

Introduced: 1/25/66
Referred: Judiciary

BY JACKSON, JOSEPHSON,
TAYLOR, KERTTULA, BALONE,
SASSARA AND GUESS

1 IN THE HOUSE

2 HOUSE BILL NO. 317

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the release of persons
7 in criminal actions by bail; and providing
8 for an effective date."

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

10 * Section i. AS 12.30 is repealed and reenacted to read:

11 Sec. 12.30.010. BAIL BEFORE CONVICTION IS MATTER OF
12 RIGHT. The defendant in a criminal proceeding is entitled
13 to be admitted to bail before conviction as a matter of
14 right.

15 Sec. 12.30.020. RELEASE BEFORE TRIAL. (a) A person
16 charged with an offense shall, at his first appearance be-
17 fore a judicial officer, be ordered released pending trial
18 on his personal recognizance or upon the execution of an
19 unsecured appearance bond in an amount specified by the judi-
20 cial officer unless the officer determines that the release
21 of the person will not reasonably assure the appearance of
22 the person as required.

23 (b) If a judicial officer determines under (a) of this
24 section that the release of a person will not reasonably
25 assure the appearance of the person, the judicial officer
26 may

27 (1) place the person in the custody of a desig-
28 nated person or organization agreeing to supervise him;

29 (2) place restrictions on the travel, association,

1 or place of abode of the person during the period of re-
2 lease;

3 (3) require the person to return to custody after
4 daylight hours on designated conditions;

5 (4) require the execution of an appearance bond
6 in a specified amount and the deposit in the registry of
7 the court, in cash or other security, a sum not to exceed
8 10 per cent of the amount of the bond; the deposit to be
9 returned upon the performance of the condition of release;

10 (5) require the execution of a bail bond with
11 sufficient solvent sureties or the deposit of cash; or

12 (6) impose any other condition considered reason-
13 ably necessary to assure the defendant's appearance as re-
14 quired.

15 (c) In determining the conditions of release under (b)
16 of this section, the judicial officer shall take into account

17 (1) the nature and circumstances of the offense
18 charged,

19 (2) the weight of the evidence against the
20 person,

21 (3) the person's family ties,

22 (4) the person's employment,

23 (5) the person's financial resources,

24 (6) the person's character and mental condition,

25 (7) the length of the person's residence in the
26 community,

27 (8) the person's record of convictions,

28 (9) the person's record of appearance at court
29 proceedings,

1 (10) the flight of the accused to avoid prosecu-
2 tion or his failure to appear at court proceedings.

3 (d) A judicial officer authorizing the release of a
4 person under this section shall issue an order containing a
5 statement of the conditions imposed.

6 (e) The judicial officer shall inform the person of
7 the penalties which may be imposed for a violation of the
8 conditions of his release and advise him that a warrant
9 for his arrest will be issued immediately upon a violation.

10 (f) A person who remains in custody 24 hours after his
11 appearance before a judicial officer because of his inabil-
12 ity to meet the conditions of release shall, upon applica-
13 tion, be entitled to have the conditions reviewed by the
14 judicial officer who imposed them. If the judicial officer
15 who imposed the conditions of release is not available, any
16 other judicial officer in the district may review the condi-
17 tions. If the conditions are not amended and the person
18 remains in custody, the judicial officer shall set out in
19 writing the reasons for requiring the conditions imposed.

20 (g) A judicial officer who orders the release of a
21 person on a condition specified in (b) of this section may
22 at any time amend his order to impose additional or different
23 conditions of release, or to release the person under (a)
24 of this section.

25 (h) Information offered or introduced at a hearing
26 before a judicial officer to determine the conditions of
27 release need not conform to the rules governing the admis-
28 sibility of evidence in a court of law.

29 Sec. 12.30.030. APPEAL FROM CONDITIONS OF RELEASE. (a)

1 A person who remains in custody after a review provided for
2 in sec. 20(f) of this chapter may move the court having
3 original jurisdiction over the offense to amend the order.
4 The motion shall be determined promptly.

5 (b) When a court denies a motion under (a) of this
6 section or conditions of release have been imposed by the
7 court having original jurisdiction over the offense, an
8 appeal may be taken to the court having appellate jurisdic-
9 tion over the court denying the motion or imposing the
10 conditions subject to the rules of the Supreme Court of
11 Alaska, and the Magistrate Rules of Criminal Procedure.
12 The order of the lower court shall be affirmed unless it is
13 found that the lower court abused its discretion. If it is
14 held that the lower court did abuse its discretion, the
15 appellate court may modify, vacate, set aside, reverse, re-
16 mand the action for further proceeding, or remand the action
17 directing entry of the appropriate order, which may include
18 ordering the person to be released under sec. 20(a) of this
19 chapter. The appeal shall be determined promptly.

20 Sec. 12.30.040. RELEASE AFTER CONVICTION. A person
21 who has been convicted of an offense and is awaiting sentence,
22 or who has filed an appeal shall be treated in accordance
23 with the provisions of sec. 20 of this chapter unless the
24 court has reason to believe that no one or more conditions of
25 release will reasonably assure the appearance of the person
26 as required or prevent the person from posing a danger to
27 other persons and the community. If that determination is
28 made, the person may be remanded to custody. This section
29 does not affect the right of a person appealing from a

1 judgment of conviction from a magistrate court to the superior
2 court to be released on bail pending appeal under Rule 2(c)
3 of the Magistrate Rules of Criminal Procedure.

4 Sec. 12.30.050. RELEASE OF MATERIAL WITNESSES. If
5 it appears by affidavit that the testimony of a person is
6 material in a criminal proceeding, and it is shown that it
7 may become impracticable to secure his presence by subpoena,
8 a judicial officer shall impose conditions of release under
9 sec. 20 of this chapter. No material witness shall be de-
10 tained because of inability to comply with any condition of
11 release if the testimony of the witness can adequately be
12 secured by deposition. Release may be delayed for a
13 reasonable period of time for the deposition of the witness
14 to be taken.

15 Sec. 12.30.060. VIOLATION OF CONDITIONS. A person
16 released under the provisions of this chapter who wilfully
17 fails to appear before a court or judicial officer as re-
18 quired shall incur a forfeiture of any security which was
19 given or pledged for his release and

20 (1) if he was released in connection with a
21 charge of felony, or while awaiting sentence or pending
22 appeal after conviction of an offense, is guilty of a felony
23 and upon conviction is punishable by a fine of not more than
24 \$5,000 or by imprisonment for not more than five years, or
25 by both; or

26 (2) if he was released in connection with a charge
27 of misdemeanor, is guilty of a misdemeanor and upon convic-
28 tion is punishable by a fine of not more than the maximum
29 provided for the misdemeanor or by imprisonment for not more

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than one year, or by both; or

(3) if he was released for appearance as a material witness, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both.

Sec. 12.30.070. CONTEMPT. Nothing in this chapter shall prevent a court from exercising its power to punish for contempt.

Sec. 12.30.080. DEFINITIONS. In secs. 10 - 70 of this chapter

(1) "judicial officer" means a person authorized to release a person pending trial, sentencing, or pending appeal;

(2) "offense" means any criminal offense.

* Sec. 2. AS 12.50.090 - 12.50.100 is repealed.

* Sec. 3. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.