

HOUSE BILL NO. 105

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced: 2/4/91

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act amending Rule 8(b) and Rule 14 of the Alaska Rules of Criminal Procedure to
2 facilitate joint trials of multiple defendants and joint charges in criminal prosecutions and
3 amending Rule 404(b)(1) of the Alaska Rules of Evidence as applicable to civil actions and
4 criminal prosecutions."

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

6 * **Section 1. PURPOSE.** (a) The rules governing joinder of two or more defendants at the same trial
7 are different than the rules for joinder of offenses because joinder is governed by a different section of
8 Criminal Rule 8 of the Alaska Rules of Criminal Procedure. Under Rules 8(b) and 13, defendants may
9 be tried together "if they are alleged to have participated in the same act or transaction or in the same
10 series of acts or transactions constituting an offense or offenses." However, in Greiner v. State, 741 P.2d
11 662 (Alaska App. 1987), the Alaska Court of Appeals held that evidence that codefendants "were willing
12 to sell drugs and were well acquainted and cooperated with each other in the individual sale of drugs"
13 was insufficient to show the existence of a conspiracy, joint venture, or common scheme or plan. The
14 amendment of Rule 8(b), Alaska Rules of Criminal Procedure, made by sec. 2 of this Act, overrules

1 Greiner v. State and allows a tacit joint venture to be proven by circumstantial evidence.

2 (b) Rule 14 of the Alaska Rules of Criminal Procedure vests the trial court with discretion to
3 sever counts if joinder unfairly prejudices the defendant. The Alaska Court of Appeals has held that a
4 defendant is prejudiced unless the evidence of the joined offenses is completely mutually cross-
5 admissible (that is, the evidence of crime A is admissible at a trial on crime B and the evidence of crime
6 B is admissible at a trial on crime A). Velez v. State, 762 P.2d 1297 (Alaska App. 1988). However,
7 mutual cross-admissibility is not required under federal law. United States v. Harper, 680 F.2d 731, 734
8 (11th Cir.), cert. denied, 459 U.S. 916, 103 S.Ct. 229, 74 L.Ed.2d 182 (1982); United States v. Jamar,
9 561 F.2d 1103, 1107 - 1108 n.8 (4th Cir. 1977). This difference in interpretation means that more cases
10 are severed in Alaska courts than in federal courts. The amendment of Criminal Rule 14 made by sec. 3
11 of this Act expressly provides that a showing that evidence of similar offenses is not completely and
12 mutually cross-admissible is insufficient, by itself, as a reason to grant severance.

13 (c) State courts treat Rule 404(b), Alaska Rules of Evidence, as a rule of exclusion. Evidence
14 is presumed prejudicial and inadmissible even if it is relevant to an issue at trial. Lerchenstein v. State,
15 697 P.2d 312, 315, and 318, n.2 (Alaska App. 1985), aff'd., State v. Lerchenstein, 726 P.2d 546 (Alaska
16 1986); Oksoktaruk v. State, 611 P.2d 521, 524 (Alaska 1980). In Lerchenstein, the court explained that,
17 "The exclusionary provision of Evidence Rule 404(b) represents the presumption in our law that the
18 prejudicial effect of introducing a prior crime outweighs what probative value may exist with regard to
19 propensity. No case by case balancing is permitted." 697 P. 2d at 315. The state courts want
20 evidence of other crimes to fit into the uses specifically set out in Evidence Rule 404(b). If the evidence
21 is not relevant to one of these expressly stated purposes, state courts will generally find it inadmissible.
22 In contrast, federal courts treat the comparable federal rule as a rule of inclusion and are more willing
23 to admit evidence of other charged acts when weighing the probative value of the evidence against the
24 danger of unfair prejudice, generally allowing admissibility of the evidence for a nonpropensity purpose.
25 The amendment of Rule 404(b)(1), Alaska Rules of Evidence, made by sec. 4 of this Act, changes the
26 state court rule applicable in a criminal action or proceeding to make it one of inclusion and to establish
27 that the nonpropensity purposes listed in the rule are not inclusive and that evidence can be admitted if
28 it is relevant to a purpose not listed in the rule.

29 * Sec. 2. Rule 8(b), Alaska Rules of Criminal Procedure, is amended to read:

30 (b) JOINDER OF DEFENDANTS. Two or more defendants may be charged in the same
31 indictment or information if they are alleged to have participated in the same act or transaction

1 or in the same series of acts or transactions constituting an offense or offenses, or if the
2 defendants are parties to an express or tacit agreement to aid each other to commit an act or
3 transaction constituting a criminal offense or offenses. Such defendants may be charged in one
4 or more counts together or separately and all of the defendants need not be charged in each
5 count. The disposition of the indictment or information as to one of several defendants joined
6 in the same indictment or information shall not affect the right of the state to proceed against the
7 other defendants.

8 * Sec. 3. Rule 14, Alaska Rules of Criminal Procedure, is amended to read:

9 RULE 14. RELIEF FROM PREJUDICIAL JOINDER. If it appears that a defendant or
10 the state is unfairly prejudiced by a joinder of offenses or of defendants in an indictment or
11 information or by such joinder for trial together, the court may order an election or separate trials
12 of counts, grant a severance of defendants, or provide whatever other relief justice requires. A
13 showing that evidence of one offense would not be admissible during a separate trial of a joined
14 offense or a codefendant does not constitute prejudice that warrants relief under this rule. In
15 ruling on a motion by a defendant for severance the court may order the attorney for the state
16 to deliver to the court for inspection in camera any statements or confessions made by the defen-
17 dants which the state intends to introduce at trial.

18 * Sec. 4. Rule 404(b)(1), Alaska Rules of Evidence, is amended to read:

19 (1) Evidence of other crimes, wrongs, or acts is not admissible if the sole purpose
20 for offering the evidence is to prove the character of a person in order to show that the person
21 [HE] acted in conformity therewith. It is [MAY], however, [BE] admissible for other purposes,
22 including, but not limited to, [SUCH AS] proof of motive, opportunity, intent, preparation, plan,
23 knowledge, identity, or absence of mistake or accident.