STATE OF ALASKA
OFFICE OF VICTIMS' RIGHTS

February 18, 2016

RE: Senate State Affairs Committee Hearing on Senate Bill 91

Thank you Mr. Chairman and committee members for the opportunity to provide written testimony in addition to oral testimony earlier today on SB 91.

My name is Taylor Winston. I am the executive director of the Alaska Office of Victims' Rights and chief advocate for crime victims statewide. OVR is the only organization which represents crime victims across the full spectrum of crimes in this state. We represent victims of Robbery, Burglary, Thefts, Sex Offenses, Assaults, Homicides and even child victims of Drug Crimes.

I want to take a moment to describe my background, and my experience. I have been in the trenches of our criminal justice system for nearly 20 years. After graduating from Georgetown Law. I began my legal career as a law clerk for an Anchorage Superior Court criminal judge. I went on to work for the Department of Law as an Assistant District Attorney for 13 years. After an initial year prosecuting misdemeanors in Anchorage, I transferred to Bethel for 2 years where I primarily prosecuted DV and sex offense crimes. I spent the remaining 10 years in the Anchorage DAs Office. Over that decade I prosecuted felony level violent crimes including homicide cases and spent 8 years in the sexual offense unit. I supervised that unit for 6 of those 8 years. For the last 4 years I have been with the Office of Victims' Rights. Additionally, before becoming an attorney I worked for almost 7 years as an analyst in Washington DC for the U.S. General Accountability Office evaluating government programs for waste, fraud and abuse.

This written testimony is long because this bill is huge. SB 91 embodies dramatic and extensive changes to the criminal justice system that could cost lives. For those who are not lawyers and especially for those who have not had the opportunity to

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be submerged in the criminal justice system, I feel it is important to describe some of the real life consequences of this bill.

One of the primary responsibilities of government and this legislature is to keep people safe. Whatever form SB 91 takes over the weeks to come it is imperative that this legislation first and foremost protects the safety of our citizens and does not sacrifice safety to save a buck.

OVR, on behalf of victims statewide, is concerned that the current version of SB 91 sacrifices public safety and that numerous sections of the bill violate crime victims' constitutional and statutory rights.

While the bill may achieve its goal to reduce prison population by 25%, there is little in it to hold criminals accountable and keep Alaskans safe. It is apparent that a lot of hard work went into drafting this bill, but it is clearly lop-sided for criminals and against victims. It is being touted as a reinvestment bill but focuses primarily on how to get people out of jail to save DOC money. The bill provides lots of specifics about eliminating or reducing consequences for criminals but fails to provide specifics on actual reinvestment and other key areas of needed reform. There should be concrete plans in place with attached dollar amounts for these reinvestment ideas, as well as the commitment from the legislature to fund, before we overhaul the criminal justice system in the way SB 91 proposes.

There is no doubt that our criminal justice system is flawed and change is warranted, but change should not come at the expense of Alaskans' safety. Change should not further trample on the rights of 1000s of people victimized by crime every year. Change should not subject victims to further victimization by a justice system that claims to hold criminals accountable and keep people safe.

This bill hands gifts to the criminals while it steals away the rights of victims. It is the equivalent of a parent telling a child "well instead of your usual weekend grounding I am going to give you a 5 minute timeout and then take you for an ice cream cone."

There was a public outcry a few years ago when Jerry Active murdered 2 people and raped a small child. People wanted to know why he was out and blamed the Dept of Law. If SB 91 becomes law, there will be many more Jerry Active stories and the blame will more fairly fall at the feet of the legislature.

SB 91 gives a criminal reductions at every level of the system - layer upon layer reductions in what's charged, in bail, in jail sentences, in lengths of probation

periods, in lengths of parole periods, in sentences for both probation and parole violations, in the amount of time served before being eligible for parole, and in the requirements to get parole that let criminals out easier and faster. Let's look more closely at some of the specifics in the current SB 91.

1) Charges :The seriousness or "class" of many crimes will be reduced

Under SB 91, many crimes will have a new reduced classification. Here are a few examples.

In Section 31, giving narcotics to kids will drop a felony level; possession of all drugs including heroin will drop from felonies to a misdemeanor; and crimes like Failure to Appear (FTA) and Violating Conditions of Release (VCR) won't even be crimes anymore – just tickets.

Our youth are put at significant risk already because of the drug trade and drug abuse in this state. I cannot fathom why any legislator believes lowering the penalties for criminals who dope up kids, use kids in the manufacturing of drugs or manufacture their poison where kids live is a good idea. Just look at a recent ADN article that describes a surprising spike in just four years in the number of Alaskan kids in foster care, which is believed to be linked with drug abuse especially heroin. The legislature should do everything it can to protect one of the most vulnerable segments of our society.

In Section 34, dropping the possession of heroin from a felony to a misdemeanor, punishable by no more than 30 days, is also shocking. What incentive will there be for someone to get treatment? The consequences for not using, not doing treatment, or not following probation are so inconsequentially they become meaningless at a misdemeanor level.

Drug crimes, especially heroin related crimes, are a huge problem. Calling these crimes non-violent is naïve and misleading. With drug crimes come robberies, assaults, child abuse, and homicides, not to mention thefts and burglaries. Tell a family whose home has been ransacked by burglars, whose irreplaceable family possessions have been stolen and whose sanctity of their home destroyed, that the act "was just a property crime." Victims of property crimes are often left out of consideration as crime victims.

Turning to Sections 21and 22; reducing VCRs from a crime to just a ticket, puts victims at risk. A defendant who has threatened to kill a victim and then shows up at victim's home in the middle of the night, violating a judge's bail order to not go

there 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. The victim's constitutional rights to be protected from the accused and to be treated with dignity fairness and respect during all phases of the criminal justice process will be violated to save a dollar. Proponents will argue that the 125 requested state employed Pre-Trial Supervisors added by SB 91 will be able to supervise the criminals and arrest if they violate a judge's orders. It will take more than 125 people to supervise all the pre-trial defendants statewide at a level that effectively protects the public. By comparison, the current level of felony probation officers is inadequate to fully supervise convicted criminals. This reduction will place more victims at risk, and lower the consequences to violators to the point of being ineffective.

In Sec 18 through 20, felony and misdemeanor crimes of Failure to Appear drop to a ticket too. Because there will be even less incentive to show up for court give much lower bails and no criminal consequence for failing to appear, this will add to the already wretched problem of continuances and delays in the system. Victims will have less certainty, suffer more delays and become further demoralized by this so called justice system. Not only their right to be treated fairly will be violated, but their constitutional right to a timely disposition of the case also will be violated.

In addition, if FTAs (which currently include A misdemeanor and class C felony offenses) and VCRs are not crimes, they will not show up on a defendant's criminal history. This creates a problem because any failures to appear or any violation of conditions of release the defendant has committed, if only violations, would not be known to judges in another jurisdiction, prosecutors, police who may come in contact with the defendant or known to potential future pre-trial services officers who are tasked with assessing the risk the defendant presents.

2)It will be more difficult for police to make arrests. For crimes like Vehicle thefts, felony Thefts, Eluding, Possessing Child Pornography, Arson, and Endangering children and vulnerable adults, the general rule will be for police to give them a citation.

On the surface crimes like vehicle thefts and eluding seem non-violent but that is far from true. Just look at some of the stories we have seen already this year ....

Dozens of vehicle thefts in a single week in Anchorage

K9 unit apprehends car thief after stolen Subaru strikes police car

Vehicle eluding trooper in Fairbanks results in officer involved shootout

Even a UAA Justice Study found that 37% of all officer involved shootings in Anchorage from 1993-2013 started as a traffic stop, stolen vehicle, eluding, or a burglary.

It makes no sense given the dangerous of such crimes, that a person fleeing police and ultimately stopped would be given just a citation to come to court in a few days. If police want to arrest the person, police will have to find a "significant" risk to the public before making the arrest (Section 37). This is a high threshold for officers in the field to meet and could subject them to lawsuits. Such litigation would not only be very expensive and time-consuming for law enforcement agencies but would lead to far fewer arrests, even when appropriate for safety reasons, because of the fear of a lawsuit. Police, the true guardians of our safety should not be handcuffed this way. Many of these crimes the bill considers harmless and non-violent present a true safety issue for law enforcement and the public.

3) **Judges authority over bail is being reduced. Low to moderate risk defendants will be mostly released on their own recognizance or unsecured bond. If a judge wants an offender to post money that judge will be required to legally justify it with a higher level of proof.**

Section 39 requires judges to revise/lessen any bail condition which may have prevented a defendant from bailing out unless the judge finds there is clear and convincing evidence that the lessened or revised bail cannot ensure the defendant's appearance or the safety of the victim or community. This section raises the level of proof/evidence needed for judges to be able to make more restrictive bail decisions.

Section 43 requires judges to release defendants on their own recognizance (OR) or unsecured bond for many crimes if deemed low/mod risk on misdemeanors or low risk on C felonies. For victims of those crimes, even if allowed to address a court, their input would be meaningless because the judge would be required to release the person OR or on unsecured bond. This law again would eviscerate the victim's constitutional right to be heard and would violate the victim's constitutional right to be protected from the accused. Therefore the section is unconstitutional. The section also fails to recognize that any 2 offenders arrested

for the same crime may present very different risks to the community based on prior charged and uncharged conduct and the facts of the underlying case.

Judges will also be required to consider the pre-trial services officers recommended conditions of release. It is absurd because the pre-trial service officer will not have sufficient factual information to make appropriate recommendations. In fact, that officer will have less information than the prosecutor, the defense attorney and possibly the judge.

Proponents will say that defendants are innocent until proven guilty and so should be released on their own recognizance. This is a nonsensical argument. If a person is presumed innocent then the type of crime charged, their prior history or the facts of the crime would mean nothing. If one adheres to this logic then the first-time murderer should be released OR just like the person who stole a roast from Carrs. To assess dangerousness you have to consider the facts of the crime with which the person is charged.

4) **Sentences and penalties across all categories of crimes would be reduced including those for murderers and sex offenders. Reductions will be seen in sentencing ranges, probation lengths, and parole lengths.**

Examples of sentences affected by SB 91

Sentences will be reduced for misdemeanor crimes

One of the most dramatic changes is seen in sentences for A class misdemeanors, like Assault. Currently, a person can be sentenced up to a year in jail and be placed on probation up to 10 years. In Section 71 of SB 91, unless the state proves to the court that a defendant has previous convictions for the same behavior or there are other specific mandatory minimums like for the crime of an assault on an officer, the maximum sentence allowed would only be 30 days, and with mandatory "good time" that's is only 20 actual days. So punching someone and breaking their nose would only mean a maximum time of 20 days in jail. Possessing ANY amount of heroin would only be a maximum 20 days. Moreover, the way in which the statute is written designates that most misdemeanor defendants will not be on probation and will have no requirements. With a specified sentence of no more than 30 days, an offender sentenced to 15 days could not receive any more than 15 days of suspended time. Putting someone of supervised probation when they have only 5 , 10 or even 30 days suspended, an utter waste of resources, clog the court system with unnecessary hearings and require a lot more in administrative costs.

Sentences for almost all felonies would drop under Sections 68-70.

For a first-time defendant convicted of Possession of Child Pornography, a C Class Felony, he would get a probationary sentence called an SIS of 0 to 18 months.

A defendant, like one I prosecuted once here in Anchorage, who possessed an old video of himself raping a little boy in another state, and had 15,000 other images of child porn would only be put on probation.

Yet, under SB 91, a Fish and Game first-time defendants of a class C would get 1-2 years jail.

The sentence of a first-time Class B felony offender such as Criminally Neglient Homicide would also drop.

For example, a defendant points a gun at a person's head and pulls the trigger thinking the gun is a toy yet kills the victim, the defendant faces between as little as NO time in jail and no more than 2 years to serve for killing a person.

A sentence for first-time Class A felony offender like Assault 1st Degree would also go down.

An example, a defendant who runs a red light and hits your child in the crosswalk crippling him for life would only face 3-6years to serve in jail.

Probation lengths and penalties for probation violations will go down too

Section 60 describes how the bill will shorten lengths of probation for criminals.

Many think this bill won't affect sentences for sex offenders or murderers but they are mistaken.

Maximum probation lengths for sex offenders will drop from 25 years to just 5yrs
Maximum probation lengths for murderers will drop from 10 years to just 5 years.
Maximum probation lengths for all other felonies will drop from 10 years to 3 years .
Maximum probation lengths for misdemeanor DV or DUI (with previously DUI convictions) offenses will drop from 10 years to 2 years.
Maximum probation lengths for all other misdemeanors will drop from 10 years to 1 year.

Section 62 violates the constitution. It says the court can limit the number of victims addressing the court regarding reducing or terminating probation. The court has no authority to violate the constitution. Each victim of a crime has a constitutional right to address the court regarding a defendant's sentence. Whether there are 1 or 100 victims, they have a protected right to address the court even if inconvenient for the court.

When criminals violate their probation, SB 91 will give them another gift. Instead of a judge being able to determine the appropriate amount of time warranted, this statute will dictated just a few days stripping the judge's discretion almost completely away. The type of violation will matter little. Clearly the defendant's criminal history and the defendant's underlying don't matter at all because the bill basically treats these sentences as a one size fits all. The bill is silent to about whether a defendant with 4 violations would get the same 1-3 days that and an offender with one violation would get. The judge's need to consider the *Cheney* criteria in sentencing appears moot under this bill essentially. At least for PTR purposes, it would be meaningless for the judge to consider the offender's criminal history, the need for isolation, deterrence of the offender, and community condemnation.

The bill merely slaps probationers on the wrist for what is called a "technical" probation violation. Their penalty:
No more than 3 days for their 1st violation
No more than 5 days for their 2nd violation.
No more than 10 days for their 3rd violation.
After the 4th reported violation the judge will be allowed to give them significantly more or all of their suspended time.

Currently offenders can get up to all their suspended time imposed on their first violation, but generally get 30 -60 days if it is not a new crime or other dangerous behavior. Section 62 creates a huge safety risk for victims and the public at large. It also violates the victim's right to be protected from the accused, eviscerates their right to be heard regarding release, and their right to be heard regarding sentencing

Proponents of the bill paint this a section to deal with those probationers who report a couple of hours late and end up not making bail and sitting in jail for months over being tardy a few hours. Show me that case, where an offender was a couple hours late , had no other violations, and wasn't a repeat violator that had a PTR filed and sat for months before release. In 13 years I never saw a PTR filed on an allegation of being a few hours or a day late. I never saw a defendant sit in jail

for months for any violation similar to this. In fact so many of the delays with PTRs are caused by defense continuances, so the sitting in jail is defense driven not state driven. Moreover, in Anchorage bail on PTRs based on violations not involving new crimes often have low bail or no required bail if defendant goes to a halfway house or treatment program. It is a false narrative that is being promoted.

Do you know what a "technical" violation is, anything that is not a new crime? A child molester on probation and ordered not to have contact with kids is found on a home visit by his PO to be naked in a room with a naked toddler...that would be a "technical violation" worthy of only a couple days in jail.

Once the felon has done the maximum number of days allowed under this section, even if they have not had a hearing yet, they must be released. Again, another constitutional violation of a victims' right to be heard before release.

Probationers could see up to another 50% knock off their probation time if they stay in compliance. Probation officers will be required to recommend to the court probation reduction incentives for good behavior. This "incentive " will amount to a day for day...meaning if you are on probation and good one day, then you get a day knocked off of your probation length.
There are so many problems with this idea. It will be an accounting nightmare. Nowhere is it explained how this really works. If the offender is good on January 1 but violates on January 2 and goes to jail for 3 days, has he been "bad" 1 day or 4 days. What if he commits 4 probation violations on one day, does it just count as 1 "bad" day when another offender who only had 1 violation on a day is also "bad" one day.

Victims will have absolutely no certainty about how long defendant will be in custody or on probation or on parole because the ultimate date of release will be a moving target. There will be no truth in sentencing. I cannot imagine how difficult and confusing it will be to explain all the various probation-parole possibilities to a victim, not to mention how demoralizing it will be to hear from the criminal justice system again that the system is more concerned about the offenders rights and well-being that theirs. Victims will also have no input on this sentence modification, which violates their constitutional right to be heard on sentencing because every probation adjustment is in fact a resentencing.

Murderers and sex offenders will also be given behavior rewards which can also reduction the length of their probation up to 50 percent.

Earlier parole releases

First-time low and mid level felons, who have met the requirements of their case plan will automatically be paroled after serving 25% of their jail sentence. This is a whole new type of parole called administrative parole, letting criminals out sooner and with greater ease. (Section 96). There will be no hearing unless a victim specifically requests it. OVR is troubled by putting the onerous on the victims to have to request a hearing and what good will it do. The statute does not appears to allow the parole board to deny a convicts administrative parole if other requirements are satisfied. If this is the case, a victims words will be meaningless. The hearing would be just lip service to try to make the victim feel as though someone cares.

Discretionary parole will be available to more criminals and sooner. Currently, the highest level sex offenders, those Class A and unclassified felons, cannot get discretionary or mandatory parole, but under SB 91 they will be eligible. Those 55 years old or older will be considered "geriatrics" and allowed parole if they have served 10 years.

Therefore, the 45 year old child molester who has raped 2 little girls repeated and was sentenced to 50 years jail will be able to get out under SB 91 on parole in just 10 years, when he turns 55. A most heinous of criminals who only serve a small portion of a lengthy and worthy sentence on the false premise that at 55 they are unlikely to reoffend. Many sex offenders, especially child molesters are first convicted of such crimes in their 50s, 60s and even 70s so the idea that the geriatric sex offender no longer present a risk due to age is a fallacy.

Most alarming is a new provision in Section 117, that says regardless of your crime or your sentence, if paroled, the offender can be unconditionally discharged from parole after only 1 year if the offender has behaved on parole for the year, and completed any ordered treatment. If passed this will apply to any criminal not already paroled.

For example, if an offender murdered his girlfriend and receives a sentence of 50 years active jail, but he was paroled after only serving 20 years, he could be off parole altogether after only 1 year. One year of good behavior could wipe 30 years

off his sentence just like that. This provision will apply to any offender no matter when convicted if parole is granted after the bill's effective date.

While the bill finds many ways to let defendants out of jail at every turn to save money, it also builds in many new administrative costs and adds new state employees to the state payroll.

Section 91 describes a pre-trial services program that will be expensive and not cost effective. As I understand, the Department of Corrections has indicated it will need to add 125 new state employees for this program at a cost of $3.9 million. Even if these officers, who will have arrest powers, are only paid $15 per hour the cost is approximately $3.7 million. That figure does not include overtime, travel expenses, training for this newly created office, clerical assistance, benefits including very costly health care coverage and future pension liability.

Regarding bail, these pre-trial services officers will have less information available to them to make assessments about flight risk and dangerousness than prosecutors will have. They likely will have less experience than judges, prosecutors and defense attorneys to fashion appropriate bail recommendations. These 125 employees will also be tasked with supervising all pre-trial released defendants across the state. I submit they will not be able to adequately supervise this population to the degree needed to keep the public safe. As it is DOC has too few felony probation/parole officers to provide the supervision needed for convicted felons.

The emphasis should not be adding a state employee program to the system. If the $3.9 million is to be spent it should be invested in treatment beds and more felony probation/parole officers. Judges, prosecutors and defense attorneys are sufficiently intelligent, informed and experienced to assess bail needs. Private sector programs like electronic monitoring or the 24/7 program could provide supervision for released defendants. These private companies should be required to be licensed by the state, be required to be insured and have required to adhere to standards provided in regulation. This would ensure consistency and reliability of the programs so that they in fact keep the public safe in a manner expected by the courts, the prosecutors and the community.

Even the chair of the commission told this committee that public safety will not be protected under SB 91 without companion legislation reinvesting in needed programs. I agree but call me cynical...because for all the years this state was fat and happy with its oil revenues, the investment was not made for more probation

officers to intensely supervise offenders; investment wasn't made for needed treatment beds for those who might succeed at breaking the cycle of addiction and recidivism; and the investment for more beds for treatment and isolation of mentally ill criminals who pose a significant risk to are communities was not made. And now when the state has no money we are being asked to trust that adequate reinvestment to protect the public will be done.

Treatment and intense probation supervision is key to first time and maybe second time felony drug and property offenders. Incentives coupled with significant deterrence is needed. Ultimately, reinvestment is critical to reducing crime and keeping the public safe. Streamlining the system, reducing duplicative programs and having government offices working together with private companies and non-profits is the way to achieve the goals sought. An efficient system allows committed efforts and resources used to have the biggest impact.

For all that SB 91 changes in the criminal justice system, the bill does not address the significant and costly problem of the length of pendency of criminal cases in the Alaska courts . Lengthy pendency not only violates victims' constitutional right to a timely disposition but cost the system significant amounts of money. Shortening pendency would reduce costs for the court system, DOC, Dept. of Law, Dept. of Administration and the community. Many who have not been in the trenches of the criminal justice system may think SB 91 provisions will shorten pendency times...I submit their belief is misguided. Throughout the bill, new layers of litigation and hearings are added which will only compound the pendency problem, not improve it. The costs of continuances and delays are financial, physical and emotional. It is not unheard of for a felony case to be in pre-trial status for 3, 4, 5 years, even some as long as 6 years. Consider that and then consider that the Boston Marathon Bomber was tried, convicted and sentenced to death faster than many felonies are tried in Anchorage.

This bill tries to address the increase in the number of offenders in custody pre-trial with a quick fix of making sure fewer people go to jail or stay in jail but it fails to address some of the main causes for the growth in pre-trial incarceration. The bill doesn't address or solve so many of the problems already in the system. The bill only addresses that which the Commission was tasked with reducing jail numbers to save money. It certainly does nothing to prevent situations where an offender not only commits one felony but then bails out repeatedly to go on to commit 2,3,4, or even 5 more felonies before the first one is ever resolved.

Solve the length of pendency issues and you solve much of the problem of increased number of pre-trial offenders taking up bed space. By simply shortening the length of time between an offender's arraignment on a PTR (petition to revoke probation) and the first substantive hearing on the violation and limiting continuances, you can easily reduce the number of probationers taking up jail space. Inefficiencies in the system, lengthy delays and lack of true deterrents are some of the biggest culprits of a failed system. Many of the bill's sections have the potential to worsen the problem of delays, the time it takes to resolve cases and lead to fewer criminal prosecutions, and more dismissals of cases. If this happens it will exclude more victims for receiving justice in the system and hold fewer offenders accountable for their criminal acts.

OVR is not opposed to thoughtful development of and gradual passage of statutes designed to specifically remedy inefficiencies, problems and costs associated with the criminal justice system. OVR submits however that many of the things SB 91 achieves by changing laws and making the system less flexible could be achieved through policy changes in the DOL, DOC and Dept. of Administration, or changed by utilizing laws already on the books. SB 91 carves into stone changes making the system less flexible to respond to the negative ramifications which could come. This notion that the sky is falling and we must make all the profound changes is a false narrative. Much can be accomplished by taking smaller steps. The Commission and Pew's research found that higher prison costs are associated with misdemeanors, and pre-trial holds. Then by addressing only those two areas with precision policies and statutory changes, savings would be realized. Our leaders should protect us. They should proceed cautiously and thoughtfully when making changes that could mean life or death for someone.

OVR will gladly sit down with any policymaker or legislator to discuss the bill and offer specific suggestions 1) to protect the constitutional rights of victims; 2) to help achieve goals sought, and 3) to keep our communities safe. We are thankful that Senator Coghill has given OVR an opportunity to present possible chances to SB 91 which could reduce its negative effects. We hope other legislators will do the same. We believe the efforts in drafting SB 91 were sincere and that the efforts may result in the intended goal of reducing the jail population. However, the practical application of the SB 91's changes will have far-reaching and devastating consequences, we believe the drafters did not intend.

Unfortunately, the current version of SB 91 does not meet these goals. Therefore OVR opposes SB 91 in the current version at this time. OVR is committed to protecting the rights of crime victims. OVR hopes to see a bill which holds criminals accountability; protects the community; improves the criminal justice system and recognizes the constitutional rights of victims. OVR looks forward to an ongoing dialogue with the legislature.

Thank you for your time and consideration.