

Alaska Criminal Justice Commission : Justice Reinvestment Report

HOUSE BILL 205: CRIMINAL LAW/PROCEDURE;
DRIVER'S LICENSES; PUBLIC AID

Pretrial

Recommendation 1: Expand the use of citations in place of arrest for lower-level non-violent offenses

- ▶ Specific Action Recommended: To reduce pretrial admissions for defendants with lower-level nonviolent charges, the Commission recommends:
- ▶ a. Creating a presumption of citation for misdemeanors and class C felonies, excluding person offenses, domestic violence offenses, violations of release conditions, or offenses for which a warrant or summons has been ordered.
- ▶ b. Allowing law enforcement officials to overcome the presumption of citation if the officer has reasonable grounds to believe the person presents a significant likelihood of flight, presents a significant danger to the victim or the public, or if the officer is unable to verify the person's identification without making an arrest.

Recommendation 2: Utilize risk-based release decision-making

- ▶ Specific Action Recommended: To implement pretrial release decision-making based upon the offender's risk level, instead of ability to pay monetary bond, the Commission recommends:
- ▶ a. Directing the DOC, in consultation with the Department of Law ("DOL"), Public Defender, Department of Public Safety ("DPS"), and Alaska Court System ("ACS"), to create an evidence based pretrial release decision-making grid that strengthens the presumption of release on personal recognizance or unsecured bond for defendants with less serious charges and lower risk scores. The statutory parameters for this grid would include:
 - ▶ i. Defining a category of defendants who, as a matter of law, should always be released on personal recognizance or unsecured bond with appropriate release conditions; and
 - ▶ ii. Defining categories of defendants for whom DOC should always or usually recommend release on personal recognizance or unsecured bond with appropriate release conditions, while providing a mechanism for the court to depart from that recommendation in limited circumstances.

The following grid captures the release categories as recommended by the Commission:

Offense Type	Misd. non-person offense (non-DV/ non-DUI)	Class C felony non-person offense (non-DV/ non-DUI)	DUI	Failure to appear/ violation of release condition	Other
Low-risk	OR or UB release	OR or UB release	OR or UB recommended	OR or UB usually recommended	OR or UB usually recommended
Moderate-risk	OR or UB release	OR or UB recommended	OR or UB recommended	OR or UB usually recommended	OR or UB not usually recommended
High-risk	OR or UB recommended	OR or UB recommended	OR or UB usually recommended	OR or UB not usually recommended	OR or UB not usually recommended

- ▶ b. Mandating that DOC assess all pretrial defendants for risk using a validated pretrial risk assessment tool and make release recommendations to the court based on the grid prior to the defendant's first appearance. All releases on personal recognizance or unsecured bond would be accompanied by release conditions and, when appropriate, varying levels of pretrial supervision.
 - ▶ i. Absent compelling circumstances, all defendants should be seen for their first appearance within 24 hours. If a first appearance happens within 24 hours, DOL is not required to be present. The court shall notify DOL if an additional probable cause hearing within 48 hours is required.
- ▶ c. Authorizing courts to consider a defendant's inability to pay a previously set secured money bond in at least one bail review hearing.
- ▶ d. Authorizing courts to issue unsecured and partially-secured performance bonds.³³
- ▶ e. Authorizing the DOL collections unit to garnish paychecks and Permanent Fund Dividend checks to collect on forfeited unsecured bonds and unpaid victim restitution.
- ▶ f. Directing the ACS to eliminate misdemeanor bail schedules following DOC's implementation of the above evidence-based pretrial practices. Thereafter, any defendant arrested by law enforcement would remain detained until they have received a risk assessment and have made their first appearance before a judicial officer.

Recommendation 3: Implement meaningful pretrial supervision

- ▶ Specific Action Recommended: To reduce the risk that released defendants will fail to appear or engage in new criminal activity, the Commission recommends:
- ▶ a. Directing the DOC to provide varying levels of supervision for moderate- and high-risk defendants who are released pretrial. The DOC would also be responsible for standardizing and recommending the use of pretrial diversion, conducting outreach to community programs and tribal courts to develop and expand diversion options, and providing referral services on a voluntary basis for substance abuse and behavioral health treatment services.
- ▶ b. Directing the ACS to issue court date reminders to criminal defendants for each of their hearings, and to coordinate and share information about hearing dates and times with the DOC.

Recommendation 4: Focus supervision resources on high-risk defendants

- ▶ Specific Action Recommended: To ensure that supervision resources are focused on defendants at the highest risk to reoffend, the Commission recommends:
- ▶ a. Ensuring that the DOC recommends evidence-based release conditions for each defendant who they have recommended for pretrial release, with more restrictive conditions reserved for higher-risk defendants.
 - ▶ i. Additionally, entitling defendants to a subsequent bail hearing in cases where the release conditions prevented the defendant's release. At the bail hearing, the court would either revise the conditions or find on the record that there is clear and convincing evidence that no other release conditions can reasonably assure court appearance and public safety.
- ▶ b. Restricting third-party custodian conditions to only those cases in which pretrial supervision provided by the DOC is not available; when no secured money bond is ordered; and when the court finds on the record that there is clear and convincing evidence that no less restrictive release conditions can reasonably assure court appearance and public safety.
- ▶ c. Revising eligibility requirements for third-party custodians to limit disqualification from serving as a third-party custodian if there is a reasonable possibility that the prosecution will call them as a witness.

Sentencing

Recommendation 5: Limit the use of prison for lower-level misdemeanor offenders

- ▶ Specific Action Recommended: In accordance with the research on the null or mildly criminogenic effect of prison stays for many lower-level offenders, and the Commission's desire to redirect a greater percentage of lower-level misdemeanor offenders to alternatives such as fines, probation, and electronic monitoring, the Commission recommends:
- ▶ a. Reclassifying the following misdemeanors as violations, punishable by up to \$1,000 fine:
 - ▶ i. Misdemeanor B offenses, the lowest-level misdemeanor class in terms of severity, excluding theft and disorderly conduct violations;
 - ▶ ii. Driving with a suspended license ("DWLS") offenses, when the underlying license suspension was not related to a conviction for driving under the influence ("DUI") or refusal to submit to a chemical test; and
 - ▶ iii. Violations of conditions of release ("VCOR") and failure to appear ("FTA") offenses, with certain exclusions.³⁶ For these pretrial violations, 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.

- ▶ b. Reclassifying disorderly conduct offenses in such a way that allows for an arrest but limits jail holds or terms up to 24 hours.
- ▶ c. Reclassifying first- and second-time theft offenses under \$250 as non-jailable misdemeanors, and limiting the maximum sentence for a third or subsequent theft offense under \$250 to five days suspended and a six-month probation term.
- ▶ d. Eliminating the mandatory minimum for first-time DUI-related DWLS offenses.
- ▶ e. Requiring that first-time misdemeanor DUI and refusal to submit to chemical test offenders serve their incarceration sentences on electronic monitoring in the community; in cases where electronic monitoring is not available, assigning the offenders to serve their incarceration sentence on supervised probation.

- ▶ f. Presumptively setting a zero to thirty day sentencing range for misdemeanor A's.
 - ▶ i. Permitting courts to depart from the presumptive sentencing range for DV-related assault 4s if the prosecution demonstrates that the conduct was among the most serious constituting the offense or if the offender has past similar and repeated criminal history (not limited to convictions).
 - ▶ ii. Permitting courts to depart from the presumptive sentencing range for all other misdemeanor A's if the prosecution demonstrates that the conduct was among the most serious constituting the offense or if the offender had past similar criminal convictions.
- ▶ g. Restricting municipalities from incarcerating past these limits for similar municipal offenses.

Recommendation 6: Revise drug penalties to focus the most severe punishments on higher level drug offenders

- ▶ **Specific Action Recommended:** In accordance with the research on the limited recidivism-reduction benefit of longer stays in prison, as well as the low deterrent value of long drug sentences in particular, the Commission recommends:
- ▶ a. Reclassifying simple possession of heroin, methamphetamine, and cocaine as a misdemeanor offense, and limiting the maximum penalty for first-and second-time possession offenses to one month and six month suspended sentences, respectively.³⁸
- ▶ b. Aligning penalties for commercial heroin offenses with penalties for commercial methamphetamine and cocaine offenses.³⁹ This recommendation shall be forwarded to the Controlled Substances Advisory Committee (“CSAC”) and CSAC shall be provided with the opportunity to comment and carry out their duties under AS 11.71.110.
- ▶ c. Creating a tiered commercial drug statute whereby offenses related to more than 2.5g of heroin, methamphetamine, and cocaine is a more serious offense (Felony B) than offenses related to less than 2.5g of heroin, methamphetamine, and cocaine (Felony C).

Recommendation 7: Utilize inflation-adjusted property thresholds

- ▶ Specific Action Recommended: To focus costly prison space on more serious offenders, and to ensure that value-based penalties take inflation into account, the Commission recommends:
- ▶ a. Raising the felony property crime threshold to \$2,000 for all property crimes with a required value amount. 42
- ▶ b. Requiring the Department of Labor to set in regulation an inflation-adjusted felony property threshold, as well as an inflation-adjusted threshold dividing Misdemeanor A and B property crimes (currently set at \$250), every 5 years, rounded up to the nearest \$50 increment.

Recommendation 8: Align non-sex felony presumptive ranges with prior presumptive terms

- ▶ **Specific Action Recommended:** In accordance with the research demonstrating that for many offenders longer prison stays do not reduce recidivism more than shorter prison stays, and the original legislative intent to maintain lengths of prison stays at 2005 levels, the Commission recommends aligning presumptive ranges with the prior presumptive terms.

(Numbers in brackets indicate presumptive terms/ranges.)

Felony Class ⁴⁵	Presumptive Term (2005)	Alaska Current	Recommendation
Class A			
First	[5] - 20 years	[5 - 8] - 20 years	[3 - 6] - 20 years
First/Enhanced ⁴⁶	[7] - 20 years	[7 - 11] - 20 years	[5 - 9] - 20 years
Second	[10] - 20 years	[10 - 14] - 20 years	[8 - 12] - 20 years
Third	[15] - 20 years	15 - 20 years	13 - 20 years
Class B			
First	[n/a] - 10 years	[1 - 3] - 10 years	[0 - 2] - 10 years
First/Enhanced ⁴⁷	[n/a] - 10 years	[2 - 4] - 10 years	[1 - 3] - 10 years
Second	[4] - 10 years	[4 - 7] - 10 years	[2 - 5] - 10 years
Third	[6] - 10 years	6 - 10 years	4 - 10 years
Class C			
First	[n/a] - 5 years	[0 - 2] - 5 years	Presumptive probation;
			0 - 18 months ⁴⁸
Second	[2] - 5 years	[2 - 4] - 5 years	[1 - 3] - 5 years
Third	[3] - 5 years	3 - 5 years	2 - 5 years

Recommendation 9: Expand and streamline the use of discretionary parole

- ▶ Specific Action Recommended: To increase the number of offenders who are eligible to apply for parole, as well as to streamline the decision-making process, the Commission recommends:
- ▶ a. Expanding eligibility for discretionary parole to all offenders except Class A or Unclassified sex offenders with prior felony convictions.
- ▶ b. Streamlining parole decision-making for lower-level felonies (first time Felony C and B offenders) by restricting hearings to only those offenders who have failed to comply with their individual case plan or who have been disciplined for failure to obey institutional rules, or in cases where the victim has requested a parole hearing. Otherwise, inmates will be paroled at their earliest eligibility date.
- ▶ c. Requiring that any other offender who is eligible for parole receives a hearing at least 90 days before his or her first eligibility date, with the presumption that the offender will be granted parole if he or she has complied with the Individual Case Plan and followed institutional rules. The presumption of parole could be overcome with a finding on the record that release would jeopardize public safety

Recommendation 10: Implement a specialty parole option for long-term, geriatric inmates

- ▶ Specific Action Recommended: To reduce the number of low risk, geriatric offenders in prison, the Commission recommends:
- ▶ a. Providing for automatic parole hearings for offenders, including those incarcerated prior to the implementation of the legislation, who are over an age threshold set between 55 and 60 and have served at least 10 years of their sentence.
- ▶ b. Ensuring that when evaluating inmates under this policy, the Parole Board considers the inmate's likelihood of re-offending in light of his or her age, as well as criminal history, behavior in prison, participation in treatment, and plans for reentering the community.

Recommendation 11: Incentivize completion of treatment for sex offenders with an earned time policy

- ▶ Specific Action Recommended: To incentivize participation in and completion of sex offender treatment, the Commission recommends:
- ▶ a. Implementing an earned time policy for sex offenders who are currently ineligible for mandatory parole, whereby offenders are able to earn up to one-third off their sentence if they complete in-prison treatment requirements set forth by the DOC.
- ▶ b. Expanding the DOC's capacity to provide residential, long-term sex offender treatment that focuses on ensuring the offender is held responsible for harmful behavior and teaches cognitive behavioral strategies to end patterns of abuse.

Community Supervision

Recommendation 12: Implement graduated sanctions and incentives

- ▶ Specific Action Recommended: To reduce recidivism and increase success rates on probation and parole through the use of swift, certain, and proportional sanctions and incentives, the Commission recommends:
- ▶ a. Statutorily authorizing the DOC to create a graduated sanctions and incentives matrix using swift, certain, and proportional responses, and to follow the matrix both when rewarding prosocial behavior and when responding to technical violations of supervision.
- ▶ b. Requiring field agents to be trained on principles of effective intervention, case management, and the use of sanctions and rewards.

Recommendation 13: Reduce pre-adjudication length of stay & cap overall incarceration time for technical violations of supervision

- ▶ Specific Action Recommended: To respond swiftly and proportionately to violations of supervision and to limit the use of prison as a sanction for technical violations, the Commission recommends:
- ▶ a. For offenders not participating in the PACE program, limiting revocations to prison as a potential sanction for technical violations of probation or parole as follows:
 - ▶ i. First revocation: Up to 3 days
 - ▶ ii. Second revocation: Up to 5 days
 - ▶ iii. Third revocation: Up to 10 days
 - ▶ iv. Fourth and subsequent revocation: Up to 10 days and a referral to the PACE program; or, if the PACE program is not available in the jurisdiction, the sanction would be left to judicial or Board discretion.
 - ▶ v. Revocation for absconding: Up to 30 days.
 - ▶ vi. These limits would not apply if the probationer or parolee is a sex offender who has failed to complete sex offender treatment.

- ▶ b. Requiring that probationers and parolees who are detained awaiting a revocation hearing for a technical violation of their community supervision be released back to probation and/or parole supervision on personal recognizance after serving the maximum allowable time outlined above, unless new criminal charges have been filed.
- ▶ c. Requiring that courts convert any unperformed Community Work Service directed in a judgment to a fine - and not to jail time - once the deadline set and announced at the time of sentencing has elapsed.
- ▶ d. Stipulating that jail time cannot be imposed because a person failed to complete treatment if, despite having made a good faith effort, they were unable to afford treatment.
 - ▶ i. Additionally, including substance abuse treatment as a reinvestment priority for indigent offenders who are:
 - ▶ 1. Referred to ASAP by the court; and
 - ▶ 2. At a moderate to high risk of re-offending and in need of substance abuse treatment, as determined by a validated risk and needs assessment.

Recommendation 14: Establish a system of earned compliance credits

- ▶ Specific Action Recommended: To focus resources on offenders at the highest risk to reoffend and to incentivize compliance with the offender's conditions of probation or parole, the Commission recommends:
- ▶ a. Statutorily establishing an earned compliance policy that grants probationers and parolees one month credit towards their probation and/or parole term for each month they are in compliance with the conditions of supervision.
- ▶ b. Establishing an automated time accounting system wherein probationers/parolees automatically earn the credit each month unless a violation report has been filed in that month

Recommendation 15: Reduce maximum lengths for probation terms and standardize early discharge proceedings

- ▶ Specific Action Recommended: To more effectively focus scarce probation and parole resources on offenders at the time they are most likely to re-offend or fail, the Commission recommends:
- ▶ a. Capping maximum probation terms at the following:
 - ▶ i. A maximum of 5 years for felony sex offenders and Unclassified felony offenders;
 - ▶ ii. A maximum of 3 years for all other felony offenders;
 - ▶ iii. A maximum of 2 years for 2nd DUI and DV assault misdemeanor offenders; and
 - ▶ iv. A maximum of 1 year for all other misdemeanor offenders.

- ▶ b. Reducing the minimum time needed to serve on probation or parole prior to being eligible for early discharge to 1 year.
- ▶ c. Requiring the DOC to recommend early termination of probation or parole to the court/Parole Board for any offender who has completed all treatment programs required as a condition of supervision and is currently in compliance with all supervision conditions.
- ▶ d. Requiring the DOC to provide notification to the victim when recommending early discharge, with an opportunity for the victim to provide input at the court or Parole Board hearing.
- ▶ e. Authorizing courts to terminate probation early in cases where the sentence was imposed in accordance with a plea agreement under Rule 11 and DOC is recommending early discharge for good behavior.

Recommendation 16: Extend good time eligibility to offenders serving sentences on electronic monitoring

- ▶ Specific Action Recommended:
- ▶ To incentivize compliance with the conditions of electronic monitoring, the Commission recommends allowing offenders on electronic monitoring to qualify for good time credits under the same conditions set forth for offenders in DOC institutions.

Recommendation 17: Focus ASAP resources to improve program effectiveness

- ▶ Specific Action Recommended: To increase the effectiveness of the ASAP program, the Commission recommends:
- ▶ a. Focusing ASAP resources on offenders at the highest risk of taking up future prison resources through one of the following means:
 - ▶ i. Limiting the offense categories that courts would be authorized to refer to ASAP to those currently mandated by statute (DUI, refusal to submit to a chemical test, and habitual minor consuming).
 - ▶ ii. Alternatively, limiting the offense categories that courts would be authorized to refer to ASAP to second-time misdemeanor DUI and refusal to submit to a chemical test offenses, as well as alcohol-related assault 4 offenses.

- ▶ b. Requiring ASAP to expand the services it provides to include:
 - ▶ i. Using a validated assessment tool to screen for criminogenic risk;
 - ▶ ii. Performing a brief behavioral health screening; and iii. Providing referrals to treatment programs designed to address offenders' individual high priority criminogenic needs including, but not limited to, substance abuse.
- ▶ c. Requiring ASAP provide increased case supervision for moderate to high risk offenders as resources permit.

Recommendation 18: Improve treatment offerings in CRCs and focus use of CRC resources on high-need offenders

- ▶ Specific Action Recommended: To reduce recidivism and improve outcomes for offenders placed in CRCs, the Commission recommends:
- ▶ a. Requiring CRCs to provide treatment (cognitive-behavioral, substance abuse, after care and/or support services) designed to address offenders' individual criminogenic needs.
- ▶ b. Adopting quality assurance procedures to ensure CRCs are meeting contractual obligations with regard to safety and offender management.
- ▶ c. Implementing admission criteria for CRCs that:
 - ▶ i. Prioritize placement in CRCs for people who would benefit most from more intensive supervision and treatment, using the results of a validated risk and needs assessment; and
 - ▶ ii. Minimize the mixing of low and high risk offenders.

Oversight and Accountability

Recommendation 19: Require collection of key performance measures and establish an oversight council

- ▶ Specific Action Recommended: To ensure that reforms are monitored for fidelity and efficacy, and to better prepare the state to meet the objectives of justice reinvestment, the Commission recommends:
- ▶ a. Requiring the ACS, the DOC, the Department of Health and Social Services (“DHSS”), the DOL, the DPS, and the Parole Board to collect and report data annually on key performance measures.
- ▶ b. Creating a Justice Reinvestment Oversight Task Force (“Task Force”), composed of legislative, executive, and judicial branch members, as well as members representing crime victims and Alaska Natives, charged with:
 - ▶ i. Monitoring and reporting back to the Legislature and Governor on the implementation and outcomes of the Commission’s recommendations;
 - ▶ ii. If needed, making additional recommendations for legislative and administrative changes to achieve the state’s justice reinvestment goals;
 - ▶ iii. Helping to administer reinvestment dollars and develop plans on an annual basis for ongoing reinvestment of a portion of the state general fund savings achieved through pretrial, sentencing, and corrections reforms, based on observed outcomes and cost-benefit estimates; and
 - ▶ iv. Assessing state government processes to ensure victim restitution and violent crimes compensation are working effectively to meet crime victim needs.

Recommendation 20: Ensure policymakers are aware of the impact of all future legislative proposals that could affect prison populations


- ▶ Specific Action Recommended: To ensure that policymakers are informed of the long-term fiscal impact of proposed corrections policies, require 10-year fiscal impact statements to accompany future sentencing and corrections legislation.

Victim Priorities

Recommendation 21: Advance crime victim priorities

- ▶ Proposed Administrative Reforms: To advance reforms addressing the needs of crime victims, the Commission recommends the following administrative reforms:
- ▶ a. The DOL and District Attorneys' offices should make enhanced efforts to increase the number of crime victims signed up for court notifications through VINE.
- ▶ b. The DOC should review and revise policies and procedures related to inmate phone calls and visitation to reduce the likelihood of offenders contacting victims.
- ▶ c. The DOC should review and revise policies and procedures to include an increased focus on crime victim needs during offender transition and reentry planning.
- ▶ d. The training standards for criminal justice professionals should contain more specific provisions related to the frequency and content of victim-focused training, with input as appropriate from victim advocacy organizations in the state.
- ▶ e. The state should authorize the DHSS to provide similar trauma-informed services for child victims as the services that exist for adult victims.
- ▶ f. The courts and criminal justice agencies should take steps to make communications and documents more accessible for non-English speakers and people with low levels of literacy.

Outside the Report: Re-Entry

- 
- ▶ Limited Driver's Licenses
 - ▶ Administrative License Revocation
 - ▶ Food Stamps
 - ▶ Re-Entry Program
 - ▶ Community Work

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue. These shapes are primarily located on the right side of the frame, creating a modern, layered effect. The rest of the background is a solid, very light blue.

Thank You