

Introduced: 1/24/86
Referred: Judiciary

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

SENATE BILL NO. 361

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to powers of magistrates in the
7 extradition of fugitives."

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

9 * Section 1. AS 12.70.090 is amended to read:

10 Sec. 12.70.090. RIGHTS OF ACCUSED PERSON AND APPLICATION FOR
11 WRIT OF HABEAS CORPUS. A person arrested on [UPON] a warrant may not
12 be delivered over to the agent that [WHOM] the executive authority
13 demanding the person has [SHALL HAVE] appointed to receive the person
14 unless the person is first taken immediately before a judge or magis-
15 trate [OF THE SUPERIOR COURT OR A DISTRICT JUDGE] of this state, who
16 shall inform the person of the demand made for the person's surrender,
17 and of the crime with which the person is charged, and that the person
18 has the right to demand and procure legal counsel. If the prisoner or
19 the prisoner's counsel states a desire to test the legality of the
20 arrest, the judge or magistrate [OF THE SUPERIOR COURT OR THE DISTRICT
21 JUDGE] shall fix a reasonable time to be allowed the prisoner within
22 which to apply for a writ of habeas corpus. When that writ is applied
23 for, notice of the application [THEREOF] and of the time and place of
24 hearing on it [THEREON] shall be given to the prosecuting attorney of
25 the judicial district in which the arrest is made and in which the
26 accused is in custody, and to the agent of the demanding state.

27 * Sec. 2. AS 12.70.120 is amended to read:

28 Sec. 12.70.120. ARREST PRIOR TO REQUISITION. When a person
29 within this state is charged on the oath of a credible person before a

1 judge or magistrate [OF THE SUPERIOR COURT OR DISTRICT JUDGE] of this
2 state with the commission of a crime in another state and, except in
3 cases arising under AS 12.70.050, with having fled from justice, or
4 with having been convicted of a crime in that state and having escaped
5 from confinement, or having broken the terms of bail, probation, or
6 parole; or whenever complaint is made before a judge or magistrate [OF
7 THE SUPERIOR COURT OR DISTRICT JUDGE] in this state setting out
8 [FORTH] on the affidavit of a credible person in another state that a
9 crime has been committed in the other state and that the accused has
10 been charged in that state with the commission of the crime and,
11 except in cases arising under AS 12.70.050, has fled from justice, or
12 with having been convicted of a crime in that state and having escaped
13 from confinement, or having broken the terms of bail, probation, or
14 parole and is believed to be in this state, the judge or magistrate
15 [OF THE SUPERIOR COURT OR DISTRICT JUDGE] shall issue a warrant di-
16 rected to a peace officer commanding the officer to apprehend the
17 person named in the warrant, wherever that person may be found in this
18 state, and to bring that person before the same or another judge or
19 magistrate [OF THE SUPERIOR COURT OR DISTRICT JUDGE] who is available
20 in or convenient of access to the place where the arrest may be made,
21 to answer the charge or complaint and affidavit. A certified copy of
22 the sworn charge or complaint or affidavit upon which the warrant is
23 issued shall be attached to the warrant.

24 * Sec. 3. AS 12.70.130 is amended to read:

25 Sec. 12.70.130. ARREST WITHOUT WARRANT. The arrest of a person
26 may also be lawfully made by a peace officer or a private person
27 without a warrant upon reasonable information that the accused stands
28 charged in the courts of another state with a crime punishable by
29 death or imprisonment for a term exceeding one year, but when [SO]

1 arrested the accused must be taken before a [SUPERIOR COURT] judge or
2 magistrate [DISTRICT JUDGE] without unnecessary delay and, in any
3 event, within 24 hours after arrest, including Sundays and holidays,
4 and complaint shall be made against the accused under oath setting out
5 [FORTH] the ground for the arrest as in AS 12.70.120. Thereafter the
6 answer of the accused shall be heard as if the accused had been ar-
7 rested on a warrant.

8 * Sec. 4. AS 12.70.140 is amended to read:

9 Sec. 12.70.140. COMMITMENT TO AWAIT REQUISITION. If at the
10 examination before the [SUPERIOR COURT] judge or magistrate [DISTRICT
11 JUDGE] it appears that the person held is the person charged with
12 having committed the crime alleged and, except in cases arising under
13 AS 12.70.050, that the person has fled from justice, the [SUPERIOR
14 COURT] judge or magistrate [DISTRICT JUDGE] shall commit the person to
15 jail for not more than 30 days, as will enable the arrest of the
16 accused to be made under a warrant of the governor on a requisition of
17 the executive authority of the state having jurisdiction of the of-
18 fense, unless the accused gives bail as provided in AS 12.70.150, or
19 until legally discharged. The commitment by the judge or magistrate
20 [OF THE SUPERIOR COURT OR BY THE DISTRICT JUDGE] shall be by a warrant
21 that [WHICH] shall recite the following:

- 22 (1) the accusation against the accused;
- 23 (2) the fact that the commitment is for a time as will
24 enable the arrest of the accused to be made under a warrant of the
25 governor of this state; and
- 26 (3) that in any event the commitment shall be for not more
27 than 30 days.

28 * Sec. 5. AS 12.70.150 is amended to read:

29 Sec. 12.70.150. BAIL. Unless the offense with which the

1 prisoner is charged is shown to be an offense punishable by death
2 under the laws of the state in which it was committed, a [SUPERIOR
3 COURT] judge or magistrate [DISTRICT JUDGE] in this state shall admit
4 the prisoner to bail by bond or undertaking, with sufficient sureties,
5 and in a sum the judge or magistrate considers proper, conditioned
6 upon the prisoner's appearance before the judge or magistrate at a
7 time specified in the bond or undertaking and for the prisoner's
8 surrender, to be arrested on [UPON] the warrant of the governor of
9 this state.

10 * Sec. 6. AS 12.70.160 is amended to read:

11 Sec. 12.70.160. EXTENSION OF TIME OF COMMITMENT. If the accused
12 is not arrested under warrant of the governor by the expiration of the
13 time specified in the warrant, bond, or undertaking, a judge or magis-
14 trate [OF THE SUPERIOR COURT OR DISTRICT JUDGE] may discharge the
15 accused or may recommit the accused for a further period of not more
16 than 60 days, or a judge or magistrate [OF THE SUPERIOR COURT OR
17 DISTRICT JUDGE] may again take bail for the appearance and surrender
18 of the accused, as provided in AS 12.70.150, but within a period of
19 not more than 60 days after the date of the new bond or undertaking.

20 * Sec. 7. AS 12.70.170 is amended to read:

21 Sec. 12.70.170. FORFEITURE OF BAIL. If the prisoner is admitted
22 to bail and fails to appear and surrender according to the conditions
23 of the bond or undertaking, the [SUPERIOR COURT] judge or magistrate
24 [DISTRICT JUDGE], by proper order, shall declare the bond or undertak-
25 ing forfeited, and order the immediate arrest of the prisoner if the
26 prisoner is within this state. Recovery may be had on the bond or
27 undertaking in the name of the state as in the case of other bonds or
28 undertakings given by the accused in criminal proceedings within this
29 state.

1 * Sec. 8. AS 12.70.220(c) is amended to read:

2 (c) The application shall be verified by affidavit, shall be
3 executed in duplicate and shall be accompanied by two certified copies
4 of the indictment returned, or information and affidavit filed, or the
5 complaint made to the [SUPERIOR COURT] judge or magistrate [DISTRICT
6 JUDGE], stating the offense with which the accused is charged, or of
7 the judgment of conviction or of the sentence. The attorney general or
8 the prosecuting attorney, the parole or probation authority, or the
9 commissioner of corrections may also attach further affidavits and
10 other documents in duplicate [HE DEEMS PROPER] to be submitted with
11 the application. One copy of the application, with the action of the
12 governor indicated by endorsement on the application, and one of the
13 certified copies of the indictment, complaint, information and affida-
14 vits, or judgment or conviction or sentence shall be filed in the
15 office of the governor to remain of record in that office. The other
16 copies of all papers shall be forwarded with the governor's requis-
17 tion.

18 * Sec. 9. AS 12.70.240 is amended to read:

19 Sec. 12.70.240. WRITTEN WAIVER OF EXTRADITION PROCEEDINGS. (a)
20 A person arrested in this state charged with having committed a crime
21 in another state or alleged to have escaped from confinement, or
22 broken the terms of bail, probation, or parole may waive the issuance
23 and service of the warrant provided for in AS 12.70.060 and 12.70.070
24 and all other procedure incidental to extradition proceedings, by
25 executing or subscribing in the presence of a [SUPERIOR COURT] judge
26 or magistrate [DISTRICT JUDGE] within this state a writing which
27 states that the person consents to return to the demanding state;
28 however, before the waiver is executed or subscribed by that person,
29 the judge or magistrate shall inform that person of the right to the

1 issuance and service of a warrant of extradition and of the right to
2 apply for a writ of habeas corpus as provided for in AS 12.70.090.

3 (b) If and when that consent is executed, it shall immediately
4 be forwarded to the office of the governor of this state and filed
5 therein. The judge or magistrate shall direct the officer having the
6 person in custody to deliver immediately that person to the duly
7 accredited agent of the demanding state, and shall deliver or cause to
8 be delivered to the agent a copy of the consent.

9 (c) Nothing in this section is considered to limit the rights of
10 the accused person to return voluntarily and without formality to the
11 demanding state, nor shall this waiver procedure be considered
12 [DEEMED] to be an exclusive procedure or to limit the powers, rights,
13 or duties of the officers of the demanding state or of this state.

14 * Sec. 10. AS 22.15.120 is amended to read:

15 Sec. 22.15.120. LIMITATIONS ON PROCEEDINGS WHICH MAGISTRATE MAY
16 HEAR. A magistrate shall preside only in cases and proceedings under
17 AS 22.15.040, 22.15.100, and 22.15.110, and as follows,

18 (1) for the recovery of money or damages only when the
19 amount claimed, exclusive of costs, interest, and attorney fees, does
20 not exceed \$1,000;

21 (2) for the recovery of specific personal property when the
22 value of the property claimed and the damages for the detention do not
23 exceed \$1,000;

24 (3) for the recovery of a penalty or forfeiture, whether
25 given by statute or arising out of contract, not exceeding \$1,000;

26 (4) to give judgment without action upon the confession of
27 the defendant for any of the cases specified in this section, except
28 for a penalty or forfeiture imposed by statute;

29 (5) to give judgment of conviction upon a plea of guilty by

1 the defendant in a criminal proceeding within the jurisdiction of the
2 district court;

3 (6) to hear, try, and enter judgments in all cases involv-
4 ing misdemeanors, if the defendant consents in writing that the magis-
5 trate may try the case;

6 (7) to hear, try and enter judgments in all cases involving
7 infractions under AS 28 and violations of ordinances of political
8 subdivisions;

9 (8) for the extradition of fugitives as authorized under
10 AS 12.70 [REPEALED].