

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE CARPENTER

TO: HB 67

Page 1, line 1, following "**procedure**";:

Insert "**relating to grand juries**";

Page 1, line 5:

Delete "**Rule 6(r)**"

Insert "**Rules 5(e), 6, and 6.1**"

Following "**Procedure**";:

Insert "**repealing Rules 6.1(b)(2) and (3), Alaska Rules of Criminal Procedure**";

Page 1, line 8, through page 2, line 6:

Delete all material and insert:

"* Section 1. AS 09.20.080 is amended by adding a new subsection to read:

(c) The jury panel for a grand jury includes not fewer than two alternate jurors. The presiding judge shall designate the alternate jurors at the time a grand jury is selected.

*** Sec. 2.** AS 09.20.090 is amended by adding a new subsection to read:

(b) When a grand jury is impaneled, the court shall provide the jury with written instructions that include state statutes relating to grand juries."

Renumber the following bill sections accordingly.

Page 2, following line 28:

1 Insert new bill sections to read:

2 **"* Sec. 4.** AS 12.40.030 is amended to read:

3 **Sec. 12.40.030. Duty of inquiry into crimes and general powers.** The grand
4 jury shall inquire into all crimes committed or triable within the jurisdiction of the
5 court and present them to the court. The grand jury shall have the power to **initiate**
6 **investigations, investigate, issue indictments consistent with AS 12.40.170,** and
7 make recommendations concerning the public welfare or safety. **The power of grand**
8 **juries to investigate and make recommendations concerning the public welfare or**
9 **safety may not be limited or suspended.**

10 *** Sec. 5.** AS 12.40.030 is amended by adding new subsections to read:

11 (b) An individual grand juror may propose that the grand jury investigate a
12 matter concerning the public welfare or safety. If, after a reasonable time for
13 consideration, as established by a majority of the grand jury members, the grand jury
14 determines that the matter should be investigated, the grand jury shall initiate an
15 investigation.

16 (c) For purposes of this section, a matter that concerns a private cause of
17 action, or a matter that could be the basis of a civil claim, does not qualify as a matter
18 concerning the public welfare or safety.

19 *** Sec. 6.** AS 12.40.040 is amended to read:

20 **Sec. 12.40.040. Juror to disclose knowledge of crime.** If an individual grand
21 juror knows or has reason to believe that a crime has been committed that is triable by
22 the court, the juror shall disclose it to

23 **(1) the other jurors, who shall investigate it; and**

24 **(2) the prosecuting attorney or presiding judge.**

25 *** Sec. 7.** AS 12.40.050 is amended to read:

26 **Sec. 12.40.050. Holding to answer as affecting indictment or presentment.**

27 The grand jury may indict or present a person for a crime upon sufficient evidence,
28 whether that person has been held to answer for the crime or not. **The grand jury**
29 **may direct the prosecutor to prepare an indictment.**

30 *** Sec. 8.** AS 12.40.070 is amended to read:

31 **Sec. 12.40.070. Duty of prosecuting attorney.** The prosecuting attorney

(1) shall submit an indictment to the grand jury and cause the evidence in support of the indictment to be brought before them in every case when a person is held to answer a criminal charge in the court where the jury is formed;

(2) may submit an indictment in any case when the prosecuting attorney has good reason to believe a crime has been committed that is triable by the court; [AND]

(3) shall, when required by the grand jury, prepare indictments or presentments for them or a replacement grand jury and attend their sittings to advise them in relation to their duties or to examine witnesses in their presence; and

(4) make arrangements for a citizen to speak with a grand jury as provided under AS 12.40.140.

* **Sec. 9.** AS 12.40.090 is amended by adding a new subsection to read:

(b) Violation of (a) of this section is a class A misdemeanor.

* **Sec. 10.** AS 12.40.100 is amended by adding a new subsection to read:

(d) Only evidence that would be admissible at trial may be included in an indictment.

* **Sec. 11.** AS 12.40.110 is repealed and reenacted to read:

Sec. 12.40.110. Hearsay evidence. All evidence or information may be presented to the grand jury. The prosecuting attorney shall, before indictment, inform the grand jury if information presented to the grand jury may be considered hearsay or determined inadmissible at trial by the court. Information that would be inadmissible at trial may be included in a report by the grand jury.

* **Sec. 12.** AS 12.40 is amended by adding new sections to read:

Sec. 12.40.120. Obstructing a grand jury. (a) A person commits the crime of obstructing a grand jury if the person intentionally fails to give or directs, orders, threatens, restrains, coerces, forces, or prevents another person from giving full cooperation to the grand jury in assembling or furnishing requested information to the grand jury.

(b) It is not a violation of (a) of this section if a prosecutor or judicial officer

(1) informs a grand jury of its ability to refer matters to an ombudsman;

1 (2) explains potential consequences of a grand jury investigation,
 2 including a grand jury investigation's interference with an investigation by law
 3 enforcement;

4 (3) advises a grand jury of the time commitment that may be required
 5 to investigate a matter brought before it;

6 (4) gives instructions or explains procedure to the grand jury for
 7 another reason before or during an investigation.

8 (c) Obstructing a grand jury is a class A misdemeanor.

9 **Sec. 12.40.130. Prosecutorial misconduct.** If a grand jury investigation
 10 concerns possible prosecutorial misconduct or misconduct on the part of an employee
 11 or agent of the Department of Law so that having a prosecuting attorney or the
 12 Department of Law proceed with an investigation would create an appearance of
 13 impropriety or conflict, the prosecuting attorney shall immediately advise the attorney
 14 general. The attorney general shall appoint a neutral attorney to assist the grand jury in
 15 its investigation and the preparation of its report.

16 **Sec. 12.40.140. Citizen investigation requests.** If a citizen who is not serving
 17 on a grand jury believes a matter of public welfare or safety should be investigated by
 18 a grand jury, the citizen may speak with a prosecuting attorney. The prosecuting
 19 attorney shall make arrangements for the citizen to speak with the grand jury under
 20 AS 12.40.070. A majority of grand jury members shall determine whether an
 21 investigation into the citizen's concern is warranted.

22 **Sec. 12.40.150. Reports.** A grand jury shall make a report only upon the
 23 concurrence of a majority of the total number of grand jurors on the grand jury. A
 24 foreperson shall sign the grand jury report. A grand jury report may include
 25 allegations of criminal conduct.

26 **Sec. 12.40.160. Subpoena power.** While conducting an investigation and
 27 preparing a report concerning a matter of public welfare or safety, a grand jury may,
 28 upon approval of a majority of the grand jurors, issue a subpoena to compel testimony
 29 from witnesses or to compel the production of documents. A subpoena may be issued
 30 only after due consideration by the grand jury of the reasonableness of the proposed
 31 subpoena and the necessity of the anticipated testimony or documents.

1 **Sec. 12.40.170. Due Process.** If, while conducting an investigation, a grand
 2 jury requests or receives information that may be considered prejudicial or
 3 inadmissible in court, the prosecuting attorney shall inform the grand jury of the
 4 ramifications and emphasize that inclusion of the information may jeopardize the
 5 validity of an indictment issued by the grand jury. If the grand jury proceeds with the
 6 investigation despite the inclusion of prejudicial or inadmissible evidence, the grand
 7 jury may request that any indictment based on that investigation be transferred to
 8 another grand jury. The grand jury has a right to continue the investigation and
 9 produce a grand jury report containing recommendations related to matters of public
 10 welfare or safety.

11 **Sec. 12.40.180. Replacement grand jury.** If a grand jury requests that an
 12 indictment be brought before another grand jury under AS 12.40.170, a new grand
 13 jury shall be convened to pursue the indictment and the court may extend the time
 14 limit for preliminary examination to 20 days."

15
 16 Renumber the following bill sections accordingly.

17
 18 Page 11, following line 7:

19 Insert new bill sections to read:

20 **"* Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to
 21 read:

22 **DIRECT COURT RULE AMENDMENT.** Rule 5(e), Alaska Rules of
 23 Criminal Procedure, is amended to read:

24 (b) Felonies - Other Requirements at First Appearance.

25 (1) If the charge against the defendant is a felony, the defendant shall
 26 not be called upon to plead.

27 (2) The judicial officer shall inform the defendant of the right to a
 28 preliminary examination. A defendant is entitled to a preliminary examination if the
 29 defendant is charged with a felony for which the defendant has not been indicted,
 30 unless

31 (A) the defendant waives the preliminary examination, or

(B) an information has been filed against the defendant with the defendant's consent in the superior court.

(3) If the defendant after having had the opportunity to consult with counsel waives preliminary examination, the judicial officer shall forthwith hold the defendant to answer in the superior court.

(4) If the defendant does not waive preliminary examination, the judicial officer shall schedule a preliminary examination. Such examination shall be held within a reasonable time, but in no event later than

(A) 10 days following the initial appearance, if the defendant is in custody, or

(B) 20 days following the initial appearance, if the defendant is not in custody **or if a replacement grand jury has been impaneled pursuant to AS 12.40.180.** With the consent of the defendant and upon a showing of good cause, taking into account the public interest in prompt disposition of criminal cases, the judicial officer may extend the time limits specified in this subsection one or more times. In the absence of consent by the defendant, the judicial officer may extend these time limits only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interest of justice."

Renumber the following bill sections accordingly.

Page 11, line 10:

Delete "6(r)"

Insert "6(s)"

Page 11, line 12:

Delete "(r)"

Insert "(s)"

Page 11, line 13:

1 Delete "**the prosecutor believes**"

2
3 Page 12, following line 28:

4 Insert new bill sections to read:

5 **"* Sec. 24.** The uncoded law of the State of Alaska is amended by adding a new section to
6 read:

7 DIRECT COURT RULE AMENDMENT. Rule 6.1(a), Alaska Rules of
8 Criminal Procedure, is amended to read:

9 (a) **Authority to Investigate and Issue Reports.** A grand jury is
10 constitutionally authorized to investigate and make reports and recommendations
11 concerning the public welfare or safety. [AN ISSUE CONCERNS THE PUBLIC
12 WELFARE OR SAFETY, AND THEREFORE IS WITHIN THE SCOPE OF A
13 GRAND JURY'S INVESTIGATIVE AUTHORITY, WHEN

14 (1) THE INVESTIGATION OF THE ISSUE COULD FURTHER A
15 PUBLIC POLICY OF THE STATE;

16 (2) THE OUTCOME OF THE INVESTIGATION COULD
17 REASONABLY BE EXPECTED TO BENEFIT A LARGE NUMBER OF PEOPLE,
18 RATHER THAN TO BENEFIT ONLY AN INDIVIDUAL OR SMALL GROUP OF
19 INDIVIDUALS; AND

20 (3) THE ISSUE INVOLVES A MATTER OF GENERAL
21 IMPORTANCE TO A LARGE NUMBER OF PEOPLE, RATHER THAN TO AN
22 INDIVIDUAL OR A SMALL GROUP OF INDIVIDUALS.]

23 *** Sec. 25.** The uncoded law of the State of Alaska is amended by adding a new section to
24 read:

25 INDIRECT COURT RULE AMENDMENTS. The provisions of secs. 1, 2, and 4 - 12
26 of this Act have the effect of changing Rules 6 and 6.1, Alaska Rules of Criminal Procedure,
27 by changing the procedure for grand jury proceedings, the duties and authority of a grand
28 jury, and the evidence that may be presented to a grand jury.

29 *** Sec. 26.** The uncoded law of the State of Alaska is amended by adding a new section to
30 read:

31 REPEAL OF COURT RULES. Rules 6.1(b)(2) and (3), Alaska Rules of Criminal

1 Procedure, are repealed."

2
3 Renumber the following bill sections accordingly.

4
5 Page 13, line 1:

6 Delete "sec. 2"

7 Insert "sec. 3"

8
9 Page 13, line 2:

10 Delete "sec. 3"

11 Insert "sec. 13"

12
13 Page 13, lines 2 - 3:

14 Delete "sec. 9"

15 Insert "sec. 19"

16
17 Page 13, line 5:

18 Delete "sec. 4"

19 Insert "sec. 14"

20 Delete "sec. 5"

21 Insert "sec. 15"

22
23 Page 13, line 6:

24 Delete "sec. 6"

25 Insert "sec. 16"

26
27 Page 13, line 9:

28 Delete "sec. 7"

29 Insert "sec. 17"

30
31 Page 13, line 13:

Delete "sec. 7"

Insert "sec. 17"

Page 13, line 16:

Delete "sec. 8"

Insert "sec. 18"

Page 13, line 18:

Following "(f)":

Insert "Rule 5(e), Alaska Rules of Criminal Procedure, as amended by sec. 22 of this Act, and"

Delete "6(r)"

Insert "6(s)"

Delete "sec. 12"

Insert "sec. 23"

Page 13, line 23, following "EFFECT.":

Insert "(a) Rule 5(e), Alaska Rules of Criminal Procedure, as amended by sec. 22 of this Act, takes effect only if sec. 22 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

(b)"

Page 13, line 24:

Delete "sec. 12" in both places

Insert "sec. 23" in both places

Page 13, following line 25:

Insert new subsections to read:

"(c) Rule 6.1(a), Alaska Rules of Criminal Procedure, as amended by sec. 24 of this Act, takes effect only if sec. 24 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

1 (d) Sections 1, 2, and 4 - 12 of this Act take effect only if sec. 25 of this Act receives
2 the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the
3 State of Alaska.

4 (e) The repeal of Rules 6.1(b)(2) and (3), Alaska Rules of Criminal Procedure, by sec.
5 26 of this Act takes effect only if sec. 26 of this Act receives the two-thirds majority vote of
6 each house required by art. IV, sec. 15, Constitution of the State of Alaska."