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OVR Written Testimony to SB 91 (version 29-LS0541\G work draft)
Prepared for the Senate Finance Committee
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Senators:

As SB 91 moves to its final Senate committee, the Senate Finance Committee, the Alaska Office of Victims' Rights (OVR) has remaining concerns about the bill in its current form. The two main goals of the bill are to curb costs and to focus on offender rehabilitation in order to reduce recidivism. These are important goals. OVR is concerned, however, that another important aspect that must not be lost in the process is victims' rights and community safety. Alaskan voters in 1994 overwhelmingly voted to add specific crime victims' legal rights to Alaska's Constitution. To Article I, Section 12, Criminal Administration, a section was added that reads "Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principles of reformation."

OVR has a small staff of criminal justice professionals, including victims' rights attorneys who have also been state prosecutors, who have examined the bill and found changes that should be made to protect victims' rights and public safety in the application of the bill while preserving the goals of the sentencing commission to the extent feasible. The legislature has created OVR as an independent agency with an appointed director so that advice can be provided free from political considerations. For efficiency and ease of discussion, OVR has compiled this written list of suggestions for the Senate Judiciary Committee.

Sections 25 – 32

OVR does not support the reductions in penalties for drug offenses proposed in these sections. Alaska, along with the rest of the nation, is in the midst of a heroin epidemic with corresponding increases in crime, child neglect, and deaths from overdose. For recent articles in the media, see http://www.adn.com/article/20160213/dramatic-spike-foster-children-overwhelming-state-agencies and http://www.adn.com/article/20150714/public-health-officials-find-steep-rise-alaska-heroin-deaths-overdoses (last accessed March 14, 2016). Despite dramatic increases in child neglect and crime associated with heroin, the effect of these sections, by reducing penalties, would be to limit the court's ability to require those possessing heroin and other hard drugs to obtain treatment. Many innocent people in our community are victimized by burglaries and thefts by drug addicts. Under these sections, possession of heroin and other drugs would be reduced to a misdemeanor and the most likely sentence would be a few days in jail, if any. There would be no way to mandate a defendant to complete treatment when a misdemeanor defendant is not supervised by a probation officer. The community would have to wait for the addiction and

addiction-related crime to escalate. Additionally, those *dealing* heroin would receive no jail if caught unless they are dealing more than 2.5 grams which is about 25 doses.

The bill also reduces the penalty for those manufacturing methamphetamine. It was only a few years ago that Alaska was in the midst of a serious methamphetamine problem. Under these sections, someone who runs a methamphetamine lab in a residential neighborhood would be sentenced from zero to two years in jail. Significantly reducing the penalty for *dealing* heroin and *manufacturing* methamphetamine will not aid in combatting this epidemic.

The proposed changes to drug offenses in SB 91 curtail existing efforts to stem the tide of overdoses, property crime, and child neglect associated with drug abuse in Alaska. OVR's experience with victims of crime committed by drug addicts is that victims *do not* support legislative efforts to decriminalize and minimize penalties for drug related offenses.

Section 45

Page 26, line 10; substitute "should presumptively" for "shall" to change the mandate to a legal presumption that release is appropriate without completely removing judicial discretion; the victim is entitled to a meaningful opportunity to be heard at all bail hearings, otherwise the provision is an unconstitutional violation of the Alaska Constitution, Article I, § 24.**

Page 26, line 28; consider adding "AS 11.61.140(a)(5)" so that when a misdemeanor defendant is charged with cruelty to animals, as a person who knowingly injures or kills an animal with intent to threaten, intimidate or terrorize another, and that defendant also has been assessed by pretrial services as a high risk offender, a judicial officer will have bail options in addition to an own recognizance release or release on an unsecured appearance or performance bond. Alternatively, consider adding AS 11.61.140(a)(5) cruelty to animals to the crimes under AS 18.66.990 that are included in the definition of crimes involving domestic violence.

Page 27, line 5; consider adding "AS 11.46.360" to include C felony vehicle theft; also line 13 adding "AS 12.63.100(a)(6) to include C felony sex offenses; and line 16 adding "AS 28.35.182" to include C felony eluding to the list of crimes, so that when a defendant is charged with one of these crimes, and a pretrial services officer has assessed the defendant as a moderate or high risk offender, a judicial officer will have bail options in addition to an own recognizance release or release on an unsecured appearance or performance bond.

Section 50

Page 30, line 31; substitute "should presumptively" for "shall" to change the mandate to a legal presumption that release is appropriate without completely removing judicial discretion; it is unconstitutional to release a criminal defendant from jail without prior victim notice and an opportunity to be heard per the Alaska Constitution, Article I, § 24.** This mandatory release provision also presents practical problems. Defendants, released after serving maximum potential jail time, will have no incentive to admit the violations; the prosecutors may not have the additional

resources needed to litigate all probation violation charges. If the charges are dismissed for lack of resources, the defendants will have time served as a "get out of jail free" pass for the next probation violation. This provision, then, may actually provide incentive for offenders who would repeatedly violate their probation. It may also "socialize" the offenders to intentionally violate probation, anticipating short jail sentences at state expense during which the offender could bring in contraband to other prison inmates.

Section 54

Page 32, line 24; OVR recommends that the added language "of not more than 120 days" should remain in the bill. There was some discussion in the House Judiciary Committee about why this phrase appears in the proposed bill and whether it should be retained. OVR worked with the bill sponsor to request the 120-day cap. OVR is aware that an amendment has been proposed that would place the 120-day cap on only the most serious offenders; OVR has agreed not to formally oppose that amendment.

Some context helps explain why the 120-day cap is important. A criminally negligent homicide in North Pole, committed by Eddie Ahyakak, brought this concern to OVR's attention. For more information about the crime, the Fairbanks News-Miner article covered the recent sentencing hearing and the news article can be accessed at this web link: http://www.newsminer.com/news/local_news/fairbanks-man-gets-years-in-prison-for-deadly-car-accident/article_e04a0b88-f181-11e5-bf9c-0f6f5bab3d7a.html
Ahyakak killed another driver while under the influence of prescription drugs. He was summonsed to court and released on his own recognizance. At his change of plea hearing for B felony criminally negligent homicide, in October, 2015, he requested his bail be *increased* to a private electronic monitor to he "could start pre-serving his jail sentence." This guaranteed that he would serve a large part of his sentence outside of a traditional jail. Eddie Ahyakak was not sentenced until Wednesday March 23, 2016, and will likely receive 157 days of credit for time spent on a pretrial electronic monitor. At sentencing, Superior Court Judge Harbison noted that, under AS 12.55.027(d), she was not permitted to consider the factors that DOC would normally consider under AS 33.30.065 (including public safety, offender's prospects for rehabilitation, the nature of the crime, the offender's criminal record) when deciding whether credit for EM is appropriate. The judge ruled that, as written, the statute required the court to grant the credit unless 1) the offender violated his release conditions or committed a new offense or 2) granting the credit would not rehabilitate the offender. But there is no guarantee that DOC will approve his application for electronic monitoring after he is sentenced. (A similar DOC electronic monitoring application was denied recently. The similar case in Anchorage involved defendant Alexandra Ellis case, who killed Jeff Dusenbury, and has garnered much media and community attention. See http://www.adn.com/article/20160317/ellis-gets-8-months-credit-toward-sentence-hit-and-run-killing-cyclist). If DOC grants Ahyakak's request to serve his remaining sentence by electronic monitor, he will serve zero days in a hard jail bed, though his criminal conduct senselessly took the life of another. If DOC denies Ahyakak's request to serve his remaining sentence on an electronic monitor, and is granted discretionary parole, he will likely serve 23 days in a hard jail bed.

The 120-day cap is requested to solve several problems. It prevents defendants from being able to "pre-serve" all their time on an electronic monitor and circumvent DOC's application process and classification decision as to whether to allow a prisoner to serve their sentence on an electronic monitor after considering factors listed in AS 33.30.065. It prevents defendants from gaming the system by requesting pretrial delays long enough to ensure that offenders can serve their entire sentence on a pretrial electronic monitor; the 120-day time limit would ensure offenders can receive pretrial electronic monitoring credit and have the full 120-day "speedy trial" time to prepare for trial. Offenders are still eligible for electronic monitoring credit post-sentencing when approved by DOC, so the proposal does not prevent any offenders from serving a sentence on an electronic monitor when appropriate. There is also a real concern that persons with means could premeditate and intentionally commit a heinous crime, like murder, get caught, claim a lesser homicide crime through a high-priced defense attorney, pay for a private pretrial electronic monitor, and delay the case for years knowing they won't have to go to jail (think drug dealers, someone who wants their spouse killed for the insurance money and commits murder but makes it look like an accident, "hunting accidents," murder for hire, etc.).

Representative Tammie Wilson's bill last session, while a cost-saving measure, has loopholes that need to be closed. The defense bar may argue that it might cost the state money to include the cap, because it might result in DOC paying more for post-sentencing electronic monitoring. However, OVR believes the state will actually save more money when defendants decide not to delay their cases knowing they can't receive any additional electronic monitoring credit beyond 120 days. Defendants would be motivated to resolve the cases sooner. The 120-day cap is an important public safeguard to preserve the intent and integrity of Representative Tammie Wilson's bill.

The legislature may also want to consider amending this section, AS 12.55.027(d), to ensure public safety and fairness in sentencing among offenders, so that courts are directed to consider the same factors that DOC considers, under AS 33.30.065, in deciding whether to approve offender credit for time spent on electronic monitoring. Accordingly, OVR now also recommends, after last week's Ahyakak sentencing hearing, that the legislature add a sentence to the end of AS 12.55.027(d), Page 33, line 5 of the bill that states, "The court, when considering whether to grant credit for time spent pretrial on an electronic monitor, may consider (1) the safeguards to the public; (2) the prospects for the prisoner's rehabilitation; (3) the nature and circumstances of the offense for which the prisoner was sentenced; (4) the record of convictions of the prisoner, with particular emphasis on crimes specified in AS 11.41.or crimes involving domestic violence; (5) the use of alcohol or drugs by the prisoner; (6) other criteria considered appropriate by the court."

Section 66

Page 40, line 3, after "impose a sentence of imprisonment" add a period. Then add, "The presumptively appropriate term of imprisonment for a technical violation is a sentence of imprisonment" of not more than; this change is recommended to ensure constitutionality under Alaska Constitution, Article I, § 24.**

Page 40, line 13, after "period of imprisonment" add a period and insert "The presumptively appropriate term of imprisonment should" not exceed 30 days; this change is recommended to ensure constitutionality under Alaska Constitution, Article I, § 24.**

Page 41, line 5, amend the definition of "technical violation" to be a definition of inclusion, for example, technical violation means 1) failure to report to probation, 2) failure to submit to a required drug test, 3) positive drug test, etc. This eliminates the possibility that factual situations not intended to be treated as "technical violations" will slip through the crack to the detriment of the crime victim and the public. This definition of inclusion will cover the vast majority of probation violations and carry out the intent of the sentencing commission while still protecting victim and public safety.

Sections 68 – 70

OVR does not support sections 68 - 70 which reduce felony presumptive prison terms. The presumptive terms for sentences currently in effect in these sentencing statutes should remain unchanged. A judicial council report, anticipated to be released soon but not yet available for distribution, shows that most offenders are currently sentenced at or below the presumptive ranges currently in place. The legislature should reserve decision on these sections until the judicial council report can be considered. Additionally, the sentencing goals of offender rehabilitation should not be given focus to the exclusion of all other sentencing goals including community condemnation and reaffirmation of societal norms. The sentences that reduce felony sentences to zero when the crimes cause the death of another are especially troubling.

The case of Eddie Ahyakak again serves as a practical example of the effect. Ahyakak was sentenced to serve 3 years with 18 months of jail time and an 18 months of active jail time to serve. The public may believe that Ahyakak will serve 18 months in jail. In reality, of this 540 day sentence, Ahyakak may only serve from zero to 23 days in a hard jail bed. He likely will receive credit for time served pretrial on an electronic monitor, 157 days, and he likely will be eligible for discretionary parole after serving 1/3 of his jail time. 540 divided by 3 = 180 days. 180 - 157 = 23 days. But he has applied to DOC to serve his remaining sentence by electronic monitor. If that request is granted, the offender will serve *zero* days in a hard jail bed after senselessly taking the life of another. While on a pretrial electronic monitor, he was released for 11 days and permitted to travel to Barrow. At sentencing, the defendant was not required to remand. He was permitted to delay remand for two weeks to seek permission to travel to Vancouver, Washington for his grandmother's funeral. The defendant had been *driving* to and from work for nearly two years while the case has been pending. The offender, during allocution, said how sorry he was that he has had to drive by the crime scene twice a day every work day since the crime occurred. Initially, he was released on his own recognizance (OR). Again, the electronic monitor (EM) condition was only added in October, 2015, at defense request, so Ahyakak "could start pre-serving his jail time." This guaranteed that he would serve a large part of his sentence outside of a traditional jail.

This happened under current law. The outcome worsens if the reductions to the presumptive terms proposed in these sections become law. The presumed sentencing range of 1 - 3 years of active jail time will be reduced to zero to 2 years, making it even less likely that a similar offender would ever serve any real jail time. And SB 91/HB 205 would make a similar offender, sentenced to a minimum of 6 months active jail, eligible for administrative parole after serving ¼, or 25%, of the jail time. Does the state save more money? Yes. But what is the cost to society if he reoffends? Pew considered only future cost savings based on the fewer number of offenders in hard jail beds to project future cost savings. Does this address the concern that it would be better for the offender's rehabilitation if he could keep his job and not fall into a downward spiral? Yes. Does this address basic fairness for the victim and the safety for the community? No. It is essential that victim fairness and community safety *not* get lost in the justice equation. This offender may be rehabilitated, but what if he isn't? There is a real concern that SB 91/HB 205 widens the back door that quietly lets convicted criminals out without public awareness. And the idea that this framework will allow some of the offenders to be less likely to reoffend does not protect the victim or the public from those offenders who are released sooner and *do* reoffend.

It has been suggested that "victims are angry" and have a hyper-inflated need for retribution. For over 12 years, this writer has worked with 50-60 families at any given time during the most trying times of their lives--when a loved one has been killed, raped, sexually abused, or lived with the mental and physical abuse of domestic violence. It is amazing to watch their resilience as they rise above the crime and the criminal justice process. They are often most concerned about ensuring that any sentence will, to the extent possible, prevent future victims so that another person won't have to experience their pain and loss. They are willing to compromise on sentences to give offenders a chance at rehabilitation. But there are, and there should be, limits. And a safety net. No one in the criminal justice process believes that a 100% rehabilitation rate is feasible.

Although the bill's intent was not to reduce penalties for serious and violent offenders, the changes proposed in *Sections 68 and 69 do lower the presumptive terms for class A and class B felonies across the board (not sex offenses), including violent crimes against a person under AS 11.41 and crimes involving domestic violence*.

Additionally, the changes proposed in Section 70, page 43, lines 18-19 require a presumptive term of all suspended time and probation for most first time C felony offenders. This change would result in first felony offenders receiving a sentence of no active jail time while many misdemeanor offenders would receive higher jail sentences. OVR recommends the presumptive term of zero to two years remain unchanged. Alternatively, the committee could consider amending the section to provide the judicial officer with discretion to impose up to 90 days of "shock" jail time.

Section 71

Page 44, line 8; consider substituting the word “most” for “more” so that the sentencing judge is not required to sentence and offender to an all-or-nothing sentence from either between zero to 30 days or a maximum sentence as a most serious offender. Also, on line 13, consider adding a new section (D) that adds a non-*Blakely* aggravator (does not require a jury trial verdict to make the finding) modeled after felony aggravator AS 12.55.155(c)(31) so that a misdemeanor offense is automatically considered aggravated for offenders who have five or more prior misdemeanor convictions on their record.

Section 92

Page 58, line 6 after “Department of Public Safety” add “Alaska Office of Victims’ Rights.” (This change may have already been made by amendment in the Senate Judiciary Committee.) If the Pretrial Services Program is implemented, a main function will be to develop recommendations for and monitor bail release of criminal defendants. Victims have constitutional and statutory rights in connection with offender bail release and victim safety is an important consideration. OVR should be included in the process to develop these recommendations because a major function of OVR is to ensure that crime victims’ legal rights under Alaska law and procedure are not denied in connection with an offender’s bail release. Currently, OVR serves on several committees designed to improve the criminal justice system including the statewide criminal justice working group, the statewide criminal rules committee, the Anchorage domestic violence fatality review team, and the Anchorage domestic violence caucus.

OVR also has general concerns whether the cost to add the pretrial service program employees is a justified reinvestment expense or whether the goals to be accomplished by a pretrial services program could be implemented in other less costly ways.

Section 97

Page 62, line 4; administrative parole as proposed here would reduce the sentence imposed to 25% of the original sentence and provide of release of offenders for B and C felons, and misdemeanants sentenced to 181 days or more of active jail time. Persons convicted of sexual felonies are excluded, but offenders convicted of criminally negligent homicide, violent crimes under AS 11.41 including crimes involving domestic violence, are not excluded. The release is mandatory, unless the victim receives notice and takes proactive steps to oppose the release. This creates a potentially dangerous situation for victims of violent crime. Victims who fear their perpetrator are unlikely to again face the offender to take proactive steps to oppose release when he may be on the verge of release. Those victims who are proactive are likely to be re-victimized by reliving the trauma to another public body with uncertain outcome.

Section 99

Page 63, line 27, and page 64, line 1; change "AS 12.55.125(i)(1)(C)-(F)" to "AS 12.55.125(i)"; page 67, line 4, change "AS 12.55.125(i)(1)(C)-(F)" to "AS 12.55.125(i)." This would exclude all sex offenders from eligibility for discretionary parole and fall in line with other changes by the bill sponsor to ensure victim and public safety by continuing to protect the public from sex offenders. Without this change, the following categories of offenders would be eligible for discretionary parole after serving 1/3 of their sentence: sexual assault in the first degree, sexual abuse of a minor in the first degree, and sex trafficking in the first degree—each of these are unclassified felonies. A separate proposal in this bill provides sex offenders to be eligible to earn good time credit, and receive 1/3 off their sentence, under the proposed section amending AS 33.20.010 for good behavior and after completing the treatment requirements of their prisoner case plan.

Section 106

Page 68, lines 5-6. OVR discussed with the bill sponsor an amendment that would remove the phrase "of a crime involving domestic violence" after the word "victim." OVR is unsure why the current version instead added the phrase "or of a sexual assault under AS 11.41.200 – 11.41.230." AS 11.41.200-230 defines the crimes of assault in the first, second, third and fourth degree and are not sexual felonies. OVR maintains its position that the notice requirement should be required for all victims whose offenders face potential release on parole. This change would fall in line with other provisions giving specific rights for victim notice and opportunity to be heard that have been added by the bill sponsor and that are also required by the Alaska Constitution, Article I, § 24 rights of crime victims to be heard at any proceedings, before or after conviction, at which an offender's release from custody is considered.**

Section 115

Page 74, line 29; after subsection (10), a new subsection should be added that reads "within 30 days after sentencing of an offender, provide the victim of a crime information on the earliest dates the offender could be released on furlough, probation, or parole, including deductions or reductions for good time or other good conduct incentives and the process for release, including contact information for the decision-making bodies." This "truth-in-sentencing" amendment was offered in the Senate State Affairs Committee and passed. For some reason, this portion of the amendment does not appear in the current version of Senate Bill 91. It is critical to basic fairness that the truth-in-sentencing provisions be retained in the bill. The amendment would allow victims at sentencing to be given written information by the sentencing judge as to how an offender's sentence may be reduced under the various provisions proposed in this bill and in existing law. The victims may disagree with the sentence and potential post-sentence reductions, but they would at least have written information that explains the process and the potential changes rather than being surprised and feeling betrayed by the system at some future date. The advance notice provides a victim with time to make a safety plan, make other life decisions, and have confidence about whether and when an offender will be released from jail. The truth-in-sentencing

amendment would give effect to crime victims' constitutional right to be treated with "dignity, respect, and fairness."

Section 119

Page 75, line 26, for this section, ensure that the victim has notice and an opportunity to be heard in connection with release after parole violations and prevent an unconstitutional violation of victims' rights under the Alaska Constitution, Article I, § 24;**

Page 76, line 30, amend the definition of "technical violation" to be a definition of inclusion, for example, technical violation means 1) failure to report to probation, 2) failure to submit to required drug test, 3) positive drug test, etc. This eliminates the possibility that factual situations not intended to be treated as "technical violations" will slip through the crack to the detriment of the crime victim and the public. Alternatively, have the Department of Corrections develop regulations to decide situations that should be considered technical violations.

Sections 151 - 157

To ensure that victims receive the sentencing bargain they were promised by the prosecutor at the time a plea agreement was entered and by the judge at sentencing, the bill should apply to crimes occurring on or after the effective date of passage. For criminal defendants, the legislature may not retroactively increase offender punishments. On the flip side, victims should receive the same treatment. Again, this would give effect to the constitutional right of crime victims to be treated with "dignity, respect, and fairness."

OVR still has concerns that the bill provides only reduced penalties in the form of cost savings without specific provisions or means for reinvestment. When the state had a period of prosperity from oil revenue, reinvestments were not made. Now in lean times, the means for reinvestment will be necessarily absent. The bill is designed to stem rising future costs to maintain Alaska's criminal justice system. If the bill only curbs future spending, there may be no resources to reinvest. Whether and what reinvestment occurs may be outside the control of this legislature. The bill should not be supported in principal without guaranteed reinvestment.

For further potential cost savings, OVR recommends that the legislature, going forward, look at the cost of pretrial delays to the criminal justice system and for ways to shorten the average number of days it takes for a criminal case to reach completion.

The Sentencing Commission made its recommendations public on December 10, 2015. The current version of SB 91 was released for the first time on February 3, 2016 (day 16 of the legislative session). The release of the bill on February 3 increased the size of the bill from about 20 pages to about 100. OVR was not invited to be on the sentencing commission. OVR participated, to the extent possible, during public comment periods during the commission meetings. Once the commission's recommendations were released, OVR could not predict whether or what part of the sentencing commission's recommendations would be adopted by the

legislature, or how the proposed language of the bill would implement these recommendations, until February 3. OVR has made a good faith effort to work with the legislature throughout the multiple drafts during the legislative process. And OVR has made its best efforts, under the circumstances, to carefully review the bill drafts and to advise the legislature. But this is a very large bill with sweeping changes to Alaska's criminal justice system. The proposed changes, though evidence-based, are still a new experiment for criminal justice in Alaska. Caution is urged. There are likely to be situations, not contemplated or addressed here by OVR, that will arise that need to be addressed in the future if this bill becomes law.

** Alaskan voters, in 1994, overwhelming approved changes to the Alaska Constitution that expressly added constitutional rights for crime victims. Article I, Section 12, was amended to add "the rights of crime victims" as an explicit principle of criminal administration in Alaskan courts. Alaska Const., art. I, § 12. At the same time, a new section, Article I, Section 24, was added, titled "Rights of Crime Victims" that enumerates eight separate constitutional rights for crime victims. Section 24 includes a guarantee that crime victims in Alaska shall have the "right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process." *Id.* Alaska Constitution, Article I, § 24 also provides constitutional rights to crime victims, including "the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered." *Id.* The constitutional rights created in section 24 are self-executing. *See* Alaska Const. art. XII § 9 ("The provisions of this constitution shall be construed to be self-executing whenever possible."); *and see Landon v. State*, 1999 WL 46543 (Alaska App. 1999) (unpublished decision examining Alaska Constitution, Article I Section 24, and concluding that it must be construed as self-executing as mandated by Article XII, Section 9). Thus, these constitutional provisions have effect regardless of whether a state statute is enacted to implement them. And statutes that contradict the plain language of the constitutional provision would be struck as unconstitutional. Information that a victim would provide to the court at a proceedings at which a defendant's release from custody is considered, such as a bail hearing, sentencing hearing, and adjudication hearing on a probation violation, or a parole hearing, might be new information not previously available to law enforcement, to the prosecutor, to a pretrial services officer, or to the court. Information provided by the victim might affect whether and under what conditions a defendant should be released from custody. The victim may have additional information because of his or her familiarity with a defendant who is often an intimate partner, family member, or a person whom the victim knows well. The information a crime victim provides to the court at these proceedings might have a profound effect on community and victim safety. If the release is predetermined by statutory mandate, the victim's right to provide input would be rendered meaningless and judicial officers and parole/probation officers would have no discretion to act on information supplied by the crime victim. One counter argument has been that victims can speak to the judge deciding bail to determine whether additional bail conditions should be added. OVR respectfully disagrees. The court must follow the plain language of the constitutional right, which includes the possibility that a victim may persuade the judge that, in some cases, there are no conditions that could would keep the victim and the public safe. OVR's suggested

amendments, creating a legal presumption in place of a mandate, are constitutionally required, and would strengthen the integrity of the bill by preserving victims' rights and protecting community safety in limited circumstances while still providing the cost savings in the vast majority of cases.