IN THE TRIAL COURT FOR THE STATE OF ALASKA

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

SECOND TEMPORARY PRESIDING JUDGES' ADMINISTRATIVE ORDER ESTABLISHING A STATEWIDE MISDEMEANOR BAIL SCHEDULE

Effective August 5, 2020[1]

1. **Scope of Application.** This Second Temporary Presiding Judges' Administrative Order Establishing a Stateside Misdemeanor Bail Schedule (Bail Schedule) is issued in response to the ongoing public health emergency caused by the COVID-19 pandemic, consistent with the Alaska Supreme Court's Order No. 1957, the Chief Justice's Special Order No. 8131, and subsequent related orders issued by the Chief Justice, and pursuant to Criminal Rule 41(d) and Administrative Rule 46, and is promulgated for use throughout all judicial districts of the State of Alaska.

   A. This Bail Schedule applies to all arrests made on or after the effective date of the Bail Schedule and is in effect until revoked.

   B. The attached User Notes are incorporated herein.

[1] This Bail Schedule replaces the March 27, 2020 Temporary Presiding Judge Administrative Order Establishing a Statewide Bail Schedule in Consideration of Public Health Necessities During the Covid-19 Pandemic and temporarily replaces the currently governing Statewide Bail Schedule Orders effective February 1, 2020 and shall govern until revoked. Upon revocation of this Bail Schedule the Statewide Bail Schedule Orders effective February 1, 2020 shall again apply.

C. A Statewide Bail Schedule Summary Reference Sheet is attached as Appendix A to provide a synopsis of this Bail Schedule.

2. **Felony.** This 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. **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** - 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 by a lawyer, maintain contact with the person's lawyer and notify the person's lawyer, who shall notify the prosecuting authority and the court, of a change in the person's mailing address, telephone number, or email address not more than 24 hours after the change; and

(d) do not contact, directly or indirectly, any alleged victim.

7. **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.

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 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.

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 bail and/or additional conditions of release for a defendant charged with an offense for which the person would be released on his or her own recognizance under section 5.

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 does not apply 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, 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 COVID-19 pandemic public health emergency, out-of-custody arraignments will be conducted by telephone, or by Zoom or similar technology if available and the necessary prior arrangements have been made, and in-custody arraignments will be conducted by telephone, or by polycom if available and the necessary prior arrangements have been made. Hearing notices shall include the Global Crossing telephone conference number (1-800-768-2983) and the necessary access code. The Alaska Court System website lists the telephonic hearing conference line and access codes for each court

location (http://www.courts.alaska.gov/covid19/index.htm#telephonic). Out-of-custody defendants should contact the local court to arrange appearance by Zoom.

12. **Use of Summons.** At the discretion of the arresting officer, whenever a defendant is eligible for an own recognizance release under this Bail Schedule, the officer is encouraged to issue a summons whenever appropriate, in lieu of arrest. Factors to consider include whether the defendant is intoxicated, and whether the defendant is subject to release under section 6 and the officer intends to request that bail or additional conditions of release be set per section 9.

IT IS SO ORDERED.

Dated this 5th day of August 2020.

Trevor Stephens
Presiding Judge First Judicial District

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

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

Michael A. MacDonald
Michael A. MacDonald
Presiding Judge Fourth Judicial District

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User Notes

1. **PJAO ¶ 1.** Consistent with Alaska Supreme Court Order No. 1957 and the Chief Justice's Special Order No. 8131, and subsequent COVID-19 related Orders, the presiding judges adopt this Second Temporary Bail Schedule. This Second Temporary Bail Schedule is issued pursuant to Criminal Rule 41(d) and Administrative Rule 46, is promulgated for use in all Judicial Districts of the State of Alaska, and is based on the following considerations:
   a. The Alaska Court of Appeals' decision in ***Karr v. State***, 459 P.3d 1183 (Alaska App. 2020).
   b. The health risks posed by the ongoing COVID-19 pandemic and the need to take reasonable steps to reduce the risk of transmission.
   c. Recognition of the related challenges faced by the Alaska Department of Corrections.
   d. Recognition of the related challenges faced by the Alaska Court System, the Department of Law, the Department of Administration, and law enforcement agencies.
   e. Recognition of the related mandates and protocols implemented by the Department of Corrections, the Department of Law, the Department of Administration, law enforcement agencies, the Alaska Court System, the executive branch of the State of Alaska, and municipalities.
   f. Misdemeanor defendants subject to a bail schedule generally pose a lower risk of danger to the public and non-appearance than those defendants who are not subject to a misdemeanor bail schedule. Balancing the risk posed by these defendants against the danger they present, in the context of the ongoing COVID-19 pandemic circumstances, recognizing that this risk may addressed in an individual case per section 9.

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 ¶ 5.** Section 5 is intended to make clear that the 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.

6. **PJAO ¶ 7.** 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 Bail Schedule. 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.

APPENDIX A

STATEWIDE BAIL SCHEDULE SUMMARY REFERENCE SHEET

This Reference Sheet is intended to provide a synopsis of the attached Second Temporary Presiding Judges' Administrative Order Establishing a Statewide Misdemeanor Bail Schedule and User Notes. Refer to the same 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.

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 6 and, if applicable, section 7.

Contact Judicial Officer

An officer arresting a person who is to be released on his or her own recognizance under this Bail Schedule, 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.