

February 8, 1967  
Judiciary - Pass 3-17  
" 5-15, Pass as amended 6-2

House File 128  
By JOHNSTON, DUFFY, HICKLIN,  
DUNTON, WOLFE and FISHER  
of Greene

Passed House, Date 5-11-67 Passed Senate, Date 6-14-67  
Vote: Ayes 85 Nays 0 Vote: Ayes 40 Nays 0

• Approved \_\_\_\_\_

## A BILL FOR

*House passed as amended by the  
Senate and further amended by  
the House 6-16, 98-0  
Senate passed as amended 6-21, 53-0*

An Act relating to the disposition prior to final judgment of persons charged with public offenses.

Be It Enacted by the General Assembly of the State of Iowa:

1 Section 1. Section seven hundred sixty-three point three  
2 (763.3), Code 1966, is hereby repealed.

1 Sec. 2. Conditions for release of defendant.

2 1. All bailable defendants shall be ordered released from  
3 custody pending judgment on their personal recognizance, or  
4 upon the execution of an unsecured appearance bond in an amount  
5 specified by the magistrate unless the magistrate determines,  
6 in the exercise of his discretion, that such a release will not  
7 reasonably assure the appearance of the defendant as required.  
8 When such determination is made, the magistrate shall, either  
9 in lieu of or in addition to the above methods of release,  
10 impose the first of the following conditions of release which  
11 will reasonably assure the appearance of the person for trial  
12 or, if no single condition gives that assurance, any combination  
13 of the following conditions:

14 a. Place the defendant in the custody of a designated per-  
15 son or organization agreeing to supervise him;

16 b. Place restrictions on the travel, association or place  
17 of abode of the defendant during the period of release;

18 c. Require the execution of an appearance bond in a  
19 specified amount and the deposit with the clerk of the court  
20 in cash or other qualified security of a sum not to exceed ten

21 percent of the amount of the bond, such deposit to be returned  
22 to the defendant upon the performance of the appearances as  
23 required in section seven hundred sixty-six point one (766.1)  
24 of the Code:

25 d. Require the execution of a bail bond with sufficient  
26 surety, or the deposit of cash in lieu thereof, provided that,  
27 except as provided in section seven hundred sixty-three point  
28 two (763.2) of the Code, bail initially given shall remain  
29 valid until final disposition of the offense. If the amount  
30 of bail is deemed insufficient by the court before whom the  
31 offense is pending, the court may order an increase thereof  
32 and the defendant must provide the additional undertaking,  
33 written or cash, to secure his release.

34 e. Impose any other condition deemed reasonably necessary  
35 to assure appearances as required, including a condition re-  
36 quiring that the defendant return to custody after specified  
37 hours.

38 2. In determining which conditions of release will reasonably  
39 assure appearance, the magistrate shall, on the basis of avail-  
40 able information, take into account the nature and circumstances  
41 of the offense charged, the weight of the evidence against the  
42 defendant, the defendant's family ties, employment, financial  
43 resources, character and mental condition, the length of  
44 his residence in the community, his record of convictions, and  
45 his record of appearance at court proceedings or of flight to  
46 avoid prosecution or failure to appear at court proceedings.

47 3. A magistrate authorizing the release of a defendant under  
48 this section shall issue a written order containing a statement  
49 of the conditions imposed, if any, shall inform the defendant  
50 of the penalties applicable to violation of the conditions of  
51 his release and shall advise him that a warrant for his arrest  
52 will be issued immediately upon such violation.

53 4. A defendant who remains in custody twenty-four hours  
54 after bail or other conditions of release are imposed as a  
55 result of his inability to fulfill the conditions of release

56 imposed shall be brought forthwith before the magistrate who  
57 imposed the conditions and informed of the defendant's right  
58 to have said conditions reviewed. If the defendant indicates  
59 he desires such a review and is indigent and unable to retain  
60 legal counsel, the magistrate shall appoint an attorney to  
61 represent the defendant for the purpose of such review. Unless  
62 the conditions of release are amended and the defendant is  
63 thereupon released, the magistrate shall set forth in writing  
64 the reasons for requiring conditions imposed. A defendant who  
65 is ordered released on a condition which required that he return  
66 to custody after specified hours shall, upon application, be  
67 entitled to review by the magistrate who imposed the condition  
68 in the same manner as a defendant who remains in full-time  
69 custody. In the event that the magistrate who imposed condi-  
70 tions of release is not available, any other magistrate in  
71 the district may review such conditions.

72 5. A magistrate ordering the release of the defendant on  
73 any conditions specified in this section may at any time amend  
74 his order to impose additional or different conditions or  
75 release, provided that, if the imposition of different or addi-  
76 tional conditions results in the detention of the defendant as  
77 a result of his inability to meet such conditions, the pro-  
78 visions of subsection four shall apply.

1 Sec. 3. Appeal from conditions of release.

2 1. A defendant who is detained, or whose release on a con-  
3 dition requiring him to return to custody after specified hours  
4 is continued, after review of his application pursuant to sec-  
5 tion two, subsection four, or section two, subsection five, by  
6 a magistrate, other than a judge of the district court having  
7 original jurisdiction over the offense with which he is charged,  
8 may move the district court having jurisdiction over the county  
9 in which the offense is pending to amend the order. Said  
10 motion shall be promptly set for hearing in which a transcript  
11 of evidence shall be preserved.

12 2. In any case in which a court denied a motion under

13 subsection one to amend an order imposing conditions of release,  
14 or a defendant is detained after conditions of release have been  
15 imposed or amended upon such a motion, an appeal may be taken  
16 to the supreme court. The appeal shall be determined summarily  
17 without briefs on the record made in the district court. How-  
18 ever, the defendant may elect to file briefs and may be heard  
19 in oral argument, in which case the prosecution shall have a  
20 right to respond as in an ordinary appeal from a criminal con-  
21 viction. Any order so appealed shall be affirmed if it is  
22 supported by the proceedings in the district court. If the  
23 order is not so supported the court may remand the case for a  
24 further hearing, or may, with or without additional evidence,  
25 order the defendant released pursuant to section two, subsection  
26 one.

1 Sec. 4. Any defendant who, having been released pursuant  
2 to sections two (2) and three (3) willfully fails to appear be-  
3 fore any court or magistrate as required shall, in addition to  
4 the forfeiture of any security given or pledged for his release,  
5 if he was released in connection with a charge which constitutes  
6 a felony, or while awaiting sentence or pending appeal after  
7 conviction of any public offense, shall be punished by imprison-  
8 ment in the penitentiary not more than five (5) years, or by  
9 fine not exceeding five thousand dollars (\$5000). If the defen-  
10 dant was released before conviction or acquittal in connection  
11 with a charge which constitutes any public offense not a felony,  
12 he shall be punished by imprisonment in the county jail not more  
13 than one (1) year, or by fine not exceeding one thousand dollars  
14 (\$1000).

#### EXPLANATION

This bill is designed to encourage magistrates to release defen-  
dants in criminal prosecutions on conditions other than a surety  
bond. However, the availability of surety bonds is unaffected.

1 Amend the Senate amendment to H.F. 128 by striking all  
after  
2 the word "by" in line 1 and inserting in lieu thereof: "in-  
3 serting in line 54 after the word 'imposed' the words 'by  
4 a magistrate not a district court judge' and inserting in  
line  
5 65 after the word 'released' the words 'by a magistrate  
other  
6 than a district court judge'."

Filed

June 14, 1967

JOHNSTON of Polk.

1 Amend the Senate amendment to House File 128 by striking  
2 in line three (3) all after the word "By" and all of  
3 line four (4) and inserting in lieu thereof the following:  
4 "inserting in line fifty-four (54) after the word 'imposed'  
5 the words 'by a magistrate not a district court judge' and  
6 inserting in line sixty-five (65) after the word  
7 'released' the words 'by a magistrate other than a  
8 district court judge'."

Filed and Adopted

June 16, 1967

JOHNSTON of Polk.

1 Amend the Johnston amendment filed June 14 to the  
2 Senate amendment to H.F. 128 by striking the number  
3 "1" in line 2 and inserting in lieu thereof the  
4 number "3".

Filed

June 16, 1967

JOHNSTON of Polk.

1 Amend House File 128 as follows:  
2 By striking from lines 41 and 42, section 2, the words "the  
3 weight of the evidence against the defendant,". By striking  
sub-  
4 section 4 of section 2 and renumbering the remaining subsection  
5 By striking from lines 10 and 11, section 3, the words "in  
6 which a transcript of evidence shall be preserved" and by  
inserting  
7 in lieu thereof the words "and a record made thereof". By  
inserting  
8 in line 21 of section 3 after the word "viction." the follow-  
ing: "The  
9 supreme court may, on its own motion, order the parties to  
submit  
10 briefs and set the time in which such briefs shall be filed."

As Adopted by the Senate *House concurred as amended 6-16*

1 Amend House File 128 by striking subsection four (4) of  
2 section two (2) and renumbering the remaining sections.

Filed - *Adopted 6-14*  
June 2, 1967

By JUDICIARY COMMITTEE

1 Amend House File 128, section two (2), subsection four (4)  
2 as follows:  
3 1. Insert in line fifty-four (54) after the word "imposed"  
4 the words "by a magistrate not a district court judge".  
5 2. Insert in line sixty-five (65) after the word "released"  
6 the words "by a magistrate other than a district court judge."

Filed - *withdrew 6-14*  
June 2, 1967

By RILEY

1 Amend House File 128 as follows:  
2 1. By striking in section two (2), lines forty-one (41)  
3 and forty-two (42) the words, "the weight of the evidence a-  
4 gainst the defendant,".  
5 2. By striking in section three (3), lines ten (10) and  
6 eleven (11) the words, "in which a transcript of evidence shall  
7 be preserved" and by inserting in lieu thereof the words, "and  
8 a record made thereof".  
9 3. By inserting in section three (3), line twenty-one (21)  
10 after the word, "victim" the words, "The Supreme Court may, on  
11 its own motion order the parties to submit briefs and set the  
12 time in which such briefs shall be filed."

Filed - *Adopted as amended 6-14*  
June 8, 1967

By GAUDINEER

1 Amend the Gaudineer amendment filed June 8, 1967 to House  
2 Filed 128 as follows:  
3 1. By striking in line ten (10) the word, "victim" and  
4 by inserting in lieu thereof the word, "viction".

Filed - *Adopted 6-14*  
June 9, 1967

By GAUDINEER

1 Amend the Senate amendment to House File 128 by  
2 striking in line three (3) all after the word "By"  
3 and all of line four (4) and inserting in lieu  
4 thereof the following: "inserting in line fifty-four  
5 (54) after the word 'imposed' the words 'by a  
6 magistrate not a district court judge' and inserting  
7 in line sixty-five (65) after the word 'released' the  
8 words 'by a magistrate other than a district court  
9 judge'."

Filed *Senate concurred 6-21*  
June 20, 1967