

IN THE TRIAL COURT FOR THE STATE OF ALASKA

In the Matter of:)
)
BAIL SCHEDULE)
)
_____)

PRESIDING JUDGE ADMINISTRATIVE ORDER
ESTABLISHING A STATEWIDE BAIL SCHEDULE

Effective June 15, 2017¹

1. **Scope of Application.** This Statewide Bail Schedule is issued pursuant to Alaska Rule of Criminal Procedure (Criminal Rule) 41(d) and Alaska Administrative Rule 46, and is promulgated for use throughout all judicial districts of the State of Alaska. The attached User Notes are incorporated herein. **And a Statewide Bail Schedule Summary Reference Sheet is attached as Appendix A to provide a synopsis of the Statewide Bail Schedule.**

2. **Felony.** The Bail Schedule does not apply to felonies, including a Petition to Revoke Probation on a felony offense, *see* Criminal Rule 41(e).

3. **Domestic Violence.** A defendant charged with a crime involving domestic violence as defined in AS 18.66.990(3) or with violating a condition of release set in a

¹ This Order replaces all previous Statewide Bail Schedule Orders. Section 3 has been amended. Section 4 has been added. The prior Section 4 has been renumbered as Section 5 and amended. Section 6 has been added. Prior Section 5 has been renumbered as Section 7 and amended. Prior Section 6 has been renumbered as Section 8. Prior Section 7 has been renumbered as Section 9 and amended. Prior Section 8 has been renumbered as Section 10. Prior Section 9 has been renumbered as Section 11 and amended. Prior Section 10 has been renumbered as Section 12. And the User Notes have been revised.

case alleging a crime involving domestic violence shall be held without bail per AS 12.30.027(e) until the defendant appears before a judicial officer within the time period set by applicable law.

4. **Stalking.** A defendant charged with a crime of Stalking in the Second Degree shall be held per Criminal Rule 41(d)(3) until the defendant appears before a judicial officer within the time period set by applicable law.

5. **Arrest and Bench Warrants.** If a defendant is arrested pursuant to an arrest or bench warrant, then the monetary bail and conditions, if any, set in the warrant shall control until the defendant appears before a judicial officer within the time period set by applicable law.

6. **Violating Conditions of Release.** If a defendant is arrested for violating conditions of release and: (1) the conditions were set in a case that did not include a domestic violence offense (DV) under AS 18.66.990 (*see* Section 3 above for DV offenses); and, (2) the conditions of release in that case provide that if the defendant is arrested for violating a condition of release, the defendant shall be held until the defendant appears before a judicial officer within the time period set by applicable law; then the defendant shall be held until the defendant appears before a judicial officer per Criminal Rule 5 or before the judge presiding over the case in which the condition of release was set, whichever occurs first.

7. **Misdemeanors With Established Bail Amount.** A defendant charged with an offense listed below is subject to the cash performance bail stated:

- (a) A second DUI or Refusal - \$500
- (b) A third or subsequent non-felony DUI - \$1,000
- (c) A first Non-DV Assault - \$500
- (d) A second and subsequent Non-DV Assault - \$1,000
- (d) Unlawful Evasion or Escape - \$1,000

A defendant who posts bail and is released from custody shall be subject to the conditions listed in Section 8 below and any condition set per Section 9 and Section 10 below.

8. Misdemeanor, Release on Own Recognizance and Conditions. All other defendants arrested without a warrant, shall be released on his or her Own Recognizance subject to the following conditions:

- (a) obey all court orders and all federal, state, and local laws;
- (b) appear in court when ordered;
- (c) if represented, maintain contact with the person's lawyer and notify the person's lawyer, who shall notify the prosecuting authority and the court, not more than 24 hours after the person changes residence;
- (d) if unrepresented, notify the prosecuting authority and the court, not more than 24 hours after the person changes residence; and
- (e) do not contact, directly or indirectly, any alleged victim.
- (f) do not leave Alaska.

These conditions shall be set forth in an Order and Conditions of Release form and a copy of the Order and Conditions of Release form shall be given to the defendant prior to the defendant being released.

9. **Officer or Defendant Request for Monetary Bail, Bail Modification, or Additional Condition.** The arresting officer or a correctional officer may apply to a judicial officer to have the established bail set for an offense listed in Section 7 modified, or to have bail set for an offense that comes within the scope of Section 8.

A judicial officer, per Criminal Rule 41(d)(2), must be contacted at a defendant's request if the defendant is charged with an offense listed in Section 7 above and is not able to immediately post the amount of bail established in Section 7. The judicial officer may modify the established bail if circumstances exist indicating that protection of the public and the defendant's appearance at subsequent proceedings can be reasonably assured by one of the following:

- (a) Release on personal recognizance;
- (b) Release on other appropriate conditions;
- (c) The execution of an unsecured appearance bond in an amount equal to or less than the scheduled or set bail amount, and the deposit in cash or other security of not more than 10 percent of the amount of the bond; or
- (d) The execution of a bail bond in an amount less than the scheduled or set bail amount, secured by cash or other solvent sureties; or
- (e) The execution of a performance bond.

10. **Defendant under the Influence of Alcohol.** If the officer has reasonable suspicion that the defendant, at the time of arrest, was under the influence of alcohol, then there is a condition of release that the defendant not possess or consume alcohol. The officer must check the related box on the Order and Conditions of Release form if the officer signs the form or, if the form is signed by a correctional officer or other officer the arresting officer must inform the jail staff or other officer of the need for this condition of

release and the correctional officer or other officer shall check this box on the Order and Conditions of Release form. A copy of the Order and Conditions of Release form shall be given to the defendant prior to the defendant being released.

11. **First Appearance.** The judicial officer presiding at the defendant's first court appearance may set and adjust bail and conditions of release even if the Bail Schedule applies or bail was set in an arrest or bench warrant or by an on call judicial officer. The setting of bail cannot be delegated to correctional officers, police officers, or any other person.

12. **Arraignment Date.** Upon release pursuant to the Bail Schedule, the defendant's next court appearance shall be the date set for arraignment at the first available time during the next business day or as provided by the local court.

IT IS SO ORDERED.

Dated at Ketchikan, Alaska this 13th day of June 2017.

/s/
Trevor N. Stephens
Presiding Judge First Judicial District

Dated at Kotzebue, Alaska this 13th day of June 2017.

/s/
Paul A. Roetman
Presiding Judge Second Judicial District

Dated at Anchorage, Alaska this 13th day of June 2017.

/s/

William F. Morse
Presiding Judge Third Judicial District

Dated at Fairbanks, Alaska this 13th day of June 2017.

/s/

Michael A. MacDonald
Presiding Judge Fourth Judicial District

User Notes

1. **PJAO ¶ 2.** Criminal Rule 41(e) provides that: “No bail schedule shall be established for felonies.” The presiding judges construe that provision as exempting cases which include a felony charge from the scope of Criminal Rule 41(d)(2).
2. **PJAO ¶ 3.** AS 12.30.027(e) provides: “A person arrested for a crime involving domestic violence or for a violation of a condition of release in connection with a crime involving domestic violence may not be released from custody until the person has appeared in person before a judicial officer or telephonically for arraignment.” Criminal Rule 41(d)(3) provides that: “A misdemeanor bail schedule may not be set for crimes involving domestic violence as defined in AS 18.66.990 or for the crime of stalking under AS 11.41.270.

The presiding judges construe “crime involving domestic violence” in AS 12.30.207(e) to be the crimes listed at AS 18.66.990(3), and AS 12.30.027(e) as requiring that defendants arrested for a crime involving domestic violence or for violating a condition of release set in a case in which a crime involving domestic violence has been charged be held without bail until the defendant appears before a judicial officer within the time period set by applicable law.

The presiding judges construe AS 12.30.027(e) and Criminal Rule 41(d)(3) as exempting the offenses referenced therein from the scope of Criminal Rule 41(d)(2).

3. **PJAO ¶ 4.** Criminal Rule 41(d)(3) provides in part that a “misdemeanor bail schedule may not be set . . . for the crime of stalking under AS 11.41.270.”

4. **PJAO ¶ 5.** Section 5 is intended to make clear that the Statewide Bail Schedule does not apply to defendants who are arrested on a bench warrant or an arrest warrant. The bail established for such defendants is the bail amount stated in the warrant. A person unable to post the bail will appear before a judicial officer within the time period set by applicable law and that judicial officer has the authority to modify the bail amount and set conditions of release in accordance with applicable law. The presiding judges do not construe Criminal Rule 41(d)(2) as applying to this situation.

5. **PJAO ¶6.** Section 6 addresses the fact that AS 11.56.757 reduces the former crime of violating a condition of release (VCOR) to a violation, though AS 12.25.030(b)(3) and AS 12.25.180(b) provide that a peace officer may still arrest a person for violating a condition of release, whether or not the underlying case charges a crime involving domestic violence.

A defendant arrested for VCOR where the conditions were set in a case in which the person has been charged with committing a crime involving domestic violence is to be held per AS 12.30.027(e) and Criminal Rule 41(d)(3) as noted in Section 3.

A defendant arrested for VCOR where the conditions were set in a case that does not include a charge of committing a crime involving domestic violence is to be released on their Own Recognizance per Section 8, unless Section 6 applies or bail is set per Section 9 and the defendant is unable to post the ordered bail.

Judges, in an effort to address the VCOR situation are, in many cases, imposing the type of condition of release set forth in Section 6. It is not necessary that the

precise language in Section 6 is used in the conditions of release. A defendant arrested for VCOR for violating a condition of release in a case which does not include a charge for committing a crime involving domestic violence in which the judge has imposed such a condition of release is to be held per that condition and Section 6.

6. **PJAO ¶ 7.** The presiding judges have determined that the offenses listed in Section 7 are such that the bail set is appropriate per AS 12.30.011. The bail may be adjusted before the defendant appears before a judicial officer per Section 9. If the defendant is not able to post the required bail and appears before a judicial officer that judicial officer has the authority to adjust bail and set conditions of release in accordance with applicable law.
7. **PJAO ¶ 8.** Defendants who are not charged with a felony, arrested on a petition to revoke probation in a felony case, arrested on a warrant with a stated bail amount, a misdemeanor crime involving domestic violence, stalking, or an offense listed in Section 7 are to be released on their Own Recognizance under the conditions stated in Section 8 unless bail is set per Section 9 and the defendant is not able to post the ordered bail. Form CR-766 (Order and Conditions of Release - Own Recognizance Per Schedule) shall be used.
8. **PJAO ¶ 9.** With regards to the first paragraph of Section 9, Criminal Rule 41(d)(2) provides, in part, that: “Any order adopting a misdemeanor bail schedule must provide that the arresting police agency may apply to a judicial officer for a different bail.” The presiding judges construe this provision as applying to the offenses listed in Section 7 and to those offenses for which an Own Recognizance release would be required under Section 8. The presiding judges have also included correctional officers in Section 9 because of the reasonable possibility

that a correctional officer may become aware of circumstances that could warrant the imposition of bail under AS 12.30.011 after the arresting police officer has departed.

9. **PJAO ¶ 9.** The second paragraph of Section 9 is required by Criminal Rule 41(d)(2)(A) - (E).

10. **PJAO ¶ 10.** The presiding judges understand that there may situations when a defendant who has consumed alcohol and has been arrested and would be released on their Own Recognizance under Section 8 may be considered to present a danger to the public though the level of intoxication is not such as would warrant commitment per AS 47.37.180. The arresting officer or a correctional officer may contact a judicial officer per Section 9 to request the imposition of bail and/or additional conditions release if that officer believes that the defendant presents a danger to the public or a flight risk.

The presiding judges also understand that there are potentially significant concerns with respect to releasing non-dangerous intoxicated vulnerable persons who do not qualify for commitment under AS 47.37.180

The presiding judges, however, are not aware of applicable legal authority for including in a Statewide Bail Schedule a provision authorizing or requiring the holding of a defendant in custody who would otherwise be released from custody until the defendant's breath alcohol content (BAC) is at a certain level. So the presiding judges have not been able to reach a consensus favoring the inclusion of such a provision. The presiding judges offer no comment herein regarding whether the Department of Corrections or another entity operating a jail facility may impose their own related administrative requirements.

APPENDIX A

STATEWIDE BAIL SCHEDULE SUMMARY REFERENCE SHEET

This Reference Sheet is intended to provide a synopsis of the attached Statewide Bail Schedule and User Notes. Refer to the Statewide Bail Schedule and User Notes for more complete directions and explanations.

Always Hold Until Seen by a Judicial Officer

Defendants arrested for:

- 1) Any felony offense.
- 2) Violating a Probation Condition in a felony case.
- 3) A crime involving domestic violence (DV).
- 4) Violating a condition of release (VCOR) if the condition was set in a case in which a DV crime is charged.
- 5) VCOR in a non-DV case in which the conditions of release provide that the defendant is to be held to see a judicial officer if arrested for violating a condition of release.
- 6) Stalking.

Arrest and Bench Warrants

Defendants who are arrested on an arrest warrant or a bench warrant are subject to the bail stated in the warrant.

Established Cash Bail Amounts for Non-DV Misdemeanor Offenses

- | | |
|--|---------|
| 1) Second DUI/Refusal | \$500 |
| 2) Third or higher DUI/Refusal | \$1,000 |
| 3) First non-DV assault | \$500 |
| 4) Second or subsequent <u>Non</u> -DV assault | \$1,000 |
| 5) Unlawful evasion or escape | \$1,000 |

Misdemeanor and Violations Not Specified Above

Defendants arrested for misdemeanors or violations not specified above are to be released on their own recognizance (OR) subject to the conditions stated in Section 8 and, if applicable, section 10.

Contact Judicial Officer

In all cases covered by the Statewide Bail Schedule an arresting officer or a correctional officer may contact a judicial officer to request that the established monetary bail amount listed above be modified or to have monetary bail imposed for a defendant who would otherwise be released OR, or to have additional conditions of release imposed. And a defendant may request that a judicial officer be contacted if the defendant cannot immediately post the bail amount listed above and the on-call judicial officer must promptly be contacted if such a request is made.

Distribution: The Clerks of Court are to distribute to all Police, Correctional Facilities, Jails, District Attorney Offices, Public Defender Agencies, and Municipal Attorney Offices in their communities; all Judges and Magistrates in their court; all Cities and Boroughs in their area; Chief Justice Stowers; Court Administrator Christine Johnson; and all Area Court Administrators.