



March 27, 2017

The Honorable Lyman Hoffman, Co-Chair
The Honorable Anna MacKinnon, Co-Chair
Senate Finance Committee
Alaska State Senate
State Capitol
Juneau, AK 99801

by email: Senator.Lyman.Hoffman@akleg.gov
Senator.Anna.MacKinnon@akleg.gov

Re: SB 54 Crime and Sentencing, ACLU of Alaska Review

Dear Senators Hoffman and MacKinnon:

Thank you for the opportunity to share our feedback on Senate Bill 54. The American Civil Liberties Union of Alaska opposes three aspects of SB 54 because these changes do not reflect the sound policymaking processes and goals that were initially sought when the Legislature created the Criminal Justice Commission.¹ Specifically, we oppose the provisions relating to (1) imprisoning people for administrative reason with violations of conditions of release, (2) enhanced sentences for first-time Class C felonies, and (3) increased penalties following the second instance of low-level theft, theft in the fourth degree.

The ACLU of Alaska represents thousands of members and activists throughout Alaska. Our mission is to preserve and expand the individual freedoms and civil liberties guaranteed by the Alaska and United States Constitutions. The ACLU also works to reform criminal laws to end criminal justice policies that lead to mass incarceration, over-criminalization, racial injustice, and that stand in the way of a fair and equal society.²

Fundamentally, the criminal law reforms that were agreed upon and the reinvestment processes that were created as a part of comprehensive criminal justice reform in Alaska must be given a chance to work as they were designed. Many of the reinvestment and diversionary programs that form an integral part of

¹ AS 44.19.645, the law that created the Criminal Justice Commission, provides that the Commission was to provide recommendations based upon “peer reviewed and data-driven research,” and “efficacy of evidence-based restorative justice initiatives.”

² See ACLU Criminal Law Reform Project, <https://www.aclu.org/issues/criminal-law-reform>.

this process are in their fledgling stages. It is simply too early to make reactive judgments about whether the policy decisions that were made have met Alaska's goals of reducing recidivism and deriving the most public safety benefits from the dollars spent in the criminal justice system. We focus on three changes that we find particularly problematic.

(1) Violations of Conditions of Release

For criminal defendants released either before trial on bail or as part of their sentence on probation, courts will often create conditions for their release, which may include, for example, avoiding certain places, or avoiding alcohol, if alcohol was involved in the underlying offense. Currently, if an individual violates those conditions, he or she can be arrested, given a fine of up to \$1,000, and the court may reassess whether those conditions are appropriate.³

The concern raised before the Criminal Justice Commission that prompted this change was that judges and magistrates found it difficult to bring those arrested before the same judge who created the conditions of release to make appropriate changes, if needed. SB 54, would require that violations of conditions of release be elevated to a Class B misdemeanor offense, which would require an active term of imprisonment.

Incarcerating someone to resolve this administrative issue on clarifying bail conditions will very likely cause many individuals to be fired from their jobs, evicted from their homes, and to lose valuable connections with the community that help that person maintain ties to a community or reenter society successfully. If this committee supports reducing recidivism, enhancing public safety, and allowing rehabilitation, it should reject this change in SB 54.

At an estimated cost of \$150 dollars per day, per inmate in corrections, changing violations of conditions of release to Class B misdemeanors is likely the most costly method to resolve an administrative problem within the judicial system. It is also unnecessary. One solution to this issue has already been successful as judges have become accustomed to procedure: the judge in the underlying criminal cases began to include instructions in the original order (setting forth the conditions of release) on whether to hold a person if he or she violates those conditions.⁴ Given more time,

³ AS 11.56.757.

⁴ Alaska Criminal Justice Commission, Meeting Summary at 5, Dec. 8, 2016, *available at* http://www.ajc.state.ak.us/sites/default/files/meeting-summaries/commission/acjmeetingsummaryfordecember82016_0.pdf.

the court system can arrive at an expedient solution that will not cause the state to incur greater costs. There is simply no need for this legislative change.

(2) Presumptive Incarceration for First-Time Class C Felony Offenses

Secondly, SB 54 removes the presumption of a suspended sentence for first-time low-level felony offenses. A suspended term of imprisonment means that these individuals, who are encountering this level of contact with the justice system for the first time, are given a chance to reenter society provided that they abide by the rules that the court creates for them upon their release. If they do not abide by those rules, they are returned to serve out their sentence. Courts already enjoy the discretion to provide more restrictive sentences if aggravating factors or extraordinary circumstances are present in a given case.⁵

SB 54 would add an active term of imprisonment ranging from zero to one year as the presumption in first-time Class C felony cases.

There is no evidence that creating a presumption of an active term of imprisonment for all Class C felonies makes sense in terms of spending the state's limited corrections dollars wisely.⁶ The exorbitant fiscal note bears this out. Studies that have reviewed prison sentences as they relate to recidivism rates concluded that "[n]one of the analyses conducted produced any evidence that prison sentences reduce recidivism," and indeed, most concerning, for people who pose a lesser risk to public safety, the opposite was true: "the lower risk group who spent more time in prison had higher recidivism rates."⁷ For first-time offenders, such a result does not promote public safety. There is no evidence that SB 54's provisions, even further increasing the presumptive sentencing range to one year, would serve a greater role with respect to public safety, recidivism, or deterrence.

The purpose of having the sentence presumptively suspended for people convicted for the first time, of these less serious felonies in particular, is to prevent those persons from experiencing the effects of even short terms of imprisonment that are

⁵ See AS 12.55.155 - 12.55.175.

⁶ The Senate Judiciary Committee spoke to the need to allow judges discretion to enhance penalties for violent crimes, but Judges already enjoy this discretion. AS 12.55.155 sets forth aggravating and mitigating factors on sentencing, and the first aggravating factor is whether "a person, other than an accomplice, sustained physical injury." Other aggravating factors include whether the defendant "employed a dangerous instrument," the conduct "created a risk of imminent physical injury to three or more persons," among others.

⁷ Paul Gendreau & Claire Goggin, *The Effects of Prison Sentences on Recidivism*, Centre for Criminal Justice Studies, Dep't of Solicitor General of Canada (1999) available at <https://www.prisonpolicy.org/scans/e199912.htm>.

likely to cause criminal behavior—including being fired from their jobs and unable to support their families, evicted from their homes, and losing ties to their families and community. For these first-time offenders, many of whom have just made one of the gravest mistakes of their lives, allowing him or her an opportunity to maintain those ties, with appropriate supervision, enhances the goals of reform and the strength of our families and communities.

(3) Increased Penalties for Theft in the Fourth Degree

SB 54 increases the penalty for low-level theft offenses, based not on evidence of a documented increase in such offenses, or evidence that harsher penalties would result in greater deterrence, but rather on third-hand accounts of perceptions of an increase these offenses. As with the other recommendations, the Criminal Justice Commission noted that “[it] did not have any data that this recommendation would prevent these types of theft[,]” and indeed that “[t]here is no evidence to support the notion that rates of petty theft are related to prison sentences.”⁸ Given the absence of any evidence of a real problem, and the absence of data-driven changes that will result in enhanced public safety and reduced recidivism, this change should be rejected.

Conclusion

The efforts in studying the data for more than a year and making evidence-based changes to crimes and sentencing are only part of the reform effort. The other critical half of this project is reinvesting in programs designed to divert people from prisons and reducing barriers to allow each person to avoid the criminal justice system, and to live, work, and thrive in the community. It must be given time to work. We urge the Legislature to refrain from making policy changes that could seriously jeopardize the savings that the criminal reform law created until there is more information about whether the law is working as it was designed.

We appreciate the opportunity to share our concerns about SB 54 with the Senate Finance Committee. We hope our testimony proves valuable to Members contemplating SB 54.

⁸ Alaska Criminal Justice Commission, Recommendations to the Legislature: January 29, 2017, at 3, *available at* http://www.ajc.state.ak.us/sites/default/files/commission-recommendations/acjcrecommendations1-142017_12.pdf.

Sincerely,

A handwritten signature in black ink, appearing to read "Tara Rich", written in a cursive style.

Tara A. Rich
Legal & Policy Director

c: Senator Click Bishop, Senator.Click.Bishop@akleg.gov
Senator Peter Micciche, Senator.Peter.Micciche@akleg.gov
Senator Mike Dunleavy, Senator.Mike.Dunleavy@akleg.gov
Senator Natasha von Imhof, Senator.Natasha.vonImhof@akleg.gov
Senator Donald Olson, Senator.Donald.Olson@akleg.gov