

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version: SB 91  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: SSSB91-LAW-CRIM-02-12-16  
Title: OMNIBUS CRIM LAW & PROCEDURE;  
CORRECTIONS  
Sponsor: COGHILL  
Requester: Senate State Affairs

Department: Department of Law  
Appropriation: Criminal Division  
Allocation: Criminal Justice Litigation  
OMB Component Number: 2202

## Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below.

(Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	FY 2017	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Personal Services	***		***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	***	<b>0.0</b>	***	***	***	***	***

## Fund Source (Operating Only)

None							
<b>Total</b>	***	<b>0.0</b>	***	***	***	***	***

## Positions

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY2017) cost:** 0.0 (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

## ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

## Why this fiscal note differs from previous version:

Initial version, not applicable.

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Agency: Department of Law

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Date: 02/12/2016 06:07 PM  
Date: 02/12/16

## FISCAL NOTE ANALYSIS

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### Analysis

This legislation makes significant changes to the current criminal code and incorporates policy recommendations from the Alaska Criminal Justice Commission.

#### **Reduction in Sentence Length**

The legislation reduces felony sentences and establishes a maximum imprisonment of 30 days for most misdemeanor cases. This maximum 30 day sentence can be exceeded if a jury finds that the conduct was among the most serious for that type of offense, if a jury finds a domestic violence offender has a history of domestic violence, or if the defendant is convicted for an offense and has been convicted of similar offenses in the past.

The Department of Law anticipates an increase in the number of trials as well as an increase in the amount of work required for misdemeanors due to these changes. The increased work results from being required to prove aggravators for misdemeanors. This will involve litigating first in the trial courts and then in the appellate courts how these new aggravators will be applied and interpreted. It is unclear how many cases will fall into the categories requiring additional time, therefore the department is unable to quantify the impact of these sections at this time.

#### **Citation v. Arrest**

This legislation also restricts when an officer may arrest a person. It requires an officer to issue a citation to a person who has committed a misdemeanor or a class C felony unless the crime is a violent crime, domestic violence related crime, the person will not identify themselves, the person poses a "significant danger" to others, refuses to accept service of the citation, or the officer believes the person will not show up to court.

"Significant danger to others" is new language in the criminal code which appears to be a higher standard than the existing "danger to others" language in the code. There may be litigation about the definition of "significant danger" and whether it existed in a particular case. The department is unable to quantify the amount of potential litigation or the impact of these sections at this time.

#### **Bail Hearings for Parole**

Under current law, parolees are not entitled to bail. This legislation reverses that by entitling a parolee who is not charged with a new crime or failure to comply with sex offender treatment to bail. This may require the Department of Law to appear at bail hearings for parolees. This section of the legislation may add a new responsibility to the Department of Law and increase the number of hearings it is required to attend.

It is unclear how many more hearings will be required. Therefore, the department is unable to quantify the impact of these sections at this time.

#### **Bail Reform**

The legislation makes significant changes to the bail process. Under the legislation a judge is required to order certain categories of defendants released on their personal recognizance or unsecured bond unless they find on the record that there is clear and convincing evidence that less restrictive conditions will not reasonably ensure that the person will appear in court or protect the safety of the victims and the community.

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### Analysis Continued

The language in these sections is ambiguous and appears to allow a person who cannot make bail to have a judge review their bail once a week until the person can make bail. Under current law a judge may not consider the person's inability to pay the bail when setting or amending bail. That limitation appears to be reversed and under the legislation a judge would be required to consider whether a person has ability to post the bail amount.

Another new requirement is a risk assessment by a pretrial services officer. That assessment along with recommendations on conditions of release must be presented to the judge, prosecutor, and defense attorney before each person is arraigned. How those assessments are conducted, interpreted and applied may result in new litigation.

The department is unable to quantify the impact of these sections at this time.

#### Capping Time Imposed for Technical Violations of Probation

The legislation caps the amount of time a person can serve for first, second, and third technical violations of probation.

The department does not anticipate a fiscal impact from these sections at this time.

#### Incarcerable Violations

This legislation reduces second degree criminal trespass, fifth degree criminal mischief, disorderly conduct, and second degree harassment to violations which are punishable by a definite term of imprisonment of no more than 24 hours.

The legislation also reduces the following crimes to violations: disregard of a highway obstruction, certain conduct related to failure to appear, violating conditions of release, promoting exhibition of fighting animals, obstruction of highways, and gambling.

The department does not anticipate a fiscal impact from these sections at this time.

#### Drug Offenses

This legislation reduces the penalties for certain conduct related to controlled substances. It amends misconduct involving a controlled substance in the third degree, a class B felony, to prohibit a person from manufacturing or delivering 2.5 grams or more of a schedule IA (heroin), IIA (methamphetamine), or IIIA (zolazepam) controlled substance. It also amends the crime of misconduct involving a controlled substance in the fourth degree, a class C felony, to prohibit a person from manufacturing or delivering less than 2.5 grams of a schedule IA (heroin), IIA (methamphetamine), or IIIA (zolazepam) controlled substance. The legislation also reduces the penalty for possessing any of these substances to a class A misdemeanor.

The department does not anticipate a fiscal impact from these sections at this time.

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### Analysis Continued

#### **Suspended Entry of Judgment**

The legislation establishes a new judicial procedure in which a person is found guilty or pleads guilty to a crime and the judgment is not immediately entered. The person would be put on probation for a certain period of time. If the person successfully completes probation the judgment would not be entered and there would never be a formal entry of guilt for the person.

The department does not anticipate a fiscal impact from this section at this time.

#### **Pretrial Services Program**

The legislation establishes a pretrial services program in the Department of Corrections. This program shall develop and implement a pretrial risk assessment which will be conducted on all defendants before the defendant's first appearance before a judicial officer and supervise pretrial defendants who are released on bail as ordered by the court.

The department does not anticipate a fiscal impact from these sections at this time.

#### **Increasing the Theft Thresholds**

The legislation raises the dollar amounts associated with theft and other related crimes. The dollar amounts are to be adjusted annually for inflation after initial enactment. The threshold for theft in the second degree is raised from \$750 or more but less than \$25,000 to \$2,000 or more but less than \$25,000. Theft in the third degree includes amounts of \$250 or more but less than \$2,000.

Adjusting the theft thresholds annually will require significant updating of all databases and yearly training of prosecutors and support staff. The department anticipates that this will require three months of time from a Law Office Assistant I each year, resulting in the department hiring a short-term non-permanent position at an estimated annual cost of \$11,000.