



April 1, 2016

The Honorable Representative Gabrielle LeDoux, Chair  
The Honorable Representative Wes Keller, Vice Chair  
House Judiciary Committee  
Alaska House of Representatives  
State Capitol  
Juneau, AK 99801

**by email:** Representative.Gabrielle.LeDoux@akleg.gov  
Representative.Wes.Keller@akleg.gov

**Re: House Bill 205: Omnibus Criminal Justice Reform Bill  
ACLU of Alaska Review**

Dear Chair LeDoux and Vice Chair Keller:

Thank you for the opportunity to share our feedback on House Bill 205, an ambitious endeavor to enact much-needed reform of Alaska's criminal justice system. The American Civil Liberties Union of Alaska represents thousands of members and activists throughout Alaska who seek to preserve and expand the individual freedoms and civil liberties guaranteed by the Alaska and United States Constitutions. While we understand that a House Judiciary Committee Substitute of HB 205 will be released soon, we wanted to offer our thoughts on—along with our overall support for—the H version of HB 205.

## **1. Support from the ACLU**

Of particular note, the ACLU approves of Alaska's joining those states that have set up a way for people who have been convicted of certain drug felonies to re-qualify for public benefits rather than being exiled to a lifetime ban. For people struggling with addiction who otherwise qualify for assistance, a lifetime ban is not only unduly punitive, it is counter-productive. Rehabilitative programs such as Alaska would now use to re-qualify someone for assistance, plus the lifeline that public assistance can represent, together represent a much more constructive option of breaking the cycle of recidivism and enabling individuals with drug and alcohol problems to use public assistance to put their lives back together.

The ACLU also approves of, unlike the G version of the Senate Judiciary Committee Substitute of Senate Bill 91, not tying requalification for public assistance to a drug-testing regime that raises constitutional concerns about privacy and the intrusiveness of government searches.

Additionally, we are encouraged that HB 205 requires the Alaska Criminal Justice Commission to annually report on the progress of criminal justice reform and recommend additional improvements. It is essential to the pursuit of justice that the issues HB 205

addresses today continue to be addressed tomorrow, lest Alaska forsake the opportunity to learn from ongoing experience.

And we are pleased that HB 205 expands the use of citations in lieu of arrest for lower-level nonviolent offenses.

## **2. Recommendations from the ACLU**

As generally pleased as the ACLU is with the H version of HB 205, we suggest the bill include the following recommendations from the Alaska Criminal Justice Commission:

### **A. HB 205 should include three consensus recommendations of the Alaska Criminal Justice Commission's December 2015 Justice Reinvestment Report.**

Three consensus recommendations of the Alaska Criminal Justice Commission's December 2015 Justice Reinvestment Report are not included in HB 205. We suggest that HB 205 include them:

Consensus Recommendation #13 included limits of 3, 5, and 10 days for first, second, and third revocations to prison, respectively, for technical violations of probation or parole. HB 205 incorporates this part of the recommendation. But the recommendation also included that revocations for fourth and subsequent technical violations should be limited to 10 days and a referral to PACE supervision if such a program is available in the jurisdiction, or that the sanction be up to the judge or parole board in jurisdictions where it is not. This has not been incorporated in HB 205. We recommend that it be.

Recommendation #6 included making the sentences for first- and second-time possession offenses *suspended* sentences. We note that HB 205 downgrades simple possession to an A misdemeanor and reduces the applicable maximum sentence for an A misdemeanor conviction to 30 days. We welcome this change. But HB 205 does not *suspend* the sentences for first- and second-time possession offenses. We recommend that it do so.

Recommendation #20 would have required 10-year fiscal impact statements to accompany future sentencing and correction legislation. We recommend that HB 205 incorporate this.

### **B. HB 205 should include six majority-approved recommendations from the Justice Reinvestment Report.**

Additional Recommendation #1: We agree with the recommendation that electronic monitoring at a private residence or alternative monitoring sentencing is the appropriate punishment for anyone convicted of driving under the influence. HB 205 only provides such prison alternatives for first-time DUI offenders, leaving that option at the discretion of the commissioner of corrections for re-offenders. We recommend making electronic monitoring at a private residence the standard form of punishment for re-offenders, too.

Additional Recommendation #2: We agree with the recommended threshold of 5 grams to distinguish between more serious (B felony) and less serious (C felony) commercial drug offenses. HB 205 uses a lower 2.5 grams threshold. We recommend using a 5 grams threshold.

Additional Recommendation #3: We agree with the recommendation to bring all presumptive sentencing ranges below the ceiling of the relevant presumptive terms as they stood in 2005. But HB 205 straddles the 2005 maximums. For example, the 2005 presumptive sentence for a first class A felony was 5 years. The presumptive range today is 5–8 years. HB 205 reduces it to 3–6 years.

Also, we agree with the recommendation to extend presumptive probation to both first- and second-time class C felony convictions. HB 205 only provides presumptive probation for first-time class C felonies. Second convictions under HB 205 would carry a presumptive range of 2–4 years.

Additional Recommendation #4: We agree with the recommendation to return sentence lengths for B and C felony sex offenses to 2005 levels. HB 205 does not change the relevant sentences, which are generally 2, 3, or 4 times as long as other felonies of the same class.

Additional Recommendation #5: We agree with the recommendation to expand the availability of Medicaid for substance abuse treatment for indigent persons. HB 205 does not incorporate it.

Additional Recommendation #6: We agree with the recommendation to limit use of multiple misdemeanor revocations for the same instance of program noncompliance. HB 205 does not incorporate these provisions.

**C. HB 205 should incorporate select reclassifications of class B misdemeanors subject to incarceration to criminal violations subject to arrest.**

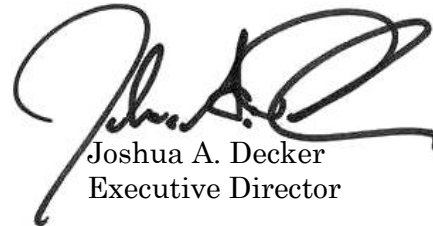
Early versions of the Senate's corollary to HB 205, Senate Bill 91, reduced four class B misdemeanors to criminal violations subject to arrest: (1) criminal trespass in the second degree, (2) criminal mischief in the fifth degree, (3) disorderly conduct, and (4) harassment in the second degree. Reclassifying these nonviolent offenses so that persons convicted of them are not subject to incarceration would spare Alaska undue expense, both by reducing incarceration and by reducing reliance on public defenders, and would reflect the overriding purpose of reforming Alaska's criminal justice system to mete out justice in a more just and proportional manner. We recommend that HB 205 include these reclassifications.

Chair Gabrielle LeDoux & Vice Chair Wes Keller  
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Thank you for the opportunity to share our thoughts on HB 205 with you. We look forward to working with the committee to help the Legislature enact meaningful and effective improvements to Alaska's criminal justice system.

Please let us know if you have any questions or if we may offer any additional information.

Sincerely,



Joshua A. Decker  
Executive Director

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