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SB 188 Protecting Victims
Highlights

- **Bail: provides greater protection for victims in setting bail and conditions of release.**
    - Notice: requires the defendant to give the prosecutor 48 hours' notice of a request to modify bail.
        - *This allows the prosecutor the opportunity to provide the victim with meaningful notice of the hearing so a victim may participate if the victim chooses.*
    - Written findings: requires the judge to issue written findings explaining how the bail and conditions of release will ensure the appearance of the defendant and protection of the victim and community.
    - Rebuttable Presumption: creates a rebuttable presumption that a person who has previously violated their conditions of release will not appear and will pose a danger to the victim and community.
        - *Too often defendants violate conditions of release repeatedly and are released back into the community without any real adjustment of their bail or conditions of release.*
    - Consecutive Sentencing: requires some additional jail time be imposed for each conviction for the crime of violation of conditions of release.
        - *Defendants often repeatedly violate their conditions of release, resulting in multiple charges of "violation of conditions of release." This provision requires some additional time be imposed for each offense.*

- **Allowing hearsay at Grand Jury protects victims and streamlines the process:** allow key witnesses, typically the officer in the case, to summarize the testimony of other witnesses.

    - Makes System Less Traumatizing To Victims: Reduces the trauma to the victim who would otherwise have to physically appear at the grand jury, sometimes mere days after being victimized, and re-tell their experience.

    - Makes The Process More Efficient: will also assist with the backlog created when grand juries were suspended due to COVID-19.
        - *More than 30 other jurisdictions allow hearsay to be presented at grand jury.*
        - *The rules of evidence, including any prohibitions on hearsay evidence, would still apply at trial because the hearsay at grand jury would still need to be for admissible evidence at trial.*

- **Ensuring changes of name by defendant do not harm victims:** requires those who are under the jurisdiction of the Department of Corrections, have to register as a sex offender with the Department of Public Safety, or who have certain types of criminal charges pending to notify the departments when they file a petition to change their name or advise the court of a pending criminal case.

    - Victim notice: the Department of Corrections will notify the victim. The departments and the victim will have the opportunity to provide information to the court.

    - Findings: the court is required to make certain findings (ex. the name change is not intended to hinder law enforcement) before allowing the person to change their name.
        - *Department of Corrections and the Department of Public Safety will be better able to monitor these offenders.*

    - The bill also includes a provision to require those who are charged with a crime (but not yet convicted) to disclose that fact to the court when they file to change their name.

- **Plain Error:** returns the Plain Error Rule (Criminal Rule 47) to what it had been from statehood until 2011.
    - 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
    - In 2011, the Alaska Supreme Court broadened the rule by
        - redefining the term "obvious" to include instances that are debatable to practitioners;
        - shifting the burden of proof from the defendant (to show prejudice) to the State (to prove, beyond a reasonable doubt, that any error was harmless), and
        - made it next to impossible to establish that a failure to object was a tactical decision.

    - This new interpretation jeopardizes the integrity and fairness of the system by incentivizing inaction.

    - <u>Appellate resources:</u> the drain of resources that must now be spent defending convictions that are typically upheld, regardless of the new interpretation.

    - Returning the rule to its prior interpretation will adequately protect the defendant's rights on appeal while also ***appropriately preserving the integrity of the conviction and the finality of the case for victims***.