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Governor Mike Dunleavy
STATE OF ALASKA

February 10, 2022

The Honorable Peter Micciche
Senate President
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Micciche:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill which makes several statutory changes that will better protect Alaska's crime victims.

Under current law, crime victims are entitled to participate in bail hearings. However, that right is diminished when adequate notice is not provided. To provide adequate notice of bail hearings to victims, the bill requires a defendant to provide a written bail request, including details of the requested modification to bail, to the prosecutor 48 hours in advance of a bail hearing. A similar provision is also included for detention hearings in juvenile cases. It is our duty to ensure that victims can participate in the criminal justice process and providing adequate notice of bail hearings is vital for meaningful participation.

Defendants often disregard the bail and conditions imposed in a case. This conduct turns our jails into revolving doors and is a drain on Alaska's entire justice system. To help address this growing problem, the bill makes numerous statutory changes designed to help the court enforce its bail orders which are intended to ensure the appearance of the defendant and the safety of the victim and the community at large. The bill: (1) requires judges to issue written findings that explain how their bail orders will protect the victim and community and reasonably ensure that the defendant will appear in court; (2) creates a rebuttable presumption that the defendant will not appear and poses a danger to the victim or the community if the person has already repeatedly violated conditions of release; and (3) requires some additional time to be imposed for each conviction of violation of conditions of release under AS 11.56.757. These changes in the law provide the criminal justice system more tools, both pre- and post-trial, to address those persons who have no desire to comply with their conditions of release and who, therefore, pose a risk to the community.

Currently, except in certain limited circumstances, hearsay evidence is prohibited at the grand jury phase of a case. Therefore, to obtain an indictment, prosecutors are required to bring each witness before the grand jury. This is similar to presenting evidence at trial and makes the grand jury process cumbersome and inefficient. This process also causes a hardship on the victim and witnesses. These individuals have already provided statements to law enforcement and are asked mere days later to come before the grand jury and relive what, for many, may be the most traumatic experience of their lives. The bill relaxes the rules and allows key witnesses, typically the officer in the case, to summarize the testimony of other witnesses. More than 30 other jurisdictions allow hearsay evidence to be presented at grand jury. This change will permit prosecutors to call fewer witnesses at the grand

jury phase of the case and reduce the need for the victim to relive their trauma so soon after the crime occurred. It will also make the process more efficient and assist in reducing the backlog that was created when grand juries were suspended due to COVID-19.

Historically, a defendant could only raise an error on appeal if the error was objected to when the alleged error occurred. The exception to this rule was when the error was deemed "plain." An error was typically deemed to be plain if it affected substantial rights, was obvious, had a prejudicial impact, and the decision not to object was not a tactical decision. However, beginning in 2011 with its decision in *Adams v. State*, 261 P.3d 758 (Alaska 2011), the Alaska Supreme Court eroded 40 years of jurisprudence by reinterpreting how this rule is applied. *Adams,* and several other cases since *Adams,* have altered the interpretation of this rule, reversing the burden of proof - from the defendant (to show prejudice) - to the State (to prove, beyond a reasonable doubt, that any error was harmless), redefined the term "obvious" to include instances that are debatable to practitioners, and made it next to impossible to establish that a failure to object was a tactical decision. This new interpretation disincentivizes contemporaneous objections at trial. In 1980, the Alaska Supreme Court articulated why such a disincentive is bad policy: "An accused may not withhold an objection . . . . during a trial until an adverse verdict has been returned. This procedure would permit him to take a gambler's risk and complain only if the cards fell the wrong way." *Owens v. State*, 613 P2d 259, 261 (Alaska 1980). Such a practice jeopardizes the integrity and fairness of the system. It also results in a significant drain of resources by shifting the burden proof, expanding the scope of errors deemed "plain", and effectively asking the State to prove what a defense attorney was thinking several years prior. Returning this rule to its previous interpretation continues to provide protection of the defendant's rights on appeal while also appropriately preserving the integrity of the conviction and the finality of the case for victims.

Finally, the bill gives the Department of Corrections and Department of Public Safety additional tools to assist in monitoring offenders. All too often, individuals in the custody of the Department of Corrections who must register as a sex offender change their name without notifying these Departments. This makes those individuals difficult to monitor and creates a risk to both the victim and the community. The bill requires those who are under the jurisdiction of the Department of Corrections, and who must register as a sex offender with the Department of Public Safety, to notify those Departments when they file a petition to change their name with the court. The Department of Corrections will then notify the victim, and all parties will have the opportunity to provide information to the court. In addition, a person who is charged with a crime, but not yet convicted, must disclose that they have an open case to the court when applying to change their name. The court must then decide whether the name change meets multiple criteria, including that the change does not have a fraudulent purpose, or is not intended to hinder law enforcement. Requiring notification when an offender seeks to change their name will ensure that these Departments have appropriate oversight and can adequately monitor those offenders.

I urge your prompt and favorable action on this measure.

Sincerely,

Mike Dunleavy
Governor

Enclosure