

## Alaska State Legislature

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### SENATE BILL 91

#### Summary of Changes

Omnibus Criminal Law & Procedure; Corrections  
Version N to V

#### **Changes to Criminal Offense Classification & Sentencing**

1. Amends various statutes to reflect Misconduct Involving a Controlled Substance (MICS) renumbering, reflected throughout the bill.
2. Reestablishes Criminal Trespass in the Second Degree, Criminal Mischief in the Fifth Degree, and Harassment in the Second Degree as class B misdemeanors, rather than violations and lengthens maximum sentence to 10 days in prison. (Removed former § 8, 13, 26; changes former 37)
3. Lowers the felony theft threshold (the dividing line between felony and misdemeanor property crimes) from \$2000 to \$1000, reflected throughout the bill.
4. Amends language regarding prior convictions for theft crimes to correct a drafting error. (§89)
5. Returns Disorderly Conduct to a class B misdemeanor, while retaining the bill's reduction from 10 days maximum term of imprisonment to 24 hours maximum term of imprisonment. (Former § 24-25, New § 28, 89.)
6. Provides a person may not be prosecuted for prostitution if they are cooperating with law enforcement in the reporting of another crime. (§ 32)

7. Limits the circumstances in which a person can be prosecuted for sex trafficking or promotion of prostitution to instances in which the person causes, induces, or forces another person to engage in prostitution (as opposed to oneself). (§33-36.)
8. Reestablishes the delivery of any amount of a schedule IA, IIA, or IIIA controlled substance to a person under 19, who is at least three years younger than the person delivering the substance, as MICS-1 (unclassified felony), rather than MICS-2 (class A felony). Reestablishes the conduct related to the manufacture of methamphetamine around children as MICS-1, rather than MICS-2, and reestablishes this within the existing felony sentence presumptive range in AS12.55.125. (Former § 21, 31 / New § 38, 84.)
9. Elevates possession of any amount of a schedule IA or IIA controlled substance around school grounds, youth recreation centers, and school busses from MICS-3 to MICS-2. (Former § 31-32 / New § 39, 41.)
10. Aligns the manufacture of methamphetamine and possession of methamphetamine precursors with the manufacture of other scheduled substances in MICS-2. (Former § 31 / New § 38)
11. Provides for aggregation of drug weights for commercial offenses relating to IA, IIA, and IIIA controlled substances.
12. Increases the mandatory minimum sentence for murder in the 1<sup>st</sup> degree from 20 to 30 years.
13. Provides that, for persons sentenced for two or more instances of Murder II, a consecutive term shall be imposed for at least one-fourth of the mandatory minimum term under AS 12.55.125(b) for each additional crime. (§ 86).
14. Reduces the presumptive term for a second class C felony to one to three years to correct a drafting error. (Previously was two to four years.) (§ 85)
15. Reestablishes the existing statutory presumptive range of imprisonment of two to four years for criminally negligent homicide where the victim is under the age of 16, and one to three years if the victim is older than 16. (Former § 69 / New § 84)

16. Removes domestic violence-related Assault in the Fourth Degree from the 0-30 day presumptive range for class A misdemeanors, replaces it at up to one year. (Former § 71 / New § 87)
17. Increases the maximum fine for class A misdemeanors from \$10,000 to \$25,000. (§ 68)

### **Pretrial Release/Arrest Procedure Changes**

18. Substantially redrafts the sections regarding use of citations and arrest for clarity.
19. Broadens exemptions from the presumption to cite by deleting “significant” from the danger required or the flight risk provisions, retaining the existing requirement to arrest when the person poses a danger to them self or to property, and when an officer has probable cause to believe a person has committed certain crimes (crimes against the person, sex offenses, theft in the second degree, escape, unlawful evasion, or unlawful conduct.) (§ 47)
20. Requires a bail hearing to be held within 24 hours following arrest, absent compelling circumstances, and in no case more than 48 hours. Clarifies that if a pretrial report isn’t available or is delayed, that is not sufficient justification to delay a hearing more than 24 hours. (§ 46).
21. Establishes total immunity from civil action for damages for failure to comply with the requirements regarding when an officer may cite or arrest, if an improper arrest is made. (§ 48)
22. Reduces the minimum time specified in the court notice to appear from five days to two for citations for felonies or misdemeanors. The minimum time for violations remains five days. (§ 49-50)
23. The pretrial release section was substantially re-written for clarity. (§ 55)
24. Limits the number of bail review hearings a defendant is entitled to due to “new information” now that a person’s inability to post the required bail can be taken into account under SB 91. (Former § 40 / New § 53)
25. Allows appearance or performance bonds to be required in a full or partial posting. (§ 55)

26. Gives additional guidance to the courts on criteria for granting credit for pretrial and adds a requirement, if a treatment program is to be eligible for pretrial credit, the program must address criminogenic traits, provide measures of progress, and require notification to the court of any violations. (§ 67)
27. Eliminates the 120- cap on the amount of jail credit that can be earned on electronic monitoring pretrial. (§ 63)
28. Eliminates the requirement that pretrial service officers be officers of the court or have their appointment entered on the journal of the court. (§ 117)
29. Authorizes pretrial services officer to recommend to the judge that a defendant charged with an offense involving alcohol or a controlled substance to comply with 24/7. (§ 117)
30. Ensures the Suspended Entry of Judgement provision in SB 91 does not provide for record confidentiality under the recently passed House Bill 11. Also, excludes persons convicted of a crime involving domestic violence from eligibility for Suspended Entry of Judgment. (Former § 59 / New § 67, 83)

### **Commercial Marijuana Oversight and Revenue**

30. Requires a national criminal background check to be conducted to determine eligibility for a license to operate a commercial marijuana establishment. (New § 91)
31. Requires applicants for a license to operate a marijuana establishment to submit fingerprints for a criminal history record check. (New § 93)
32. Establishes the recidivism reduction fund in the general fund with 50 percent of the commercial marijuana tax revenue collected to make appropriations for recidivism reduction programs. (New § 174)

### **Victim Notification and Inclusion**

33. Removes language from existing AS 12.55.090(h) limiting the number of victims who may give sworn testimony at a hearing to reduce or terminate probation and discharge a defendant before the period of probation for the offense has been completed. This was a request of the Office of Victims' Rights (OVR). (Former § 63 / New § 77)

34. Under Duties of a Prosecuting Attorney, requires the prosecutor to confer with the victim of any felony offense or domestic violence offense concerning a proposed plea agreement prior to entering into such an agreement. This broadens the requirement to confer *with victims of all felonies*, not just victims of domestic violence. This was added at the request of OVR. (New § 90)
35. Requires the court to provide victims with a form at the time of sentencing that provides contact information if the victim has questions and notifies the victim of the potential for the offender to be released on furlough, probation, or parole or for good time credit. (New § 61)
36. Adds the Office of Victim Rights to the groups DOC is required to consult with when developing regulations regarding pretrial services. (§ 117)
- Requires DOC to create a restitution payment schedule for each probationer who owes restitution based on the probationer's income and ability pay if the court has not done so. (§ 115)
37. Requires DOC to provide victims with information on the earliest date an offender could be released on furlough, probation, or parole, and the process for release. (§141)

### **Changes to Community Supervision (Probation and Parole)**

38. Changes the maximum term of probation from five years to ten years for felony sex offenses (currently 25 years); from three years to five years for unclassified felonies (currently 10 years); and to two for assault in the fourth degree (currently 10 years). (Former § 61 / New § 75)
39. Adds exceptions so that the court or board of parole may impose a period of imprisonment up to the remainder of the suspended portion of the sentence for probationers/parolees who have failed to complete required batterers intervention programming or sex offenders who have failed to complete sex offender treatment. Requires parole time to be tolled during a period of absconding. (§ 145, 148)
40. Changes the earned compliance credit to be applied every thirty days, upon thirty days of compliance rather than each day for a single day of credit. Clarifies that no proration of months shall be allowed. Requires DOC to establish regulations for calculating and tracking credits and notifying victims. Extends program to parole as well as probation. (Former § 88 / New § 114, 151)

- 41. Clarifies that offenders earning a sentence of imprisonment of less than 10 days for a technical violation of probation or parole are not entitled to good time. (§ 153)
- 42. Corrects references to violators of parole, rather than probation. (Former § 118 / New § 145)

### **Parole Release Eligibility & Procedures**

- 43. Excludes persons convicted of a sexual felony from eligibility for administrative parole, which is offered under the bill to prisoners convicted of first-time class B or C felonies. (Former § 96 / New § 122)
- 44. Clarifies timeline to notify the victim of their right to request a hearing: DOC is required to notify a victim at least 90 days before eligibility date, and the victim is required to respond within 30 days to request a hearing. (§ 122)
- 45. Clarifies geriatric parole provision to ensure that the board takes an offender's likelihood of recidivism given their age and other relevant factors when making release decisions, and that eligibility is notwithstanding a presumptive, mandatory, or mandatory minimum term or sentence the prisoner may be serving or any restriction on parole eligibility. (Former § 97 / New § 123)
- 46. Requires the board to authorize parole for anyone who committed a class A, B or C felony if the person has met the requirements of their case plan and followed institutional rules, unless the board finds the prisoner poses a threat of harm. Due to a drafting error, this requirement previously applied only to those who had committed one or more previous felonies. (§ 127)
- 47. Authorizes the board to impose a requirement that the parolee participate in a 24/7 program. (§140)
- 48. Changes from compulsory to discretionary the Board of Parole's unconditional discharge of a parolee upon their completion of one year of parole while in compliance and having completed all treatment programs required. Adds an exclusion for persons convicted of an unclassified felony offense, a sexual felony, a crime involving domestic violence or a misdemeanor from recommended early unconditional discharge from parole. (Former § 117 / New § 144)

- 49. Eliminates section that would have allowed technical parole violators to be released on bail. (Former § 129)
- 50. Requires DOC to perform a risk and needs assessment before an offender is released on parole, furlough or electronic monitoring. (§ 156)
- 51. Restricts eligibility for discretionary parole for sex offenders. Higher-level sex offenders are no longer eligible for discretionary parole, and lower-level sex offenders will only be eligible after serving half of their sentence. (§ 124)

### **Re-Entry**

- 52. Creates a timeline for re-entry planning, which shall occur for all prisoners serving 90 days more (changed from 181 days in the original draft of the bill) and begin at least 90 days before release. (§ 156)
- 53. Requires DOC to form a partnership with one or more non-profits to assist in the re-entry process. (§ 158)
- 54. Requires DOC to coordinate with the Department of Labor and Workforce Development to provide access, after release, to job training and employment assistance, and to assist a prisoner in obtaining a valid state identification card if the prisoner does not have one. (§ 156)
- 55. Requires that the recidivism reduction program fund programs that increase access to evidence-based rehabilitation programs and support offender transition and re-entry. (§ 187)

### **Alcohol Safety Action Program**

- 56. Restricts ASAP referrals to persons who have been referred by a court for DUI, Refusal, or MCA. Requires the department of health and human services to develop regulations for the operation and management of public and private ASAP programs that ensures the uses of a validated risk tool. Provides that ASAP assess participants for risk to re-offend and monitor based on that risk. (§ 182 – 185)

### **Oversight**

- 57. Provides that the Alaska Criminal Justice Commission shall annually make recommendations to the governor and legislature on how savings from

criminal justice reforms should be reinvested to reduce recidivism. Allows the commission to appoint a working group to review and analyze the implementation of recommendations, as well as enter into data-sharing agreements with the University of Alaska and the Alaska Judicial Council. (§ 175)

- 58. Requires the commission to track and analyze data collected by agencies and entities charged with implementing the recommendations. Requires the Judiciary, the Department of Public Safety, and the Department of Corrections to report data to the commission on a quarterly basis. (§ 176)
- 59. Requires the commission to issue an annual report that must include a description of the past year, a summary of savings, performance metrics and outcomes from the recommendations, and recommendations for additional reforms. (§ 177)
- 60. Requires the commission to submit the report no later than November 1 of each year and extends the life of the commission to June 30, 2021. (§ 178-179)

### **Miscellaneous**

- 61. Extends reimbursement of medical benefits to an eligible member's dependent children and spouse if the member dies. (§ 161 - 172)
- 62. Creates an exception to vehicle registration requirements for vehicles driven by an operator with an off-highway commercial driver's license or a noncommercial off-road driver's license. (§ 95, 107, 109-110)
- 63. Requires the Department of Motor Vehicles to issue off-road system noncommercial driver's licenses and to publish a list of off-road system eligible areas. (§ 96)
- 64. Corrects a drafting error in Section 138.
- 65. Removes retroactive application of administrative and discretionary parole provisions. They shall now apply to persons sentenced on or after the effective date of these sections, for conduct occurring before, on or after the effective dates. (Former § 141 / New § 206 – *Applicability*)
- 66. Makes changes to probation and parole supervision (administrative sanctions and incentives, earned compliance credits, early discharge, technical revocation caps) apply to offenders currently on probation or parole as well as those put on probation or parole in the future. (Former § 141 / New § 206 – *Applicability*)



67. Delays effective dates for provisions relating to community supervision (to January 2017) and pretrial release and services (January 2018).
68. Requires the Alaska Criminal Justice Commission to review and analyze sexual offense statutes and explore the possibility of entering into arrangements with tribal organizations to provide pretrial, probation, and parole services in underserved areas of the state.
69. Requires the Alaska Criminal Justice Commission to prepare a report regarding the effectiveness of Alaska's Driving While Intoxicated offenses.
70. Requires the Alaska Criminal Justice Commission to prepare a report regarding collection of victims' restitution and make recommendations for statutory changes to improve the payment and collection of victims' restitution.
71. Requires the Alaska Criminal Justice Commission to prepare a report regarding the potential of using social impact bonds to reduce recidivism rates.