

IN THE TRIAL COURT FOR THE STATE OF ALASKA

In the Matter of: )  
 )  
BAIL SCHEDULE )  
\_\_\_\_\_ )

**PRESIDING JUDGE ADMINISTRATIVE ORDER**  
**ESTABLISHING A STATEWIDE BAIL SCHEDULE**

**August 1, 2016<sup>1</sup>**

1. **Scope of Application.** The Bail Schedule attached to this Administrative Order is issued pursuant to Alaska Criminal Rule 41(d) and Alaska Administrative Rule 46, and is promulgated for use throughout all judicial districts of the State of Alaska.

2. **Felony.** The Bail Schedule does not apply to felonies, including a Petition to Revoke Probation, *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) 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. **Arrest and Bench Warrants.** If a defendant is arrested pursuant to an arrest or bench warrant, the then monetary bail and conditions, if any, set in the warrant shall control.

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<sup>1</sup> This Order replaces the Orders issued in March and on 12 July 2016.

5. **Misdemeanor, Bail to Be Set by a Judicial Officer.** A defendant charged with the following offenses or conduct shall be brought before a judicial officer for bail to be set or reviewed

- (a) a second or additional DUI or Refusal,
- (b) a second or additional non-DV assault if the most recent assault was within five years,
- (c) violation of a condition of release set in a case alleging a crime involving domestic violence, or
- (d) Unlawful Evasion or Escape.

6. **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;
- (e) do not leave Alaska; and
- (f) do not contact, directly or indirectly, any alleged victim.

7. **Officer Request for Monetary Bail or Additional Condition.** The arresting officer may apply to a judicial officer for a different bail. If the defendant is

charged with new charge of Violating Conditions of Release or Failure to Appear, then the bail on that charge is OR.

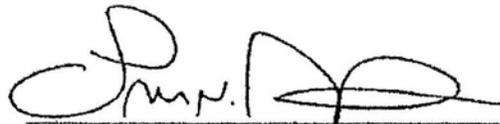
8. **Defendant under the Influence of Alcohol.** If the officer has reasonable suspicion that the defendant, at the time of arrest, was under the influence of alcohol, then there is a condition of release that the defendant not possess or consume alcohol.

9. **First Appearance.** The judicial officer presiding at the defendant's first court appearance may adjust bail and conditions of release even if the Bail Schedule applies. The setting of bail cannot be delegated to correctional officers, police officers, or any other person.

10. **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 29<sup>th</sup> day of ~~August~~<sup>July</sup>, 2016.



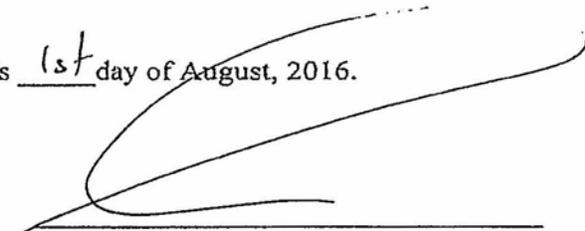
Trevor N. Stephens  
Presiding Judge First Judicial District

Dated at Kotzebue, Alaska this 15<sup>th</sup> day of August, 2016.



Paul A. Roetman  
Presiding Judge Second Judicial District

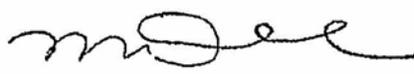
Dated at Anchorage, Alaska this 1st day of August, 2016.



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William F. Morse  
Presiding Judge Third Judicial District

Dated at Fairbanks, Alaska this 1st day of August, 2016.



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Michael A. MacDonald  
Presiding Judge Fourth Judicial District

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.

## User Notes

1. **PJAO ¶ 3.** AS 12.30.027(e) provides, “A person arrested for a crime involving domestic violence or for 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.*” (Italics added.) The presiding judges construe this statute to mean that a person arrested for domestic violence cannot be released pursuant to a bail schedule. Instead, the arrestee must appear before a judicial officer, whether in person or by telephone, at a hearing that is functionally an arraignment on the new charge. For a proceeding to be an arraignment the prosecutor must be present, in person or by telephone. (Added 12 July 2016).
2. **PJAO ¶ 5.** Sections 26 and 28 of SB 91, signed by Governor Walker on 11 July 2016, reduce the former crime of failure to appear (FTA) to a violation, punishable by a fine only, unless certain conditions are met. Therefore, the bail for a FTA violation is set by the schedule to be OR with conditions. Paragraph 5 of the PJA Order has been modified to remove FTA violation from crimes listed for which an arrestee must be brought before a judicial officer so that bail may be set. (Added 12 July 2016).
3. **PJAO ¶ 5.** Section 28 of SB 91 redefines a FTA as a misdemeanor or felony if the underlying crime is a misdemeanor or felony, respectively, and the defendant either does not make contact with “the court or a judicial officer” within 30 days of a hearing or fails to appear “to avoid prosecution.” The presiding judges assume that most FTA violations will only become a FTA crime in two scenarios: (a) as the result of a prosecutor filing a new charge and requesting an arrest warrant or (b) a person being arrested on or charged with a FTA violation, after which the prosecutor increases the charge to a FTA crime. For scenario (a) the bail set by the judicial officer who issued the

arrest warrant will govern. PJA Order ¶ 4. For scenario (b) the prosecutor may seek to have bail modified at an arraignment on the new charge or a bail hearing. (Added 12 July 2016).

4. **PJAO ¶ 5.** Sections 29 and 30 of SB 91, signed by Governor Walker on 11 July 2016, reduce the former crime of violation of condition of release (VCOR) to a violation, punishable by a fine only. Therefore, the bail for such an offense is set by the schedule to be OR and conditions. It should be noted that police may still arrest a person for violating the conditions of release. AS 12.25.030(b)(3)(C). Paragraph 5 of the PJA Order has been modified to remove VCOR from offenses listed for which a charged arrestee must be brought before a judicial officer so that bail may be set. However, paragraph 5(c) has been revised to include arrests for violating conditions of release set in an existing charge of domestic violence. *See* user note 5. (Added 12 July 2016).

5. **PJAO ¶ 5.** AS 12.30.027(e) provides, “A person arrested for a crime involving domestic violence or *for 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.” (Italics added.) The presiding judges construe the retention of the italicized language, despite SB 91’s reduction of the offense of Violating Conditions of Release from a crime to a violation, to mean that police may arrest a person for allegedly violating a condition of release, even though they may elect not to charge the person with a new offense (that of VCOR, a violation). When police arrest a person, who has been released on bail for a crime of domestic violence, for violating the conditions of release, that person cannot be released from custody until brought before a judicial officer for arraignment. (Added 12 July 2016).

6. **PJAO ¶ 7.** The presiding judges appreciated that there would be situations when an arrestee was particularly dangerous, in part because of alcohol, or vulnerable because of intoxication (albeit intoxication less extreme than that which would warrant commitment pursuant to AS 47.37.180). If a police officer believes that special circumstances exist in a particular arrest that warrant something other than an OR release or the imposition of additional conditions of release (including conditions that address intoxication) then the police officer may contact a judicial officer to request a bail package that deviates from the bail schedule. (Added 12 July 2016).

7. **PJAO ¶ 7.** [Deleted] (1 August 2016).