

HB

387

<TARGET><BILL>HB 387</BILL><SUBJECT>HB
387</SUBJECT><COMM>HJUD30</COMM></TARGET>



Alaska State Legislature

Representative Matt Claman

Session: State Capitol, Rm 118 Juneau, AK 99801 Phone: 465-4919

Interim: 1500 W. Benson Blvd., Anch, AK 99503 Phone: 269-0130

House Bill 387 Sponsor Statement

"An Act relating to scheduled substances; relating to the Controlled Substances Advisory Committee; and authorizing the attorney general to schedule substances by emergency regulation or repeal an emergency regulation that scheduled a substance."

Currently, state law requires the Legislature to pass legislation before a substance can be added to the list of controlled substances in Alaska. This process takes time, often years. Once a bill is passed, drug traffickers often stay one step ahead of the law by simply changing a chemical component of a drug so it is no longer considered a controlled substance.

In recent years, changing components has become a significant problem for substances such as spice and other synthetic opioids. For example, tramadol has an opioid-like effect on the body. This drug is on the federal controlled substances list, but was not a controlled substance in Alaska until recently, through inclusion as a schedule IVA controlled substance through Section Two, Chapter One, 4SSLA 2017. Tramadol pills sell for approximately five to ten dollars per pill in Alaska depending on where the pills are sold. School-age children are common abusers of the drug because of the easy acquisition and low cost. Before tramadol was scheduled as a controlled substance, State and local authorities could not seize the drug for prosecution without approval from federal authorities. Further, state prosecutors could not prosecute cases of tramadol abuse and federal prosecutors lacked the resources to prosecute those cases.

To avoid a repeat of this situation, House Bill 387 would allow the Attorney General to schedule substances by emergency regulation. Before scheduling a substance, the Attorney General would need to assess the danger of the substance and consult with both the Controlled Substances Advisory Committee and the State's Chief Medical Officer. Additionally, the bill does not impair the ability of the Legislature, through enactment of law, from annulling a regulation or adding a substance to the controlled substance statutory schedules.

Allowing the Attorney General to schedule dangerous substances by regulation would allow the Department of Law to be more agile and responsive when new or altered substances are identified. With this bill, the state would be able to keep up with drug traffickers as they alter these substances, and prosecute cases involving these new substances.

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Session: State Capitol, Rm 118 Juneau, AK 99801 Phone: 465-4919
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House Bill 387 Sectional Analysis —Version A

Section 1

Designates the president of the Board of Pharmacy as the chair of the Controlled Substances Advisory Committee.

Section 2

Makes conforming changes to Controlled Substances Advisory Committee enabling statute.

Section 3

Adds a new duty to the Controlled Substances Advisory Committee to advise the Attorney General of the need to schedule substances by emergency regulation.

Section 4

Allows the Attorney General to schedule substances by emergency regulation. Before scheduling a substance, the Attorney General shall (1) assess the danger of the substance; (2) consider whether the substance has been scheduled on a temporary basis under federal law; and (3) consult with the Controlled Substances Advisory Committee.

The Attorney General shall also post a notice on the Alaska Online Public Notice System 30 days before the effective date of an emergency regulation that schedules a substance. The notice must include certain written findings.

Section 5

Defines “controlled substance” to include substances scheduled by the Attorney General by an emergency regulation adopted under AS 11.71.125.

Section 6

Defines “substance” to include a drug, controlled substance, or immediate precursor in the schedules set out in statute or that is scheduled by the Attorney General by an emergency regulation.

Section 7

Allows the Attorney General to schedule a substance by emergency regulation.

Section 8

Requires notice of an emergency regulation scheduling a controlled substance to be published on the Alaska Online Public Notice System.

Section 9

Requires the public notice of an emergency regulation scheduling a controlled substance to include a summary of the Attorney General's compliance with the procedure set out in proposed AS 11.71.125 (sec. 4).

Section 10

Exempts the procedure for scheduling a controlled substance by emergency regulation from the regular emergency regulations process.

Section 11

Adds to the current emergency regulation procedure for regulations to schedule a substance by emergency regulation.

Section 12

Exempts the procedure for scheduling a controlled substance by emergency regulation from the time limits for other emergency regulations (120 days).

Section 13

Allows an emergency regulation scheduling a controlled substance to remain in effect for 720 days unless the Attorney General complies with the standard regulation procedures. If the emergency regulation is not made permanent, then the regulation expires at the end of the 720 days and may not be renewed or refiled as an emergency regulation.

Section 14

Amends the state policy on emergency regulations to clarify that that section does not limit the Attorney General's authority to schedule a controlled substance by emergency regulation.

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version: HB 387
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB387-DHSS-PHAS-3-9-18
Title: AG SCHEDULE CONTROLLED SUBSTANCES
Sponsor: CLAMAN
Requester: House JUD

Department: Department of Health and Social Services
Appropriation: Public Health
Allocation: Public Health Administrative Services
OMB Component Number: 292

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
OPERATING EXPENDITURES	FY 2019	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
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 (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? no
If yes, by what date are the regulations to be adopted, amended or repealed? n/a

Why this fiscal note differs from previous version/comments:

Not applicable; initial version.

Prepared By:	Jay C. Butler, MD, Chief Medical Officer/Director	Phone:	(907)269-6680
Division:	Public Health	Date:	03/06/2018
Approved By:	Shawnda O'Brien, Asst. Commissioner	Date:	03/09/18
Agency:	Health and Social Services		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

BILL NO. HB387

Analysis

HB 387 "A" would allow the Attorney General to schedule by emergency regulation for up to 720 days a substance that is an immediate hazard to the public health and safety. The Attorney General would take into consideration the advice of the Department of Health and Social Services' Chief Medical Officer and the Controlled Substances Advisory Committee, the degree of danger of the substance (including the risk to public health), and whether federal law has scheduled the substance.

Juvenile offenders who commit offenses involving controlled substances that are added to the list of controlled substances under the provisions of this legislation will be referred to the Division of Juvenile Justice. The legislation is not expected to significantly increase the number of juveniles referred to the department.

Emergency scheduling of a drug dispensed by an outpatient pharmacy and covered by Medicaid may require updates to the pharmacy point-of-sale system for claims processing or drug utilization. It is anticipated that additional costs to the program could be absorbed within existing appropriations.

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version: HB 387
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB387-DPS-COMM-03-11-18
Title: AG SCHEDULE CONTROLLED SUBSTANCES
Sponsor: CLAMAN
Requester: (H) JUD

Department: Department of Public Safety
Appropriation: Statewide Support
Allocation: Commissioner's Office
OMB Component Number: 523

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019 Appropriation Requested	Included in Governor's FY2019 Request	Out-Year Cost Estimates					
			FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
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 (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version/comments:

Not applicable, initial version.

Prepared By:	Kelly Howell, Administrative Services Director	Phone:	(907)465-4336
Division:	Administrative Services	Date:	03/11/2018
Approved By:	Walt Monegan, Commissioner	Date:	03/11/18
Agency:	Public Safety		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

BILL NO. HB 387

Analysis

This legislation amends statutes dealing with the scheduling of controlled substances to authorize the Attorney General to schedule substances by emergency regulation.

Passage of this legislation would have no fiscal impact to the Department of Public Safety.

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version: HB 387
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB387-LAW-CRIM-03-09-18
Title: AG SCHEDULE CONTROLLED SUBSTANCES
Sponsor: CLAMAN
Requester: House Judiciary

Department: Department of Law
Appropriation: Criminal Division
Allocation: Criminal Justice Litigation
OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
OPERATING EXPENDITURES	FY 2019	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
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 (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version/comments:

Not applicable, initial version.

Prepared By: Valerie Rose, Budget Analyst	Phone: (907)465-3674
Division: Administrative Services Division	Date: 03/09/2018
Approved By: Jahna Lindemuth, Attorney General	Date: 03/09/18
Agency: Department of Law	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

BILL NO. HB 387

Analysis

This bill would allow the Attorney General to schedule substances by emergency regulation. Before scheduling a substance, the Attorney General would need to assess the danger of the substance, consult with the Controlled Substances Advisory Committee, and make certain written findings, set out in proposed AS 11.71.125. A substance scheduled by emergency regulation could remain on the schedule (through regulation) for not longer than 720 days. The Attorney General would be authorized to make the regulation permanent using the process of the Administrative Procedure Act (AS 44.62) within the 720-day period.

The Department of Law cannot predict how often the Attorney General would schedule a substance through the emergency regulation process set out in the bill, but expects it would be infrequent and that additional staff is not needed. Therefore, the Department of Law does not anticipate a fiscal impact if the bill becomes law.



Testimony of the
CONSUMER HEALTHCARE PRODUCTS ASSOCIATION
concerning
HOUSE BILL 387
presented to the
HOUSE JUDICIARY COMMITTEE
STATE OF ALASKA
MARCH 16, 2018

Submitted by: Sean Moore, Director, State & Local Government Affairs
Email: smoore@chpa.org

Good afternoon, Chairman Claman and distinguished members of the House Judiciary Committee, my name is Sean Moore and I am testifying today on behalf of the Consumer Healthcare Products Association (CHPA) concerning **House Bill 387** – a bill that would provide the Attorney General authority to schedule a substance under emergency rule.

CHPA is the 137-year-old trade association representing the leading manufacturers and marketers of over-the-counter (OTC) medicines and dietary supplements. Every dollar spent by consumers on OTC medicines saves the U.S. healthcare system \$6-\$7, contributing a total of \$102 billion in savings each year. CHPA is committed to promoting the increasingly vital role of over-the-counter medicines and dietary supplements in America’s healthcare system through science, education, and advocacy.

CHPA and our member companies appreciate the intent of this bill, and we are sympathetic to the difficulties of remaining ahead of the ever-evolving nature of synthetic drugs used and distributed by criminals. However, CHPA is concerned that – as drafted – the bill may unintentionally threaten access to OTC medications approved by the Food and Drug Administration (FDA) and used by hundreds of thousands of Alaskans.

To address these concerns, CHPA proposes to amend Section 4 of the bill (p. 3 lines 28-30) as follows:

28 (e) The attorney general may not adopt an emergency regulation under this
29 section that schedules an alcoholic beverage as defined in AS 04.21.080, marijuana as
30 defined in AS 17.38.900, non-narcotic drugs if such drugs may [under the federal Food,
Drug, and Cosmetic Act 921 USC 301 et seq] be lawfully sold over the counter or behind
the counter without a prescription, or tobacco.

Non-prescription medicines are subject to an extensive pre-market review process, including thorough inspection of the medication’s safety and effectiveness, as well as the potential incidence of adverse events under directions for use and warnings against unsafe use. Furthermore, FDA considers the potential for harm that may result from abuse.

CHPA believes the above amendments provide a straightforward modification that maintains the intent of the bill, while ensuring Alaska’s consumers have access to FDA-approved OTC medicines and our member companies are able to operate in a predictable regulatory environment.

For these reasons, we respectfully encourage the committee to amend House Bill 387, which would allow CHPA to take a neutral position on the legislation. I sincerely appreciate your consideration of our position on this important issue. I am happy to answer any questions you might have.

AMENDMENT

#1 Adopted

OFFERED IN THE HOUSE
TO: HB 387

BY REPRESENTATIVE CLAMAN

- 1 Page 3, following line 17:
- 2 Insert a new subsection to read:
- 3 "(c) The attorney general may schedule a substance by emergency regulation
- 4 under this section only if the substance has been listed on a federal controlled
- 5 substance schedule."
- 6
- 7 Reletter the following subsections accordingly.

Conceptual Amendment
#1
Delete "has been"
Insert "is
currently"

AMENDMENT #2 Adopted

OFFERED IN THE HOUSE
TO: HB 387

BY REPRESENTATIVE CLAMAN

1 Page 6, line 31, through page 7, line 14:

2 Delete all material and insert:

3 "(c) A substance scheduled by the attorney general by emergency regulation
4 under AS 11.71.125 will remain on the schedule under the emergency regulation for a
5 period not to exceed ~~three years~~ unless the legislature schedules the substance by law
6 or annuls the regulation by law."

1095 days

30-LS1461\D
Martin
4/11/18

CS FOR HOUSE BILL NO. 387(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE CLAMAN

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to scheduled substances; relating to the Controlled Substances**
2 **Advisory Committee; authorizing the attorney general to schedule substances by**
3 **emergency regulation or repeal an emergency regulation that scheduled a substance;**
4 **relating to detaining a person for up to 48 hours for the prosecuting authority to**
5 **demonstrate that release of the person would not reasonably ensure the appearance of**
6 **the person or will pose a danger to the victim, other persons, or the community if the**
7 **person has a criminal conviction or charge outside the state; relating to conditions of**
8 **release for a person who is represented by an attorney or has a criminal conviction or**
9 **charge outside the state; relating to factors the court is required to consider when**
10 **determining the conditions of release before trial; amending the authority of pretrial**
11 **services officers to make a warrantless arrest or request the court to issue a warrant for**
12 **arrest; providing that pretrial services, probation, and parole officers may perform**

1 **duties relating to pretrial services, probation, and parole; amending Rule 41, Alaska**
2 **Rules of Criminal Procedure; and providing for an effective date."**

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

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

6 LEGISLATIVE INTENT. It is the intent of the legislature that, if a person's criminal
7 convictions or charges outside the state are included in a pretrial risk assessment conducted
8 under AS 33.07, the result of that assessment will control the release decision and the section
9 of this bill allowing a defendant to be detained for 48 hours and directing presumptive release
10 on a person's own recognizance or on an unsecured bond when the person has a criminal
11 conviction or charge outside the state will no longer apply.

12 * **Sec. 2.** AS 11.71.100(c) is amended to read:

13 (c) The president of the Board of Pharmacy or the president's designee

14 [ATTORNEY GENERAL] is the chair [CHAIRMAN] of the committee.

15 * **Sec. 3.** AS 11.71.100(d) is amended to read:

16 (d) The committee meets at the call of the chair of the committee

17 [ATTORNEY GENERAL].

18 * **Sec. 4.** AS 11.71.110 is amended to read:

19 **Sec. 11.71.110. Duties of committee.** The committee shall

20 (1) advise the governor of the need to add, delete, or reschedule
21 substances in the schedules in AS 11.71.140 - 11.71.190;

22 (2) recommend regulations for adoption by the Board of Pharmacy to
23 prevent excessive prescription of controlled substances and the diversion of
24 prescription drugs into illicit channels;

25 (3) evaluate the effectiveness of programs in the state providing
26 treatment and counseling for persons who abuse controlled substances;

27 (4) recommend programs to the Alaska Court System to be instituted
28 as alternatives to the prosecution or imprisonment of offenders who have no prior
29 criminal record involving controlled substance offenses and who are charged with
30 crimes involving controlled substances;

1 (5) review and evaluate enforcement policies and practices of the
 2 Department of Public Safety and the Department of Law with regard to crimes
 3 involving controlled substances, and recommend modifications of those policies and
 4 practices consistent with the committee's assessment of the probable danger of
 5 particular controlled substances; [AND]

6 (6) review budget requests and recommend amounts for appropriations
 7 to the governor and the legislature for departments and agencies responsible for

8 (A) enforcing criminal laws pertaining to controlled
 9 substances;

10 (B) providing treatment and counseling of persons who abuse
 11 controlled substances; and

12 (C) regulating the legitimate handling of controlled substances;

13 **and**

14 **(7) advise the attorney general of the need to schedule substances**
 15 **by emergency regulation.**

16 * **Sec. 5.** AS 11.71 is amended by adding a new section to read:

17 **Sec. 11.71.125. Emergency substance scheduling.** (a) The attorney general
 18 may, by regulation, schedule a substance under this chapter regardless of whether the
 19 substance is substantially similar to a controlled substance listed in AS 11.71.140 -
 20 11.71.180, if the attorney general finds that scheduling the substance on an emergency
 21 basis is necessary to avoid an immediate hazard to public safety.

22 (b) In determining whether to schedule a substance on an emergency basis, or
 23 repeal an emergency regulation that scheduled a substance, the attorney general shall

24 (1) assess the degree of danger or probable danger of the substance by
 25 considering

26 (A) the actual or probable abuse of the substance including the

27 (i) history and current pattern of abuse;

28 (ii) scope, duration, and significance of abuse of the
 29 substance; and

30 (iii) degree of actual or possible detriment that may
 31 result from abuse of the substance; and

1 (B) the risk to public health;

2 (2) consider whether the substance has been scheduled on a temporary
3 basis under federal law and may consider clandestine importation, manufacture, or
4 distribution of the substance;

5 (3) consult with the Controlled Substances Advisory Committee
6 established under AS 11.71.100; and

7 (4) consult with the chief medical officer in the Department of Health
8 and Social Services.

9 (c) The attorney general may schedule a substance by emergency regulation
10 under this section only if the substance is currently listed on a federal controlled
11 substance schedule.

12 (d) The attorney general shall clearly indicate in an emergency regulation that
13 schedules a substance the appropriate schedule under this chapter that applies to the
14 substance.

15 (e) The attorney general shall post a notice on the Alaska Online Public Notice
16 System (AS 44.62.175) 30 days before the effective date of an emergency regulation
17 that schedules a substance. The notice must include

18 (1) a summary of the attorney general's findings under (b) of this
19 section; and

20 (2) the finding required for an emergency regulation under
21 AS 44.62.250(b).

22 (f) The attorney general may not adopt an emergency regulation under this
23 section that schedules an alcoholic beverage as defined in AS 04.21.080, marijuana as
24 defined in AS 17.38.900, or tobacco.

25 (g) An emergency regulation adopted under this section is subject to the
26 requirements in AS 44.62.260(c).

27 * **Sec. 6.** AS 11.71.900(4) is amended to read:

28 (4) "controlled substance" means a drug, substance, or immediate
29 precursor included in the schedules set out in AS 11.71.140 - 11.71.190 **or included**
30 **in those schedules by an emergency regulation adopted under AS 11.71.125;**

31 * **Sec. 7.** AS 11.71.900 is amended by adding a new paragraph to read:

1 (31) "substance" means a drug, controlled substance, or immediate
2 precursor included in the schedules set out in AS 11.71.140 - 11.71.190 or in an
3 emergency regulation adopted under AS 11.71.125, AS 44.62.250, and 44.62.260.

4 * **Sec. 8.** AS 12.30.006(b) is amended to read:

5 (b) At the first appearance before a judicial officer, a person may be detained
6 up to 48 hours for the prosecuting authority to demonstrate that release of the person
7 under AS 12.30.011 would not reasonably ensure the appearance of the person or will
8 pose a danger to the victim, other persons, or the community, if the person has [BEEN
9 CHARGED WITH THE FOLLOWING CRIMES:]

10 (1) **been charged with**

11 (A) an unclassified, class A, or class B felony;

12 (B) [(2)] a class C felony

13 (i) [(A)] under AS 11.41, AS 11.56.730, AS 28.35.030,
14 or 28.35.032;

15 (ii) [(B)] that is a sex offense; [IN THIS
16 SUBPARAGRAPH, "SEX OFFENSE" HAS THE MEANING GIVEN
17 IN AS 12.63.100]; or

18 (iii) [(C)] that is a crime involving domestic violence; in
19 this **sub-subparagraph** [SUBPARAGRAPH], "crime involving
20 domestic violence" has the meaning given in AS 18.66.990; or

21 (C) [(3)] a class C felony, other than a class C felony listed in
22 (B) [(2)] of this **paragraph** [SUBSECTION], and the person has been assessed
23 as moderate to high risk under AS 12.30.011(c)(2); **or**

24 (2) **a criminal conviction or charge outside the state that**

25 (A) **is a felony, a crime against a person, or a sex crime; and**

26 (B) **has not been used in determining the person's risk level**

27 **in the pretrial risk assessment under AS 33.07.**

28 * **Sec. 9.** AS 12.30.011(a) is amended to read:

29 (a) **Except as otherwise provided in this chapter, a** [A] judicial officer may
30 order that a person charged with an offense, in addition to other conditions imposed
31 under this section, be released

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- (1) on the person's own recognizance;
- (2) upon execution of an unsecured appearance bond; or
- (3) upon execution of an unsecured performance bond.

* **Sec. 10.** AS 12.30.011(b) is amended to read:

(b) A person charged with a misdemeanor that does not include an offense under AS 11.41, AS 11.56.730, 11.56.757, AS 28.35.030, or 28.35.032, a sex offense as defined in AS 12.63.100, or a crime involving domestic violence as defined in AS 18.66.990 and who is assessed by a pretrial services officer as

(1) low to moderate risk shall, except as provided in (m) of this section, be released on the person's own recognizance or upon execution of an unsecured appearance bond or unsecured performance bond; or

(2) high risk shall be released on the person's own recognizance or upon execution of an unsecured appearance bond or unsecured performance bond unless the judicial officer finds on the record that there is clear and convincing evidence that no nonmonetary conditions of release in combination with the release of the person on the person's own recognizance or upon execution of an unsecured bond can reasonably ensure the appearance of the person in court and the safety of the victim, other persons, and the community.

* **Sec. 11.** AS 12.30.011(c) is amended to read:

(c) A person charged with a class C felony that does not include an offense under AS 11.41, AS 11.56.730, AS 28.35.030, or 28.35.032, a sex offense as defined in AS 12.63.100, or a crime involving domestic violence as defined in AS 18.66.990 and who is assessed by a pretrial services officer as

(1) low risk shall, except as provided in (m) of this section, be released on the person's own recognizance or upon execution of an unsecured appearance bond or unsecured performance bond; or

(2) moderate to high risk shall be released on the person's own recognizance or upon execution of an unsecured appearance bond or unsecured performance bond unless the judicial officer finds on the record that there is clear and convincing evidence that no nonmonetary conditions of release in combination with the release of the person on the person's own recognizance or upon execution of an

1 unsecured bond can reasonably ensure the appearance of the person in court and the
2 safety of the victim, other persons, and the community.

3 * **Sec. 12.** AS 12.30.011(g) is amended to read:

4 (g) A person released under this **chapter** [SECTION] shall be released on the
5 condition that the person

- 6 (1) obey all court orders;
- 7 (2) obey all laws;
- 8 (3) make all court appearances;
- 9 (4) maintain contact with the person's pretrial services officer, if one is
- 10 appointed by the court, and follow the pretrial services officer's instructions;

11 (5) maintain contact with the person's attorney **if the person is**
12 **represented by an attorney;**

13 (6) notify the person's attorney or, if the person is not represented by
14 an attorney, the pretrial services officer or the court within 24 hours after a change in
15 the person's residence.

16 * **Sec. 13.** AS 12.30.011(i) is amended to read:

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

- 19 (1) the nature and circumstances of the offense charged;
- 20 (2) the weight of the evidence against the person;
- 21 (3) the nature and extent of the person's family ties and relationships;
- 22 (4) the person's employment status and history;
- 23 (5) the length and character of the person's past and present residence;
- 24 (6) the person's record of convictions, **including convictions outside**

25 **the state;**

- 26 (7) the person's record of appearance at court proceedings;
- 27 (8) assets available to the person to meet monetary conditions of
- 28 release;
- 29 (9) the person's reputation, character, and mental condition;
- 30 (10) the effect of the offense on the victim, any threats made to the
- 31 victim, and the danger that the person poses to the victim;

1 (11) the conditions of release recommended by the pretrial services
2 officer;

3 (12) the person's pretrial risk assessment score; and

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

6 * **Sec. 14.** AS 12.30.011 is amended by adding a new subsection to read:

7 (m) A person charged with an offense who would otherwise be released under
8 AS 12.30.011(b)(1) or (c)(1) and who has a criminal conviction or charge outside the
9 state that is a felony, a crime against a person, or a sex crime and that has not been
10 used in determining the person's risk level in the pretrial risk assessment under
11 AS 33.07 shall be released on the person's own recognizance or upon execution of an
12 unsecured appearance bond or unsecured performance bond unless the judicial officer
13 finds on the record that there is clear and convincing evidence that no nonmonetary
14 conditions of release, in combination with the release of the person on the person's
15 own recognizance or upon execution of an unsecured bond, can reasonably ensure the
16 appearance of the person in court and the safety of the victim, other persons, and the
17 community.

18 * **Sec. 15.** AS 33.07.030(g) is amended by to read:

19 (g) A pretrial services officer may

20 (1) recommend pretrial diversion to the court and parties before
21 adjudication in accordance with the guidelines established by the commissioner under
22 AS 33.07.020(6);

23 (2) [ARREST, WITHOUT A WARRANT, A DEFENDANT WHO
24 HAS BEEN RELEASED WHILE AWAITING TRIAL] if the officer has probable
25 cause to believe the defendant has committed an offense under AS 11.56.730 or
26 11.56.757 or has violated the defendant's release conditions, **file a complaint with the**
27 **court and**

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

30 **(B) request the court to issue warrants related to any**
31 **violation of the defendant's release conditions;**

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

6 (4) recommend that a defendant charged with an offense involving the
7 use of alcohol or controlled substances comply with a program established under
8 AS 47.38.020; and

9 (5) coordinate with community-based organizations and tribal courts
10 and councils to develop and expand pretrial diversion options.

11 * **Sec. 16.** AS 33.16.190 is amended to read:

12 **Sec. 33.16.190. Authority of parole, pretrial services, and probation**
13 **officers.** An officer appointed by the commissioner under AS 33.05.020(a), AS 33.07,
14 or under this chapter, may discharge duties under AS 33.05, AS 33.07, or this chapter.

15 * **Sec. 17.** AS 44.23.020 is amended by adding a new subsection to read:

16 (j) The attorney general may by regulation schedule a substance on an
17 emergency basis as provided in AS 11.71.125 and AS 44.62 (Administrative
18 Procedure Act).

19 * **Sec. 18.** AS 44.62.175(a) is amended to read:

20 (a) The lieutenant governor shall develop and supervise the Alaska Online
21 Public Notice System, to be maintained on the state's site on the Internet. The
22 lieutenant governor shall prescribe the form of notices posted on the system by state
23 agencies. The Alaska Online Public Notice System must include

24 (1) notices of proposed actions given under AS 44.62.190(a);

25 (2) notices of state agency meetings required under AS 44.62.310(e),
26 even if the meeting has been held;

27 (3) notices of solicitations to bid issued under AS 36.30.130;

28 (4) notices of state agency requests for proposals issued under
29 AS 18.55.255, 18.55.320; AS 36.30.210; AS 37.05.316; AS 38.05.120; and
30 AS 43.40.010;

31 (5) executive orders and administrative orders issued by the governor;

1 (6) written delegations of authority made by the governor or the head
2 of a principal department under AS 44.17.010;

3 (7) the text or a summary of the text of a regulation or order of repeal
4 of a regulation for which notice is given under AS 11.71.125 or AS 44.62.190(a),
5 including an emergency regulation or repeal regardless of whether it has taken effect;

6 (8) notices required by AS 44.62.245(b) regarding an amended version
7 of a document or other material incorporated by reference in a regulation;

8 (9) a summary of the text of recently issued published opinions of the
9 attorney general;

10 (10) a list of vacancies on boards, commissions, and other bodies
11 whose members are appointed by the governor;

12 (11) in accordance with AS 39.52.240(h), advisory opinions of the
13 attorney general; [AND]

14 (12) notices required by AS 26.30.010(d) and (e) regarding
15 applications for military facility zones; and

16 (13) notices of substances scheduled by an emergency regulation
17 under AS 11.71.125.

18 * **Sec. 19.** AS 44.62.200(a) is amended to read:

19 (a) The notice of proposed adoption, amendment, or repeal of a regulation
20 must include

21 (1) a statement of the time, place, and nature of proceedings for
22 adoption, amendment, or repeal of the regulation;

23 (2) reference to the authority under which the regulation is proposed
24 and a reference to the particular code section or other provisions of law that are being
25 implemented, interpreted, or made specific;

26 (3) an informative summary of the proposed subject of agency action;

27 (4) other matters prescribed by a statute applicable to the specific
28 agency or to the specific regulation or class of regulations;

29 (5) a summary of the fiscal information required to be prepared under
30 AS 44.62.195; and

31 (6) for a regulation under AS 11.71.125, a summary of the attorney

1 **general's compliance with the requirements of AS 11.71.125(b).**

2 * **Sec. 20.** AS 44.62.250 is amended to read:

3 **Sec. 44.62.250. Emergency regulations. Except for a regulation adopted**
4 **under AS 11.71.125, a** [A] regulation or order of repeal may be adopted as an
5 emergency regulation or order of repeal if a state agency makes a written finding,
6 including a statement of the facts that constitute the emergency, that the adoption of
7 the regulation or order of repeal is necessary for the immediate preservation of the
8 public peace, health, safety, or general welfare. The requirements of AS 44.62.040(c),
9 44.62.060, and 44.62.190 - 44.62.215 do not apply to the initial adoption of
10 emergency regulations; however, upon adoption of an emergency regulation, the
11 adopting agency shall immediately submit a copy of it to the lieutenant governor for
12 filing and for publication in the Alaska Administrative Register, and, within five days
13 after filing by the lieutenant governor, the agency shall give notice of the adoption in
14 accordance with AS 44.62.190(a). Failure to give the required notice by the end of the
15 10th day automatically repeals the regulation.

16 * **Sec. 21.** AS 44.62.250 is amended by adding a new subsection to read:

17 (b) A regulation or order of repeal may be adopted as an emergency regulation
18 under AS 11.71.125 if the attorney general makes a written finding that the
19 requirements of AS 11.71.125 are met. The requirements of AS 44.62.190 - 44.62.215
20 do not apply to the adoption or order of repeal by the attorney general of a regulation
21 to schedule a substance by emergency regulation under AS 11.71.125.

22 * **Sec. 22.** AS 44.62.260 is amended to read:

23 **Sec. 44.62.260. Limitation on effective period of emergency regulations. (a)**
24 **Except as provided in (c) of this section, a** [A] regulation adopted as an emergency
25 regulation does not remain in effect more than 120 days unless the adopting agency
26 complies with AS 44.62.040(c), 44.62.060, and 44.62.190 - 44.62.215 either before
27 submitting the regulation to the lieutenant governor or during the 120-day period.

28 (b) **Except as provided in (c) of this section, before** [BEFORE] the
29 expiration of the 120-day period, the agency shall transmit to the lieutenant governor
30 for filing a certification that AS 44.62.040(c), 44.62.060, and 44.62.190 - 44.62.215
31 were complied with before submitting the regulation to the lieutenant governor, or that

1 the agency complied with those sections within the 120-day period. Failure to so
2 certify repeals the emergency regulation; it may not be renewed or refiled as an
3 emergency regulation.

4 * **Sec. 23.** AS 44.62.260 is amended by adding a new subsection to read:

5 (c) A substance scheduled by the attorney general by emergency regulation
6 under AS 11.71.125 will remain on the schedule under the emergency regulation for a
7 period not to exceed 1,095 days unless the legislature schedules the substance by law
8 or annuls the regulation by law.

9 * **Sec. 24.** AS 44.62.270 is amended to read:

10 **Sec. 44.62.270. State policy.** It is the state policy that emergencies are held to
11 a minimum and are rarely found to exist. **Nothing in this section limits the attorney**
12 **general from scheduling a substance by emergency regulation under**
13 **AS 11.71.125.**

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

16 INDIRECT COURT RULE AMENDMENT. AS 12.30.011 (a) - (c), (g), and (i), as
17 amended by secs. 9 - 13 of this Act, and AS 12.30.011(m), enacted by sec. 14 of this Act,
18 have the effect of changing Rule 41, Alaska Rules of Criminal Procedure, by changing the
19 conditions of release for certain defendants.

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

22 APPLICABILITY. AS 12.30.006(b), as amended by sec. 8 of this Act, AS 12.30.011
23 (a) - (c), (g), and (i), as amended by secs. 9 - 13 of this Act, and AS 12.30.011(m), enacted by
24 sec. 14 of this Act, apply to offenses committed on or after the effective date of secs. 8 and 9 -
25 14 of this Act.

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

28 CONDITIONAL EFFECT. Sections 9 - 14 of this Act take effect only if sec. 25 of
29 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
30 Constitution of the State of Alaska.

31 * **Sec. 28.** If secs. 9 - 14 of this Act take effect under sec. 27 of this Act, they take effect

1 immediately under AS 01.10.070(c).
2 * **Sec. 29.** Sections 1, 8, 15, 16, and 25 - 27 of this Act take effect immediately under
3 AS 01.10.070(c).