

SENATE BILL NO. 15

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY SENATOR MICCICHE

Introduced: 1/16/19

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a petition to convene a grand jury; and repealing and reenacting**
2 **Rule 16(b)(3), Alaska Rules of Criminal Procedure, concerning a prosecuting attorney's**
3 **duty to disclose favorable information to a defendant in a criminal proceeding."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 12.40 is amended by adding a new section to read:

6 **Sec. 12.40.120. Petition to convene a grand jury.** (a) A person may petition
7 to convene a grand jury for the purpose of investigating a matter that, if true, would
8 warrant a true bill of indictment as provided in this section.

9 (b) Before circulating a petition under this section, the petitioner shall file a
10 copy of the petition with the clerk of court of the judicial district in which the matter is
11 alleged to have occurred. The clerk shall deliver the petition to the presiding judge of
12 the judicial district.

13 (c) Not later than four business days after the petition is filed with the court,
14 the presiding judge of the judicial district shall enter an order stating whether the

1 petition on its face identifies with reasonable specificity areas to be investigated and
2 sufficient general allegations to warrant a finding that an investigation may lead to
3 information that, if true, would warrant a true bill of indictment.

4 (d) If the judge finds a petition is deficient under (c) of this section, the judge
5 shall issue a written order setting out each deficiency. Not later than two business days
6 after the order finding the petition deficient is entered, the petitioner may file an
7 amended petition. Not later than two business days after the amended petition is filed
8 with the court, the judge shall issue an order stating whether the amended petition
9 meets the requirements of (c) of this section.

10 (e) A petitioner may not circulate a petition without a court order stating that
11 the petition is sufficient under (c) of this section.

12 (f) If the judge issues an order finding a petition sufficient under (c) of this
13 section, the petitioner shall, not later than 45 days after the court enters the order, file
14 the completed petition containing not fewer than 500 signatures of voters registered in
15 the judicial district with the division of elections. The division of elections shall, not
16 later than seven business days after receiving the petition, submit the original petition
17 and a certification of the number of signatures of registered voters to the clerk of court
18 of the judicial district of the presiding superior court judge who issued the order
19 concerning the petition. The clerk shall deliver the petition and signature certification
20 to the presiding superior court judge.

21 (g) An individual who signs a petition to convene a grand jury may file a
22 request to remove the individual's name from the petition at any time before the
23 division of elections certifies the number of signatures on the petition under (f) of this
24 section.

25 (h) If the division of elections certifies that the petition contains the required
26 signatures, the presiding superior court judge of the judicial district shall, not later than
27 30 calendar days after the date the certification is received by the clerk from the
28 division of elections, convene a grand jury.

29 (i) An individual is guilty of a class B misdemeanor punishable under
30 AS 12.55 if the individual knowingly

31 (1) offers money, a gratuity, a prize, or any other thing of value to

1 induce another individual to sign or to remove a name from a petition to convene a
2 grand jury; or

3 (2) makes a false statement to induce another individual to sign or to
4 remove a name from a petition to convene a grand jury.

5 (j) In this section, "knowingly" has the meaning given in AS 11.81.900.

6 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 DIRECT COURT RULE AMENDMENT. Rule 16(b)(3), Alaska Rules of
9 Criminal Procedure, is repealed and reenacted to read:

10 (3) Prosecuting Attorney's Duty to Disclose Favorable Information to
11 Defense Counsel.

12 (A) Material and Information Within the Prosecuting
13 Attorney's Possession, Custody, or Control. The prosecuting attorney shall
14 disclose to defense counsel any material or information within the prosecuting
15 attorney's possession or control that tends to negate the guilt of the accused as
16 to the offense or would tend to reduce the accused's punishment therefor. In
17 addition, within 20 days after receiving a written demand from defense
18 counsel, the prosecuting attorney shall disclose to defense counsel and make
19 available for inspection and copying

20 (i) all information favorable to the accused that is in the
21 possession of the prosecuting attorney or a branch of law enforcement
22 involved in the prosecution of the accused;

23 (ii) evidence disproving the identity of the accused as
24 the perpetrator of an offense at issue;

25 (iii) evidence tending to disprove an element of an
26 offense at issue;

27 (iv) evidence constituting a prior representation of a
28 witness account describing the events surrounding an offense at issue
29 that varies in any degree from any other statements of the witness;

30 (v) evidence that a witness has a prior criminal history;

31 (vi) evidence that a witness has engaged in acts that

1 would bear on the credibility and integrity of the witness or the
2 witness's testimony;

3 (vii) evidence that would cause a reasonable person to
4 question the veracity of a witness, including motive, bias,
5 compensation, or information tending to devalue the testimony offered.

6 (B) Material and Information Not Within the Prosecuting
7 Attorney's Possession, Custody, or Control. If material or information
8 requested by defense counsel is not in the possession, custody, or control of the
9 prosecuting attorney, the prosecuting attorney shall make a diligent, good faith
10 effort to ascertain the existence of the requested material or information and
11 make the material or information available for discovery where it exists.

12 (C) Continuing Duty to Disclose Favorable Information. If,
13 after complying with the requirements in (b)(3)(A) and (b)(3)(B) of this rule,
14 additional material or information subject to discovery under (b)(3)(A) of this
15 rule comes into the possession of the prosecuting attorney or a branch of law
16 enforcement involved in the prosecution of the accused, either before or during
17 trial, the prosecuting attorney shall disclose the material or information to
18 defense counsel.

19 (D) In Camera Review. The prosecuting attorney may request
20 an in camera review of any evidence demanded by defense counsel. After an in
21 camera review of the materials provided and all parties have been afforded a
22 reasonable opportunity to be heard, the court shall promptly issue a written
23 order granting or denying defense counsel's access to all or part of the
24 materials. In determining whether to grant or deny defense counsel's access to
25 the materials, the court shall consider whether the requested review of the
26 materials may reasonably be expected to cause substantial and identifiable
27 harm to others that outweighs the right of the accused to access the materials,
28 whether the requested review would have a detrimental effect on the action or
29 proceeding, or whether all or part of the materials sought to be reviewed
30 constitute personal notes and observations. The court shall reconsider an order
31 denying access to all or part of the materials if the court determines at a later

1 date that the basis for denying defense counsel access to the materials no
2 longer exists.

3 (E) Time Limit. The court may delay disclosure of material or
4 information under (b)(3)(A) of this rule until a date the court determines will
5 provide a reasonable amount of time for defense counsel to review the material
6 or information before trial. The date of disclosure may not be less than 30 days
7 before the date set for trial absent a showing by the prosecuting attorney of
8 compelling circumstances.

9 (F) Noncompliance. If, at any time during the course of the
10 proceedings, it is brought to the attention of the court that the prosecuting
11 attorney has failed to comply with (b)(3)(A) or (b)(3)(B) of this rule, the court
12 shall

13 (i) enter findings into the record regarding the extent of
14 and reason for the noncompliance; and

15 (ii) order an appropriate remedy under (b)(3)(G) of this
16 rule.

17 (G) Remedies. In addition to sanctions imposed under (e) of
18 this rule, if the court finds that prosecuting attorney has failed to comply with
19 (b)(3)(A) or (b)(3)(B) of this rule, the court may order

20 (i) postponement or adjournment of the proceedings;

21 (ii) exclusion or limitation of testimony or evidence;

22 (iii) a new trial;

23 (iv) dismissal with or without prejudice; or

24 (v) any other remedy determined appropriate by the
25 court.

26 (H) Totality of the Circumstances. In determining a remedy
27 under (a)(3)(G) of this rule, the court shall consider the totality of the
28 circumstances, including

29 (i) the seriousness of the violation;

30 (ii) the effect of the violation on the proceeding;

31 (iii) whether the violation resulted from innocent error,

1 negligence, recklessness, or knowing conduct; and

2 (iv) the effectiveness of alternative remedies to protect
3 the interest of the accused and the public in ensuring fair prosecutions
4 and proceedings.

5 * **Sec. 3.** The uncoded law of the State of Alaska is amended by adding a new section to
6 read:

7 **CONDITIONAL EFFECT.** Section 2 of this Act takes effect only if sec. 2 of this Act
8 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
9 of the State of Alaska.