

SENATE BILL NO. 206

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY SENATOR BUNDE

Introduced: 1/9/06

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to material witnesses; and amending Rule 58.1, Alaska Rules of Civil**
2 **Procedure, and Rule 204, Alaska Rules of Appellate Procedure."**

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

4 * **Section 1.** AS 12.50 is amended by adding new sections to read:

5 **Article 3. Material Witnesses.**

6 **Sec. 12.50.200. Application for material witness order.** (a) A prosecuting
7 attorney or defendant in a criminal action may apply to the superior court for an order
8 compelling a person to appear at a material witness hearing if there is probable cause
9 to believe that (1) the person has information material to the prosecution or defense of
10 a pending indictment, information, or complaint for a crime, or a criminal
11 investigation before a grand jury, and (2) the person is unlikely to respond to a
12 subpoena. The application may be accompanied by an application for an arrest warrant
13 when there is probable cause to believe that the person will not appear at the material
14 witness hearing unless arrested.

1 (b) The application must include a copy of any pending indictment, complaint,
2 or information and an affidavit containing

3 (1) the name and address of the person alleged to be a material
4 witness;

5 (2) a summary of the facts believed to be known by the alleged
6 material witness and their relevance to the pending criminal action or investigation;

7 (3) a summary of the facts supporting the belief that the person
8 possesses information material to the pending criminal action or investigation; and

9 (4) a summary of the facts supporting the claim that the alleged
10 material witness is unlikely to respond to a subpoena.

11 (c) If the application requests an arrest warrant, the affidavit must set out why
12 immediate arrest is necessary.

13 **Sec. 12.50.210. Order to appear.** (a) If there is probable cause to believe that
14 a material witness order may issue against the person named in the material witness
15 order application, the court may order the person to appear at a hearing to determine
16 whether the person should be adjudged a material witness.

17 (b) The order and a copy of the application shall be served personally upon the
18 alleged material witness at least 48 hours before the hearing, unless the court adjusts
19 the time period for good cause, and shall advise the person of

20 (1) the time and place of the hearing; and

21 (2) the right to be represented by an attorney or to have an attorney
22 appointed if the person cannot afford one.

23 **Sec. 12.50.220. Arrest with warrant.** (a) If there is clear and convincing
24 evidence that the person named in the material witness order application will not be
25 available as a witness unless immediately arrested, the court may issue an arrest
26 warrant. The arrest warrant must require that the person be brought before the court
27 immediately after arrest. If the arrest does not take place during the regular business
28 hours of the court, the person shall be brought to the closest judge of the superior
29 court.

30 (b) The court shall inform the person of

31 (1) the reason for the arrest;

1 (2) the time and place of the hearing to determine whether the person
2 is a material witness; and

3 (3) the right to be represented by an attorney or to have an attorney
4 appointed if the person cannot afford one.

5 (c) The court shall set conditions for release or, if there is clear and convincing
6 evidence that the person will not be available as a witness unless confined, may order
7 the person confined until the material witness hearing, which must take place within
8 48 hours after the arrest.

9 **Sec. 12.50.230. Arrest without warrant.** (a) A law enforcement officer may
10 arrest an alleged material witness without a warrant only if the arrest occurs before the
11 filing of an indictment, information, or complaint for a crime, or the initiation of a
12 criminal investigation before a grand jury, and if the officer has probable cause to
13 believe that

14 (1) a crime has been committed;

15 (2) the alleged material witness has information material to the
16 prosecution of that crime;

17 (3) the alleged material witness will refuse to cooperate with the
18 officer in the investigation of that crime; and

19 (4) the delay necessary to obtain an arrest warrant or an order to appear
20 would result in the unavailability of the alleged material witness.

21 (b) Following the warrantless arrest of an alleged material witness, the law
22 enforcement officer shall immediately bring the person before a judge of the superior
23 court. If court is not in session, the officer shall immediately bring the person before
24 the closest judge of the superior court. The judge shall determine whether there is
25 probable cause to believe that the person is a material witness of a crime and, if an
26 indictment, information, or complaint for that crime has not issued or if a grand jury
27 has not commenced a criminal investigation of that crime, whether there is probable
28 cause to believe that, within 48 hours after the arrest, an indictment, information, or
29 complaint will issue or a grand jury investigation will commence. If the court finds
30 that probable cause exists, the court shall proceed as if an application for an order and
31 warrant were made under AS 12.50.200.

1 **Sec. 12.50.240. Material witness hearing.** (a) At the material witness hearing,
2 the alleged material witness shall have the following rights:

3 (1) the right to be represented by an attorney or to have an attorney
4 appointed if the person cannot afford one;

5 (2) the right to be heard and to present witnesses and evidence;

6 (3) the right to have all of the evidence considered by the court in
7 support of the application;

8 (4) the right to confront and cross-examine witnesses; and

9 (5) the right to appeal a material witness order to the court of appeals.

10 (b) If the court finds that there is probable cause to believe that the person is
11 unlikely to respond to a subpoena and has information material to the prosecution or
12 defense of a pending indictment, information, or complaint for a crime, or a criminal
13 investigation before a grand jury, the court shall determine that the person is a material
14 witness and may set the conditions of release of the material witness.

15 (c) If the court finds by clear and convincing evidence that confinement is the
16 only method that will secure the appearance of the material witness, the court may
17 order the confinement of the material witness.

18 (d) The court shall set out the facts and reasons in support of the material
19 witness order on the record.

20 **Sec. 12.50.250. Conditions of release; confinement, fees.** (a) An arrested or
21 confined material witness may not be held in a correctional facility but shall be
22 provided food and board as is provided to a member of a jury when sequestered.

23 (b) The conditions of release for a material witness or for a person held on an
24 application for a material witness order shall be the least restrictive to ensure the
25 appearance of the material witness. The court may

26 (1) place the material witness in the custody of a designated person or
27 organization agreeing to supervise the person;

28 (2) restrict the travel of the person;

29 (3) require the person to report to the court at specific places or times;

30 (4) set bail; or

31 (5) impose other reasonable restrictions on the material witness.

1 (c) A person arrested or confined as a material witness is entitled to fees as
 2 provided in Rule 7, Alaska Rules of Administration. The party obtaining the material
 3 witness order bears the cost of confinement and payment, unless the party is indigent.

4 **Sec. 12.50.260. Deposition.** A material witness may apply to the court for an
 5 order directing that a deposition be taken to preserve the witness's testimony. After the
 6 deposition is taken, the court shall vacate the terms of confinement contained in the
 7 material witness order and impose the least restrictive conditions to secure the
 8 appearance of the material witness.

9 **Sec. 12.50.270. Orders appealable.** A material witness order is a final order
 10 for purposes of an appeal as of right to the court of appeals but, on motion of the
 11 material witness, may be reconsidered at any time by the court that entered the order.

12 * **Sec. 2.** AS 22.07.020(a) is amended to read:

13 (a) The court of appeals has appellate jurisdiction in actions and proceedings
 14 commenced in the superior court involving

15 (1) criminal prosecution;

16 (2) post-conviction relief;

17 (3) matters under AS 47.12, including waiver of jurisdiction over a
 18 minor under AS 47.12.100;

19 (4) extradition;

20 (5) habeas corpus;

21 (6) probation and parole; [AND]

22 (7) bail; **and**

23 **(8) material witnesses under AS 12.50.200 - 12.50.270.**

24 * **Sec. 3.** AS 44.21.410(a) is amended to read:

25 (a) The office of public advocacy shall

26 (1) perform the duties of the public guardian under AS 13.26.360 -
 27 13.26.410;

28 (2) provide visitors and experts in guardianship proceedings under
 29 AS 13.26.131;

30 (3) provide guardian ad litem services to children in child protection
 31 actions under AS 47.17.030(e) and to wards and respondents in guardianship

1 proceedings who will suffer financial hardship or become dependent upon a
2 government agency or a private person or agency if the services are not provided at
3 state expense under AS 13.26.025;

4 (4) provide legal representation in cases involving judicial bypass
5 procedures for minors seeking abortions under AS 18.16.030, in guardianship
6 proceedings to respondents who are financially unable to employ attorneys under
7 AS 13.26.106(b), to indigent parties in cases involving child custody in which the
8 opposing party is represented by counsel provided by a public agency, to indigent
9 parents or guardians of a minor respondent in a commitment proceeding concerning
10 the minor under AS 47.30.775;

11 (5) provide legal representation and guardian ad litem services under
12 AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate Compact on
13 Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or
14 petitions for the termination of parental rights on grounds set out in
15 AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor
16 under AS 09.55.590; in children's proceedings under AS 47.10.050(a) or under
17 AS 47.12.090; in cases involving appointments under AS 18.66.100(a) in petitions for
18 protective orders on behalf of a minor; and in cases involving indigent persons who
19 are entitled to representation under AS 18.85.100 and who cannot be represented by
20 the public defender agency because of a conflict of interests;

21 (6) develop and coordinate a program to recruit, select, train, assign,
22 and supervise volunteer guardians ad litem from local communities to aid in delivering
23 services in cases in which the office of public advocacy is appointed as guardian ad
24 litem;

25 (7) provide guardian ad litem services in proceedings under
26 AS 12.45.046 or AS 18.15.355 - 18.15.395;

27 (8) establish a fee schedule and collect fees for services provided by
28 the office, except as provided in AS 18.85.120 or when imposition or collection of a
29 fee is not in the public interest as defined under regulations adopted by the
30 commissioner of administration;

31 (9) provide visitors and guardians ad litem in proceedings under

1 AS 47.30.839;

2 (10) provide legal representation to an indigent parent of a child with a
3 disability; in this paragraph, "child with a disability" has the meaning given in
4 AS 14.30.350;

5 **(11) provide legal representation to material witnesses and alleged**
6 **material witnesses arrested, confined, or subject to an order under AS 12.50.200 -**
7 **12.50.270.**

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

10 INDIRECT COURT RULE AMENDMENT. AS 12.50.270, added by sec. 1 of this
11 Act, has the effect of amending Rule 58.1, Alaska Rules of Civil Procedure, and Rule 204,
12 Alaska Rules of Appellate Procedure, by providing that material witness orders are final
13 orders for purposes of an appeal as of right while allowing the superior court to reconsider the
14 order at any time at the request of the material witness.