

To: Anchorage Assembly Members
From: Greg Razo, Chair, Alaska Criminal Justice Commission
Date: October 9, 2017
Re: Response to criticisms/factual errors regarding S.B. 91

I hope you will take a moment to review the following information about SB91 and SB54 in advance of your action tomorrow evening. I was prompted to send this response out of concern that you may recently have received an email containing incorrect, incomplete, or misleading information about SB91, the research underlying it, and the adjustments to it contained in SB54.

This document sets out the most seriously flawed statements, and corrects each of them for the record.

1. The bill was too big.

Over 50 hearings occurred during the legislative process. The majority of provisions were recommended by the Commission in its Dec. 2015 report based on rigorous research about what works and doesn't work to reduce recidivism.

S.B. 91 did not include a provision about helping families of police officers killed on duty as a ruse to gain public support.

- Anchorage Representative Cherise Millett, who opposed S.B. 91, attempted to amend it to include health benefits for the families of officers killed in the line of duty. Speaker Chenault ruled the amendment out of order and the sponsor of the bill explicitly opposed adding that policy into the bill, because "It makes this about something other than criminal justice reform.... How does the Senate react to that? I don't think very favorably—not because of the issue, but because they don't fit together." See this news coverage:

<http://www.ktuu.com/content/news/Crime-bill-will-not-gaurantee-benefits-to-families-of-officers-killed-on-duty-378302291.html>

2. C felonies are "non-arrestable" offenses and no jail time is possible.

Untrue: the law did not make C felonies "non-arrestable" offenses. Whether to make an arrest and hold a person in jail pending a judicial adjudication or to issue a citation with a court date is entirely in the police officer's discretion—the law doesn't take away any tools that the officer previously had. Law enforcement officers can and still do exercise their discretion to arrest people they believe have committed C felonies.

(To clarify terms: a “citation” is different from a ticket. It’s a criminal charge with a date to appear in court, where the court will weigh the evidence and issue a sentence if the person is found guilty.)

Also untrue is the suggestion that no C felons can go to jail. Repeat C felony offenders are subject to a sentence of incarceration. In this way we preserve the use of incarceration for higher-risk offenders.

Many *first-time* C felony offenders are at the tipping point between falling deeper into the criminal justice system, or getting their lives on track. Under SB91, this class of offenders is subject to a suspended term of incarceration of 0-18 months, a fine, victim restitution, and they will be actively monitored by a DOC probation officer for up to 5 years. However, S.B. 54 reinstitutes jail time first-time class C felonies.

3. Investments in more police and prosecutors are wasted unless crimes have the possibility of jail time.

Of course many repeat offenders can and are taken to jail; they can and do serve sentences of incarceration.

But also: S.B. 54 reinstitutes jail time for certain offenses that were given presumptive or mandatory non-jail sanctions under S.B. 91, including: repeat shoplifting, violations of conditions of release, and first-time class C felonies. A full repeal of S.B. 91 is unnecessary to carry out these changes, because they’re already accounted for in S.B. 54.

4. Questioning the studies about what works to reduce recidivism; cherry-picking offenders.

The Commission’s 2015 report and information on its web site give the citations to the criminological studies with control groups and meta-analyses of studies about what works to reduce recidivism. These studies include:

- The marginal impact of incarceration has declined with the emergence of mass incarceration in the United States, and increasing the number of prisoners further today will have little if any effect on crime.
 - National Research Council (2014), *The Growth of Incarceration in the United States*
- Incarceration does not reduce recidivism more than non-custodial sanctions.
 - Campbell Collaboration (2015), Nagin & Snodgrass (2013), Nagin, Cullen, & Lero Jonson (2009)
- Longer periods of incarceration do not reduce recidivism more than shorter periods of incarceration.

- Nagin (2009), Anwar & Stephens (2011), Meade, et al. (2012)
 - Lengthy prison sentences are ineffective as a crime control measure and an inefficient approach to preventing crime by incapacitation unless they are specifically targeted at very high-rate or extremely dangerous offenders.
 - National Research Council (2014)
 - Targeting low-risk offenders with intensive interventions can actually *increase* recidivism.
 - Lowenkamp et al. (2006), Andrews (1999), Latessa et al. (2010), Bonta et al. (2000)
 - Targeting dynamic risk factors with individualized case management, supervision, and programming reduces re-offending
 - Bonta & Andrews (2007), Latessa (2004), Gendreau, French & Taylor (2002)
 - Swift, certain, and proportional sanctions have a stronger deterrent effect than delayed, random, and severe sanctions.
 - Nagin & Pogarsky (2001), Hawken & Kleiman (2009), Harrell & Roman (2001)
 - Increased program completion rates and reduced recidivism when rewards outnumber sanctions.
 - Wodahl, Garland, Culhane & McCarty (2011), Petersilia (2007)
5. Criticism of cost analysis.
- The Commission has been a stakeholder in the UAA Justice Information Center's important new research on the effectiveness and cost-effectiveness of adult criminal justice programs specifically offered in Alaska. See this Sept. 2017 report by UAA's Alaska Justice Information Center: <https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/alaska-justice-information-center/documents/ajic.2017.results-first-acj-executive-summary.pdf>

Criminal justice reform is intended to *decrease* recidivism, resulting in less victimization costs. See studies in paragraph 4 above.

6. People won't be deterred from crime unless they get caught.

This argument is supported by the research principle that sanctions for criminal behavior must be swift, certain, and proportional. This research principle is the primary reason why S.B. 91 changed graduated sanctioning practices for those supervised in the community on probation and parole. (Meaning, if you roll back S.B. 91, you're actually doing away with policy fixes meant to enact swift, certain sanctions for violations of supervision conditions.)

7. Criminal justice reform creates more criminals.

Many citizens have theories about how criminals think and what motivates them. But SB91 is not based on idiosyncratic theories about individual offenders' motivations; rather, it is based on the best of what we know works to reduce recidivism statistically.

Because the state of our knowledge can never be said to be perfect, the law includes requirements to monitor, calculate, and publicly report on recidivism rates in the future. If the social scientists are wrong, we will soon know.

8. It promotes vigilantism.

A situation of a local citizen chasing alleged car thieves occurred because of a perception that APD was not responding to calls for service for vehicle thefts. Whether and how APD can respond to calls for service is a local resource issue.

9. It is elitist because people need their cars.

This claim is completely unsupported. Both the Legislature and the Criminal Justice Commission put in hours and hours of work designing policies that help people get provisional driver's licenses so that they can get to work. They heard testimony from dozens of people affected by the loss of transportation, and had them top of mind when designing these provisions in S.B. 91.

What "loopholes" allow vehicle thieves to avoid charges? They have to be caught first by the police. It is then up to the DAs to charge them. The state prosecutor's office has lost around 10 positions in the last few years due to budget cuts; the state's capacity to prosecute misdemeanors is down by 6,863 since 2013; capacity to prosecute felonies is down by 187.

The only possible "loophole" is lack of resources to investigate and prosecute property crimes when there are so many violent crimes competing for attention.

10. Bail decisions

The timing of bail decisions remains the same. Under current practice, some arrestees are released on their own recognizance before seeing a judge, some are released on bail without seeing a judge, and some see a judge for a release decision the next day.

S.B. 91 invests millions of dollars into a pretrial services program that—for the first time—will provide more information to help inform a judge's bail decision. The previous bail system in which money was the deciding factor in someone's pretrial release was letting people go who were dangerous, but who had access to money. The new system under S.B. 91, becoming effective starting in January, will use a risk assessment instrument that has

been validated on Alaska's pretrial defendant population to identify factors that predict failure to appear in court and new criminal activity during the pretrial period, and will weight those factors based on their predictive weight. Use of tools like these results in more informed decisions by judges, not less-informed ones. It will also result in supervision of those released pretrial—for the first time in Alaska's history—a public safety value add that would disappear if S.B. 91 were repealed.

The bill did not take away the prosecutor's ability to request a longer period to prove someone is too dangerous for release on bail (see AS 12.30.006(b)).

11. Fingerprinting. Fingerprint requirements are the same – if they don't get fingerprinted at booking, the law requires judges to order offenders to be fingerprinted at sentencing. Officers have always had the authority to bring someone to the police station for fingerprinting and background checks before releasing them with a citation to appear in court.

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In any event, to improve fingerprint compliance, DPS is currently considering stationing LiveScans and technicians in high-volume courthouses throughout the state so sentenced people who haven't yet been fingerprinted can do it right then.

12. Bail violations are under reported.

For years we have known that bail conditions of release are not readily accessible to law enforcement. While SB91 doesn't solve this problem, it makes it a lot better because soon Pretrial Enforcement Officers will monitor people out on bail.

13. Technical violations are serious and need to be responded to with effective sanctions.

This problem is precisely what S.B. 91 addresses with swift, certain, and proportional sanctions for technical violations of probation and parole conditions.

14. Under S.B. 91, sex offenders can be released early if they satisfy some program requirements.

This is not true. S.B. 91 makes no sentencing or good time changes affecting felony sex offenses. It also excludes felony sex offenses from the geriatric parole provision. It does require prisoners to be given individualized case plans with programming designed to address the factors/needs that make them likely to reoffend, and allows the Parole Board to consider paroling people with Class B and C sex offenses, but it explicitly requires the board to determine whether the person poses a threat of harm to the public if released.

15. S.B. 91 fails to treat repeated non-serious offenses as a problem.

This is precisely what S.B. 54 aims to address by establishing jail penalties for repeated shoplifting, and increasing jail penalties for repeated Class A misdemeanors.

16. If anything, we should have stiffened our penalties to get better crime outcomes.

This is not supported by the experiences of other states. Between 2010 and 2015, the nation's imprisonment rate fell 8.4% while the combined violent and property crime rate declined 14.6%. Thirty one states cut both crime and imprisonment simultaneously. See this report:

http://www.pewtrusts.org/~media/assets/2017/03/pspp_national_imprisonment_and_crime_rates_fall.pdf

17. We're paying correctional officers to just sit around. If we want better outcomes, we should revise correctional officer job duties and train them better.

Revising job descriptions and training corrections officers on core correctional practices has been an enormous part of S.B. 91 implementation.

18. S.B. 91 makes it easier for offenders to blow off their community work service duties by reducing them to a fine.

The entire purpose of community work service is to allow people who cannot pay a fine to "work off" the fine. What S.B. 91 does is simply convert that work time back to a fine if the person doesn't do the community service.