

Senate Bill 91: Summary of Policy Reforms

SB91: Omnibus Criminal Law & Procedure; Corrections Act was signed into law on July 11, 2016. This article highlights provisions of SB91 related to the recommendations made by the Alaska Criminal Justice Commission. The Commission was established by then Governor Sean Parnell in 2014 with the mission of evaluating and making recommendations “for improving criminal sentencing practices and criminal justice practices, including rehabilitation and restitution.”

The bipartisan, statewide Commission includes the following representatives: Gregory P. Razo, Chair (Anchorage), CIRI, Alaska Native Community; Justice Alexander O. Bryner (Ret.) (Anchorage), Designee of the Alaska Supreme Court Chief Justice; Senator John Coghill (North Pole), Non-voting; Attorney General Jahna Lindemuth, Department of Law (Juneau); Jeff L. Jessee, CEO, Alaska Mental Health Trust Authority (Anchorage); Representative Wesley C. Keller (Wasilla), Non-voting; Commissioner Walt Monegan, Department of Public Safety (Anchorage); District Court Judge Stephanie Rhoades (Anchorage), 3rd Judicial District; Lt. Kristie Sell, Juneau Police Department (Juneau); Brenda Stanfill, Executive Director, Interior Alaska Center for Non-Violent Living (Fairbanks); Alaska Public Defender Quinlan Steiner (Anchorage); Superior Court Judge Trevor N. Stephens (Ketchikan), 1st Judicial District; and Commissioner Dean Williams, Department of Corrections (Anchorage).

The Commission reached a number of consensus recommendations including:

Implementing evidence-based pretrial practices by making changes to bail practices to focus pretrial release decisions more on risk than on ability to pay, and expanding law enforcement’s discretion to use citations in lieu of arrest for lower-level nonviolent offenders.

Focusing prison beds on serious and violent offenders by diverting nonviolent misdemeanor offenders to alternatives; revising drug crime penalties to focus the most severe punishments on higher-level drug dealers; raising the felony theft threshold and indexing it to inflation; realigning sentence ranges in statute; expanding and streamlining the use of discretionary parole; and implementing a specialty parole option for the oldest cohort of prisoners.

Strengthening probation and parole supervision by standardizing sanctions for violations of probation and parole conditions to ensure they are swift, certain, and

proportional; establishing incentives to comply with conditions; focusing treatment resources on high-needs offenders; and extending good time eligibility to offenders serving sentences on electronic monitoring.

Improving reentry programming by ensuring that individuals exiting prison have the resources they need to remain crime-free and become contributing members of society.

Ensuring oversight and accountability by requiring collection of key performance measures and establishing an oversight council.

Reinvesting in programs proven to reduce recidivism and protect public safety by directing funds over the next six years into evidence-based pretrial supervision; in-prison and community-based alcohol and substance abuse treatment; transitional support for offenders returning to the community; and victims’ services and violence prevention programming.

Following are highlights of the provisions of SB91 that stem from recommendations of the Alaska Criminal Justice Commission. *These highlights do not include every measure in the bill.*

Recommendation: Implement Evidence-based Pretrial Practices

SB91 adopts a number of evidence-based pretrial reforms designed to improve public safety and pretrial outcomes:

Risk-Based Release Decision-Making

Release decisions will now be made based on a defendant’s risk, as assessed by a validated pretrial risk instrument, and alleged offense. Defendants will fall into three potential categories:

Required release on personal recognition or unsecured bond: Low- and moderate-risk defendants charged with non-violent, non-DUI misdemeanors; low-risk defendants charged with non-violent, non-DUI class C felonies.

Presumption of release on personal recognition or unsecured bond, which can be overcome if the judge finds that monetary bail is the only way to reasonably assure court appearance and public safety: Defendants charged with DUI; low- and moderate-risk defendants charged with failure to appear or violation of release conditions; high-risk defendants charged with a non-violent misdemeanor; moderate- and high-risk defendants charged with a non-violent class C felony; and all other defendants

assessed as low-risk for pretrial failure.

Monetary bail may be ordered: All other defendants, which includes any moderate- and high-risk defendant charged with a person, DV [domestic violence], or sex offense or higher-level felony. In all cases, the courts may order additional, non-monetary release conditions, including complying with pretrial supervision, so long as they are the least restrictive conditions necessary to assure court appearance and public safety.

Pretrial Supervision

SB91 establishes a pretrial services program at the Department of Corrections to conduct pretrial risk assessments using an objective, data-based, validated pretrial risk assessment tool; make recommendations to the court regarding release decisions and conditions; and supervise pretrial defendants who are released. The use of third-party custodians will be restricted to only those cases where pretrial supervision is not available and no secured monetary bond is ordered. Additionally, the courts will be required to send court date reminders to defendants to help improve court appearance rates.

Arrest Procedures

Peace officers will now be permitted (but not required) to issue a citation for class C felony offenses, unless the person is a danger to others or the offense involves violence or harm to another person or to property.

Failure to Appear (FTA) and Violation of Conditions of Release (VCOR)

Failure to Appear (FTA): FTA is now an arrestable violation, unless the defendant fails to appear for more than 30 days or in order to avoid prosecution (in which case it remains a misdemeanor or Class C Felony).

Violation of Conditions of Release (VCOR): VCOR is now an arrestable violation. Under SB91, FTA and VCOR are responded to by arresting the defendant, revoking bail, conducting a new pretrial risk assessment, and then either detaining the individual in prison or releasing the person with greater restrictions or conditions.

Recommendation: Focus Prison Beds on Serious and Violent Offenders

Evidence suggests that for many offenders, incarceration is not more effective at reducing recidivism than non-custodial sanctions—and a growing body of research shows that for many low-level offenders, prison terms may increase rather than reduce recidivism. Further, the most rigorous

research in the field shows that longer prison stays do not reduce recidivism any more than shorter prison stays.

SB91 adopts a number of reforms designed to focus expensive prison beds on serious and violent offenders, including:

Misdemeanor Sentencing and Classification

Senate Bill 91 includes the following changes to misdemeanor sentencing and classification:

Class B Misdemeanors: Sets the maximum term of imprisonment for a Class B Misdemeanor to ten days, except if the offense is distribution of explicit images. Sets a maximum term for disorderly conduct of 24 hours. Reclassifies certain Class B misdemeanors as violations.

Class A Misdemeanors: Provides for a presumptive range of zero to thirty days for Class A Misdemeanors, with exceptions for offenses with mandatory minimums of thirty days or above, for cases in which the conduct was among the most serious included in the definition of the offense, for defendants with similar past convictions, and for assault in the fourth degree, sexual assault in the fourth degree, sexual abuse of a minor in the fourth degree, indecent exposure in the second degree if the victim is under 15, and harassment in the first degree.

Felony Sentencing

Reduces the presumptive sentencing range for non-sex felony offenses (see Table 1 for details).

Controlled Substances

Senate Bill 91 includes the following policy changes related to controlled substances:

Possession: Reduces the classification of possession offenses for all controlled substances except GHB [gamma-hydroxybutyric acid] to a Class A Misdemeanor and eliminates the imposition of active imprisonment time for the first two misdemeanor possession offenses.

Commercial: Reduces the penalty for com-

mercial offenses relating to less than 1 gram of a IA substance or 2.5 grams of IIA or IIIA controlled substances to a Class C Felony, and more than 1 gram of a IA controlled substance to a Class B Felony.

Theft

Senate Bill 91 includes the following policy changes related to theft:

Felony Theft Threshold: Increases the threshold value for theft related offenses from \$750 to \$1,000 and requires the level to be adjusted every five years to account for inflation.

Shoplifting: Eliminates use of incarceration as a sanction for theft under \$250 (first two offenses), and limits the use of incarceration to 5 days suspended imprisonment and six months of probation for subsequent shoplifting offenses.

Traffic Offenses

Senate Bill 91 includes the following policy changes related to traffic offenses:

DUI-Related DWLS: Removes the mandatory minimum for first time DUI-related DWLS [Driving With License Suspend] offenders and reduces the mandatory minimum for second time DUI-related DWLS offenders to 10 days.

Non-DUI Related DWLS: Reduces the penalty for non-DUI-related DWLS offenses from a misdemeanor to an infraction.

First-time DUI: Requires first-time DUI offenders to serve a mandatory term of electronic monitoring. If this is unavailable, imprisonment is determined by the Department of Corrections.

Suspended Entry of Judgment

Establishes a sentencing option that allows a court to suspend entering a judgment of guilt in some cases and allow the person to serve time on probation. If the person successfully completes probation, the court would then discharge the person and dismiss the case.

Administrative Parole

Creates an administrative parole option, which grants parole without a hearing, for first-time non-violent, non-sex misdemeanor and Class B or C felony offenders who have completed the requirements of their case plan, followed institutional rules, and in cases where a victim has not requested a parole hearing.

Discretionary Parole

Senate Bill 91 makes the following changes to discretionary parole:

Eligibility: Expands eligibility for discretionary parole to all offenders except unclassified sex offenders. For other sex offenders, eligibility for discretionary parole starts once they have served 50% of their sentence.

Process: Streamlines the hearing process for discretionary parole by requiring the parole board to hold hearings for all prisoners who are eligible, rather than wait for prisoners to determine eligibility and prepare an application prior to a hearing.

Geriatric Parole

Expands eligibility for discretionary parole to inmates who are over the age of 60, have served at least 10 years of their sentence, and have not been convicted of an unclassified or sexual felony.

Recommendation: Strengthen Probation and Parole Supervision

Research has identified a number of key strategies to increase success rates for those supervised in the community, including identifying and focusing resources on higher risk offenders; using swift, certain, and proportional sanctions; incorporating rewards and incentives; frontloading resources in the first weeks and months of supervision; and integrating treatment into supervision. SB91 requires Alaska to adopt these evidence-based community supervision strategies, including:

Administrative Sanctions and Incentives

Requires the Department of Corrections to establish an administrative sanction and incentive program to facilitate a prompt and effective response to compliance with or violations of conditions of probation or parole.

Cap Technical Violation Stays

Limits the maximum sentence for technical violations of probation or parole for offenders who are not in the PACE [Probation Accountability and Certain Enforcement] program to 3 days for the first revocation, 5 days for the second revocation, 10 days for

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Table 1. Felony Presumptive Sentencing Comparison

Class	First	Second	Third	Exceptions
A	3–6 years (was 5–8)	8–12 years (was 10–14)	13–20 years (was 15–20)	Use of dangerous weapon/offense directed at first responder: 5–9 years for first offense
B	0–2 years (was 1–3)	2–5 years (was 4–7)	4–10 years (was 6–10)	Criminally negligent homicide: of a child, 2–4 years for a first offense; of an adult, 1–3 years for a first offense
C	0–18 months (suspended) (was 0–2 years)	1–3 years (was 2–4)	2–5 years (was 3–5)	First-time DUI: 120–239 days; second-time DUI: 240–359 days; third and subsequent DUI: 360 days to two years

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the third revocation, and up to the remainder of the suspended sentence for the fourth or subsequent revocation. The maximum sentence for absconding is limited to 30 days. Arrests for new criminal conduct, failing to complete batterer's intervention or sex offender treatment, or failing to comply with special sex offender conditions of release are not considered technical violations. [The PACE program focuses on offenders with drug or alcohol offenses who are on probation and operates in Anchorage, Bethel, Fairbanks, Juneau, Kenai, and Palmer.]

Earned Compliance Credits

Requires the commissioner to establish a program that allows probationers and parolees to earn a credit of 30 days for each 30 day period served in which the person has complied with conditions of supervision.

Early Discharge

Requires probation or parole officers to recommend early discharge for any probationer/parolee who has served at least one year (Class C Felonies) or two years (Class A and B Felonies), completed any required treatment, and has not been found in violation of their conditions of probation for at least one year, with an exception for offenders convicted of an unclassified or sex felony offenses, or a crime involving domestic violence.

Maximum Probation Terms

Limits probation terms to 15 years for a sex offense; ten years for a non-sex unclassified felony; five years for other felony offenses; three years for a misdemeanor assault, domestic violence, or sex offense; two years for a second-time misdemeanor DUI; and one year for any other offense.

Good Time on Electronic Monitoring

Extends good time credit to individuals on electronic monitoring.

CRCs

Requires CRCs [Community Residential Centers—housing for offenders] to provide treatment, reduce mixing of low and high risk offenders, and adopt quality assurance measures, including standards for assessing risk levels.

Alcohol Safety Action Program [ASAP]

Restricts ASAP referrals to persons who have been referred by a court for a DUI-related offense, and requires the ASAP program to screen for criminogenic risk and monitor based on risk level.

Community Work Service

Prevents the court from converting community work service into a sentence of imprisonment. Increases the value of an hour of community work from three dollars to the state minimum wage.

Recommendation: Improve Reentry Programming

Almost everyone incarcerated in Alaska will eventually be released to the community. SB91 included reforms designed to improve the re-entry process—and, in doing so, improve public safety by reducing recidivism.

Reentry Planning

Requires the Department of Corrections to work with prisoners to prepare a reentry plan, beginning 90 days before the date of release. The department must partner with one or more community nonprofits to assist in the reentry process, and must identify resources available to the prisoner in the community. Finally, the department must assist prisoners with obtaining state identification prior to release.

Food Stamps

Lifts the restriction on eligibility for food stamps for persons convicted of drug felonies, provided the individual is compliant with conditions of probation and has completed treatment or is still working toward rehabilitation.

Driver's Licenses

Requires the DMV [Department of Motor Vehicles] to restore a person's driver's license if all charges have been dismissed or if the person has been acquitted of DUI. Authorizes the court to grant limited license privileges for felony DUI offenders if the person has completed a court-ordered treatment program, has proof of insurance and has installed an ignition interlock device.

Recommendation: Ensure Oversight and Accountability

The reforms to Alaska's correctional and criminal justice systems will require careful implementation and oversight. To ensure that reforms are monitored for fidelity and efficacy, SB91 requires:

Oversight Commission

Extends the life of the Alaska Criminal Justice Commission and requires the Commission to review and analyze the implementation of the legislation and annually make recommendations on how savings from reforms should be reinvested to reduce recidivism.

Reporting of performance measures

Requires state agencies to collect and report data on key performance measures, and requires the Commission to use that data to monitor the reforms and, if necessary, recommend additional reforms in the future.

Recommendation: Reinvest in Practices Proven to Reduce Recidivism and Protect Public Safety

Using a portion of the savings and 50 percent of the state's new revenue from marijuana tax receipts, Alaska will reinvest an estimated \$98 million over the next six years into treatment in prison and in the community, reentry support services for inmates returning to the community from prison, pretrial services and supervision, violence prevention programming, and crime victims' services. (This reinvestment component is found both in the bill itself and in the bill's fiscal note.)

The full text of SB91 is available on the Alaska State Legislature website (http://www.legis.state.ak.us/basis/get_bill.asp?session=29&bill=SB91).

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