

SB

55

**<TARGET><BILL>SB 55</BILL><SUBJECT>SB
55</SUBJECT><COMM>HJUD30</COMM></TARGET>**

30th Alaska State Legislature

Judiciary Committee
Chairman
Resources Committee
State Affairs Committee
Education Committee
Select Committee on Legislative
Ethics
Joint Armed Services Committee




Session Address:
State Capitol, Room 119
Juneau, AK 99801-1182
(907) 465-3719
Fax (907-465-3258

Interim Address:
1292 Sadler Way, Suite 340
Fairbanks, AK 99701
(907) 451-2997
Fax (907) 451-3526
877-465-3719

www.aksenate.org

Senator John Coghill

TO: Representative Matt Claman, Chair
House Judiciary Committee

FROM: Senator John Coghill 

DATE: April 11, 2017

SUBJECT: Request to Hear SB 55

I respectfully request a hearing for Senate Bill 55, "Omnibus Crime/Corrections," at your convenience.

Attached to this memorandum:

- Sponsor statement
- Sectional summary
- Summary of changes since introduction
- Supporting documents
- Current version of the bill
- Fiscal notes

If you have any questions, please contact me or my staff Jordan Shilling at 465-5834.



ALASKA STATE LEGISLATURE

SENATE JUDICIARY COMMITTEE

SEN. JOHN COGHILL
Chair
State Capitol, Room 119
Juneau, AK 99801
(907) 465-3719
sen.john.coghill@akleg.gov

Sen. Pete Kelly
Sen. Kevin Meyer
Sen. Mia Costello
Sen. Bill Wielechowski

SENATE BILL 55

SPONSOR STATEMENT

Omnibus Crime/Corrections
Version T

Senate Bill 55 makes technical revisions to the criminal justice reform package passed by the legislature in 2016, pursuant to recommendations made by the Alaska Criminal Justice Commission. Technical revisions are necessary to provide clarity and improve implementation.



ALASKA STATE LEGISLATURE

SENATE JUDICIARY COMMITTEE

SEN. JOHN COGHILL
Chair
State Capitol, Room 119
Juneau, AK 99801
(907) 465-3719
sen.john.coghill@akleg.gov

Sen. Pete Kelly
Sen. Kevin Meyer
Sen. Mia Costello
Sen. Bill Wielechowski

SENATE BILL 55

BILL CONTENTS

Version T

Policy	Bill Sections	Rec.
Removing Inflation Adjustment	1, 2, 3	14
Drug Possession Clarification	4	14
Victim Notification	5, 18	10, 13
Suspended Entry of Judgement	6-10	14
Probation Term Lengths	11	14
Fine Updates	12, 13	-
Administrative License Revocations	14	-
Municipal Penalty	15	3
Data Reporting	16	14
A.S.A.P. Referrals	17	7
Applicability	19, 20	14



ALASKA STATE LEGISLATURE

SENATE JUDICIARY COMMITTEE

SEN. JOHN COGHILL
Chair
State Capitol, Room 119
Juneau, AK 99801
(907) 465-3719
sen.john.coghill@akleg.gov

Sen. Pete Kelly
Sen. Kevin Meyer
Sen. Mia Costello
Sen. Bill Wielechowski

SENATE BILL 55

SUMMARY OF CHANGES

Version D to Version T

Omnibus Crime/Corrections

Section 4

AS 11.71.050(a) – Misconduct involving a controlled substance in the fourth degree.

Excludes two forms of felony possession of a controlled substance from the offense of misconduct involving a controlled substance in the fourth degree, to conform to MICS 2 and 3.

Section 7

AS 12.55.045(l) – Restitution and compensation.

Ensures that a restitution order is not discharged and remains enforceable when a proceeding is dismissed under a Suspended Entry of Judgment.

Section 8

AS 12.55.078(a) – Suspending entry of judgment.

Clarifies that imprisonment may not be imposed in a suspended entry of judgment.

Section 9

AS 12.55.078(d) – Suspending entry of judgment.

Clarifies that a person who has successfully completed probation and the requirements of a suspended entry of judgment is not convicted of a crime.

Section 12

AS 18.65.865(b) – Service of process; forms for petitions and orders; fees; warnings; notification; and pending civil or criminal actions.

Updates the maximum fine that may be imposed under this section to conform to an increase in the maximum fine for a class A misdemeanor.

Section 13

AS 18.66.130(d) – Specific protective orders.

Updates the maximum fine that may be imposed under this section to conform to an increase in the maximum fine for a class A misdemeanor.

Section 15

AS 29.25.070(g) – Penalties.

Specifies that limitations on municipal authority to impose punishments does not apply to non-criminal offenses.

Section 17

AS 47.37.040 – Duties of department.

Includes the offense of Access of Persons Under the Age of 21 to Licensed Premises to the list of offenses that may be referred to and accepted by the Alcohol Safety Action Program.

Section 18

Repealed statutes

Deletes an inadvertently repealed statute.



ALASKA STATE LEGISLATURE

SENATE JUDICIARY COMMITTEE

SEN. JOHN COGHILL
Chair
State Capitol, Room 119
Juneau, AK 99801
(907) 465-3719
sen.john.coghill@akleg.gov

Sen. Pete Kelly
Sen. Kevin Meyer
Sen. Mia Costello
Sen. Bill Wielechowski

SENATE BILL 55

SECTIONAL SUMMARY

Omnibus Crime/Corrections
Version T

Section 1

AS 11.46.280(d) – Issuing a bad check.

Removes inadvertent inflation-adjustment of \$25,000.

Section 2

AS 11.46.285(b) – Fraudulent use of an access device.

Removes inadvertent inflation-adjustment of \$25,000.

Section 3

AS 11.46.730(c) – Defrauding creditors.

Removes inadvertent inflation-adjustment of \$25,000.

Section 4

AS 11.71.050(a) – Misconduct involving controlled substances in the fourth degree

Eliminates penalty overlap for possession of less than an ounce of a VIA controlled substance and excludes two forms of felony possession of a controlled substance from the offense of misconduct involving a controlled substance in the fourth degree, to conform to MICS 2 and 3.

Section 5

AS 12.55.011(b) – Victim and community involvement in sentencing.

Clarifies that the court shall only provide the form to the victim if practicable.

Section 6

AS 12.55.015(a) – Authorized sentences; forfeiture.

Provides explicit authority to the court to suspend an entry of judgment.

Section 7

AS 12.55.045(l) – Restitution and compensation.

Ensures that a restitution order is not discharged and remains enforceable when a proceeding is dismissed under a suspended entry of judgment.

Section 8

AS 12.55.078(a) – Suspended entry of judgment.

Clarifies that the court may not impose a sentence of imprisonment in a suspended entry of judgment.

Section 9

AS 12.55.078(d) – Suspended entry of judgment.

Clarifies when the court shall discharge and dismiss proceedings in a suspended entry of judgment and clarifies that a person who has successfully completed probation and the requirements of a suspended entry of judgment is not convicted of a crime.

Section 10

AS 12.55.078(f) – Suspended entry of judgment.

Clarifies that the crimes for which SEJ may not be used are the crimes currently charged, not prior convictions.

Section 11

AS 12.55.090(c) – Granting of probation

Clarifies that the maximum probation term for a felony sex offense is 15 years, while all other unclassified felonies have a maximum probation term of 10 years.

Section 12

AS 18.65.865(b) – Service of process; forms for petitions and orders; fees; warnings; notification; and pending civil or criminal actions.

Updates the maximum fine that may be imposed under this section to conform to an increase in the maximum fine for a class A misdemeanor.

Section 13

AS 18.66.130(d) – Specific protective orders.

Updates the maximum fine that may be imposed under this section to conform to an increase in the maximum fine for a class A misdemeanor.

Section 14

AS 28.15.165(e) – Administrative revocations and disqualifications resulting from chemical sobriety tests and refusals to submit to tests.

Clarifies that the dismissal of all charges, regardless of prejudice, serves to meet the requirement of this section.

Section 15

AS 29.25.070(g) – Penalties.

Specifies that limitations on municipal authority to impose punishments does not apply to non-criminal offenses.

Section 16

AS 44.19.645(g) – Powers and duties of the commission

Requires the Department of Corrections to report certain data to the Alaska Criminal Justice Commission regarding earned compliance credits for parolees.

Section 17

AS 47.37.040 – Duties of the department.

Authorizes the Alcohol Safety Action Program to accept referrals from the court for minor consuming/possession and similar offenses.

Section 18

AS 33.16.120(h) – Rights of certain victims in connection with parole.

Resolves a drafting error that requires the Department of Corrections to provide notifications for hearings that will not occur.

Section 19

Uncodified law - applicability

This section contains applicability provisions.

Section 20

Uncodified law - applicability

This section contains applicability provisions clarifying that no decisions made by the Board of Parole prior to January 1, 2017 that extended the period of supervision beyond the maximum release date are to be construed as invalidated by the passage of SB 91 (2016).

There is further clarification that the earned compliance credit for parolees does not apply to time served prior to January 1, 2017.

Section 21

Uncodified law - effective date

This bill takes effect immediately.

RECOMMENDATIONS TO THE ALASKA STATE LEGISLATURE BY THE ALASKA CRIMINAL JUSTICE COMMISSION

**Recommendations 1-14 2017, Approved January 19 and January 27, 2017.
Submitted to the Legislature on January 30, 2017.**

The following recommendations from the Alaska Criminal Justice Commission are the result of discussions at the Commission's plenary meetings on January 19 and 27, 2017. At these meetings, the Commission solicited and considered information and views from a variety of constituencies to represent the broad spectrum of views that exist with respect to possible approaches to sentencing and administration of justice in the state.

When the Commission was created in 2014, the Legislature directed the Commission to make recommendations based on, among other things:

- The need to rehabilitate the offender;
- The sufficiency of state resources to administer the criminal justice system;
- The effect of state laws and practices on the rate of recidivism; and
- Peer-reviewed and data-driven research.¹

Since the Commission began operation, it agreed to forward only recommendations that were backed by data and were evidence-based. In 2015, the legislature further directed the Commission to forward recommendations that would either (1) avert all future prison growth, (2) avert all future prison growth and reduce the current prison population by 15%, or (3) avert all future prison growth and reduce the current prison population by 25%.

As part of SB91, the Legislature tasked the Commission with monitoring the efficacy of the reforms using data collected from certain state agencies. Because SB 91 was enacted in July of 2016, and parts of the bill will not go into effect until January 2018, the Commission does not yet have enough data to assess whether SB 91 is achieving its intended outcomes. Thus, the recommendations below are not based on data-driven research and they are not based on the data that the Legislature instructed the Commission to collect and analyze. Moreover, they are not expected to reduce the prison population, reduce recidivism, or reduce the criminal justice system's usage of state resources.

Rather, the recommendations below are based on feedback from members of law enforcement, prosecutors, and the public. This feedback reflected other factors the Commission has been directed to consider in making recommendations, including:

- The need to confine offenders to prevent harm to the public;
- The effect of sentencing in deterring offenders; and
- The need to express community condemnation of crime.²

¹ See AS 44.19.646. This statute was enacted in 2014 as part of SB 64.

² *Id.*

The Commission recognizes that the factors it has been instructed to consider in formulating its recommendations often work in tension. Not all of the recommendations below received unanimous support from the Commission. If a recommendation did not receive unanimous support from the Commission, the recommendation includes an explanation of the concerns of the Commissioners who did not support that recommendation.

Recommendation 1-2017: Return VCOR to Misdemeanor Status

In 2015, the Commission recommended that the crime of Violation of Conditions of Release (VCOR) be downgraded to a non-criminal violation, punishable by a fine. This recommendation was enacted in SB 91.³ Implementation of this provision did not immediately occur as the Commission intended. The Commission's recommendation was that those who violate conditions of their release would be arrested and held in jail until the judge in their underlying case could review bail. While SB 91 included an arrest provision so that defendants who violated conditions of their release could be arrested,⁴ some of those arrested were not being held in jail—they were being released as soon as they were brought to jail.

The Alaska Court System has now altered its bail forms to order defendants held in jail if they violate the conditions of their release; however, the Commission has heard anecdotal reports that this solution is not working universally. The Commission therefore recommends that the legislature enact a statute that would return VCOR to a crime. Specifically, **the Commission recommends that Violation of Conditions of Release become a Class B Misdemeanor, punishable by up to 5 days in jail.**

This recommendation did not receive unanimous approval from the Commission. Those who were in favor of this recommendation noted that this will ensure that offenders will be held in jail until they get to a bail hearing in front of the judge in their underlying case. That judge will then be familiar with the case and will be able to re-set bail.

Those who opposed this recommendation voiced concern that it was an unnecessary criminalization of conduct to solve an administrative issue, that it would simply stack crimes for defendants and increase unnecessary use of costly jail beds, and that the solution from the Alaska Court System (the change to the bail form) should be given time to work. There was also a concern from victims that if VCOR were to become a separate crime once again, it may encourage the practice of allowing defendants to plead to VCOR in exchange for dismissal of the underlying charge. The Commission does not condone this practice and may revisit this topic if it finds that this practice is occurring.

Recommendation 2-2017: Increase penalties for repeat Theft 4 offenders.

Theft in the fourth degree (Theft 4) penalizes simple theft (theft that does not involve burglary or violence) of items or services valued at \$250 or less. Theft 4 is a Class B misdemeanor, and SB 91 limited the penalties for this offense: for a defendant's first and second convictions of this offense, no jail time may be imposed (though fines and restitution may be imposed). For a defendant's third or subsequent

³ 2016 SLA Ch. 36 ("SB 91") §§ 29-30.

⁴ SB 91 § 51.

conviction of this offense, the maximum terms is 5 days suspended with 6 months of probation.⁵ The Commission's original recommendation to limit jail time for this offense was based on information from the Department of Corrections showing that these low-level offenders stole mostly toiletries and alcohol, and they accounted for a significant number of prison beds in a year.⁶

The Commission has received a good deal of feedback about this provision of SB 91. Business owners, law enforcement officers, and prosecutors feel this provision has emboldened some offenders to commit more lower-value theft crimes. They believe some prospect of jail time provides deterrence and reflects community condemnation. **The Commission therefore recommends that for third-time Theft 4 offenders, this offense should be punishable by up to 10 days in jail.** (This third-time offense would remain a Class B Misdemeanor).

This recommendation did not receive unanimous approval from the Commission. Those who voted against the recommendation believed it did not go far enough and would have preferred a recommendation to re-enact a statute (which was repealed by SB 91⁷) that made an offender's third Theft 4 within five years a Class A misdemeanor rather than a Class B misdemeanor.

The Commissioners voting in favor of this provision thought it would be a way to address the community's concerns regarding theft crime. The Commission did not have any data that this recommendation would prevent these types of theft. Studies of Alaskan offenders sentenced prior to SB91 show that misdemeanor property offenders such as these have historically recidivated at very high rates. There is no evidence to support the notion that rates of petty theft are related to prison sentences. Rates of property crime in Alaska have been rising for the past two to three years—a trend that began before SB 91 was introduced in the Legislature.⁸

While debating this recommendation, some Commissioners noted that for offenders struggling with homelessness and behavioral health disorders, jail is not a deterrent, but rather a housing option: some offenders will commit crimes to be assured a warm place to sleep at night, particularly during the winter. It was also noted that some offenders who are addicts commit low-level thefts to obtain resources to pay for their drug of choice.

All Commissioners agreed that further solutions are needed to address the problem of persistent low-level offending, including more options to treat mental illness, addiction, and chronic homelessness. Robust and comprehensive solutions are needed to get at the root causes of theft crime.

⁵ SB 91 § 93. When a sentence is suspended, it means that the offender will not serve the term "up front"; the offender will be placed on probation and will serve this time only if the offender commits a major violation of the conditions of probation or commits a new crime.

⁶ In 2014, 324 offenders were admitted to prison for Theft 4, and these offenders spent an average of 23 days behind bars after being convicted.

⁷ SB 91 § 179. (Referring to former AS 11.46.140(a)(3).)

⁸ The 30-year trend lines for Part I property crimes in Alaska and in Anchorage are downward; however, the shorter-term trend for these property crimes - between 2011 and 2015 - is upward in Anchorage, and upward to a lesser degree statewide.

Recommendation 3-2017: Allow municipalities to set different non-incarceration punishments for non-criminal offenses that have state equivalents.

In order to ensure that state statutes and municipal code provisions were not working at cross purposes, SB 91 limited the amount of jail time a municipality could impose for a municipal offense that has a state equivalent to the amount of jail time called for in state statute.⁹ In other words, state and municipal crimes that are equivalent must have equivalent punishments.

The provision as currently enacted, however, has been interpreted to apply not just to prison terms but to all forms of punishment, including fines for non-criminal offenses such as speeding. Municipalities have expressed concern that fines for equivalent state offenses are much lower than fines for municipal offenses, and this has been a significant change for the municipalities. **The Commission therefore recommends that the “binding provision” of SB 91 be amended so that it does not apply to non-criminal offenses found in municipal codes and regulations.** This recommendation passed unanimously.

Recommendation 4-2017: Revise the sex trafficking statute.

The provisions of SB 91 that altered the sex trafficking statutes were not based on any recommendation from the Commission. The legislative history suggests these provisions were intended to ensure that sex workers simply working together—not exploiting one another—could not be prosecuted for trafficking each other or trafficking themselves.¹⁰ However, as passed, the provisions could be read so that a person who might otherwise be found guilty of sex trafficking (i.e., someone receiving money for the sex work performed by others) could avoid prosecution if that person engaged in sex work personally (i.e., they also received money for sex work performed themselves.) **The Commission therefore recommends repealing sections 39 and 40 of SB 91 and amending existing statutes as follows:**

- **AS 11.66.130(a):** After “a person” insert “receiving compensation for prostitution services rendered by another”
- **AS 11.66.130(a)(3):** Delete “as other than a prostitute receiving compensation for personally rendered prostitution services,”
- **AS 11.66.135(a):** After “a person” insert “receiving compensation for prostitution services rendered by another”

The Commission also recommends that the Legislature define the term “compensation” as used in these statutes. “Compensation” should be defined so that it applies only to compensation for services performed and does not include things like shared rent, shared gas money, or shared hotel fees in instances where sex workers are working together to split costs.

⁹ SB 91 §113.

¹⁰ SB 91 §§ 39 and 40.

Recommendation 5-2017: Enact a 0-90 day presumptive sentencing range for first-time Class C Felonies.

SB 91 provides that Class C Felonies are punishable by a suspended term of 0-18 months for first-felony offenders.¹¹ This means that a first-time felony offender convicted of a Class C Felony is presumed to receive a probationary sentence that would include some amount of suspended time. A person receiving a probationary sentence with suspended time does not spend any time in jail up front, but is subject to jail time if they violate conditions of probation.

The purpose of this provision was to provide community supervision for first-time offenders to (1) allow the offender to maintain pro-social ties to the community and (2) ensure that the offender would comply with conditions of probation such as remaining sober, not committing new crimes, and paying fines and restitution to victims. If the offender did not succeed with these conditions, that offender could be made to serve part or all of the suspended time in jail.

The Commission heard numerous concerns about this provision in particular. Prosecutors felt that some violent Class C Felonies warranted jail time for a first-time offense, and were concerned that there was not enough of an incentive to encourage these offenders to get into treatment. Members of law enforcement were frustrated that this provision was overbroad and did not provide for an offender's immediate incarceration if the offender posed a danger to the community. Members of the community were offended by this provision and felt that it did not express community condemnation strongly enough.

Prosecutors and law enforcement preferred a provision that would allow a judge discretion in sentencing and would provide for immediate incarceration if necessary. They thought that while there were some cases where a probationary term was warranted for a first-time offender, the judge should be able to impose jail time in some instances, particularly cases involving violence.

The Commission therefore recommends that Class C Felonies carry a presumptive jail term of 0-90 days for first-felony offenders. The Commission also recommends retaining the provision allowing up to 18 months of suspended time.

This recommendation did not pass unanimously, and was the subject of considerable debate among the Commissioners. Those who voted against it would have preferred a much stronger provision; another proposal was to expand the sentencing range to 0-18 months for all class C felonies. The Attorney General was willing to compromise at 0-12 months for violent offenders and to 0-6 months for non-violent offenders.

This Commissioners debated the amount of time that might incentivize an offender to get treatment—some Commissioners thought that first-time felony offenders would not need long treatment programs (in the range of 60-90 days) while other Commissioners thought that some first-felony offenders would need longer treatment programs and a greater incentive to complete that treatment.

¹¹ SB 91 § 90. A second-time felony offender would receive a sentence of 1-3 years to serve if convicted of a Class C. A third-time (and subsequent) felony offender would receive a sentence of 2-5 years to serve if convicted of a Class C.

Commissioners in favor of this recommendation noted that this sentence could be enhanced (up to 5 years) if the judge or jury found certain aggravating factors.

Commissioners in favor of a shorter presumptive term were concerned that a longer term would constitute a more significant reversal of the intent behind SB 91, which was to supervise first time offenders in the community to encourage their rehabilitation and reduce the recidivism rate. The Commission relied on research showing that for first-time offenders, time in prison can actually make the offender more likely to recidivate after leaving prison. The Commission did not have any data or empirical evidence to show that a term of 0-90 days would reduce recidivism; this recommendation will almost certainly increase the prison population. However, Commissioners noted the strong public outcry around this provision and wanted to meet the community's standards for condemnation of crime.

Recommendation 6-2017: Enact an aggravator for Class A Misdemeanors for defendants who have a prior conviction for similar conduct.

SB 91 enacted a presumptive sentence range of 0-30 days for most Class A Misdemeanors.¹² This sentence can be increased up to 1 year (the previous limit) in some cases: for certain violent offenses and sex offenses, for cases where the conduct was among the most serious conduct included in the definition of the offense, and for cases where the defendant has two or more criminal convictions for similar conduct.

Prosecutors voiced concern over the provision allowing for a longer sentence for defendants who have past convictions for similar conduct, because it requires proof of at least *two* prior convictions. This proved to be a particular problem for second-time DUI (and Refusal) offenders. The minimum jail term for a second-time DUI/Refusal offender is 20 days; with a maximum of 30 days for a Class A Misdemeanor, that leaves only 10 days to suspend as a method of enforcing conditions of probation.

The Department of Law and the Department of Public Safety believe that judges should have the option for an increased penalty for defendants who have *one* prior conviction for similar conduct. This would allow a judge to impose more suspended time for second-time offenders and provide a greater incentive for defendants to get into treatment.

The Commission therefore recommends enacting an additional aggravating factor for Class A Misdemeanors for defendants who have one prior conviction for similar conduct. This aggravating factor would allow a judge to impose a sentence of up to **60 days**. This recommendation passed unanimously.

Recommendation 7-2017: Clarify that ASAP is available for Minor Consuming Alcohol.

The Alcohol Safety Action Program provides monitoring for misdemeanor DUI and Refusal cases to ensure that defendants are going to court-ordered treatment. In 2015 the Commission found that the ASAP program was overextended, and recommended that the program either be more robustly funded or be restricted only to DUI and Refusal offenders (rather than all offenders with alcohol-related

¹² SB 91 § 91.

convictions, as was the case). Accordingly, SB 91 limits ASAP to offenders who have been convicted of DUI and Refusal offenses.¹³

SB 165, also passed in 2016, made Minor Consuming Alcohol a violation (rather than a criminal offense). It also provided that the fine for this violation may be reduced if the defendant goes through ASAP. It therefore contemplates that ASAP will be available for these non-DUI offenders. This provision is in conflict with the above-referenced provisions in SB 91. **The Commission therefore recommends that ASAP be available for people cited for Minor Consuming Alcohol.**

Recommendation 8-2017: Enact a provision requiring mandatory probation for sex offenders.

In an apparent oversight, SB 91 eliminated the statutory provision requiring sex offenders to serve a period of probation. **The Commission therefore recommends that the Legislature enact a provision requiring sex offenders to serve a period of probation as part of their sentence.**

Recommendation 9-2017: Clarify the length of probation allowed for Theft 4.

SB 91 provides that an offender's third Theft 4 conviction be punishable by up to 5 days of suspended jail time and 6 months of probation.¹⁴ The law is silent, however on the allowable probationary term for a first or second Theft 4 conviction. (Theft 4 is a Class B Misdemeanor; misdemeanors generally carry a maximum probation term of 1 year.¹⁵) **The Commission therefore recommends that the Legislature clarify the allowable probationary period for first and second Theft 4 convictions.** The Commission believes that a probationary term is appropriate for these offenses.

Recommendation 10-2017: Require victim notification only if practical.

SB 91 requires the court, at the time of sentencing, to provide the victim with information on where to find information about the defendant's sentence or release, and the potential for a defendant's release.¹⁶ However, not all victims want to participate in sentencing, and the court will not always have current contact information for victims. Even if the victim has an address on file with the court, the victim may not want to automatically be sent information which would remind the victim of the crime. **The Commission therefore recommends that AS 12.55.011 be amended as follows:**

"(b) At the time of sentencing, the court shall, if practical, provide the victim with a form..."

Recommendation 11-2017: Felony DUI sentencing provisions should be in one statute.

Section 90 of SB 91 amends the provision in Title 12 that sets the presumptive sentencing ranges for Class C felonies. This section of SB 91 also includes sentencing ranges for Felony DUI and Refusal. In Title 28, where the statutes creating the offenses of Felony DUI and Refusal are found, those offenses are

¹³ SB 91 §§ 170-173.

¹⁴ SB 91 § 93.

¹⁵ SB 91 § 79.

¹⁶ SB 91 § 65.

given a mandatory minimum, not a presumptive range. Essentially there are two punishment provisions for the same offenses in two different statutes, which creates confusion. **The Commission therefore recommends that the Legislature place the penalty provision for Felony DUI and Refusal sentences in one statute only.**

Recommendation 12-2017: Clarify who will be assessed by Pre-Trial Services.

Section 117 of SB 91 states: "The commissioner shall establish and administer a pretrial services program that provides a pretrial risk assessment for *all* defendants, recommendations to the court concerning pretrial release decisions, and supervision of defendants released while awaiting trial as ordered by the court" (emphasis added).

The bill therefore contemplates that "all" defendants should be assessed. However, the purpose of the Pretrial Assessment Tool is to assist judges and pretrial services officers with the decision to release a defendant before trial. Not all defendants will be in custody pretrial; some will be issued citations and a summons to appear before the court. Typically these defendants will be low risk (because the officer who issued them the citation likely believed the person to be low risk, and did not arrest the person). **The Commission therefore recommends that AS 33.05.080 be amended as follows:**

"The commissioner shall establish and administer a pretrial services program that provides a pretrial risk assessment for all defendants **brought into custody or at the request of a prosecutor at the next hearing or arraignment.** [,] **The pretrial services program shall make** recommendations to the court concerning pretrial release decisions, and **provide** supervision of defendants released while awaiting trial as ordered by the court."

Recommendation 13-2017: Fix a drafting error regarding victim notification.

SB 91 currently contains the following provisions:

- Section 122: **33.16.089. Eligibility for administrative parole:** "A prisoner convicted of a misdemeanor or a class B or C felony that is not a sex offense as defined in AS12.63.100 or an offense under AS 11.41."
- Section 132: **33.16.120(h)** "A victim who has a right to notice under (a) of this section may request a hearing before a prisoner is released on administrative parole under 33.16.089."
- Section (a) of AS 33.16.120 provides that a victim of a crime against a person (found in 11.41) or a victims of Arson in the first degree (a Class A felony) has a right to request notice of a hearing for *discretionary* parole.

Therefore, prisoners convicted of a Class A felony or a crime against a person (found in 11.41) will *not* be eligible for administrative parole. Section 132 of SB 91, however, provides for a victim's right to request a notice of a hearing for administrative parole in these cases—i.e. to request notice of a hearing that will never happen because this class of offender is not eligible for administrative parole. **The Commission therefore recommends that section 132 be repealed.**

Recommendation 14-2017: Enact the following technical corrections to SB 91.

The Commission considers the following recommendations purely technical; they are designed to fix drafting or oversight errors.

- For the crimes of issuing a bad check, fraudulent use of an access device, and defrauding creditors, SB 91 pegged the threshold amount for a B-level felony (\$25,000) to inflation.¹⁷ **The Commission recommends removing this inflation adjustment for the B-felony amounts.** This change would mean that the B-level amount would remain at \$25,000 absent further legislative action.
- SB 91 changed driving on a suspended license to an infraction in most cases. However, driving without a valid license (arguably, less serious conduct than driving on a suspended license) continues to be a misdemeanor. **The Commission recommends that the crime of driving without a valid license also be reduced to an infraction** to be consistent with the changes made for driving with a suspended/revoked license.
- SB 91 Section 47; page 25; line 13: **The Commission recommends deleting the reference to “(B)” in “11.71.060(a)(2)(B).”** This change limits charging MICS 4 for possession of a compound containing a schedule VIA drug (similar to marijuana) to an ounce or more.
- **The Commission recommends enacting the following changes regarding Suspended Entry of Judgment (SEJ),** which will clarify that the crimes for which SEJ may not be used are the current crimes charged, and will add SEJ to the list of authorized sentences.
 - SB 91 Sec. 77; page 44; line 19: Delete “is convicted of” and insert “is charged with”
 - SB 91 Sec. 77; page 44; line 23: Delete “is convicted” and insert “is charged”
 - SB 91 Sec. 77; page 44; line 29: Delete “is convicted of” and insert “is charged with”
 - SB 91 Sec. 77; page 45; line 8: Delete “has been convicted of” and insert “is charged with”
 - SB 91 Sec. 77; page 45; line 11: Delete second “of” and after “original probation,” and insert “was imposed,”
 - AS 12.55.015(a)(8): Insert “suspend entry of judgement under AS 12.55.078;”
- Sending an explicit image of a minor to another person (a B misdemeanor AS 11.61.116(c)(1)) has an enhanced penalty under SB 91 of up to 90 days.¹⁸ However, posting an explicit image of a minor to a publically available website is limited to 30 days (an A misdemeanor pursuant to AS 11.61.116(c)(2)). **The Commission therefore recommends adding AS 11.61.116(c)(2) to AS 12.55.135(a)(1)(F) to align penalties for posting and sending explicit images of a minor.**
- **The Commission recommends adding the following language to SB 91 Sec. 79; page 45; line 17:** After “AS 11” insert “not listed in (1) of this subsection;”. This will clarify that the maximum probation term for felony sex offenses is 15 years, while all other unclassified felonies have a maximum probation term of 10 years.

¹⁷ SB91 §§ 12, 13, 23.

¹⁸ SB 91 § 91.

- **The Commission recommends adding the following language to Sec. 164; page 105; line 7:** After “AS 33.05.020(h)” insert “or 33.16.270”. SB 91 requires DOC to provide the Commission with data on earned compliance credits for probationers; this change would extend that requirement to parolees as well.
- **The Commission recommends amending sections 148 and 151 of SB 91 for clarity as to their applicability.** Section 185 of SB 91 states that sections 148 and 151 apply to parole granted before, on, or after the effective date of those sections. Section 190 states that the effective date of sections 148 and 151 is January 1, 2017.
 - Section 148 adds a new tolling provision for parolees who abscond. It also provides that the board may not extend the period of supervision beyond the maximum release date calculated by the department on the parolee’s original sentence. It therefore creates a different scheme for calculating an offender’s parole, and it would be difficult to apply this section to parole calculated under the previous scheme.
 - The Department of Corrections would like this language added to section 148: “The provisions of this section shall not be construed as invalidating any decision of the Board, issued prior to 1/1/17, which extended the period of supervision beyond the maximum release date on the original sentence.”
 - The Department also would like similar language added to section 151, which provides for earned compliance credits for parolees. This also requires a new time accounting system that would not apply to parole calculated under the previous scheme.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version:	CSSB 55(FIN)
Fiscal Note Number:	9
(S) Publish Date:	4/3/2017

Identifier: SFIN SB55 Various-Executive 3-31-17
 Title: OMNIBUS CRIME/CORRECTIONS
 Sponsor: JUDICIARY
 Requester: Senate Finance

Department: Various (for Fiscal Notes only)
 Appropriation: Various
 Allocation: Executive Branch
 OMB Component Number: 0

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates					
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial Version - Based on this legislation only making technical changes to Ch. 36, SLA 2016, SB91 (Omnibus Crime Bill), this fiscal note consolidates all the zero fiscal notes for the executive branch into one branch-wide zero note.

Prepared By: Senator MacKinnon
Senate Finance Committee
Senator Hoffman
Senate Finance Committee

Phone: (907)465-3777
 Date: 03/31/2017

REPORTED OUT OF
SFC 03/31/2017

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

Analysis

This bill makes technical adjustments to criminal justice reforms from last year's Omnibus Crime Bill, SB91 (Ch. 36, SLA 2016).

The following executive branch agencies do not anticipate significant (if any) fiscal impact from this legislation . Therefore, zero fiscal notes are submitted for the following components:

Department	Appropriation	Allocation	OMB Component Number
Administration	Legal and Advocacy Services	Office of Public Advocacy	43
Administration	Legal and Advocacy Services	Public Defender Agency	1631
Administration	Motor Vehicles	Motor Vehicles	2348
Corrections	Population Management	Institution Director's Office	1381
Health & Social Services	Behavioral Health	Alcohol Safety Action Program	305
Law	Criminal Division	Criminal Justice Litigation	2202
Public Safety	Alaska State Troopers	Alaska State Trooper Detachments	2325

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version:	CSSB 55(FIN)
Fiscal Note Number:	8
(S) Publish Date:	4/3/2017

Identifier: SB055CS(JUD)-JUD-ACS-03-24-17
 Title: OMNIBUS CRIME/CORRECTIONS
 Sponsor: JUDICIARY
 Requester: Senate Finance Committee

Department: Judiciary
 Appropriation: Alaska Court System
 Allocation: Trial Courts
 OMB Component Number: 768

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates				
			FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version.

Prepared By: Nancy Meade, General Counsel
 Division: Alaska Court System
 Approved By: Nancy Meade for Christine Johnson, Administrative Director
 Agency: Alaska Court System

Phone: (907)463-4736
 Date: 03/24/2017 01:00 PM
 Date: 03/24/17

REPORTED OUT OF
SFC 03/31/2017

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

Analysis

The Senate Judiciary Committee Substitute for Senate Bill 55 (version N) makes a number of technical changes to criminal laws; none of the changes in the bill would result in a fiscal impact to the court system. In general, the bill makes technical adjustments to, and corrects minor drafting errors in, Senate Bill 91, passed in 2016.

SB 55 removes the inflation adjustment for Class B felony theft offenses (sec. 1-3), clarifies the drug possession classifications (sec. 4), clarifies that the court must provide certain information if practicable (sec. 5), makes minor wording changes to the suspended entry of judgment law (sec. 8-10), and adds wording to other provisions to reference that new SEJ procedure (sec. 6-7). It clarifies maximum probation periods (sec. 11), aligns wording to address the new maximum penalty for Class A misdemeanors (sec. 12-13), removes a reference to how certain cases may be dismissed (sec. 14), adjusts the data reporting requirement for the Department of Corrections (sec. 15), and clarifies that the Alcohol Safety Action Program has authority to provide services to persons under 21 who are convicted of certain alcohol offenses (sec. 16).

All of these changes are aimed at improving consistency with other statutes or clarifying a minor drafting error in the prior law. The court system does not anticipate that any of the changes will have a fiscal impact on it, and therefore submits this zero fiscal note.