases to constitute danger of serious physical injury necessary to establish the crime of arson in the first degree. The existence of the necessary danger will be an issue of fact which must be determined by the trier of fact in each individual case.

CROSS REFERENCES

Definitions of "property," "serious physical injury," "building," "affirmative defense" - AS 11.81.900(b)

Definition of "intentionally," "recklessly" - AS 11.81.900(a)

Criminal mischief - AS 11.46.480 — 11.46.486

Criminal possession of explosives - AS 11.61.240

Original Code Provision - AS 11.20.010; 11.20.020; AS 11.20.030; AS 11.20.040; AS 11.20.060; AS 11.20.070.

TD: III, 69-73.

Sec. 11.46.420. Arson in the third degree.

(a) A person commits the crime of arson in the third degree if the person intentionally damages a motor vehicle by starting a fire or causing an explosion while that vehicle is located on state or municipal land.

(b) Arson in the third degree is a class C felony. (§ 1 ch 68 SLA 2008)

Sec. 11.46.427. Criminally negligent burning in the first degree.

(a) A person commits the crime of criminally negligent burning in the first degree if the person

- (1) violates AS 11.46.430; and
- (2) within the preceding 10 years, has been convicted on two separate occasions of violating AS 11.46.400 — 11.46.430 or AS 41.15.150 or a law or

ordinance of this or another jurisdiction with elements similar to those offenses.

(b) Criminally negligent burning in the first degree is a class C felony. (§ 15 ch 75 SLA 2008)

Sec. 11.46.430. Criminally negligent burning in the second degree. (a) A person commits the crime of criminally negligent burning in the second degree if with criminal negligence the person damages property of another by fire or explosion.

(b) Criminally negligent burning in the second degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978; am § 16 ch 75 SLA 2008)

COMMENTARY

From Senate Journal Supp. No. 47, at 47 (June 12, 1978):

The crime of criminally negligent burning, a class A misdemeanor, covers the criminally negligent damaging of the property of another by fire or explosion. The person who falls asleep in a hotel bed with a cigarette in his hand, for example, would violate the statute if the bed caught on fire. If physical injury or death results, prosecution would be brought under the Code's homicide or assault statutes.

CROSS REFERENCES

Definition of "property" - AS 11.81.900(b)

Definition of "property of another" - AS 11.46.990

Definition of "criminal negligence" - AS 11.81.900(a)

Arson in the first and second degree - AS 11.46.400, 11.46.410

Original Code Provision - AS 11.15.340

TD: III, 73-74.

Sec. 11.46.450. Failure to control or report a dangerous fire.

(a) A person commits the crime of failure to control or report a dangerous fire if the person knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measures to put out or control the fire, when the person can do so without substantial personal risk, or to give a prompt fire alarm if

(1) the person knows that the person is under an official, contractual, or other legal duty to prevent or combat the fire; or

(2) the fire was started by the person, with the person's consent, or on property in the person's custody or control.

(b) Failure to control or report a dangerous fire is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

COMMENTARY

From Senate Journal Supp. No. 47, at 47-48 (June 12, 1978):

Existing AS 41.15.110(a) creates an affirmative duty on a person to exercise due care to prevent the uncontrolled spread of a fire when he knows of a fire or sets a fire on forest lands, owned, possessed or controlled by him.

Section 4: Lots 9 — 11

Section 5: SW $\frac{1}{4}$ SW $\frac{1}{4}$

Section 7: Lot 4, S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$

Section 8: E $\frac{1}{2}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$

Section 9: Lots 1 — 2, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$

Section 10: NW $\frac{1}{4}$ NW $\frac{1}{4}$

Section 11: Lots 1 — 5

Section 12: Lots 2 — 3

Section 17: NW $\frac{1}{4}$ NW $\frac{1}{4}$

Section 18: N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;

(2) Township 1 North, Range 2 West, Fairbanks Meridian

Section 13: SE $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$

Section 23: NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$

Section 24: E $\frac{1}{2}$

Section 26: W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$

Section 27: N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

(§ 1 ch 48 SLA 1990; am § 5 ch 9 SLA 1994)

Sec. 41.23.180. Purpose of AS 41.23.180 — 41.23.230. The purpose of AS 41.23.180 — 41.23.230 is to establish the area described in AS 41.23.230 as the Knik River Public Use Area. The Knik River Public Use Area is established to

- (1) perpetuate and enhance
 - (A) general public recreation;
 - (B) public enjoyment of fish and wildlife;
- (2) protect and maintain migratory waterfowl nesting areas; habitats for moose, Dall sheep, and brown bear; and other fish and wildlife habitat so that traditional public use of fish and wildlife populations may continue;
- (3) provide an area for the public to enjoy the full spectrum of public uses, including maintenance and enhancement of off-road motorized vehicle and nonmotorized recreational opportunities;
- (4) allow
 - (A) continued motorized access for miners and owners of private property in the Knik River Public Use Area; and
 - (B) additional public uses of the area determined by the commissioner to be compatible with this section. (§ 1 ch 83 SLA 2006)

Effective dates. — Section 1, ch. 83, SLA 2006, which enacted this section, took effect on September 28, 2006.

Sec. 41.23.190. Management. (a) The commissioner is responsible for the management of the land and mineral estate within the Knik River Public Use Area consistent with the purposes of AS 41.23.180. After adequate public hearings, the commissioner may designate incompatible uses and shall adopt and may revise a management plan for the Knik River Public Use Area. The management plan must include provisions for the enforcement of the plan and compliance with the requirements of the plan.

(b) The commissioner of fish and game, the Board of Fisheries, and the Board of Game are responsible for the management of fish and game resources and public use of fish and wildlife in the Knik River Public Use Area consistent with the purposes of AS 41.23.180.

(c) The Knik River Public Use Area may not be managed as a unit of the state park system.

(d) The co Area and pr plan. (§ 1 ch

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d) The commissioner shall identify wetland areas within the Knik River Public Use Area and provide for the protection and use of the wetland areas in the management plan. (§ 1 ch 83 SLA 2006)

Effective dates. — Section 1, ch. 83, SLA 2006, which enacted this section, took effect on September 25, 2006.

Sec. 41.23.200. Incompatible uses. (a) Except as provided in this section, the commissioner may prohibit or restrict uses determined to be incompatible with the purposes of the Knik River Public Use Area under AS 41.23.180 within the state-owned land and water described in AS 41.23.230.

b) Nothing in AS 41.23.180 — 41.23.230 prohibits the Department of Fish and Game from engaging in rehabilitation, enhancement, and development of fish and wildlife habitat within an area described in AS 41.23.230 that is consistent with the purposes stated in AS 41.23.180.

c) The commissioner may not restrict

(1) lawful fishing, hunting, or trapping rights allowed under a regulation of the Board of Fisheries or the Board of Game in the Knik River Public Use Area; or

(2) the use of weapons, including firearms, in the Knik River Public Use Area except in locations where the commissioner determines that the use of weapons constitutes a threat to public safety.

d) The commissioner shall

(1) allow the Knik River Public Use Area to be used for activities that are compatible with the reasons for establishing the public use area in AS 41.23.180 and include all-terrain vehicles, aircraft, watercraft, airboats, snowmobiling, horseback riding, hiking, bicycling, dog sledding, cross-country skiing, skijoring, camping, hunting, fishing, wildlife viewing, photography, and, where permitted, mineral exploration and mining; and

(2) recognize the existing off-road motor vehicle trails and the access those trails provide to areas in the Knik River Public Use Area, make accommodations that will provide the shortest possible route to avoid critical habitat, conduct trail rehabilitation in a way that minimizes damage, maintain and enhance off-road motor vehicle options and opportunities in the Knik River Public Use Area, and provide for increased use of the public use area.

e) The commissioner of public safety and the commissioner of fish and game shall have necessary access for fish and game management, research, and enforcement purposes. (§ 1 ch 83 SLA 2006)

Effective dates. — Section 1, ch. 83, SLA 2006, which enacted this section, took effect on September 25, 2006.

Sec. 41.23.210. Enforcement authority. (a) In the Knik River Public Use Area described in AS 41.23.230, the following persons are peace officers of the state for the purpose of enforcing the provisions of AS 41.23.180 — 41.23.230 and regulations adopted under AS 41.23.180 — 41.23.230:

(1) an employee of the department or other person authorized by the commissioner;

(2) a peace officer, as that term is defined in AS 01.10.060.

(b) A person designated in (a) of this section may, when enforcing the provisions of AS 41.23.180 — 41.23.230 or a regulation adopted under AS 41.23.180 — 41.23.230,

(1) execute a warrant or other process issued by an officer or court of competent jurisdiction;

(2) administer or take an oath, affirmation, or affidavit; and

(3) issue a citation or arrest a person who violates a provision of AS 41.23.180 — 41.23.230 or a regulation adopted under AS 41.23.180 — 41.23.230.

(c) A citation issued under (b) of this section must comply with the provisions of AS 12.25.175 — 12.25.230. (§ 1 ch 83 SLA 2006; am §§ 44, 45 ch 29 SLA 2010)

Effect of amendments. — The 2010 amendment, effective July 1, 2010, in (b)(3), added “issue a citation or” preceding “arrest a person”; added (c).

Effective dates. — Section 1, ch. 83, SLA 2006, which enacted this section, took effect on September 28, 2006.

Editor’s notes. — Under § 61, ch. 29, SLA 2010, the 2010 amendment of (b) and enactment of (c) of this section apply “to all citations issued . . . for violations occurring on or after July 1, 2010.”

Sec. 41.23.220. Penalty. (a) A person who violates a provision of AS 41.23.180 — 41.23.230 or a regulation adopted under AS 41.23.180 — 41.23.230 is guilty of a violation as defined in AS 11.81.900.

(b) The supreme court shall establish by order or rule a schedule of bail amounts for violations under (a) of this section that allow the disposition of a citation without a court appearance. (§ 1 ch 83 SLA 2006)

Effective dates. — Section 1, ch. 83, SLA 2006, which enacted this section, took effect on September 28, 2006.

Sec. 41.23.230. Knik River Public Use Area. Subject to valid existing rights in state-owned land and water and the state land and water acquired in the future that are within the boundaries described in this section are designated as the Knik River Public Use Area, are reserved for all uses compatible with their primary function as public lands, and are assigned to the department for control and management:

- (1) Township 15 North, Range 4 East, Seward Meridian;
- (2) Township 15 North, Range 5 East, Seward Meridian;
- (3) Township 15 North, Range 6 East, Seward Meridian;
- (4) Township 15 North, Range 7 East, Seward Meridian
 - Section 3: NW¼NW¼
 - Section 4: N½NE¼, N½NW¼
 - Section 5: N½NE¼, NW¼
 - Section 6: SW¼SE¼, N½SE¼, SW¼, N½
 - Section 7: SW¼NW¼, N½NW¼;
- (5) Township 16 North, Range 2 East, Seward Meridian
 - Section 1: Portions located below the ordinary high water of Knik River
 - Section 2: Portions located below the ordinary high water of Knik River
 - Section 3: Portions located below the ordinary high water of Knik River;
- (6) Township 16 North, Range 3 East, Seward Meridian
 - Sections 1 — 3
 - Section 4: Portions located below the ordinary high water of Knik River
 - Section 5: Portions located below the ordinary high water of Knik River
 - Section 6: Portions located below the ordinary high water of Knik River
 - Section 9: Portions located below the ordinary high water of Knik River
 - Section 10: Portions located below the ordinary high water of Knik River
 - Sections 11 — 13
 - Section 14: Portions located below the ordinary high water of Knik River
 - Section 23: Portions located below the ordinary high water of Knik River
 - Section 24: Portions located below the ordinary high water of Knik River;
- (7) Township 16 North, Range 4 East, Seward Meridian;
- (8) Township 16 North, Range 5 East, Seward Meridian;
- (9) Township 16 North, Range 6 East, Seward Meridian;
- (10) Township 16 North, Range 7 East, Seward Meridian

Section 6: NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, W $\frac{1}{2}$

Section 7

Sections 17 — 20

Section 28: NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$

Sections 29 — 32

Section 33: S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, W $\frac{1}{2}$

Section 34: SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$;

(11) Township 17 North, Range 2 East, Seward Meridian

Section 36: Portions located below the ordinary high water of Knik River;

(12) Township 17 North, Range 3 East, Seward Meridian

Sections 1 — 5

Sections 9 — 16

Section 17: S $\frac{1}{2}$

Sections 20 — 29

Section 31: NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, SW $\frac{1}{4}$ located below the ordinary high water of Knik River

Sections 32 — 36;

(13) Township 17 North, Range 4 East, Seward Meridian;

(14) Township 17 North, Range 5 East, Seward Meridian;

(15) Township 17 North, Range 6 East, Seward Meridian;

(16) Township 18 North, Range 6 East, Seward Meridian. (§ 1 ch 83 SLA 2006)

Effective dates. — Section 1, ch. 83, SLA 2006, which enacted this section, took effect on September 28, 2006.

Sec. 41.23.240. Purpose and establishment of the Kodiak Narrow Cape Public Use Area. The purpose of AS 41.23.240 — 41.23.270 is to protect, maintain, enhance, and perpetuate the present use of the area described in AS 41.23.270 as the Kodiak Narrow Cape Public Use Area. The Kodiak Narrow Cape Public Use Area is established to

- (1) protect, maintain, perpetuate, and enhance year-round general public recreation;
- (2) protect, maintain, perpetuate, and enhance public enjoyment and use of fish and wildlife;
- (3) allow for continued use of the area for grazing and other purposes authorized in a land use plan adopted by the commissioner or by law;
- (4) allow additional public uses of the area in a manner compatible with the purposes specified in (1), (2), and (3) of this section. (§ 1 ch 53 SLA 2007)

Effective dates. — Chapter 53, SLA 2007, which enacted this section, became effective October 10, 2007.

Sec. 41.23.250. Management. (a) The commissioner is responsible for the management of the surface and subsurface estate of the Kodiak Narrow Cape Public Use Area. After adequate public hearings, the commissioner may adopt and may revise a management plan for the Kodiak Narrow Cape Public Use Area. The commissioner shall provide a copy of the management plan and each revision to the chairs of the resource committees of the legislature within 30 days after its adoption or revision. The commissioner shall consult with the Department of Fish and Game in the adoption and revision of the management plan.

(b) Subject to valid existing rights, including existing rights for grazing leases and operations and the interagency land management agreement between the department and the Alaska Aerospace Corporation for the Kodiak Launch Complex, the commissioner may not dispose of the surface estate in state land within the Kodiak Narrow Cape Public Use Area.

(SCO 1429 effective April 15, 2001; amended by SCO 1583 effective August 11, 2005)

Rule 43.9. Skiing Bail Forfeiture Schedule.

Pursuant to AS 05.45.100(i), the following offenses listed in AS 05.45.100(c) and (g) may be disposed of without court appearance upon payment and forfeiture of the bail amounts listed. If a person charged with one of these offenses appears in court and is found guilty, the fine imposed for the offense may not exceed the bail amount for that offense listed below. An offense for which a bail forfeiture amount has been established shall be charged on a citation which meets the requirements of District Court Criminal Rule 8(c) and shall not be filed, numbered or processed as a criminal case.

State or Regulation	Description of Offense	Bail
AS .45.100(c)(1)	Skiing on closed slope or trail	\$ 150
AS 5.45.100(c)(2)	Stopping device required	50
AS 05.45.100(c)(3)	Crossing uphill track of surface lift	50
AS 05.45.100(c)(4)	Skiing or riding lift under influence of alcohol or drugs	150
AS 05.45.100(c)(5)	Failure to ski within ski area boundaries	150
AS 05.45.100(g)	Failure to remain at scene of accident	150

(Adopted by SCO 1557 effective October 15, 2004)

Rule 43.10. Knik River Public Use Area Bail Forfeiture Schedule.

Pursuant to AS 41.23.220(b), the following offenses committed within the Knik River Public Use Area (KRPUA) shall be disposed of without court appearance upon payment and forfeiture of the bail amounts listed. If a person charged with one of these offenses appears in court and is found guilty, the fine imposed for the offense may not exceed the bail amount for that offense listed below. An offense for which a bail forfeiture amount has been established shall be charged on a citation which meets the requirements of District Court Criminal Rule 8(c) and shall not be filed, numbered, or processed as a criminal case.

Regulation	Description of Offense	Bail
11 AAC 96.016(b)(1)	Failure to obtain permit for activity listed in 11 AAC 96.010	\$150
11 AAC 96.016(b)(2)	Failure to register commercial recreation use	50
11 AAC 96.016(b)(4)	Commercial harvest of non-timber forest products without a permit	100
11 AAC 96.016(c)(1)	Leaving vehicle unattended more than 72 hours	300
11 AAC 96.016(c)(2)	Transporting non-functional vehicle into the area	400
11 AAC 96.016(c)(3)	Operating a vehicle over 10,000 pounds without prior written authorization	150
11 AAC 96.016(c)(4)	Unauthorized operation of a vehicle resulting in disturbance of wetlands or organic mat to a depth greater than 6 inches	300
11 AAC 96.016(c)(5)	Unauthorized fire	50
11 AAC 96.016(c)(6)	Burning a wooden pallet, vehicle, structure, or other unauthorized object or material	50

Regulation	Description of Offense	Bail
11 AAC 96.016(c)(7)	Place, dump, or discard waste or refuse	100
11 AAC 96.016(c)(8)	Place, dump, discard, or release hazardous substances	300
11 AAC 96.016(c)(9)	Unauthorized construction, maintenance or abandonment of a structure	200
11 AAC 96.016(c)(10)	Unauthorized cutting, collecting, or harvesting of trees larger than 5-inch diameter	75
11 AAC 96.016(c)(11)	Erecting a camp, structure, or facility for more than 14 consecutive days without authorization	100
11 AAC 96.016(c)(12)	Discharging a firearm at unauthorized target	50
11 AAC 96.016(c)(13)	Discharging a firework	50
11 AAC 96.016(c)(14)	Discharging a firearm in prohibited area	75
11 AAC 96.016(c)(15)	Repeatedly approaching fish or wildlife, altering animal's behavior	300
11 AAC 96.016(c)(16)	Unauthorized construction, development, widening, brushing, or creating road or trail	100
11 AAC 96.016(c)(17)	Damage, deface, destroy, or remove public property	300

(Adopted by SCO 1711 effective May 15, 2009)

Rule 43.11. Weights and Measures Bail Forfeiture Schedule.

Pursuant to AS 45.75.133, the following offenses are appropriate for disposition without court appearance upon payment and forfeiture of the bail amounts listed. If a person charged with one of these offenses appears in court and is found guilty, the penalty imposed for the offense may not exceed the bail amount for that offense listed below. An offense for which a bail forfeiture amount has been established shall be charged on a citation which meets the requirements of District Court Criminal Rule 8(c) and shall not be filed, numbered, or processed as a criminal case.

Statute	Description of Offense	Bail
AS 45.75.380(a)(1)	Use of incorrect weight or measure	\$ 250
AS 45.75.380(a)(2)	Use of unsealed weight or measure	250
AS 45.75.380(a)(3)	Failure to dispose of rejected weight or measure	100
AS 45.75.380(a)(4)	Removal of weights & measure seal or tag	100
AS 45.75.380(a)(5)	Offers for sale short-weight/short-measure	500
AS 45.75.380(a)(6)	Fraudulent buying with weight or measure	500
AS 45.75.380(a)(7)	Commodity sales contrary to law or regulation	500
AS 45.75.380(a)(8)	Failure to provide customer display	100
AS 45.75.380(a)(9)	Obstruction of inspector	500

(Adopted by SCO 1735 effective July 1, 2010)

Rule 44. Rulemaking.

(a) **Uniform Policy.** The supreme court shall make and promulgate rules governing administration of all courts, and practice and procedure in civil and criminal cases in all courts. The rules shall be uniform throughout the Alaska Court System.

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March 9, 2011

**AMERICAN CIVIL
LIBERTIES UNION OF
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STUDENT ADVISOR

The Honorable Carl Gatto, Chair
The Honorable Steve Thompson, Vice-Chair
House Judiciary Committee
Alaska House of Representatives
Juneau, AK 99801

via email: [Representative Carl Gatto@legis.state.ak.us](mailto:Representative_Carl_Gatto@legis.state.ak.us)
[Representative Steve Thompson@legis.state.ak.us](mailto:Representative_Steve_Thompson@legis.state.ak.us)

Re: House Bill 175
ACLU Review of Legal Issues

Chair Gatto, Vice-Chair Thompson:

Thank you for the opportunity to submit written testimony with respect to House Bill 175.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. In that respect, we wish to advise you of constitutional issues with the Bill.

Last year, HB 324 was passed (26th Legislature, Chapter No. 19, SLA 2010, Effective Date: July 1, 2010), amending Alaska Rule of Criminal Procedure 5 to permit a new arrestee to be held for up to 48 hours before the initial appearance before a judge or magistrate, rather than the 24 hour period which had long been the law. HB 175 would create consistency between the amended rule and the statute relating to pretrial detention.

Requirement for Hearing Without Unreasonable Delay

Under *Gerstein v. Pugh*, a probable cause hearing must be held without unreasonable delay. 420 U.S. 103 (1975). After *Gerstein*, a standard of 24 hours was adopted by most states and most circuits. Years later, a narrowly divided US Supreme Court stated that the initial appearance must be made only within 48 hours. *Riverside v. McLaughlin*, 500 U.S. 44 (1991). However, *Riverside* does not bind the states in their interpretation of their own constitutions.

In one accounting of state responses to *Gerstein*, most states had concluded that 24 hours was the appropriate term of detention before appearing before a magistrate or judge, and only seven states explicitly permitted more than 24 hours prior to an initial hearing. *Jenkins v. Chief Justice of Dist. Court Dept.*, 619 N.E.2d 324, 333-34 (Mass. 1993).

Since Alaska had guaranteed a 24-hour window for initial appearances for 18 years since the *Riverside* decision, the state courts may be hard pressed to see why a 48-hour window would not likely permit “unreasonable delay.” The Alaska courts have not yet had a chance to rule on the dimensions of the “speedy trial” provision of Article I, section 11 as it relates to initial appearances, since Rule 5 has long guaranteed a 24-hour window of appearance. The Alaska Supreme Court could very well decide that the state constitutional provisions relating to speedy trial and due process require no more than a 24-hour window prior to initial appearance, just as the Massachusetts Supreme Court did in *Jenkins*.

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

Contribution to Prison Over-Crowding, Increased Costs

The Legislature should also take note of the fact that **almost half of all Alaska prisoners are being held pretrial**, typically constituting 46 to 48% of all prisoners in Alaskan institutions. The high rate of pre-trial detention contributes substantially to the state of overcrowding in Alaska prisons and the need to build more of the prisons that cost our state dearly. Consider that the Department of Law reports that almost 27,000 new criminal cases were filed last year – roughly 6,000 felony cases and roughly 21,000 misdemeanor cases. If every one of those 27,000 arrests results in a single extra day in custody, that increase of 27,000 prisoner-days would impose a similar burden in on the correctional system as 74 prisoners spending a year in prison.

Every prisoner-year in custody costs roughly \$45,000. **The cost of additional incarceration from such the policy change contemplated in HB 175 could cost up to \$3.3 million in increased costs every year**, just by adding a single day of initial incarceration for each arrest.

Extension of the post-arrest time that a prisoner can be kept in custody without any bail will merely serve to increase our prison population unnecessarily, mostly by increased incarceration of prisoners accused only of misdemeanors.

The Legislature should reverse course and return to the 24-hour window Alaska observed for decades. We are not aware of any evidence of a single incident in which a prisoner was released wrongfully because of any limitation imposed by the 24-hour window before the initial appearance. Locking up thousands of people accused of misdemeanors for longer periods of time and spending millions of dollars to keep our prisons crowded is not good public policy.

Please feel free to contact the undersigned should you require any additional information. We are happy to reply to any questions that may arise, or to answer informally any questions which Members of the Committee may have.

Sincerely,



Jeffrey Mittman
Executive Director
ACLU of Alaska

- cc: Representative Wes Keller, [Representative Wes Keller@legis.state.ak.us](mailto:Representative_Wes_Keller@legis.state.ak.us)
- Representative Bob Lynn, [Representative Bob Lynn@legis.state.ak.us](mailto:Representative_Bob_Lynn@legis.state.ak.us)
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- Representative Mike Chenault, [Representative Mike Chenault@legis.state.ak.us](mailto:Representative_Mike_Chenault@legis.state.ak.us)

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 175

BY REPRESENTATIVE GRUENBERG

1 Page 3, following line 18:

2 Insert a new bill section to read:

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

5 SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application
6 of it to any person or circumstance, is held invalid, the remainder of this Act and the
7 application to other persons or circumstances is not affected."

8

9 Renumber the following bill section accordingly.

MEMORANDUM

STATE OF ALASKA

Department of Law - Criminal Division

To: Senate Judiciary Committee

Date: March 1, 2010

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

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

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

General Considerations

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

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

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

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

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

State Time Limits for Initial Appearance Before Magistrate

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

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

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

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

CS FOR HOUSE BILL NO. 175(JUD)

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION**

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to an appearance before a judicial officer after arrest; relating to**
2 **penalties for operating a vehicle without possessing proof of motor vehicle liability**
3 **insurance or a driver's license; relating to penalties for certain arson offenses; amending**
4 **Rule 5(a)(1), Alaska Rules of Criminal Procedure, and Rule 43.10, Alaska Rules of**
5 **Administration; and providing for an effective date."**

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

7 *** Section 1.** AS 12.25.150(a) is amended to read:

8 (a) A person arrested shall be taken before a judge or magistrate without
9 unnecessary delay, and in any event within 48 [24] hours after arrest, including
10 Sundays and holidays. This requirement applies to municipal police officers to the
11 same extent as it does to state troopers.

12 *** Sec. 2.** AS 12.70.130 is amended to read:

13 **Sec. 12.70.130. Arrest without warrant.** The arrest of a person may also be

1 lawfully made by a peace officer or a private person without a warrant upon
 2 reasonable information that the accused stands charged in the courts of another state
 3 with a crime punishable by death or imprisonment for a term exceeding one year, but
 4 when arrested the accused must be taken before a judge or magistrate without
 5 unnecessary delay and, in any event, within 48 [24] hours after arrest, including
 6 Sundays and holidays, and complaint shall be made against the accused under oath
 7 setting out the ground for the arrest as in AS 12.70.120. Thereafter the answer of the
 8 accused shall be heard as if the accused had been arrested on a warrant.

9 * **Sec. 3.** AS 28.15.131 is amended by adding a new subsection to read:

10 (b) Violation of this section is an infraction.

11 * **Sec. 4.** AS 28.22.019(c) is amended to read:

12 (c) A person convicted under this section is guilty of an infraction [A CLASS
 13 B MISDEMEANOR] and shall be sentenced to pay a mandatory fine of \$500
 14 [MAY BE PUNISHED AS PROVIDED IN AS 12.55, EXCEPT THAT A FINE OF
 15 AT LEAST \$500 MUST BE IMPOSED].

16 * **Sec. 5.** AS 41.23.220 is amended to read:

17 **Sec. 41.23.220. Penalty.** (a) Except for conduct that is a violation of
 18 AS 11.46.420, a [A] person who violates a provision of AS 41.23.180 - 41.23.230 or a
 19 regulation adopted under AS 41.23.180 - 41.23.230 is guilty of a violation as defined
 20 in AS 11.81.900.

21 (b) Except for conduct that is a violation of AS 11.46.420, the [THE]
 22 supreme court shall establish by order or rule a schedule of bail amounts for violations
 23 under (a) of this section that allow the disposition of a citation without a court
 24 appearance.

25 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
 26 read:

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

29 (1) Except when the person arrested is issued a citation for a
 30 misdemeanor or a violation and immediately thereafter released, the arrested person
 31 shall be taken before the nearest available judge or magistrate without unnecessary

1 delay and in any event within forty-eight hours after arrest, including Sundays
2 and holidays. This appearance may be accomplished by the use of telephonic or
3 television equipment pursuant to Criminal Rules 38.1 and 38.2. [NECESSARY
4 DELAY WITHIN THE MEANING OF THIS PARAGRAPH (a) IS DEFINED AS A
5 PERIOD NOT TO EXCEED FORTY-EIGHT HOURS AFTER ARREST,
6 INCLUDING SUNDAYS AND HOLIDAYS.]

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

9 INDIRECT COURT RULE AMENDMENT. The amendments to AS 41.23.220, made
10 in sec. 5 of this Act, have the effect of changing Rule 43.10, Alaska Rules of Administration,
11 by prohibiting the disposition of a violation of AS 11.46.420 without court appearance and
12 forfeiture of bail amounts.

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

15 APPLICABILITY. (a) Sections 1 - 4 of this Act apply to arrests for offenses
16 committed before, on, or after the effective date of this Act.

17 (b) Sections 5 - 7 of this Act apply to offenses committed on or after the effective date
18 of this Act.

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

21 SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application
22 of it to any person or circumstance, is held invalid, the remainder of this Act and the
23 application to other persons or circumstances is not affected.

24 * **Sec. 10.** This Act takes effect July 1, 2011.