

State of Alaska
DEPARTMENT OF LAW

FREQUENTLY ASKED QUESTIONS:

SB54

September 26, 2017

1. What changes did SB 91 make to the criminal justice laws when it went into effect in July 2016?

Senate Bill 91 comprehensively reformed our criminal justice system by changing the classification and sentences for a number of crimes, adding pretrial and probation services, and focusing on rehabilitation of criminals and treatment for those with substance abuse problems. Based on evidence and positive experience of other states, SB 91 brought proven solutions to bear on the upward trend of crime and recidivism in Alaska.

What was happening in Alaska's prison system prior to the passage of SB91 was not sustainable. Between 2005-2014, Alaska's prison population grew by 27 percent. By 2024 Alaska would be forced to build another prison or start sending inmates out of state. Alaska wanted to get a better return for its money and decided to focus prison beds on those offenders who are violent or pose a risk to the community. Other lower level, non-violent offenders should be given opportunities to return to the community and address the underlying issues which are the cause of their criminal behavior. Research from other states showed that reinvesting in community programs, treatment, and victims' services reduced recidivism and cost less.

SB 91 is scheduled to reinvest \$99 million over six fiscal years. The state has reinvested \$22 million in the first two years alone. Assuming the reinvestment plan advances as planned in FY19, the state will have reinvested a total of \$39.3 million dollars in 3 fiscal years in community programs, treatment and victims' services.

2. How does SB 54 change SB 91?

SB 54 makes several changes to the law enacted by SB 91. It provides judges, prosecutors, and law enforcement with more tools.

- SB 91 reduced the possibility of incarceration for [non-aggravated first time class C felonies](#) from 0-2 years of jail to probation with the ability to impose up to 18 months of jail time only if the defendant commits another crime or violates the terms of probation. SB 54 would change that to 0-1 year of jail time for the first offense. This will allow judges more discretion in crafting appropriate sentences.
- SB 91 made theft of property under \$250 (theft in the fourth degree) punishable by no jail time for the first two convictions and only a suspended sentence of 5 days on the third and subsequent conviction. SB 54 allows for a suspended sentence of 5 days on the first conviction, up to 5 days of active imprisonment on the second conviction and up to 10 days of active imprisonment on the third and subsequent conviction.

- SB 54 also closes a loophole in the law created by SB 91. One of the unintended consequences of an amendment to SB 91 was to potentially allow a sex trafficker to avoid prosecution if they themselves also practiced prostitution when operating a place of prostitution. SB 54 amends the law so independent sex workers can work together without being charged for trafficking while still allowing prosecution those who operate a place of prostitution.
- SB 91 downgraded the crime of violation of conditions of release (VCOR) to a non-criminal violation, punishable by only a fine. While law enforcement officers retained the authority to arrest a person for VCOR, this has led to delays in getting defendants who violate their conditions of release while awaiting trial off the streets because judges were reluctant to keep people in jail for a violation and have wanted to wait until the defendant's attorney could be present, which means the defendant could remain on the streets for longer putting the public at risk. SB 54 returns violating conditions of release to a misdemeanor. It will be punishable by up to 5 days in jail. This allows immediate action and time for the court to conduct a bail review in the underlying case on which the defendant had been released pending trial.
- In an apparent oversight, SB 91 eliminated the statutory provision requiring sex offenders to serve a period of probation. Intensity of treatment and length of supervision are the key factors associated with successful management of sex offenders. While supervised probation for sex offenders does not eliminate an offender's propensity for sexual victimization, it does provide a method for managing and preventing the behaviors while on supervision. This suggests, and research supports, that long periods of supervision are critical to protecting communities from sexual predators. The elimination of mandatory probation for sex offenders leaves a significant hole in Alaska's strategy for addressing sex offenses. SB 54 reenacts mandating periods of probation for sex offenders.

3. How would SB 54 make my community safer?

SB 54 returns much needed discretion to judges, which will allow them to craft a sentence that will appropriately balance both public safety and rehabilitation.

4. What evidence is there to support up to one year for first-time Class C felonies?

The evidence before the Commission was that smaller sentences were just as effective as long sentences for many crimes. But SB 91 not just reduced the amount of jail time for Class C felonies, it took away a court's discretion to impose any jail time.

After the passage of SB 91 anecdotal evidence began to mount indicating that the reforms were not working as intended. Some criminals seemed emboldened by the lack of sanctions for Class C felonies. Though police **could** arrest people for lower level crimes, those arrested were immediately released from jail and faced the real possibility of receiving no jail time even when convicted. Thus, the practical effect was that making an arrest in these cases – as opposed to issuing a summons – was not worth the time or risk of injury to police or offender.

This anecdotal evidence of increased crime has been validated by the Department of Public Safety's annual report: [Crime in Alaska 2016](#). The larceny and vehicle theft data supports what we have suspected for the past year.

Moreover, the evidence behind SB 91 showed that treatment would be better than jail time when substance abuse was the primary causal factor for the offense. But without the threat or ability to impose jail time, prosecutors and judges found themselves unable to incentivize or require treatment. Allowing up to a year in jail for non-aggravated first time class C felonies will give necessary discretion and tools back to judges, law enforcement, and prosecutors that will help them better address these crimes and build a safer Alaska

5. Wasn't crime on the rise prior to SB 91? Why will SB 54 help?

It is true that crime generally was on the rise prior to passage of SB 91. Sentences for the sex offenses and homicides were not changed by SB 91, and the rise in the incidents of those crimes is unrelated to SB 91. But what the 2016 Uniform Crime Report shows us is that thefts increased 16.1% between 2015 and 2016, much higher than any prior increases since 2012. In fact, the prior two years had seen a downturn in thefts. Motor vehicle thefts show an even starker uptick, increasing 48.7% between 2015 and 2016. With our ongoing opioid crisis and the State's fiscal crisis, SB 91 is likely not the sole cause in the increase in crime, but the evidence does show a significant increase in theft crimes in the same year as SB 91 was passed. SB 54 will give necessary discretion and tools back to judges, law enforcement, and prosecutors that will help them better address these property crimes and build a safer Alaska. (See the [Department of Public Safety's Uniform Crime Report](#).)

6. Wasn't SB 91(criminal justice reform) based on evidence and data? What evidence do we have that SB 54 will help bring down crime?

Although there was a lot of research and data presented to the Alaska Criminal Justice Commission, there was no evidence presented that lowering non-aggravated first-time C Felony offenses to no jail time would reduce recidivism and bring down crime rates. In fact, the Department of Law did a review of the other 49 states, and no other state has gone this far in their reforms. (See [memorandum from the Department of Law](#).) There has also been anecdotal evidence that has been backed up by the Department of Public Safety's report: Crime in Alaska 2016. Further explanation is provided in FAQs 4 and 5.

7. Doesn't the 2016 Uniform Crime Report show crime is actually up, so SB 91 hasn't worked?

As addressed in question 5, you have to look at overall trends. As examples, murder crime rates steadily increased from 2013-2015, as did the crime rates for rape. Alaska has been struggling for decades with the highest domestic violence and sexual assault rates in the nation. SB 91 did not cause this. We need to look at the whole picture—the various causes of crime and the number of treatment options available—something SB 91 will helped with money it allocated to be invested in treatment programs.

8. Do we need to repeal all of SB 91? Would prosecutors support a wholesale repeal?

See FAQs 5 and 7. The evidence behind SB 91 still exists—we need to be smarter about how we design our criminal justice system and work on rehabilitating individuals who can be rehabilitated. This January, as part of SB 91, the Department of Corrections will have 60 armed pre-trial officers to help take dangerous offenders off the streets as quickly as possible while also helping offenders who can be rehabilitated find the right services and treatment as early as possible. We need to give the reforms on the whole a chance to work, while making necessary tweaks, such as SB 54, when they are needed.

9. Shouldn't we give SB 91 a chance to work before making changes?

Yes, but with any large legislation totaling more than 130 pages, you are going to have areas that need to be corrected. As explained in FAQs 4, 5 and 6, SB 54 is targeted at specific provisions in SB 91 that did not have the evidence supporting improved results when the bill passed and have clearly emboldened criminals by taking away a judge's discretion to impose appropriate jail time. SB 54 merely makes necessary tweaks to SB 91. These types of changes are necessary with almost every large omnibus legislation. As a whole, we need to continue to monitor over the next three to five years if SB 91 has worked as intended.

10. Won't jail sentences take away money that could have been used for treatment?

It should be remembered that SB 54 only gives the discretion back to judges to impose some jail time; it does not mandate jail time. There are circumstances where a judge would find that jail time is not needed, and others where the maximum sentence should be imposed. This will lead to an increase in those in jail for short periods, but will not take away from the efforts towards treatment which should ultimately lower the number of repeat offenders and free up beds in our jails.

11. What if the crime rate continues to go up after passing SB 54?

We have always said this is a multi-faceted problem that will require many solutions. SB 54 will simply restore some of the tools necessary to address non-aggravated first-time C felony offenses and lower level theft cases. We need to be vigilant about providing treatment options and continuing to get dangerous individuals off the streets. In the coming months, the Governor and Attorney General will be outlining further plans to improve public safety in our state.

12. Department of Law has seen a reduction in their budget because of the fiscal crisis. What is the point of increasing penalties if there aren't enough prosecutors to handle the cases?

The fiscal crisis and the opioid crisis are likely both contributing factors to the rise in crime. Economic downturns have historically meant an uptick in crime can be expected. But this does not mean that giving the necessary tools to our judges, prosecutors, and law enforcement is fruitless. Prosecutors must continually weigh priorities and decide where their resources will make the most difference. Giving some tools back to prosecutors can both assist in deterring individuals from committing the crime in the first place and allow prosecutors to advocate for the most effective punishment or treatment in a particular case. SB 54 is important for these reasons and can make a difference regardless of the budget situation.

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