



LAWS OF ALASKA

1971

Source

HB 15

Chapter No.

8

AN ACT

Revising the Alaska Statutes to reflect corrective amendments by the revisor of statutes dealing with superior court judges, district courts, district judges and magistrates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 09.50.010(12) is amended to read:

(12) disobedience by an inferior court, judge, magistrate, referee, master, or officer of the lawful judgment, order, or process of a higher court, or proceeding in an action or proceeding contrary to law after the action or proceeding is removed from the jurisdiction of that inferior court, judge, magistrate, or officer.

* Sec. 2. AS 11.30.200 is amended to read:

Sec. 11.30.200. NEGLECT OR REFUSAL TO AID OFFICER. A person required by a peace officer, judge or magistrate to assist him in the execution of his office in the preservation of the peace, or the arrest of a person for a breach of the peace, or the service of process, who neglects or refuses to render assistance, upon conviction, is punishable by imprisonment in a jail for not less than one month nor more than six months, or by a fine of not less than \$25 nor more than \$500.

* Sec. 3. AS 11.30.220 is amended to read:

Sec. 11.30.220. IMPERSONATING PEACE OFFICER. A person who falsely assumes to be a judge, magistrate or peace officer, and acts as such, and requires a person to aid or assist him in any matter pertaining to the duty of a judge, magistrate or peace officer, upon conviction, is punishable by imprisonment in jail for not less than three months nor more than one year, or by a fine of not less than \$50 nor more than \$500.

Chapter 8

- * Sec. 4. AS 11.30.320(1) is amended to read:

(1) corruptly, or by threats or force, or by a threatening letter or communication, endeavors to influence, intimidate, or impede a witness in a court of this state or before a committing magistrate, or a grand or petit juror, judge, or officer in or of a court of this state, or an officer serving at an examination or other proceeding before a committing judge or magistrate, in the discharge of his duty; or

- * Sec. 5. AS 11.30.320(2) is amended to read:

(2) injures the person or property of a party or witness because of his attending or having attended a court or examination before an officer, or committing judge or magistrate, or because of his testifying or having testified to a matter pending before them; or

- * Sec. 6. AS 11.30.320(4) is amended to read:

(4) injures the person or property of an officer or committing judge or magistrate because of the performance of his official duties; or

- * Sec. 7. AS 12.25.020 is amended to read:

Sec. 12.25.020. JUDGE OR MAGISTRATE MAY ORDER ARREST. When a crime is committed in the presence of a judge or magistrate, he may, by an oral or written order, command any person to arrest the offender, and may immediately proceed as though the offender had been brought before him on a warrant of arrest.

- * Sec. 8. AS 12.25.040 is amended to read:

Sec. 12.25.040. TAKING BEFORE JUDGE OR MAGISTRATE PERSON ARRESTED BY BYSTANDER. A peace officer may, without warrant, take before a judge or magistrate a person who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

- * Sec. 9. AS 12.25.140 is amended to read:

Sec. 12.25.140. PROPERTY TAKEN FROM DEFENDANT ON ARREST. When money or other property is taken from a person arrested upon a charge of a crime, the officer taking it shall immediately make duplicate receipts for the property, specifying particularly the amount of money or kind of property taken. The officer shall deliver one receipt to the person arrested and the other to the judge or magistrate who examines the charge or, if the arrest is after the information or indictment, to the clerk of the court where the action is pending.

- * Sec. 10. AS 12.25.150(a) is amended to read:

(a) The person arrested shall be taken before the judge or magistrate without unnecessary delay, and in any event within 24 hours after his arrest, including Sundays and holidays. This requirement shall apply to municipal police officers to the same extent as it does to state

troopers.

- * Sec. 11. AS 12.35.080 is amended to read:

Sec. 12.35.080. JUDGE, MAGISTRATE OR OFFICER TO HOLD PROPERTY ALLEGEDLY STOLEN OR EMBEZZLED. When property alleged to have been stolen or embezzled comes into the custody of a judge, magistrate or peace officer, he shall hold it subject to the order of the judge or magistrate who examines the charge against the person accused of stealing or embezzling the property.

- * Sec. 12. AS 12.35.090 is amended to read:

Sec. 12.35.090. DELIVERY OF PROPERTY TO OWNER. On satisfactory proof of ownership of the property, the judge or magistrate who examines the charge against the person accused of stealing or embezzling it shall order it to be delivered to the owner or his duly authorized agent, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the judge or magistrate. The order entitles the owner to demand and receive the possession of the property but does not affect the rights of third persons.

- * Sec. 13. AS 12.35.110 is amended to read:

Sec. 12.35.110. DISPOSAL OF UNCLAIMED PROPERTY. If property stolen or embezzled is not claimed by the owner within 60 days after the conviction of the person for stealing or embezzling it, the judge, magistrate or other officer having it in custody shall, if it is money, deposit it in court, or if it is other property, sell it in the same manner as a sale upon an execution. After paying the expenses of the sale and preservation of the property as certified by the court, the proceeds shall be disposed of in the same manner as money collected upon judgments in favor of the state.

- * Sec. 14. AS 12.35.120 is amended to read:

Sec. 12.35.120. DEFINITION OF SEARCH WARRANT. A search warrant is an order in writing, signed by a judge or magistrate, directed to a peace officer, commanding him to search for personal property and bring it before the judge or magistrate.

- * Sec. 15. AS 12.45.120(1) is amended to read:

(1) by or upon a peace officer, judge or magistrate while in the execution of the duties of his office;

- * Sec. 16. AS 12.45.150 is amended to read:

Sec. 12.45.150. ORDER FOR PRIVATE PROSECUTOR TO PAY COSTS FOR MALICIOUS PROSECUTION WITHOUT PROBABLE CAUSE. The name of a person who voluntarily appears before a judge, magistrate or grand jury to prosecute a person in a criminal action, either for a misdemeanor or felony, shall be endorsed upon the complaint, information, or indictment as a private prosecutor. If it is found by a

judge, magistrate or court trying the action or hearing the proceeding that the prosecution is malicious or without probable cause, those facts shall be entered upon the record in the action or proceeding by the judge, magistrate or court. Upon making the entry, the judge, magistrate or court shall immediately render judgment against the private prosecutor for the costs and disbursements of the action or proceeding, which may be enforced by execution in the same manner as a judgment in a civil action.

- * Sec. 17. AS 12.55.030 is amended to read:

Sec. 12.55.030. DISCHARGE OF INDIGENTS IMPRISONED FOR NONPAYMENT OF FINE. When an indigent defendant sentenced to be imprisoned and to pay a fine has been confined in prison 30 days solely for the nonpayment of the fine, the defendant may make application in writing to a judge or magistrate in the district where he is imprisoned, setting out his inability to pay the fine, and, after notice to the district attorney, the judge or magistrate shall proceed to hear and determine the matter. If on examination it appears to him that the defendant is unable to pay the fine and that he has no property exceeding \$50 in value, except property which is by law exempt from being taken on execution for debt, the judge or magistrate shall administer to him the following oath: "I do solemnly swear that I do not have any property, real or personal, to the amount of \$50, except property which is by law exempt from being taken on civil process for debt, and that I have no property in any way conveyed or concealed or any way disposed of for my future use or benefit. So help me God." The judge or magistrate shall discharge the defendant after he takes the oath.

- * Sec. 18. AS 12.60.050 is amended to read:

Sec. 12.60.050. EXAMINATION OF COMPLAINANT AND WITNESSES. When the complaint is brought, the judge or magistrate shall examine the complainant and require him to sign the complaint under oath, and take signed statements under oath of any witnesses he produces.

- * Sec. 19. AS 12.60.060 is amended to read:

Sec. 12.60.060. ARREST. If it appears that there is good reason to fear the commission of the crime threatened by the person complained of, the judge or magistrate shall have the person complained of arrested and immediately brought before him.

- * Sec. 20. AS 12.60.070 is amended to read:

Sec. 12.60.070. EXAMINATION OF CHARGE. When the person complained of appears or is brought before the judge or magistrate, if the charge in the complaint is controverted, the judge or magistrate may subpoena witnesses, hear any statement to the charges made by the person complained of, and all other testimony.

- * Sec. 21. AS 12.60.080 is amended to read:

Sec. 12.60.080. ADJOURNMENT OF EXAMINATION. The judge or magistrate may adjourn the examination and commit the person complained of, or take bail or a deposit of money in lieu thereof.

- * Sec. 22. AS 12.60.100 is amended to read:

Sec. 12.60.100. REQUIREMENT OF UNDERTAKING. If there is good reason to fear the commission of the crime, the person complained of may be required to enter into an undertaking in a sum not exceeding \$2,000 as the judge or magistrate may direct, with one or more sufficient sureties, to keep the peace toward the people of the state and particularly toward the complainant. The undertaking is valid and binding for not more than one year and may, upon the renewal of the action, be extended for an additional period of not more than one year, or a new undertaking required.

- * Sec. 23. AS 12.60.110 is amended to read:

Sec. 12.60.110. DISCHARGE UPON GIVING UNDERTAKING. If the undertaking is given, the party complained of shall be discharged. If he does not give it, the judge or magistrate shall commit him to the custody of a peace officer.

- * Sec. 24. AS 12.60.120 is amended to read:

Sec. 12.60.120. SECURITY WHERE CRIME COMMITTED OR THREATENED BEFORE COURT, JUDGE OR MAGISTRATE. A person who, in the presence of a court, judge or magistrate, assaults or threatens to assault another, or to commit an offense against his property, or who contends with another with angry words to the disturbance of the peace may be ordered by the court, judge or magistrate without warrant or other proof to give security as provided in this chapter and, if he omits to do so, may be committed.

- * Sec. 25. AS 12.60.130 is amended to read:

Sec. 12.60.130. DISCHARGE UPON GIVING UNDERTAKING AFTER COMMITMENT. If the person complained of is committed for not giving the undertaking required, he may be discharged by any judge or magistrate upon giving the undertaking.

- * Sec. 26. AS 12.60.180 is amended to read:

Sec. 12.60.180. UNLAWFUL OR RIOTOUS ASSEMBLY. Where three or more persons, whether armed or not, are unlawfully or riotously assembled, a district judge, magistrate, peace officer, or the chief executive officer of a city, town, village, or settlement shall go among the persons assembled, or as near to them as he can with safety, and command them in the name of the state to disperse.

- * Sec. 27. AS 12.60.190 is amended to read:

Sec. 12.60.190. ARREST ON FAILURE TO DISPERSE AND COMMANDING AID. If the persons assembled do not

Immediately disperse, the district judges, magistrates and officers shall arrest them. Any two of the officers mentioned in sec. 180 of this chapter may command the aid of a sufficient number of persons, armed or otherwise, as may be necessary, and may proceed in the manner as in their judgment may be most expedient to disperse the assembly and arrest the offenders.

- * Sec. 28. AS 12.60.200 is amended to read:

Sec. 12.60.200. PERSON REFUSING TO AID OFFICERS AS RIOTER. If a person is commanded by any two of the officers mentioned in sec. 180 of this chapter to give aid, and neglects to do so, he is considered one of the rioters, and may be treated and is punishable accordingly.

- * Sec. 29. AS 12.60.210 is amended to read:

Sec. 12.60.210. OFFICER FAILING TO ACT IS GUILTY OF MISDEMEANOR. If a district judge, magistrate or officer having notice of an unlawful or riotous assembly, mentioned in sec. 180 of this chapter, neglects to proceed to the place of assembly, or as near as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

- * Sec. 30. AS 12.60.220 is amended to read:

Sec. 12.60.220. GUILT WHERE DEATH ENSUES. If, in the effort to suppress or disperse any unlawful or riotous assembly, or to arrest or detain any of the persons engaged in the assembly, any of the rioters or other persons then present as spectators or otherwise are killed or wounded, the district judge, magistrate and officers and persons acting in their aid are guiltless of the killing or wounding. However, if a district judge, magistrate or officer or person acting in their aid is killed or wounded, all the persons unlawfully engaged in the assembly are guilty of the killing or wounding.

- * Sec. 31. AS 12.60.240 is amended to read:

Sec. 12.60.240. PAYMENT OF REWARD. The Department of Revenue shall pay all claims for rewards upon certificate by a judge or clerk of the superior court, showing that the claimant has lodged information that resulted in an arrest and conviction under the provisions of sec. 230 of this chapter.

- * Sec. 32. AS 12.75.140 is amended to read:

Sec. 12.75.140. ADMISSION TO BAIL. A person prosecuting a writ of habeas corpus may, at any time after the writ is allowed, be admitted to bail by the court allowing the writ, or by another judge or magistrate designated by that court or judge, pending the hearing upon the writ and the final order of the court and, in case of appeal, during the pendency of the appeal and until the final order of the appellate court. The bail shall be by written undertaking and executed as bail upon

arrest, and the undertaking shall be conditioned that the person so admitted to bail shall appear in the designated court or before the designated judge or magistrate whenever required, and shall at all times render himself amenable to the order or process of that court, judge, or magistrate, and that if he fails to perform either of those conditions, the surety or sureties on the undertaking will pay to the state the sum in which that person is so admitted to bail.

* Sec. 33. AS 22.15.080(3) is amended to read:

(3) the judge or magistrate is disqualified from acting, but if another judge or magistrate is assigned to try the action, no change of place of trial need be made;

* Sec. 34. AS 22.20.140(2) is amended to read:

(2) "district courts" includes sessions presided over by a magistrate;