HOUSE . . . . . No. 5449

The Commonwealth of Massachusetts

House of Representatives, April 30, 1970.

The committee on Bills in the Third Reading, to whom was referred the Bill providing for release on personal recognizance without surety and for a speedy appeal from a refusal to order such release (House, No. 5331), report recommending that the same be amended by the substitution of the accompanying bill resolve (House, No. 5449).

For the committee,

RAYMOND M. LaFONTAINE.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy.

AN ACT PROVIDING FOR RELEASE ON PERSONAL RECOGNIZANCE WITHOUT SURETY AND FOR A SPEEDY APPEAL FROM A REFUSAL TO ORDER SUCH RELEASE.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith for the release on personal recognizance of a person charged with a criminal offense therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 276 of the General Laws is hereby amended by striking out section 58, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: –

Section 58. Any person charged with an offense shall, at his appearance before a justice or a clerk or assistant clerk of the district court, a bail commissioner or master in chancery, be ordered released pending trial on his personal recognizance or on execution of an unsecured appearance bond which shall be in writing signed by said person on forms approved by the chief justice of the district courts, unless said justice, clerk or assistant clerk, bail commissioner or master in chancery determines in the exercise of his discretion that such a release will not reasonably assure the appearance of the person as required. In his determination, said justice, clerk or assistant clerk, bail commissioner or master in chancery shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the accused's family ties, financial resources, character and mental condition, the length of residence in the community, his record of convictions and appearances at court proceedings, or

21 of any previous flight to avoid prosecution, or any previous
22 failure to appear at any court proceeding. Said determination
23 need not be in writing. Said justice, clerk or assistant clerk, bail
24 commissioner or master in chancery authorizing the release of a
25 person on personal recognizance or on execution of an unsecured
26 appearance bond under this act shall inform such person of the
27 penalties provided by section eighty-two A if such person fails
28 without sufficient excuse to appear personally at the specified
29 time and place. Any person authorized to take bail may charge
30 the fees authorized by section twenty-four of chapter two
31 hundred and sixty-two if he goes to the place of detention of the
32 person arrested to make the determination provided for in this
33 section, even though said person arrested is ordered released on
34 his personal recognizance or on execution of an unsecured
35 appearance bond pending trial. Said fees shall not be charged by
36 any clerk or assistant clerk of a district court during regular
37 working hours.
38 Any person aggrieved by the refusal of said justice, clerk or
39 assistant clerk, bail commissioner or master in chancery to
40 authorize his release on personal recognizance or on the execu-
41 tion of an unsecured appearance bond, may petition the superior
42 court for a review of such decision. The justice, clerk or assistant
43 clerk, bail commissioner or master in chancery making such
44 determination shall advise such person of his right to obtain an
45 immediate review of such determination in the superior court. If
46 such person chooses to have a review, he shall be furnished a
47 petition for review, in a form prescribed by the chief justice of
48 the district courts, and upon the execution of said petition and
49 without the issuance of any writ or other process, the sheriff of
50 the county in which the determination was made shall provide for
51 the transportation of the petitioner forthwith, together with the
52 petition for review and all papers relevant thereto, or copies
53 thereof, to the superior court for the county if a justice is then
54 sitting, or to the nearest county in which a justice of the superior
55 court is then sitting. In the event that no justice of the superior
56 court is then sitting, the petitioner shall be retained in custody
57 until the next business day and upon the morning of such day,
58 without the issuance of any writ or other process, the petitioner's

59 custodian shall provide for his transportation to the superior
60 court as hereinbefore required.
61 The petition and such papers shall be delivered to the clerk of
62 the superior court to which the petitioner is transported and
63 upon their receipt such clerk shall give notice to the district
64 attorney for the district in which the determination was made.
65 Said petition shall have priority over any other matter before said
66 justice and he shall, if he finds in his discretion that the petitioner
67 may be released on his personal recognizance or on execution of
68 an unsecured appearance bond, order such release, or he may
69 make any order of bail he deems appropriate revising the amount
70 of the recognizance or the number of sureties thereon, or both.
71 Following a determination of the conditions of release by a
72 justice of the district court, or review by a justice of the superior
73 court, the amount of any recognizance shall not be increased, nor
74 shall any additional surety be required, unless the person making
75 such recognizance shall default thereon or unless the court in its
76 discretion determines that changed circumstances or other factors
77 not previously considered by the court make the present
78 recognizance insufficient to reasonably assure the presence of the
79 defendant, provided, however, that any revision which increases
80 the amount of the recognizance or which requires an additional
81 surety shall be made by an order supplementing rather than
82 replacing any recognizance given pursuant to such initial decision.
83 Any person aggrieved by a failure to comply with any of the
84 requirements of this section may petition the supreme judicial
85 court as provided in section three of chapter two hundred and
86 eleven.

87 SECTION 2. Section 65 of said chapter 276 as so appearing, is
88 hereby amended by striking out the second sentence and inserting
89 in place thereof the following two sentences: –
90 The condition of personal recognizance or an appearance bond,
91 binding any person to appear before a court or justice to answer
92 to a charge against him, shall be so framed as to bind him
93 personally to appear at the time so expressed, and if at that time
94 or thereafter, such person is bound over for trial in the superior
95 court as provided in section thirty of chapter two hundred

96 eighteen, to bind him personally to appear before the superior
97 court at such time as may be prescribed. The condition further
98 shall be so framed as to bind such person personally to appear at
99 any subsequent time to which the case may be continued and, if
100 an appeal is claimed from the decree, sentence or order entered
101 with respect thereto, at all subsequent proceedings in the court or
102 courts having appellate jurisdiction thereof for the purpose of
103 prosecuting such appeal, and so from time to time unless
104 previously surrendered or discharged, until a final decree, sentence
105 or order shall be entered from which no appeal is claimed, and
106 such conditions shall also bind such person to abide such final
107 sentence, order or decree and not depart without leave.

108 SECTION 3. Section 68 of said chapter 276 is hereby amended
109 by striking out the second sentence, as most recently amended by
110 chapter 316 of the acts of 1964, and inserting in place thereof the
111 following sentence: –
112 They shall deliver to the jailer their principal, with a certified
113 copy of the recognizance, and he shall be received and detained
114 by the jailer, but may again be bailed in the same manner as if
115 committed for not finding sureties to recognize for him, provided
116 that the surety making the surrender shall not be accepted as bail
117 if the person surrendered shall again be bailed.