IN THE TRIAL COURT FOR THE STATE OF ALASKA

In the Matter of:	)
	)
TEMPORARY	)
BAIL SCHEDULE	)
COVID-19	)
	)
	)

TEMPORARY PRESIDING JUDGE ADMINISTRATIVE ORDER ESTABLISHING A STATEWIDE BAIL SCHEDULE IN CONSIDERATION OF PUBLIC HEALTH NECESSITIES DURING THE COVID –19 PANDEMIC

Effective March 27, 2020[1]

1. **Scope of Application.** This Temporary Statewide Bail Schedule is issued in response to the public health emergency caused by the coronavirus pandemic, consistent with the Alaska Supreme Court's Order No. 1957 and the Chief Justice's Special Order No. 8131. These orders direct that trial court operations be conducted in a manner that both protects the rights and liberties of the parties and ensures the safety of court personnel, litigants, and the public.

A. This order is issued pursuant to Criminal Rule 41(d) and Administrative Rule 46, and is promulgated for use throughout all judicial districts of the State of Alaska.

B. This order applies to all arrests made after the effective date of this order and until it is revoked.

[1] This order temporarily replaces the currently governing Statewide Bail Schedule Orders effective February 1, 2020 and shall govern until revoked. Upon revocation of this temporary order, the Statewide Bail Schedule Orders effective February 1, 2020 shall apply.

C. This order applies to all outstanding and unserved arrests warrants. The bail amount in outstanding and unserved arrest warrants are modified to own recognizance release for the charges governed by the bail schedule.

D. The attached User Notes are incorporated herein.

E. 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.

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. **Misdemeanor Offenses - Established Bail Amount**. A defendant charged with a misdemeanor offense, other than Stalking in the 2nd Degree or a crime involving domestic violence, 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.

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.

6. **Arrest and Bench Warrants.** If a person is arrested on an arrest or bench warrant for an offense for which a defendant is to be released on his or her own recognizance under this Temporary Order, then the person shall be released on their own recognizance. The person will be subject to the conditions of release set in section 5 and these conditions shall be set forth in an 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.

7. **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 shall 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.

8. **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 an alternative bail set for an offense that comes within the scope of this order. The defendant's right to be heard pursuant to Criminal Rule 41(d)(2) is preserved.

9. **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.

10. **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.

11. **Arraignment Date.** Upon release pursuant to the Bail Schedule or upon issuance of a summons, 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. During the term of the current COVID-19 public health emergency, out of custody arraignments will be telephonic. The hearing notice should indicate that the hearing is telephonic and should include the Global Crossing telephone conference number and the access code for the local telephonic arraignment court. The Global Crossing telephone conference number is 1-800-768-2983. Consult with the local court to confirm local out of custody telephonic arraignment access code numbers. See the court system website for telephonic hearing and conference line numbers for each court location: http://www.courts.alaska.gov/covid19/index.htm#telephonic.

12. **Use of Summons.** At the discretion of the arresting officer, whenever a defendant is eligible for an own recognizance release under this Temporary Order, the officer is encouraged to issue a summons whenever appropriate, in lieu of arrest. Factors to consider include whether the defendant is intoxicated, the defendant should be immediately placed under a bail order, or the defendant should be held under an alternative bail.

IT IS SO ORDERED.

Dated at Ketchikan, Alaska this 27th day of March 2020.

M. McLee for

Trevor N. Stephens
Presiding Judge First Judicial District

Dated at Kotzebue, Alaska this 27th day of March 2020.

M. M. Lee for

Paul A. Roetman
Presiding Judge Second Judicial District

Dated at Anchorage, Alaska this 27th day of March 2020.

M. M. Lee for

William F. Morse
Presiding Judge Third Judicial District

Dated at Fairbanks, Alaska this 27th day of March 2020.

M. M. Lee

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 Bolger; Court Administrator Stacey Marz; and all Area Court Administrators.

User Notes

1. **PJAO ¶ 1.** Consistent with Alaska Supreme Court issued Order No. 1957 and the Chief Justice issued Special Order No. 8131, the presiding judges adopt this temporary bail schedule. This temporary schedule is based on the following:
   a. This order is issued pursuant to Criminal Rule 41(d) and Administrative Rule 46, and in consideration of *Karr v. State*, No. A13630 (Alaska App. March 24, 2020). It is promulgated for use throughout all judicial districts of the State of Alaska
   b. The current pandemic has placed increasing demands on the court system, law enforcement, the Department of Corrections, the Department of Law, and the Department of Administration at a time when staffs at these institutions have been depleted by quarantines. The Alaska Supreme Court and the Chief Justice have issued orders limiting trial courts to high priority proceedings. The DOC has issued orders limiting access to correctional facilities. Law enforcement and judicial services officers are operating at reduced staff. Department of Law and Department of Administration attorneys are operating under strict social distancing orders. These limitations emphasize the need to reduce, if not eliminate, in person contact, consistent with current public health directives.
   c. Among the high priority proceedings that must continue are booking, arraignment, and bail hearings for an individual arrested following the alleged commission of an offense or on an arrest warrant. The close contacts associated with these proceedings pose a risk to those involved and increase the probability of further spread of the COVID-19 virus. Once a defendant is booked, the need for an in-custody bail hearing is increased and the risks and burdens associated with that hearing is increased as well. The introduction of the misdemeanor bail schedule defendants into a correctional facility increases the risk of exposing the inmates

and staff of the facility to the COVID-19 virus, jeopardizing the safe and secure detention of detainees who pose a high risk of danger to the public.

d. Misdemeanor bail schedule defendants generally pose a lower risk of danger to the public than those defendants who are not subject to the misdemeanor bail schedule. Balancing the risk posed by misdemeanor bail-schedule defendants against the danger they present to the public, in the context of the additional risks presented by the current public health emergency, the presiding judges adopt this temporary bail schedule for so long as the public danger posed by the COVID-19 virus remains high.

2. **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).

3. **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).

4. **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."

5. **PJAO ¶ 6.** Section 6 is intended to modify all outstanding arrest or bench warrants that are for offenses that would otherwise qualify for an own recognizance release under this order. If a person is arrested on an arrest or bench warrant for an offense for which a defendant is to be released on his or her own recognizance under this Temporary Order, then the person shall be released on their own recognizance and be subject to the conditions of release set in section 5.

6. **PJAO ¶ 8.** 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 all own recognizance releases under this order. 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 defendant's right to be heard pursuant to Criminal Rule 41(d)(2) is preserved.

APPENDIX A
TEMPORARY STATEWIDE BAIL SCHEDULE
SUMMARY REFERENCE SHEET

This Reference Sheet is intended to provide a synopsis of the attached Temporary Presiding Judge Administrative Order Establishing A Statewide Bail Schedule In Consideration of Public Health Necessities During the COVID-19 Pandemic (Temporary Order).

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.

Misdemeanor Offenses Not Specified Above

Defendants arrested for misdemeanors or violations not specified above are to be released on their own recognizance (OR) subject to the provisions in the Sections of the Temporary Order addressing conditions of release and the setting the defendant's next court appearance.

Arrest and Bench Warrants

Defendants who are arrested on an arrest warrant or a bench warrant for a misdemeanor offense for which a defendant would be released on his her own recognizance under this Temporary Order shall be release on their own recognizance subject to the provisions in the Sections of the Temporary Order addressing conditions of release and the setting the defendant's next court appearance.

Contact Judicial Officer

An officer arresting a person who is to be released on his or her own recognizance under this Temporary Order, or a correctional officer, may contact a judicial officer to request that cash bail be set and/or that additional conditions of release be imposed.