

AMENDMENT #6

OFFERED IN THE HOUSE
TO: HB 67

BY REPRESENTATIVE CARPENTER

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

2 Insert "relating to grand juries;"

3

4 Page 1, line 5:

5 Delete "Rule 6(r)"

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

7 Following "Procedure;":

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

10

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

12 Delete all material and insert:

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

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

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

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

20

21 Renumber the following bill sections accordingly.

22

23 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 could 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. (a) All evidence or information may be presented to the grand jury. A witness may be presented to summarize admissible evidence if the admissible evidence will be available at trial.

(b) 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.

(c) 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.

- 1 (b) It is not a violation of (a) of this section if a prosecutor or judicial officer
2 (1) informs a grand jury of its ability to refer matters to an
3 ombudsman;
4 (2) explains potential consequences of a grand jury investigation,
5 including a grand jury investigation's interference with an investigation by law
6 enforcement;
7 (3) advises a grand jury of the time commitment that may be required
8 to investigate a matter brought before it;
9 (4) gives instructions or explains procedure to the grand jury for
10 another reason before or during an investigation.

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

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

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

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

29 **Sec. 12.40.160. Subpoena power.** While conducting an investigation and
30 preparing a report concerning a matter of public welfare or safety, a grand jury may,
31 upon approval of a majority of the grand jurors, issue a subpoena to compel testimony

1 from witnesses or to compel the production of documents. A subpoena may be issued
 2 only after due consideration by the grand jury of the reasonableness of the proposed
 3 subpoena and the necessity of the anticipated testimony or documents.

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

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

18 **Sec. 12.40.190. Peace officer testimony.** If the testimony presented by a peace
 19 officer to a grand jury is inaccurate because of intentional or negligent misstatements
 20 or omissions and the defendant shows that the inaccuracy prejudices substantial rights
 21 of the defendant, the court shall dismiss an indictment resulting from the testimony."
 22

23 Renumber the following bill sections accordingly.

24
 25 Page 11, following line 7:

26 Insert new bill sections to read:

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

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

31 (e) Felonies - Other Requirements at First Appearance.

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

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

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

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

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

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

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

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

27
28 Renumber the following bill sections accordingly.

29
30 Page 11, line 10:

31 Delete "6(r)"

1 Insert "6(s)"

2

3 Page 11, line 12:

4 Delete "(r)"

5 Insert "(s)"

6

7 Page 11, lines 13 - 14:

8 Delete "Evidence which the prosecutor believes would be legally admissible at trial
9 shall be admissible before"

10 Insert "All evidence or information may be presented to [EVIDENCE WHICH
11 WOULD BE LEGALLY ADMISSIBLE AT TRIAL SHALL BE ADMISSIBLE BEFORE]"

12

13 Page 12, line 23:

14 Delete "(3)"

15

16 Page 12, lines 26 - 28:

17 Delete all material and insert:

18 "(6) WHEN A PRIOR CONVICTION IS AN ELEMENT OF AN
19 OFFENSE, HEARSAY EVIDENCE RECEIVED THROUGH THE ALASKA
20 PUBLIC SAFETY INFORMATION NETWORK OR FROM OTHER
21 GOVERNMENT AGENCIES OF PRIOR CONVICTIONS MAY BE PRESENTED
22 TO THE GRAND JURY.]"

23

24 Page 12, following line 28:

25 Insert new bill sections to read:

26 "* **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

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

30 (a) **Authority to Investigate and Issue Reports.** A grand jury is
31 constitutionally authorized to investigate and make reports and recommendations

1 concerning the public welfare or safety. [AN ISSUE CONCERNS THE PUBLIC
 2 WELFARE OR SAFETY, AND THEREFORE IS WITHIN THE SCOPE OF A
 3 GRAND JURY'S INVESTIGATIVE AUTHORITY, WHEN

4 (1) THE INVESTIGATION OF THE ISSUE COULD FURTHER A
 5 PUBLIC POLICY OF THE STATE;

6 (2) THE OUTCOME OF THE INVESTIGATION COULD
 7 REASONABLY BE EXPECTED TO BENEFIT A LARGE NUMBER OF PEOPLE,
 8 RATHER THAN TO BENEFIT ONLY AN INDIVIDUAL OR SMALL GROUP OF
 9 INDIVIDUALS; AND

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

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

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

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

21 **REPEAL OF COURT RULES.** Rules 6.1(b)(2) and (3), Alaska Rules of Criminal
 22 Procedure, are repealed."

23
 24 Renumber the following bill sections accordingly.

25
 26 Page 13, line 1:

27 Delete "sec. 2"

28 Insert "sec. 3"

29
 30 Page 13, line 2:

31 Delete "sec. 3"

1 Insert "sec. 13"

2

3 Page 13, lines 2 - 3:

4 Delete "sec. 9"

5 Insert "sec. 19"

6

7 Page 13, line 5:

8 Delete "sec. 4"

9 Insert "sec. 14"

10 Delete "sec. 5"

11 Insert "sec. 15"

12

13 Page 13, line 6:

14 Delete "sec. 6"

15 Insert "sec. 16"

16

17 Page 13, line 9:

18 Delete "sec. 7"

19 Insert "sec. 17"

20

21 Page 13, line 13:

22 Delete "sec. 7"

23 Insert "sec. 17"

24

25 Page 13, line 16:

26 Delete "sec. 8"

27 Insert "sec. 18"

28

29 Page 13, line 18:

30 Following "(f)":

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

1 of this Act, and"

2 Delete "6(r)"

3 Insert "6(s)"

4 Delete "sec. 12"

5 Insert "sec. 23"

6

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

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

11 (b)"

12

13 Page 13, line 24:

14 Delete "sec. 12" in both places

15 Insert "sec. 23" in both places

16

17 Page 13, following line 25:

18 Insert new subsections to read:

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

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

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