

SENATE BILL NO. 188

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/15/22

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to criminal law and procedure; relating to a petition for a change of**
2 **name for certain persons; relating to procedures for bail; relating to consecutive**
3 **sentencing for violation of condition of release; relating to the duty to register as a sex**
4 **offender; amending Rules 6(r) and 47, Alaska Rules of Criminal Procedure; amending**
5 **Rule 12, Alaska Delinquency Rules; amending Rule 84, Alaska Rules of Civil Procedure;**
6 **and providing for an effective date."**

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

8 * **Section 1.** The uncoded law of the State of Alaska is amended by adding a new section
9 to read:

10 LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that it is not
11 now, nor has it ever been, the case that a prosecutor must know conclusively that evidence
12 admitted at grand jury will also be admitted at trial.

13 (b) The legislature further finds that evidence is generally admissible at grand jury as

1 long as the prosecutor believes that the evidence will be admissible at the time of trial.

2 (c) It is the intent of the legislature that Criminal Rule 6(r), as amended by sec. 14 of
3 this Act, overturns the decision of the Alaska Court of Appeals in *State v. Powell*, 487 P.3d
4 609 (Alaska App. 2021), to the extent the decision held that hearsay evidence admissible
5 under the hearsay exception under Alaska Rule of Evidence 801(d)(3) is inadmissible at grand
6 jury if certain foundational requirements cannot be met at the time of grand jury.

7 (d) It is the intent of the legislature that Alaska Rule of Criminal Procedure 47(b) and
8 (c), as amended by secs. 15 and 16 of this Act, overturns case law with which it is
9 inconsistent, including the decision in *Adams v. State*, 261 P.3d 758 (Alaska 2011), to the
10 extent the decision held that a constitutional violation will be prejudicial unless the state
11 proves that it was harmless beyond a reasonable doubt; the decision in *Moreno v. State*, 341
12 P.3d 1134 (Alaska 2015), to the extent the decision held that evidence of a tactical decision
13 not to object to a trial error must be plainly obvious from the record; and the decision in
14 *Goldsbury v. State*, 342 P.3d 834 (Alaska 2015), to the extent the decision held that plain
15 error may be found even though reasonable people could disagree about a proposition or
16 appropriate remedy.

17 * **Sec. 2.** AS 09.55.010 is amended to read:

18 **Sec. 09.55.010. Jurisdiction in action for change of name.** A person may
19 bring an action for change of name in the superior court. **Except as provided in (b)**
20 **and (c) of this section, a** [A] change of name of a person may not be made unless the
21 court finds sufficient reasons for the change and also finds it consistent with the public
22 interest. A change of name upon marriage, dissolution, or divorce meets these
23 requirements.

24 * **Sec. 3.** AS 09.55.010 is amended by adding new subsections to read:

25 (b) The court may not consider an action for change of name brought by a
26 person

27 (1) who is committed to the custody of the Department of Corrections,
28 on probation under AS 33.05 or parole under AS 33.16, or required to register as a sex
29 offender under AS 12.63 unless

30 (i) for a person committed to the custody of the
31 Department of Corrections, on probation under AS 33.05 or parole

1 under AS 33.16, the person provides proof satisfactory to the court that
 2 notice of the petition has been served on the Department of
 3 Corrections; or

4 (ii) for a person required to register as a sex offender
 5 under AS 12.63, the person provides proof satisfactory to the court that
 6 notice of the petition has been served on the Department of Public
 7 Safety;

8 (2) who is charged with an offense unless the person provides the court
 9 with the case number associated with the offense.

10 (c) A change of name of a person under (b) of this section may not be made
 11 unless the court finds that the change

12 (1) is consistent with the public interest;

13 (2) does not have a fraudulent purpose;

14 (3) is not intended to hinder or obstruct law enforcement purposes; and

15 (4) would not interfere with the rights of others.

16 * **Sec. 4.** AS 11.56.840(a) is amended to read:

17 (a) A person commits the crime of failure to register as a sex offender or child
 18 kidnapper in the second degree if the person

19 (1) is required to register under AS 12.63.010;

20 (2) knows that the person is required to register under AS 12.63.010;

21 and

22 (3) fails to

23 (A) register;

24 (B) file written notice of

25 (i) change of residence;

26 (ii) change of mailing address;

27 (iii) establishment of an electronic or messaging address
 28 or any change to an electronic or messaging address; or

29 (iv) establishment of an Internet communication
 30 identifier or any change to an Internet communication identifier; **or**

31 **(v) change of name;**

1 (C) file the annual or quarterly written verification; or

2 (D) supply accurate and complete information required to be
3 submitted under this paragraph.

4 * **Sec. 5.** AS 12.30.006(c) is amended to read:

5 (c) A person who remains in custody 48 hours after appearing before a judicial
6 officer because of inability to meet the conditions of release shall, upon application, be
7 entitled to have the conditions reviewed by the judicial officer who imposed them. If
8 the judicial officer who imposed the conditions of release is not available, any judicial
9 officer in the judicial district may review the conditions. **A judicial officer may not**
10 **review bail under this subsection unless the person provides to the court and the**
11 **prosecuting authority written notice at least 48 hours before the time set for the**
12 **review. The notice must include a description of the conditions of release that the**
13 **person is seeking to modify.**

14 * **Sec. 6.** AS 12.30.006(f) is amended to read:

15 (f) The judicial officer shall issue written [OR ORAL] findings that explain
16 **how** [THE REASONS THE OFFICER IMPOSED] the particular conditions of release
17 **imposed** or modifications or additions to conditions previously imposed **will**
18 **reasonably ensure the appearance of the person and the safety of the victim,**
19 **other persons, or the community.** The judicial officer shall inform the person that a
20 law enforcement officer or a pretrial services officer under AS 33.07 may arrest the
21 person without a warrant for violation of the court's order establishing conditions of
22 release.

23 * **Sec. 7.** AS 12.30.011(d) is amended to read:

24 (d) In making a finding regarding the release of a person under this chapter,

25 (1) except as otherwise provided in this chapter, the burden of proof is
26 on the prosecuting authority that a person charged with an offense should be detained
27 or released with conditions described in (b) of this section or AS 12.30.016;

28 (2) there is a rebuttable presumption that there is a substantial risk that
29 the person will not appear and the person poses a danger to the victim, other persons,
30 or the community, if the person [IS]

31 (A) **is** charged with an unclassified felony, a class A felony, a

sexual felony, or a felony under AS 28.35.030 or 28.35.032;

(B) is charged with a felony crime against a person under AS 11.41, was previously convicted of a felony crime against a person under AS 11.41 in this state or a similar offense in another jurisdiction, and less than five years have elapsed between the date of the person's unconditional discharge on the immediately preceding offense and the commission of the present offense;

(C) is charged with a felony offense committed while the person was on release under this chapter for a charge or conviction of another offense;

(D) is charged with a crime involving domestic violence, and has been convicted in the previous five years of a crime involving domestic violence in this state or a similar offense in another jurisdiction;

(E) is arrested in connection with an accusation that the person committed a felony outside the state or is a fugitive from justice from another jurisdiction, and the court is considering release under AS 12.70; or

(F) has violated a condition of release imposed under this chapter two or more times in a single case.

* Sec. 8. AS 12.55.127(c) is amended to read:

(c) If the defendant is being sentenced for

(1) escape, the term of imprisonment shall be consecutive to the term for the underlying crime;

(2) two or more crimes under AS 11.41, a consecutive term of imprisonment shall be imposed for at least

(A) the mandatory minimum term under AS 12.55.125(a) for each additional crime that is murder in the first degree;

(B) the mandatory minimum term for each additional crime that is an unclassified felony governed by AS 12.55.125(b);

(C) the presumptive term specified in AS 12.55.125(c) or the active term of imprisonment, whichever is less, for each additional crime that is

(i) manslaughter; or

(ii) kidnapping that is a class A felony;

(D) two years or the active term of imprisonment, whichever is less, for each additional crime that is criminally negligent homicide;

(E) one-fourth of the presumptive term under AS 12.55.125(c) or (i) for each additional crime that is sexual assault in the first degree under AS 11.41.410 or sexual abuse of a minor in the first degree under AS 11.41.434, or an attempt, solicitation, or conspiracy to commit those offenses; and

(F) some additional term of imprisonment for each additional crime, or each additional attempt or solicitation to commit the offense, under AS 11.41.200 - 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, or 11.41.500 - 11.41.520;

(3) two or more crimes of violation of condition of release under AS 11.56.757, a consecutive term of imprisonment shall be imposed for some additional term of imprisonment for the underlying crime and each additional crime under AS 11.56.757.

* **Sec. 9.** AS 12.63.010(c) is amended to read:

(c) If a sex offender or child kidnapper changes residence **or obtains a change of name under AS 09.55.010** after having registered under (a) of this section, the sex offender or child kidnapper shall provide written notice of the change by the next working day following the change to the Alaska state trooper post or municipal police department located nearest to the new residence or, if the residence change is out of state, to the central registry. If a sex offender or child kidnapper establishes or changes an electronic mail address, instant messaging address, or other Internet communication identifier, the sex offender or child kidnapper shall, by the next working day, notify the department in writing of the changed or new address or identifier.

* **Sec. 10.** AS 25.24.165 is amended by adding a new subsection to read:

(c) This section does not apply to a person who is committed to the custody of the Department of Corrections, on probation under AS 33.05 or parole under

AS 33.16, or required to register as a sex offender under AS 12.63.

* **Sec. 11.** AS 33.05.020 is amended by adding a new subsection to read:

(j) The commissioner shall notify the victim of a crime upon receiving notice that the probationer has filed a petition for a change of name under AS 09.55.010.

* **Sec. 12.** AS 33.16.180 is amended to read:

Sec. 33.16.180. Duties of the commissioner. The commissioner shall

(1) conduct investigations of prisoners eligible for discretionary parole, as requested by the board and as provided in this section;

(2) supervise the conduct of parolees;

(3) appoint and assign parole officers and personnel;

(4) notify the board and provide information on a prisoner 120 days before the prisoner's mandatory release date, if the prisoner is to be released on mandatory parole;

(5) maintain records, files, and accounts as requested by the board;

(6) prepare parole reports under AS 33.16.110(a);

(7) notify the board in writing of a prisoner's compliance or noncompliance with the prisoner's case plan created under AS 33.30.011(a)(8) not less than 30 days before the prisoner's next parole eligibility date or the prisoner's parole hearing date, whichever is earlier;

(8) establish an administrative sanction and incentive program to facilitate a swift and certain response to a parolee's compliance with or violation of the conditions of parole and shall adopt regulations to implement the program; at a minimum, the regulations must include

(A) a decision-making process to guide parole officers in determining the suitable response to positive and negative offender behavior that includes a list of sanctions for the most common types of negative behavior, including technical violations of conditions of parole, and a list of incentives for compliance with conditions and positive behavior that exceeds those conditions;

(B) policies and procedures that ensure

(i) a process for responding to negative behavior that

includes a review of previous violations and sanctions;

(ii) that enhanced sanctions for certain negative conduct are approved by the commissioner or the commissioner's designee; and

(iii) that appropriate due process protections are included in the process, including notice of negative behavior, an opportunity to dispute the accusation and the sanction, and an opportunity to request a review of the accusation and the sanction; [AND]

(9) within 30 days after sentencing of an offender, provide the victim of a crime information on the earliest dates the offender could be released on furlough, probation, or parole, including deductions or reductions for good time or other good conduct incentives, and the process for release, including contact information for the decision-making bodies; and

(10) notify the board and the victim of a crime upon receiving notice of the filing of a petition for a change of name of a parolee under AS 09.55.010.

* Sec. 13. AS 33.30.013(a) is amended to read:

(a) The commissioner shall notify the victim if the offender

(1) escapes from custody;

(2) is discharged from parole under AS 33.16; [OR]

(3) is released to the community on a furlough, on an early release program, or for any other reason; or

(4) petitions the court for a change of name and the commissioner has received notice of the filing of the petition under AS 09.55.010.

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

DIRECT COURT RULE AMENDMENT. Rule 6(r) Alaska Rules of Criminal Procedure, is amended to read:

(r) **Admissibility of Evidence.**

(1) Evidence which the prosecutor believes would be legally admissible at trial shall be admissible before the grand jury. Witnesses [IN

1 APPROPRIATE CASES, HOWEVER, WITNESSES] may be presented to
 2 summarize admissible evidence if the admissible evidence will be available at trial.
 3 [EXCEPT AS STATED IN SUBPARAGRAPHS (2), (3), AND (6), HEARSAY
 4 EVIDENCE SHALL NOT BE PRESENTED TO THE GRAND JURY ABSENT
 5 COMPELLING JUSTIFICATION FOR ITS INTRODUCTION. IF HEARSAY
 6 EVIDENCE IS PRESENTED TO THE GRAND JURY, THE REASONS FOR ITS
 7 USE SHALL BE STATED ON THE RECORD.]

8 (2) [IN A PROSECUTION FOR AN OFFENSE UNDER
 9 AS 11.41.410 - 11.41.458, HEARSAY EVIDENCE OF A STATEMENT RELATED
 10 TO THE OFFENSE, NOT OTHERWISE ADMISSIBLE, MADE BY A CHILD
 11 WHO IS THE VICTIM OF THE OFFENSE MAY BE ADMITTED INTO
 12 EVIDENCE BEFORE THE GRAND JURY IF

13 (i) THE CIRCUMSTANCES OF THE STATEMENT
 14 INDICATE ITS RELIABILITY;

15 (ii) THE CHILD IS UNDER 10 YEARS OF AGE
 16 WHEN THE HEARSAY EVIDENCE IS SOUGHT TO BE
 17 ADMITTED;

18 (iii) ADDITIONAL EVIDENCE IS INTRODUCED
 19 TO CORROBORATE THE STATEMENT; AND

20 (iv) THE CHILD TESTIFIES AT THE GRAND JURY
 21 PROCEEDING OR THE CHILD WILL BE AVAILABLE TO
 22 TESTIFY AT TRIAL.

23 (3) HEARSAY EVIDENCE RELATED TO THE OFFENSE, NOT
 24 OTHERWISE ADMISSIBLE, MAY BE ADMITTED INTO EVIDENCE BEFORE
 25 THE GRAND JURY IF

26 (i) THE INDIVIDUAL PRESENTING THE
 27 HEARSAY EVIDENCE IS A PEACE OFFICER INVOLVED IN THE
 28 INVESTIGATION; AND

29 (ii) THE HEARSAY EVIDENCE CONSISTS OF THE
 30 STATEMENT AND OBSERVATIONS MADE BY ANOTHER
 31 PEACE OFFICER IN THE COURSE OF AN INVESTIGATION;

1 AND

2 (iii) ADDITIONAL EVIDENCE IS INTRODUCED
3 TO CORROBORATE THE STATEMENT.

4 (4) If the testimony presented by a peace officer [UNDER
5 PARAGRAPH (3) OF THIS SECTION] is inaccurate because of intentional, grossly
6 negligent, or negligent misstatements or omissions, then the court shall dismiss an
7 indictment resulting from the testimony if the defendant shows that the inaccuracy
8 prejudices substantial rights of the defendant.

9 **(3)** [(5)] In this section "statement" means an oral or written assertion
10 or nonverbal conduct if the nonverbal conduct is intended as an assertion.

11 **(4)** [(6)] When a prior conviction is an element of an offense, hearsay
12 evidence received through the Alaska Public Safety Information Network or from
13 other government agencies of prior convictions may be presented to the grand jury.

14 * **Sec. 15.** The uncoded law of the State of Alaska is amended by adding a new section to
15 read:

16 DIRECT COURT RULE AMENDMENT. Rule 47(b), Alaska Rules of
17 Criminal Procedure, is amended to read:

18 (b) **Plain Error.**

19 **(1)** Plain errors [OR DEFECTS AFFECTING SUBSTANTIAL
20 RIGHTS] may be noticed **by the reviewing court** although they were not brought to
21 the attention of the **trial** court. **Where plain error has been established, the remedy**
22 **shall be determined by the reviewing court, but should be employed only in cases**
23 **where the plain error seriously affects the fairness, integrity, or public reputation**
24 **of judicial proceedings.**

25 **(2) The party seeking to establish plain error has the burden of**
26 **proving**

27 **(A) any factual assertions by clear and convincing evidence;**

28 **and**

29 **(B) all of the elements of plain error, regardless of whether**
30 **the claimed error is constitutional in nature.**

31 **(3) Where the record is silent or ambiguous, the error cannot be**

deemed plain unless the factual finding asserted on appeal is the only finding rationally supported by the record.

* **Sec. 16.** The uncoded law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 47, Alaska Rules of Criminal Procedure, is amended by adding a new subsection to read:

(c) Definitions.

(1) *Obvious.* An error is obvious if every competent judge would have recognized it as an error. An error is not obvious if

(A) reasonable judges could disagree about a proposition or appropriate remedy; or

(B) simply because it is constitutional in nature.

(2) *Plain Error.* An error is plain if it was obvious, involved substantial rights, and was prejudicial. An error that is the result of an intelligent waiver or a forfeiture due to a tactical decision not to object, is not a plain error.

(3) *Prejudicial.* An error is prejudicial if there is a reasonable probability that the error appreciably affected the outcome of the proceeding.

(4) *Substantial Rights.* A right is substantial if it significantly contributes to the fundamental fairness of the proceeding. The denial of a substantial right could cause a miscarriage of justice. A substantial right may be substantive or procedural.

(5) *Tactical Decision.* A decision is tactical if the record supports a plausible reason for the failure to object. There is a rebuttable presumption that failures to object are tactical. The party seeking to establish plain error has the burden of rebutting this presumption and must prove all factual assertions by clear and convincing evidence.

* **Sec. 17.** The uncoded law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 12, Alaska Delinquency Rules, is amended by adding a new subsection to read:

(f) **Notice.** Not less than 48 hours before a hearing under (e) of this section,

1 the minor or the minor's attorney shall provide written notice to the court, Department,
2 and prosecuting attorney of any proposed conditions of release.

3 * **Sec. 18.** AS 12.40.110 is repealed.

4 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 INDIRECT COURT RULE AMENDMENT. AS 09.55.010, as amended by secs. 2
7 and 3 of this Act, has the effect of changing Rule 84, Alaska Rules of Civil Procedure, by
8 establishing specific parties that must be notified and findings that must be made by the court
9 when certain persons petition for a change of name.

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

12 APPLICABILITY. (a) AS 11.56.840(a), as amended by sec. 4 of this Act,
13 AS 12.30.006(c), as amended by sec. 5 of this Act, AS 12.30.006(f), as amended by sec. 6 of
14 this Act, AS 12.30.011(d), as amended by sec. 7 of this Act, and AS 12.55.127(c), as amended
15 by sec. 8 of this Act, apply to offenses committed on or after the effective date of those
16 sections.

17 (b) AS 12.63.010(c), as amended by sec. 9 of this Act, applies to the duty to register
18 as a sex offender or child kidnapper for offenses committed before, on, or after the effective
19 date of this Act.

20 (c) Rule 6(r), Alaska Rules of Criminal Procedure, as amended by sec. 14 of this Act,
21 applies to indictments occurring on or after the effective date of this Act for offenses
22 committed before, on, or after the effective date of this Act.

23 (d) Rule 47(b), Alaska Rules of Criminal Procedure, as amended by sec. 15 of this
24 Act, applies to appeals filed before, on, or after the effective date of this Act for convictions
25 occurring before, on, or after the effective date of this Act.

26 (e) Nothing in (d) of this section may be construed as invalidating a decision of the
27 Court of Appeals rendered before the effective date of this Act.

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

30 CONDITIONAL EFFECT. (a) AS 09.55.010, as amended by sec. 2 of this Act, and
31 AS 09.55.010(b) and (c), enacted by sec. 3 of this Act, take effect only if sec. 19 of this Act

1 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
2 of the State of Alaska.

3 (b) Rule 6(r), Alaska Rules of Criminal Procedure, as amended by sec. 14 of this Act,
4 takes effect only if sec. 14 of this Act receives the two-thirds majority vote of each house
5 required by art. IV, sec. 15, Constitution of the State of Alaska.

6 (c) Rule 47(b), Alaska Rules of Criminal Procedure, as amended by sec. 15 of this
7 Act, and Rule 47(c), Alaska Rules of Criminal Procedure, enacted by sec. 16 of this Act, take
8 effect only if secs. 15 and 16 of this Act receive the two-thirds majority vote of each house
9 required by art. IV, sec. 15, Constitution of the State of Alaska.

10 (d) Rule 12, Alaska Delinquency Rules, as amended by sec. 17 of this Act, takes
11 effect only if sec. 17 of this Act receives the two-thirds majority vote of each house required
12 by art. IV, sec. 15, Constitution of the State of Alaska.

13 * **Sec. 22.** This Act takes effect July 1, 2022.