

Saving clause.

tion, subdivision, paragraph, sentence or clause of this Act is held invalid or unconstitutional, such decision shall not affect the remaining portions of this Act.

Definition.

Section 21. Definitions. The word "filing" or "filings" means the respective information or documents which must be filed by insurers and rating organizations as hereinbefore respectively specified. The words "casualty insurance" and the words "fire, marine and inland marine insurance" are used in this Act in their generally accepted trade sense.

Section 22. Supplements Present Laws. This Act shall be construed to supplement and not to repeal Chapter 22, Alaska Session Laws 1937, Chapters 47 and 66, Alaska Session Laws 1939, and Chapter 7, Alaska Session Laws 1941, and amendments thereto, except to the extent that the provisions of this Act are in conflict therewith.

Section 23. Effective Date. This Act shall take effect October 1, 1947.

Passed by the House, Mar. 3, 1947.

Passed by the Senate, Mar. 14, 1947.

CHAPTER 59

AN ACT

[S. B. 34]

To amend Criminal Procedure in Alaska by amending Sections 5152, 5169, 5243, 5261, 5262, 5278, 5279, 5281, 5294, 5321, 5336, 5347, 5369, 5374, 5381, 5391, 5414, 5457b, 5457c, 5457d, 5464, 5719, 5742, 5743, 5756, Compiled Laws of Alaska, 1933; and to repeal Section 5241, Section 5267, to 5277, inclusive, and Sections 5370 and 5371, Compiled Laws of Alaska, 1933.

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. That Section 5152, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Section 5152. FELONIES, HOW PROSECUTED. No person can be tried for commission of a felony but upon the indictment of a grand jury; provided, that an offense which may be punished by imprisonment for a term exceeding one year or at hard labor may be prosecuted by information if the defendant, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment. An offense punishable by death shall be prosecuted by indictment.

Prosecutions of felonies.

Section 2. That Section 5169, Compiled Laws of Alaska, 1933 be, and the same is hereby amended to read as follows:

Sec. 5169. APPOINTMENT OF FOREMAN AND DEPUTY FOREMAN. From the persons accepted as grand jurors, the court shall appoint a foreman and another to be deputy foreman. The foreman shall have power to administer oaths and affirmations to witnesses appearing before the grand jury, and shall sign all indictments.

Court appoints foreman.

Section 3. That Section 5242, Compiled Laws of Alaska, 1933, is hereby amended to read as follows:

Sec. 5242. IF DEFENDANT REFUSE TO PLEAD, PLEA OF NOT GUILTY TO BE ENTERED. If the defendant, within the time required, refuse to plead to the indictment, the

Refusal to plead.

court must direct that a plea of not guilty be entered for him.

Section 4. That Section 5243, Compiled Laws of Alaska, 1933, is hereby amended to read as follows:

Sec. 5243. PERSONAL APPEARANCE AT ARRAIGNMENT, WHEN NECESSARY. When the indictment is for a felony the defendant must be personally present at the arraignment, but if it be for a misdemeanor only, and the defendant has been held to answer to the charge, the court, with the written consent of the defendant, may permit appearance by counsel.

Personal appearance for felony arraignment.

Section 5. That Section 5261, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5261. INDICTMENT, WHEN SET ASIDE ON MOTION. The indictment must be set aside by the court, upon the motion of the defendant, in either of the following cases:

Indictment set aside on motion.

First. When it is not found, indorsed and presented as prescribed in Chapter 177, or if it does not substantially conform to the requirements of Chapter 178.

Second. When the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment or indorsed thereon.

Section 6. That Section 5262, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5262. MOTION TO SET ASIDE, WHEN MADE AND HEARD. The motion to set aside the indictment shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter. The motion shall include all defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

Making of motion to set aside.

Section 7. That Section 5278, Compiled Laws of Alaska, 1933, be, and the same is hereby amended by adding another paragraph thereto to read as follows:

Fourth. Nolo Contendere, with the consent of the court.

Section 8. That Section 5279, Compiled Laws of Alaska, 1933, be, and the same is hereby amended by adding the following paragraph thereto:

Fourth. If he pleads nolo contendere: "The defendant pleads nolo contendere with the consent of the court."

Section 9. That Section 5281, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5281. PLEA OF GUILTY, WHEN AND HOW WITHDRAWN. A motion to withdraw a plea of guilty or of nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct

Withdrawing plea of guilty.

manifest injustice, the court, after sentence, may set aside the judgment of conviction and permit the defendant to withdraw his plea.

Section 10. That Section 5294, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5294. WHEN DEFENDANT MUST APPEAR IN PERSON ON TRIAL. The defendant shall be present at every stage of the trial except in prosecutions for offenses not punishable by death, the defendant's voluntary absence after the trial has been commenced in his presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by counsel for all purposes. In prosecutions for offenses punishable by fine or by imprisonment for not more than one year or both, the court, with the written consent of the defendant, may permit plea and trial in the defendant's absence.

Appearance by defendant.

Section 11. That Section 5321, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5321. PEREMPTORY CHALLENGES. If the offense charged is punishable by death, each side is entitled to 20 peremptory challenges. If the offense charged is punishable by imprisonment for more than one year, the government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges. If the offense charged is punishable by imprisonment for not more than one year or by fine or both, each side is entitled to 3 peremptory challenges. If there is more than one defendant, the court may allow the de-

Amount of peremptory challenges.

defendants additional peremptory challenges and permit them to be exercised separately or jointly.

Section 12. That Section 5336, Compiled Laws of Alaska, 1933, as amended by Chapter 42, Session Laws of Alaska, 1937, be, and the same is hereby amended to read as follows:

Sec. 5336. ORDER OF PROCEEDINGS ON TRIAL. After the jury is impaneled and sworn, the trial shall proceed in the following order:

Order of proceedings prescribed for trial.

First. A counsel for the United States must state the case of the prosecution, and may briefly state the evidence by which he expects to sustain it.

Second. The defendant, or his counsel, must then state his defense, and may briefly state the evidence he expects to offer in support of it.

Third. The United States must first produce its evidence; and the defendant will then produce his evidence.

Fourth. The United States will then be confined to rebutting evidence, unless the court, for good reasons, in furtherance of justice, permit it to offer evidence in chief.

Fifth. When the evidence is concluded, or at such earlier time during the trial as the court reasonable directs, any party may request instructions to the jury on points of law, which shall be given or refused by the court.

Sixth. Unless the case be submitted without argument, the counsel for the United States shall commence, the defendant or his counsel

follow, and the counsel for the United States conclude, the argument to the jury.

Seventh. At the conclusion of the arguments, the court shall charge the jury; which charge shall be reduced to writing by the court, and a copy of such instructions shall be given to the counsel for each of the parties plaintiff and defendant; provided, however, at the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to the adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. Such charge or charges, or any other charge or instructions provided for in this section, when so written and given, shall in no case be orally qualified, modified or in any other manner explained to the jury by the court; and all written charges and instructions shall be taken by the jury in their retirement and returned with their verdict into court and shall remain on file with papers of the case.

Section 13. That Section 5347, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5347. LAW OF EVIDENCE IN CRIMINAL CASES. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by law. The admissibility of evidence and the competency and privileges of witnesses shall be governed, except otherwise provided by law, by the principles of the common law as they may be interpreted by

the courts of the United States in the light of reason and experience.

Section 14. That Section 5369, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5369. EXCEPTIONS UNNECESSARY. Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary, it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

Exceptions to rulings or orders of the court.

Section 15. That Section 5374, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5374. MOTION FOR NEW TRIAL. The court may grant a new trial to a defendant if required in the interest of justice. If trial was by the court without a jury, the court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending, the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within five days after verdict or finding of guilty or within such further time as the court may fix during the five-day period.

New trial in motion.

New evidence.

Time limit.

Section 16. That Section 5381, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5381. MOTION IN ARREST OF JUDGMENT. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal. It may be founded on one or all of the following grounds and not otherwise:

Motion in arrest
of judgment.

First. That the grand jury by which the indictment was found had no legal authority to inquire into the crime charged, because the same is not triable within the Territory.

Grand jury
lacked power.

Second. That the facts stated do not constitute a crime.

No crime.

Third. That the defendant has been formerly convicted or acquitted of the same offense.

Prior acquittal
or conviction.

The motion must be made within the time allowed to file a motion for a new trial, and both such motions may be made together, and heard and decided at once or separately, as the court may direct.

Section 17. That Section 5391, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5391. DEFENDANT MUST BE PRESENT, WHEN. For the purpose of giving judgment, if the conviction be for a felony, the defendant must be personally present; but if it be for a misdemeanor, the court, with defend-

Defendant
present for
felony judgment.

ant's written consent, may permit judgment to be given in his absence.

Section 18. That Section 5414, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5414. JUDGMENT OF IMPRISONMENT OR FOR A FINE, HOW EXECUTED.

When the judgment is that the defendant be imprisoned until a fine be paid, the judgment must be executed by the marshal. Provided, however, that when an indigent defendant, sentenced to be imprisoned and to pay a fine, has been confined in prison thirty days solely for the nonpayment of such fine, such defendant may make application in writing to any commissioner in the district where he is imprisoned, setting forth his inability to pay such fine, and, after notice to the district attorney, the commissioner shall proceed to hear and determine the matter. If on examination it shall appear to him that such convicted person is unable to pay such fine and that he has not any property exceeding \$20 in value, except such as is by law exempt from being taken on execution for debt, the commissioner shall administer to him the following oath: "I do solemnly swear that I have not any property, real or personal, to the amount of \$20, except such as is by law exempt from being taken on civil process for debt by the laws of Alaska; and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit. So help me God." Upon taking such oath, such convicted person shall be discharged; and a commissioner shall give to the keeper of the jail a certificate setting forth the facts.

Indigent
defendant.

Inability to pay
fine.

Section 19. That Section 5457b, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5457b. WHEN DEFENDANT MAY BE ADMITTED TO BAIL. A person arrested for an offense not punishable by death shall be admitted to bail. A person arrested for an offense punishable by death may be admitted to bail by any court or judge authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense.

Admission to bail.

Section 20. That Section 5457c, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5457c. WHEN DEFENDANT ADMITTED TO BAIL BEFORE CONVICTION, AS A MATTER OF RIGHT. If the charge be for an offense not punishable by death, the defendant, before conviction, is entitled to be admitted to bail, as a matter of right.

When bail is a matter of right.

Section 21. That Section 5457d, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5457d. WHEN DEFENDANT MAY BE ADMITTED TO BAIL AFTER CONVICTION AND DURING EXAMINATION. Bail may be allowed pending appeal or certiorari only if it appears that the case involves a substantial question which should be determined by the appellate court. Bail may be allowed by the trial judge or by the appellate court or by any judge thereof or by the circuit justice. The court or the judge or justice allowing bail may at any

Admission to bail on appeal.

time revoke the order admitting the defendant to bail; and as a matter of discretion, a defendant may be admitted to bail for his appearance from day to day before the magistrate, on the examination of the charge before being held to answer, or discharged.

Section 22. That Section 5464, Compiled Laws of Alaska, 1933, be, and the same is hereby amended by adding thereto a new paragraph as follows:

The following provisions shall apply to persons charged with a Federal offense in a district without the Territory of Alaska, and arrested within the Territory of Alaska;

(1) APPEARANCE BEFORE COMMISSIONER OR JUDGE. The person arrested shall be taken without unnecessary delay before the nearest available commissioner or a nearby judge of the United States in the district in which the arrest was made.

Appearance
of defendant.

(2) STATEMENT BY COMMISSIONER OR JUDGE. The commissioner or judge shall inform the defendant of the charge against him, of his right to retain counsel and of his right to have a hearing or to waive a hearing by signing a waiver before the commissioner or judge. The commissioner or judge shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him, shall allow him reasonable opportunity to consult counsel and shall admit him to bail.

Defendant
notified of
charge.

Right to counsel.

(3) HEARING; WARRANT OF REMOVAL OR DISCHARGE. The defendant shall not be called upon to plead. If the defendant waives

Waiving of
hearing.

hearing, the judge shall issue a warrant of removal to the district where the prosecution is pending. If the defendant does not waive hearing, the commissioner or judge shall hear the evidence. If the commissioner hears the evidence, he shall report his findings and recommendations to the judge. At the hearing the defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. If it appears from the commissioner's report or from the evidence adduced before the judge that sufficient ground has been shown for ordering the removal of the defendant, the judge shall issue a warrant of removal to the district where the prosecution is pending. Otherwise he shall discharge the defendant. If the prosecution is by indictment, a warrant of removal shall issue upon production of a certified copy of the indictment and upon proof that the defendant is the person named in the indictment. If the prosecution is by information or complaint, a warrant of removal shall issue upon the production of a certified copy of the information or complaint and upon proof that there is probable cause to believe that the defendant is guilty of the offense charged. If a warrant of removal is issued, the defendant shall be admitted to bail for appearance in the district in which the prosecution is pending. After a defendant is held for removal or is discharged, the papers in the proceeding and any bail taken shall be transmitted to the clerk of the district court in which the prosecution is pending.

Warrant of
removal.

Admission
to bail.

Arrest without
warrant.

(4) HEARING AND REMOVAL ON ARREST WITHOUT A WARRANT. If a person is arrested without a warrant, the hearing may be continued for a reasonable time, upon a showing of probable cause to believe that he is

guilty of the offense charged; but he may not be removed as herein provided unless a warrant issued in the district in which the offense was committed is presented.

Section 23. That Section 5719, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5719. WITHIN WHAT TIME WARRANT MUST BE EXECUTED AND RETURNED. A search warrant must be executed and returned to the magistrate by whom it was issued within ten days from its date, and unless so executed, is void.

Time limit of
warrant.

Section 24. That Section 5742, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5742. WHEN WARRANT OF ARREST TO ISSUE. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall be issued by the magistrate to any officer authorized by law to execute it. Upon the request of the attorney for the government, a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

When warrant
may be issued.

Section 25. That Section 5743, Compiled Laws of Alaska, 1933, be, and the same is hereby amended in the following respects: By adding the words "AND SUMMONS" to the title thereof, and immediately after the title and before the word "A" adding the sentence: "The

summons shall be in the same form as the warrant hereafter described except that it shall summon the defendant to appear before a Commissioner at a stated time and place. The summons may be served by any person authorized to serve a summons in a civil action."

Section 26. That Section 5756, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Sec. 5756. OFFICER MUST STATE HIS AUTHORITY. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address.

How warrant served.

Section 27. That Section 5241, Section 5267 to 5277, both inclusive, and Section 5370 and 5371, Compiled Laws of Alaska, 1933, be, and they are hereby repealed.

Passed by the Senate, Feb. 20, 1947.

Passed by the House, Mar. 13, 1947.

CHAPTER 60

AN ACT

[S. B. 69]

To amend Chapter 67, Session Laws of Alaska, 1935, relating to fire escapes on school buildings and dormitories.