



SB 188 Criminal Procedure; Change of Name
Sectional

February 14, 2022

Section 1. Intent section:

This section clarifies that evidence which the prosecutor believes will be admissible at trial should be admissible at grand jury. It also overturns the decision in *State v. Powell*, 487 P. 609 (Alaska App. 2021) to the extent that it held that hearsay evidence is not admissible at grand jury under ARE 801(d)(3).

This section, also expresses intent to overturn a series of cases which have modified the Plain Error rule under Criminal Rule 47(b).

Sections 2 and 3. These sections require persons incarcerated and under supervision by the Department of Corrections (DOC) or who are required to register as a sex offender to notify the DOC and/or the Department of Public Safety when they file a petition for a change of name. Persons who are charged with an offense but not yet convicted must notify the court that they have an open case. The court may grant a change of name if it finds that it is 1.) consistent with the public interest; 2.) does not have a fraudulent purpose; 3.) is not intended to hinder or obstruct law enforcement purposes; or 4.) would not interfere with the rights of others.

Section 4. This section adds failing to file written notice of a change of name of a person required to register as a sex offender to the crime of “failure to register as a sex offender” (class A misdemeanor).

Section 5. This section requires a person requesting a bail review hearing to give the prosecuting attorney 48 hours’ notice. The notice must include a description of the conditions of release that the person is seeking to modify.

Section 6. This section requires the judicial officer to explain, in writing, how the particular conditions of release will reasonably ensure the appearance of the person and the safety of the victim, other persons, or the community.

Section 7. This section creates a presumption that the defendant will not appear and poses a danger to the victim, other persons, or the community of the person has repeatedly violated conditions of release imposed in a single case.

Section 8. If a person is being sentenced for a violation of a condition of release under AS 11.56.757, this section requires the court to impose consecutive sentences for the underlying offense and any additional crimes of violation of a condition of release.

Section 9. This section requires a person required to register as a sex offender to provide the Department of Public Safety with written notice of a change of name by the next working day following the change.

Section 10. This section amends the statute on the procedure for changing a person's name in the event of a divorce or annulment to prohibit that procedure from applying to a person who is in the custody or under the supervision of the Department of Corrections or who is required to register as a sex offender. Those persons must use the procedure developed in sections 2 and 3.

Section 11. This section requires the commissioner of the Department of Corrections to notify a victim if a probationer files a petition to change their name.

Section 12. This section requires the commissioner of the Department of Corrections to notify the parole board and the victim if a parolee files for a change of name.

Section 13. This section requires the commissioner of the Department of Corrections to notify the victim if an inmate petitions the court for a change of name.

Section 14. This section is a direct court rule amendment allowing evidence (including hearsay) to be presented to the grand jury if the prosecutor believes that that evidence would be admissible at trial. Witnesses are also allowed to summarize admissible evidence if that evidence will be available at trial.

Section 15 and 16. These sections are direct court rule amendments which amend the plain error rule (Criminal Rule 47). These amendments overrule recent court decisions (noted in the intent section in section 1) and return the rule to the way it was before the decision in *Adams v. State*, 261 P. 3d 758 (2011) allowing the defendant to raise an error on appeal only where the defendant objected when the alleged error occurred. The only exception is when the error is deemed "plain" and the court will find plain error only if the error (1) was not the result of an intelligent waiver or a tactical decision not to object; (2) was obvious; (3) involved substantial rights; and (4) was prejudicial.

Section 17. This section is a direct court rule amendment amending the Alaska Delinquency Rules requiring the minor to provide the court, the Department of Health and Social Services, Division of Juvenile Justice and the prosecuting attorney with 48 hours' notice if the minor plans to propose any conditions of release at a detention review hearing.

Section 18. This is the repealer section. The statute allowing hearsay evidence provided by children in sex offense cases to be presented to the grand jury is repealed as the amendments in sec. 14 which allow hearsay evidence to be presented to the grand jury generally alleviate the need for that statute.

Section 19. This section is contains indirect court rule amendment noting that the amendment regarding the new process for certain persons to change their name indirectly affects a court rule.

Section 20. This section is the applicability section.

Section 21. This section is the conditional effect section for some of the court rule changes.

Section 22. This section is the effective date section. The bill would take effect on July 1, 2022.