

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 December 8, 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 (VCOR, AS 11.56.757) set in a 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.

¹ This Order replaces all previous Statewide Bail Schedule Orders.

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. **Misdemeanor Offenses - 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
- (e) Unlawful Evasion or Escape - \$1,000
- (f) Violating Conditions of Release on a non-DV A misdemeanor - \$250
- (g) Violating Conditions of Release on a non-DV felony - \$1,000

A defendant who posts bail and is released from custody shall be subject to the conditions listed in Section 7 below and any condition set per Section 9 and Section 10 below.

7. **Misdemeanor Offenses - 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.

8. **Release of Intoxicated Defendants.** For any defendant released pursuant to this Bail Schedule, the correctional facility shall, at the time of release, conduct a chemical test of the breath of a person who has been arrested and who is intoxicated. The correctional facility may detain the defendant until the test result indicates that the person's breath has less than 0.08 grams of alcohol for each 210 liters of breath or, with the defendant's consent, may release the defendant to another person who is willing and able to provide care for the defendant. [This paragraph 8 is effective January 1, 2018 and is included pursuant to AS 12.30.011(1)]

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 6 modified, or to have bail set for an offense that comes within the scope of Section 7.

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 6 above and is not able to immediately post the amount of bail established in Section 6. 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 5th day of December 2017.

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

Dated at Kotzebue, Alaska this 6th day of December 2017.

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

Dated at Anchorage, Alaska this 5th day of December 2017.

/s/
William F. Morse
Presiding Judge Third Judicial District

Dated at Fairbanks, Alaska this 5th day of December 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.** The presiding judges have determined that the offenses listed in Section 6 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 8. 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.

Section 6 in the June 15, 2017 Presiding Judges' Statewide Bail Schedule had addressed the reduction in SB 91 of the crime of VCOR to a non-jailable violation. SB 54 has now revised SB 91 by making VCOR a misdemeanor punishable by up to five days in jail. So the prior Section 6 has been deleted, and VCOR is now addressed in paragraphs 6(f) and 6(g).

6. **PJAO ¶ 7.** 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 6 are to be released on their Own Recognizance under the conditions stated in Section 7 and, if applicable, Section 10 unless bail is set per Section 9 and the defendant is not able to post the ordered bail.

7. **PJAO ¶ 8.** PJAO ¶ 10 in the June 15 2017 Presiding Judges’ Statewide Bail Schedule had addressed the controversy over whether there was legal authority that would permit the Presiding Judges to mandate or permit correctional facilities to hold an arrestee until that person was sober.

The legislature at section 27 of SB 54 (new AS 12.30.011(1), effective January 1, 2018) now requires the inclusion of the language in Section 8. Section 27 of SB 54 arguably amends Criminal Rule 41. The Presiding Judges, by revising the Statewide Bail Schedule to include Section 8, are not making any determination about the constitutionality of section 27.

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 6 and to those offenses for which an Own Recognizance release would be required under Section 7. The presiding judges have also included correctional officers in Section 8 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.

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

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) 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-DV</u> assault | \$1,000 |
| 5) Unlawful evasion or escape | \$1,000 |
| 6) Violating Conditions of Release on a Non-DV A misdemeanor | \$250 |
| 7) Violating Conditions of Release on a Non-DV felony | \$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 7 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.