

# Kenai Peninsula Borough Assembly

---

## MEMORANDUM

**TO:** Brent Johnson, Assembly President  
Members, Kenai Peninsula Borough Assembly

**FROM:** Bill Elam, Assembly Member   
Cindy Ecklund, Assembly Member 

**DATE:** March 2, 2023

**SUBJECT:** Resolution 2023-026, Requesting Alaska State Legislature Hearings Regarding Grand Juries, Mechanisms to Protect the Independence of the Investigative Grand Jury, and to Address Public Concerns Related to Recent Changes to Rules Applicable to Grand Juries that were Adopted by the Alaska Supreme Court (Elam, Ecklund)

---

Over the past six months of regular meetings, the Assembly has frequently heard from the public regarding concerns of interference with the grand jury process and authority for investigating public welfare or safety concerns. A specific concern articulated by Mr. David Haeg during a presentation to the Assembly on February 21, 2023, is that recent changes to the Alaska Criminal Rules of Court seem to conflict with Article 1, Section 8 of the Constitution of the State of Alaska which states: "The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended".

Constituents have raised issues of public concern, and it should be incumbent on the Alaska State Legislature to fulfill its oversight function and hold investigations or hearings to gather evidence related to the concerns that have been raised by constituents. Such investigations or hearings are within the oversight function of the Alaska State Legislature pursuant to Article 2, Section 20, Article 4, Section 12, and Article 4, Section 15 of the Alaska Constitution.

Public trust in the Alaska Court System is paramount to upholding the rule of law. Allegations of bias, misfeasance, and even systemic corruption should be investigated. The Alaska State Legislature is the proper body to find a solution to the concern that the State is not living up to the mandates and protections found in the Constitution of the State of Alaska.

Your consideration is appreciated.

Introduced by: Elam, Ecklund  
Date: 03/14/23  
Action: Adopted as Amended  
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2023-026**

**A RESOLUTION REQUESTING ALASKA STATE LEGISLATURE HEARINGS  
REGARDING GRAND JURIES, MECHANISMS TO PROTECT THE INDEPENDENCE  
OF THE INVESTIGATIVE GRAND JURY, AND TO ADDRESS PUBLIC CONCERNS  
RELATED TO RECENT CHANGES TO RULES APPLICABLE TO GRAND JURIES  
THAT WERE ADOPTED BY THE ALASKA SUPREME COURT**

**WHEREAS,** Article 1, Section 8 of the Constitution of the State of Alaska states, “The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended”; and

**WHEREAS,** public welfare and safety is protected by the rule of law and equal protection under the law; and

**WHEREAS,** Alaska Statute 12.40.030 – “Duty of inquiry into crimes and general powers” – provides, “The grand jury shall inquire into all crimes committed or triable within the jurisdiction of the court and present them to the court. The grand jury shall have the power to investigate and make recommendations concerning the public welfare or safety”; and

**WHEREAS,** Alaska Statute 12.40.040 – “Juror to disclose knowledge of crime” –provides, “If an individual grand juror knows or has reason to believe that a crime has been committed that is triable by the court, the juror shall disclose it to the other jurors, who shall investigate it”; and

**WHEREAS,** Criminal Rules 6 and 6.1 of the Alaska Rules of Court set forth the procedural rules governing the grand jury; and

**WHEREAS,** all five justices of the Alaska Supreme Court, using its rule-making authority under Article 4, Section 15 of the Alaska Constitution recently approved, effective on December 1, 2022, through Supreme Court Order (SCO) no. 1993, changes to Criminal Rules 6 and 6.1, and then, through SCO no. 2000 effective February 6, 2023, repealed some of the changes made by SCO no. 1993; and

**WHEREAS,** Kenai Peninsula Borough residents have raised concerns and presented their position or allegations that: the Alaska Supreme Court recently approved changes to the Alaska Criminal Rules of Court that conflict with the Alaska Constitution; grand juries have been denied their investigative powers; and, there has been public official misconduct and/or falsifying of official records. The allegations are serious, involve constitutional rights, and merit Legislative hearings to gather evidence in a public forum.

**WHEREAS,** numerous individuals who provided public comment to the Assembly articulated a distrust of the process that resulted in changes to Criminal Rules 6 and 6.1 related to investigative grand juries, at the same time that a grand jury in Kenai was investigating allegations of judicial misconduct, including the apparent conflict between some of the changes and Alaska law; and

**WHEREAS,** there should be public trust that the judicial branch of government is an impartial guardian of the rule of law; and

**WHEREAS,** if there exist allegations that bias or systemic corruption have led to improperly restricting substantive rights without due process or public notice, then it is incumbent upon the Legislature to gather further information or evidence through the public hearing process; and

**WHEREAS,** such an investigation appropriately reflects the separation of powers doctrine, and is an oversight function of the Alaska State Legislature pursuant to Article 2, Section 20, Article 4, Section 12, Article 4, Section 15 of the Alaska Constitution; and

**WHEREAS,** the oath of office that all elected members of this assembly take, require that this body protect and defend the Constitution of the State of Alaska and the Constitution of the United States of America;

**NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

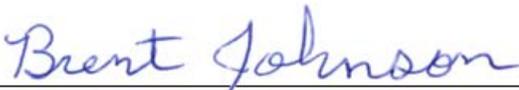
**SECTION 1.** That the Assembly supports the need for a mechanism for grand juries to investigate and make recommendations concerning the public welfare or safety pursuant to Article 1, Section 8 of the Constitution of the State of Alaska. It is in the best interest of the State to provide a transparent process and Legislative oversight pursuant to the provisions of the Alaska Constitution.

**SECTION 2.** That the Assembly upholds the Federal and State constitutional principles of the rule of law and equal protection under the law. These principles are the bedrocks of self-governing societies and they are essential to building and maintaining accountability, transparency, and trust in our system of justice.

**SECTION 3.** That a copy of this resolution shall be provided to the Governor of the State of Alaska, and the Alaska Legislature.

**SECTION 4.** That this resolution is effective immediately upon adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 14TH DAY OF MARCH, 2023.**

  
\_\_\_\_\_  
Brent Johnson, Assembly President

ATTEST:

  
\_\_\_\_\_  
Michele Turner, CMC, Acting Borough Clerk



Yes: Chesley, Cox, Ecklund, Elam, Hibbert, Ribbens, Tupper, Johnson  
No: None  
Absent: Derkevorkian