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Memorandum

To: Quinlan Steiner
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From: Tracey Wollenberg
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Date: February 22, 2016

Subject: Response to OVR's Testimony, Senate Bill 91, Version N

In December 2015, the Alaska Criminal Justice Commission, comprised of multiple stakeholders in the criminal justice system, released a report entitled, "Justice Reinvestment Report." Senate Bill 91 (SB 91) seeks to implement the report's consensus recommendations for criminal justice reforms in order to more effectively and efficiently address recidivism, rehabilitation, and public safety.

On Thursday, February 18, 2016, the Office of Victim's Rights (OVR) testified before the Senate State Affairs Committee in opposition to Senate Bill 91. OVR subsequently submitted written testimony. You asked me to prepare the following memorandum responding to OVR's testimony regarding the legal interpretation of the bill.

Purpose and Background

OVR's overarching concern throughout its testimony was that SB 91 focuses on reducing incarceration at the expense of victims in order to save money. But OVR overlooks the fact that SB 91 (and the Justice Reinvestment Report on which it is largely based) is premised on data indicating that current practices are not succeeding in improving public safety, despite increased corrections spending.[1] The Justice Reinvestment Report noted a growing body of research showing that for individuals who commit lower-level offenses, prison terms may actually increase, rather than reduce, recidivism.[2] The report also pointed to research demonstrating that individuals are more responsive to swift, certain, and proportionate sanctions than sanctions that are delayed, inconsistently applied,

[1] *See* Alaska Criminal Justice Commission, Justice Reinvestment Report (Dec. 2015), at 3.
[2] *Id.* a 9.

and severe.[3] And the report noted that supervision resources have the highest impact in the first few months, when people are most likely to commit another offense,[4] and that encouraging positive behavior through incentives can have an even greater effect than surveillance and sanctions on fostering behavioral change for those on supervision.[5]

Violating Conditions of Release and Failure to Appear (Sections 18 – 20)

OVR expressed concern with the reduction of violating conditions of release and failure to appear to violations. With regard to violating conditions of release, OVR cited, as an example, a defendant who has previously threatened to kill a victim showing up at the victim's home in the middle of the night in violation of a court-imposed no-contact order. In that situation, OVR alleged, the person "would not be charged with a new offense and may or may not be arrested in this situation. In fact police may not even respond since a crime isn't being committed."[6]

But OVR overlooks AS 12.25.030(b)(3)(C), which authorizes a peace officer to arrest a person, without a warrant, when the officer has probable cause for believing that the person "violated the conditions imposed as part of the person's release under the provisions of AS 12.30." That is, when there is probable cause to believe that a person has violated the conditions of bail on a charged offense, an officer may arrest and incarcerate that person on that offense, regardless of whether that person can be charged with the new crime of violating conditions of release. The reduction of violating conditions of release to a violation does not preclude arrest and revocation of bail release on the underlying offense[7] nor does it preclude a court from pursuing a criminal contempt charge for a willful violation.[8] Moreover, the addition in SB 91 of pretrial service officers, with the specific duty of supervising pretrial defendants,[9] will provide more oversight for these types of violations. And reducing violating conditions of release to a violation does not preclude the State from filing a new charge when the conduct constitutes an independent crime.

OVR also alleges that the reduction of failure to appear to a violation would dis-incentivize defendants from coming to court, causing additional delay in cases. But as with violating conditions of release, bail can be revoked for failing to appear.[10] Moreover, those who purposely delay proceedings by failing to appear can still be charged with a class A misdemeanor under SB 91.

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3 *Id.* at 12.

4 *Id.* at 13.

5 *Id.* at 12.

6 OVR's Written Testimony (Feb. 18, 2016), at 4.

7 *See* Justice Reinvestment Report, at 18 (noting that for pretrial violations like violating conditions of release and failure to appear, "law enforcement will be authorized to arrest the defendant, and the DOC will be authorized to detain the defendant until the court schedules a bail review hearing").

8 AS 09.50.010, *as interpreted by State v. Williams*, 356 P.3d 804 (Alaska App. 2015).

9 *See* SB 91, Version N, § 91, proposed AS 33.07.030(f)(2) (providing that a pretrial services officer may "arrest a defendant who has been released pretrial without a warrant if the officer has reason to believe the defendant has committed an offense under AS 11.56.730 or 11.56.757 or has violated the defendant's release conditions").

10 *Id.*

Under Section 20 of SB 91, failure to appear remains a class A misdemeanor if (1) the person does not make contact with the court or a judicial officer within 30 days after failing to appear at a scheduled hearing; or (2) the person fails to appear at a scheduled hearing in order to avoid prosecution. These exceptions address OVR's concern about any purposeful delay in the proceedings due to a defendant's failure to appear while not inadvertently criminalizing a person who simply forgets his court hearing.

In its written testimony, OVR also expresses concern that failure to appear and violating conditions of release offenses will not appear on a defendant's criminal history, making them unknown to judges in another jurisdiction, prosecutors, police, or potential future pretrial service officers.[11] But these violations, if adjudicated, will remain available on CourtView. Moreover, it seems a system could be established for these violations to appear on an individual's Alaska Public Safety Information Network (APSIN) report, in much the same way that traffic offenses currently appear on APSIN.

Citations (Section 37)

OVR expressed concern that under Section 37, police, as a general rule, would be required to give a citation, rather than arrest, for crimes like vehicle theft, felony theft, eluding, possession of child pornography, arson, and endangering the welfare of children or vulnerable adults. OVR cited the following examples as situations that would require a citation: a K9 unit apprehending a car thief after his stolen Subaru struck a police vehicle; a vehicle eluding a Fairbanks trooper and resulting in an officer-involved shooting; and a UAA study showing that 37% of all officer-involved shootings in Anchorage from 1993-2013 started as a traffic stop, stolen vehicle, eluding, or burglary. OVR stated in its oral testimony, "It just makes no sense that a person fleeing police and ultimately stopped would be given a citation to come to court in a few days."

But Section 37 gives officers discretion at the scene to determine whether an arrest is necessary. While the general rule states that an officer shall cite a person for a misdemeanor or for a class C felony that is not a crime against a person under AS 11.41, there are broad exceptions, including: (1) when "the crime for which the person is contacted is one involving violence or harm to another person" or the officer has "probable cause to believe the person committed a crime against a person under AS 11.41 or a crime involving domestic violence;" (2) when "the contacting officer reasonably believes the person is a significant danger to others," regardless of the crime for which the person was contacted; or (3) when "the contacting officer reasonably believes there is a significant risk the defendant will fail to appear in court" or "the person does not furnish satisfactory evidence of identity." These exceptions would clearly permit an officer to arrest rather than cite in the examples given by OVR. The proposal simply creates a presumption of citation in lower-level offenses.[12]

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[11] OVR's Written Testimony (Feb. 18, 2016), at 4.

[12] Notably, SB 91 does not amend AS 12.25.030(b)(1), which requires a peace officer to make an arrest "under the circumstances described in AS 18.65.530." Alaska Statute 18.65.530 requires arrest when an "officer has probable cause to believe the person has, either in or outside the

Notably, the bill does not provide for judicial review of the officer's decision. Thus, an officer can exercise discretion under one of the exceptions to effectuate an arrest without having to seek judicial approval.

Bail Provisions (Sections 39 – 49, 91)

OVR alleged in its oral testimony that under SB 91, bail would be "significantly reduced, requiring many offenders to be released on their own recognizance or unsecured bond." OVR maintained that because Section 43 requires judges to release low- or moderate-risk defendants charged with misdemeanors or low-risk defendants charged with class C felonies on their own recognizance (O.R.) or on an unsecured bond, victims' input on bail would be meaningless, thus violating a victim's constitutional right to be heard prior to a defendant's release and a victim's right to be protected from the accused.[13]

But OVR overlooks the fact that Section 43 (proposed AS 12.30.011(b), starting on p. 24, line 23) permits the judge "singly or in combination," to impose bail conditions ranging from restrictions on travel, association, and residence; to restrictions on alcohol use, possession, or exposure; to house arrest and supervision by a pretrial services officer or a third-party custodian (if the requirements of AS 12.30.021 are met)—even if the court otherwise orders O.R. or unsecured bond release.[14] Thus, a victim's input at a bail hearing—even one considering release of a charged misdemeanant deemed low or moderate risk or a defendant charged with a class C felony deemed low risk—would not be meaningless. The victim could be heard on a defendant's residence, employment, and associations; access to alcohol, weapons, and controlled substances; supervision; and other proposed conditions. The provision governing lower-risk individuals charged with lower level offenses (proposed AS 12.30.011(a), starting on p. 23, line 31) would simply prohibit the imposition of monetary bail—consistent with their risk level and in order to ensure that low-risk individuals charged with lower-level offenses are not denied pretrial release simply due to their inability to post bail.[15]

For the same reason, OVR is mistaken in its written testimony when it says that Section 43 "fails to recognize that any 2 offenders arrested for the same crime may present very different risks

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presence of the officer, within the previous 12 hours," committed domestic violence, committed the crime of violating a protective order in violation of AS 11.56.740(a)(1) or (2), or violated a condition of release imposed under AS 12.30.016(e) or (f) (governing release in stalking and sexual assault and abuse cases), or AS 12.30.027 (governing release in domestic violence cases), absent authorization by a prosecuting attorney not to arrest.

[13] *See also* OVR's Written Testimony (Feb. 18, 2016), at 5.

[14] *See* Justice Reinvestment Report (Dec. 2015), at 16 (defining categories of defendants for whom the Department of Corrections should always or usually recommend release on personal recognizance or unsecured bond "with appropriate release conditions").

[15] *See id.* at 8 ("Research has shown that defendants are as likely to make their court appearances and refrain from new criminal activity whether their bail is secured or unsecured, compared to defendants with similar risk levels. However, use of secured bail results in many more jail beds than use of unsecured bail, as defendants who are unable to post the monetary amount upfront remain detained.").

to the community based on prior charged and uncharged conduct and the facts of the underlying cases."[16] The distinctions between two defendants—based on their prior conduct and the facts of the case—will be considered both in the pretrial risk assessment and the imposition of pretrial release conditions.

Moreover, the provision requiring O.R. or unsecured release for a low- or moderate-risk defendant charged with a misdemeanor or a low-risk defendant charged with a class C felony has broad categorical exceptions for those charged with an offense against the person under AS 11.41; failure to appear or violating conditions of release; crimes involving domestic violence; and driving under the influence (DUI) or refusal. If a person has committed one of these offenses, that person's bail release is governed by different provisions—proposed AS 12.30.011(f) (starting on p. 28, line 8) or proposed AS 12.30.011(h) (starting on p. 29, line 20)—that allow for the imposition of monetary bail. Under certain circumstances (starting on p. 28, line 8), the court must find by clear and convincing evidence that no nonmonetary conditions of release in combination with O.R. or an unsecured bond can reasonably ensure the person's appearance and the safety of the victim, other persons, and the community prior to imposing monetary bail. This level of proof strikes an appropriate balance between judicial discretion and ensuring that defendants do not remain incarcerated pretrial merely because they are indigent.[17]

Additionally, misdemeanor bail schedules currently exist,[18] including for crimes involving a victim (*e.g.*, non-domestic violence misdemeanor assaults, reckless endangerment, and misdemeanor criminal mischief or theft).[19] When an accused is released pursuant to a bail schedule, there is no bail hearing and no opportunity for input by a victim. Thus, the concern cited by OVR—that a victim may not be heard prior to release—exists now. SB 91 would eliminate bail schedules (Sections 135 & 136), giving victims more input in certain misdemeanor cases than they currently have.

Finally, OVR states in its written testimony that "[j]udges will also be required to consider the pre-trial services officers' recommended conditions of release," a proposition it says "is absurd because the pre-trial service officer will not have sufficient factual information to make appropriate

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16 OVR's Written Testimony (Feb. 18, 2016), at 5-6.

17 The Alaska case file review conducted by the Pew Charitable Trusts revealed that 36% of individuals with a court-ordered secured bond under $500 remained incarcerated pretrial and this percentage increased with an increase in the amount of required monetary bail, even when the absolute level of required bail remained relatively low. 57% of those with secured bond between $500 and $999 remained incarcerated pretrial, and 62% of those with secured bond between $1,000 and $2,499 remained incarcerated pretrial. The Pew Charitable Trusts, Alaska Criminal Justice System Assessment, Alaska Commission on Criminal Justice (Aug. 3, 2015), p. 15, slide # 29, *available at*: http://www.ajc.state.ak.us/sites/default/files/imported/acjc/pewpresent8-2015.pdf.

18 *See* Alaska Criminal Rule 41(d).

19 *See, e.g.*, Bail Schedule and Conditions in the Second Judicial District (Presiding Judge's Administrative Order 14-02); Anchorage Misdemeanor Bail Schedule (Administrative Order 3AN-AO-11-03).

recommendations."[20] But the Commissioner of the Department of Corrections is required to "approve a risk assessment instrument that is objective, standardized, developed based on analysis of empirical data and risk factors relevant to pretrial failure, that evaluates the likelihood of failure to appear in court and the likelihood of rearrest during the pretrial period, and that is validated on the state's pretrial population[.]"[21] Presumably, this assessment will heavily depend on a defendant's prior criminal history and the offense type, and OVR provides no reason to think that the pretrial services officer will have access to less information than the prosecutor or the defense attorney.[22] In fact, the Commissioner is required to adopt regulations as necessary to implement the pretrial services program, including pretrial release decision-making guidelines, in consultation with the Department of Law, the Public Defender, the Department of Public Safety, and the Alaska Court System.[23] Moreover, the pretrial service officer's recommended conditions of release are just that—recommendations that the court is required to consider when exercising its discretion to set conditions.[24]

Sentences (Sections 68 – 73)

OVR states that for the most part under SB 91, the maximum sentence for a class A misdemeanor would be 30 days (which, accounting for the receipt of statutory good-time credit, would in most cases be 20 days). OVR finds this particularly problematic as it relates to possession of heroin, which would be reduced to a class A misdemeanor under this bill. However, several components of the proposed sentencing structure for class A misdemeanors impact this 30-day threshold.

First, as OVR recognizes in its written testimony, existing mandatory minimum sentences for class A misdemeanors remain unchanged by SB 91. For example, under existing AS 12.55.135(d)(1), a defendant convicted of fourth-degree assault or first-degree harassment who knowingly directed the conduct at a uniformed or clearly identified police officer, firefighter, correctional employee, or emergency responder engaged in official duties is subject to a mandatory minimum sentence of 60 days for an injury assault or harassment and 30 days for a fear assault. Under AS 12.55.135(d)(2), a person convicted of an injury assault while on school grounds during school hours or at a school-sponsored event is subject to a mandatory minimum sentence of 60

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[20] OVR's Written Testimony (Feb. 18, 2016), at 6.

[21] Senate Bill 91, § 91, proposed AS 33.07.020(5) (starting on p. 58, line 31).

[22] *See* AS 12.62.160(b) (permitting the Department of Public Safety to provide criminal justice information "to a criminal justice agency for a criminal justice activity" or "to a government agency when necessary for enforcement of or for a purpose specifically authorized by state or federal law," among others).

[23] Senate Bill 91, § 91, proposed AS 33.07.020(6) (starting on p. 59, line 5).

[24] Senate Bill 91, § 43, proposed AS 12.30.011(c)(12) (p. 26, lines 28-29). To the extent OVR is also suggesting in its written testimony that the current bill does not permit the court to assess the facts of the charged offense, that assertion is incorrect. *See* OVR's Written Testimony (Feb. 18, 2016), at 6 ("To assess dangerousness you have to consider the facts of the crime with which the person is charged."). Under Section 43 of SB 91, the court is required—when setting conditions of pretrial release—to consider "the nature and circumstances of the offense charged" (p. 26, lines 12-14), just as it is under the current bail statute.

days. Under AS 12.55.135(g), a defendant convicted of fourth-degree assault that is a crime involving domestic violence is subject to a mandatory minimum sentence of 30 days if the defendant has been previously convicted of a crime against the person or a crime involving domestic violence or 60 days if the person has been previously convicted two or more times. And under AS 12.55.135(h), a defendant convicted of second-degree failure to register as a sex offender is subject to a mandatory minimum sentence of 35 days. Senate Bill 91 provides that when the conviction is for a crime with a mandatory minimum of more than 30 days, the court may impose a sentence of up to one year.[25]

Second, even if the crime has no mandatory minimum sentence, SB 91 establishes a system of aggravating factors that permit a sentence above 30 days when properly found by a jury (or judge, if the aggravating factors are based solely on the existence of prior convictions). These aggravating factors are: (i) the conduct constituting the offense was among the most serious conduct included in the definition of the offense; (ii) the conviction is for fourth-degree assault involving domestic violence and the defendant has a criminal history of repeated instances of conduct violative of criminal laws, as felonies or misdemeanors, similar in nature to the current offense; and (iii) the defendant has past criminal convictions for conduct violative of criminal laws, as felonies or misdemeanors, similar in nature to the current offense.[26] Thus, if the State establishes that a person convicted of possessing heroin has past similar criminal convictions, that person will be subject to an aggravated sentence of up to one year.[27]

OVR also notes that SB 91 reduces the sentences for felonies. This change was intended to realign presumptive ranges with pre-2005 presumptive terms.[28] In 2005, in response to *Blakely v. Washington*,[29] the Alaska legislature enacted presumptive ranges, using the prior presumptive term as the bottom of the presumptive range.[30] In the Statement of Legislative Intent accompanying the 2005 bill, the legislature stated, "Although the presumptive terms are being replaced by presumptive ranges, it is not the intent of this Act in doing so to bring about an overall increase in the amount of active imprisonment for felony sentences."[31] Notwithstanding this intent, the length of incarceration increased across all non-sex felony classes of offense, necessitating the realignment.[32]

But the proposed reductions in SB 91 do not affect the sentences for sexual felonies. Thus, OVR is incorrect when it states that first-felony defendants convicted of possession of child pornography, a class C felony, would get a probationary sentence, and in particular a suspended

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25 Senate Bill 91, § 71, proposed AS 12.55.135(a)(1)(A) (p. 46, lines 10-14).

26 Senate Bill 91, § 71, proposed AS 12.55.135(a)(1)(B) (p. 46, lines 15-26).

27 In proposing a revision to the drug penalties, the Justice Reinvestment Report reviewed research "pointing to the low deterrent value of long prison terms for drug offenders." Justice Reinvestment Report (Dec. 2015), at 19. Under SB 91, manufacture or delivery of heroin remains a felony-level offense (Sections 32 & 33).

28 Justice Reinvestment Report (Dec. 2015), at 20.

29 542 U.S. 296 (2004).

30 Justice Reinvestment Report (Dec. 2015), at 20.

31 SLA 2005, ch. 2, § 1 (SB 56).

32 Justice Reinvestment Report (Dec. 2015), at 20.

imposition of sentence (SIS), of 0 to 18 months.[33] Sentencing for possession of child pornography, like all sexual felonies, is governed by AS 12.55.125(i), a provision that is unchanged by SB 91. Under AS 12.55.125(i)(4)(A), a first-felony offender convicted of possession of child pornography is subject to (and remains subject to) a sentence of two to 12 years.

Probation Provisions

OVR expresses concern about the length of sentences for technical violations. But as the Justice Reinvestment Report noted, "research shows – and Alaska's experiences with the PACE program have demonstrated – that more proportionate sanctions, administered in a swift and certain fashion have a stronger deterrent effect than these less swift and more severe sanctions [that currently exist]."[34]

OVR also states that automatic release under the technical-violation scheme before any hearing is held (*see* Section 49) would violate victims' rights to be protected from the accused and to be heard upon the defendant's release and at sentencing. But the automatic release is not "bail release"—rather, the automatic release only occurs once a defendant reaches the maximum sentence that can be imposed.[35] An individual cannot be held beyond the maximum permissible sentence provided by law. Thus, no hearing to consider the defendant's release is necessary, and a victim's right to "be heard . . . at any proceeding where the accused's release from custody is considered"[36] is not violated. Moreover, even after release for a technical probation violation, a court would still need to adjudicate the individual for the violation, and the victim could elect to be present at that hearing and any disposition. Even if the individual has served the requisite time by the time of the disposition hearing, the court could modify probation conditions if the State establishes that there has been a "significant change of circumstances."[37]

Finally, OVR alleges that given the probation and parole incentive programs established by SB 91, the sentencing tree will look like a convoluted family tree and there will be "no truth in sentencing." The "truth in sentencing" provisions currently require the sentencing court to identify the approximate term of imprisonment that a defendant must serve before becoming eligible for mandatory parole or release after acquisition of good-time credit and the approximate minimum term of imprisonment the defendant must serve before becoming eligible for discretionary parole.[38] Senate Bill 91 adds eligibility for administrative parole to the list of advisements the sentencing court

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33 *See* OVR's Written Testimony (Feb. 18, 2016), at 7.

34 Justice Reinvestment Report (Dec. 2015), at 23.

35 Section 49, proposed AS 12.30.055, provides:

> (b) A person who is in custody in connection with a petition to revoke probation for a technical violation of probation under AS 12.55.110 shall be released without bail after the person has served the maximum number of days that the court could impose on the person for a technical violation of probation under AS 12.55.110.

36 Alaska Const. art. I, § 24.

37 AS 12.55.090(b); *Edwards v. State*, 34 P.3d 962, 969 (Alaska App. 2001).

38 AS 12.55.025(a)(3); Alaska R. Crim. P. 32.2(c)(2).

must make.[39] But the court is not required to advise victims about the possibility that a defendant may seek early release from probation or parole, notwithstanding the fact that this possibility exists under current law.[40] Thus, SB 91's alteration or creation of incentive programs does not add to the information the court must provide. And by establishing specific incentive programs with defined parameters, Senate Bill 91 more clearly defines the circumstances under which a probationer or parolee would be granted early discharge.[41]

OVR asserts in its written testimony that "victims will have no input on this sentence modification [the day-for-day probation compliance program of Section 88], which violates their constitutional right to be heard on sentencing because every probation adjustment is in fact a resentencing."[42] But nothing in Section 88 prohibits the probation office or the prosecutor from providing notice to the victim of the time computation and early discharge. Moreover, the court can advise the victim of the possibility of early probation termination at the sentencing hearing, as it does for good-time credit.

Parole Provisions

OVR suggests in its written testimony that under SB 91, all defendants convicted of class A and unclassified sex offenses will be eligible for mandatory and discretionary parole.[43] But under Section 98 of the bill, second- and third-felony offenders convicted of the most serious sexual felonies (first-degree sexual assault, first-degree sexual abuse of a minor, or first-degree sex trafficking) remain ineligible for discretionary parole, absent consideration by the three-judge panel.[44] And under AS 33.20.010(a)(3) and Section 127, a defendant convicted of an unclassified or class A

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[39] Senate Bill 91, § 51 (p. 34, line 17).

[40] *See* Justice Reinvestment Report (Dec. 2015), at 12. A defendant can file, at any time during probation, a motion for early termination of probation. Under AS 12.55.090(b), a court "may change the period of probation," except when a prior plea agreement required a specific period of probation or a specific term of suspended incarceration. Under AS 12.55.090(b), the court may also revoke or modify any probation condition.

Under AS 33.16.210(a), the parole board "may unconditionally discharge a parolee from the jurisdiction and custody of the board after the parolee has completed two years of parole." And under AS 33.16.210(b), the board can unconditionally discharge a mandatory parolee before the parolee has completed two years of parole, "if the parolee is serving a concurrent period of residual probation . . . , and the period of residual probation and the period of suspended imprisonment each equal or exceed the period of mandatory parole."

[41] Senate Bill 91, §§ 63, 88-89, 116-17. *See* Justice Reinvestment Report (Dec. 2015), at 12 (noting that "there is currently no standard practice" for early termination of supervision and applications to terminate supervision are made "on an individual basis").

[42] OVR's Written Testimony (Feb. 18, 2016), at 9.

[43] OVR's Written Testimony (Feb. 18, 2016), at 10 ("Currently, the highest level sex offenders, those Class A and unclassified felons, cannot get discretionary or mandatory parole, but under SB 91 they will eligible").

[44] Senate Bill 91, § 98 (p. 64, lines 16-31 – p. 65, lines 1-4).

sexual felony remains ineligible for good-time credit, unless the defendant successfully completes the treatment requirements of his case plan while incarcerated.[45]

Section 97 authorizes the parole board to grant discretionary parole to a person who is at least 55 years old and has served at least 10 years of a sentence. The Justice Reinvestment Report based this provision on research by the Alaska Judicial Council showing that individuals released at age 55 or older were far less likely to be rearrested than the average for all offenders.[46] OVR opposes this "geriatric parole" provision, citing as an example a 45-year-old person convicted of sexual abuse of a minor who will be able to get out of jail in 10 years, when he turns 55 years old, and describing the low likelihood of reoffending after age 55 as a "false premise."

But eligibility for discretionary parole does not mean that parole will be granted. Under Section 99, the board may only release a person convicted of an unclassified felony on discretionary parole if a reasonable probability exists that: "(1) the prisoner will live and remain at liberty without violating any laws or conditions imposed by the board; (2) the prisoner's rehabilitation and reintegration into society will be furthered by release on parole; (3) the prisoner will not pose a threat of harm to the public if released on parole; and (4) release of the prisoner on parole would not diminish the seriousness of the crime." Thus, while the defendant in OVR's example may become eligible for discretionary parole at age 55 under Section 97 due to his age, the specifics of his case and his background will determine whether the parole board actually grants him release under Section 99.

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45 Senate Bill 91, § 127 (p. 78, lines 21-29).

46 Justice Reinvestment Report (Dec. 2015), at 21.