

SB

54

<TARGET><BILL>SB 54</BILL><SUBJECT>SB
54</SUBJECT><COMM>HSTA30</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
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Fax (907) 465-3258

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Senator John Coghill

SENATE BILL 54 **SPONSOR STATEMENT** Omnibus Crime/Corrections

Senate Bill 54 makes substantive revisions to the criminal justice reform package passed by the legislature in 2016, pursuant to recommendations made by the Alaska Criminal Justice Commission.

The three major areas to be addressed: C-felony penalties, misdemeanor penalties, and violations of conditions of release.

The Commission's recommendations were based on feedback from members of law enforcement, prosecutors, and the public. This feedback reflected 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.

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Senator John Coghill

TO: Representative Jonathan Kreiss-Tomkins, Chair
House State Affairs Committee

FROM: Senator John Coghill 

DATE: April 11, 2017

SUBJECT: Request to Hear SB 54

I respectfully request a hearing for Senate Bill 54, "Crime and Sentencing," 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
- Requested invited testimony

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

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SENATE BILLS 54 BILL CONTENTS Version N

Policy	Bill Sections	Rec.
Violation of Conditions of Release	1, 2, 9	1
Sex Trafficking	3, 4, 5, 13, 14, 20	4
C-Felony (w/ No Priors)	6	5
Mandatory-Minimum Sex Offender Probation	7	8
A-Misdemeanor	8, 11, 12	6
Theft in the 4 th Degree	10	2, 9
No Valid Operator's License	15	14
Municipal Penalty	16	3
Pre-Trial Risk Assessment	17	12
Discretionary Parole	18	-
DOC Authority Home Confinement	19	-
ASAP Program	21	-
Felony DUI	22	11

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SENATE BILL 54 **SECTIONAL SUMMARY** Crime and Sentencing Version N

Section 1

AS 11.56.757(a) – Violation of condition of release.

Changes the offense of violation of condition of release to a crime.

Section 2

AS 11.56.757(b) – Violation of condition of release.

Changes the offense of violation of condition of release to a crime (B-Misdemeanor).

Section 3

AS 11.66.130(a) – Sex trafficking in the third degree.

Restructures the elements of the offense of sex trafficking in the third degree, and applies the compensation provision to all of the elements of the offense.

Section 4

AS 11.66.135(a) – Sex trafficking in the fourth degree.

Establishes an additional element to the offense of sex trafficking in the fourth degree requiring a person receive compensation for prostitution services rendered by another.

Section 5

AS 11.66.150 – Definitions.

Establishes a definition for “compensation” that applies to sex trafficking in the third and fourth degrees.

Section 6

AS 12.55.125(e) – Sentences of imprisonment for felonies.

Increases the presumptive sentencing range for a class C felony that is a first felony conviction from 18 months of suspended imprisonment to up to 1 year of active imprisonment.

Section 7

AS 12.55.125(q) – Sentences of imprisonment for felonies.

Establishes mandatory minimum probation term lengths for felony sex offenders. 15 years for an unclassified felony; 10 years for a class A or B felony; and 5 years for a class C felony.

Section 8

AS 12.55.135(a) – Sentences of imprisonment for misdemeanors.

Increases the sentencing range for a class A misdemeanor from zero to 30 days to zero to 60 days if the defendant has one previous conviction for a similar offense. Additionally, increases the sentencing range for distributing an explicit image of a minor on an Internet website that is accessible to the public.

Section 9

AS 12.55.135(b) – Sentences of imprisonment for misdemeanors.

Limits the maximum sentence for violation of conditions of release may be sentenced to up to 5 days of imprisonment.

Section 10

AS 12.55.135(l) – Sentences of imprisonment for misdemeanors.

A person convicted of theft in the fourth degree (and similar offenses) may be sentenced up to 10 days of active imprisonment and up to 6 months of probation for third and subsequent convictions. A person convicted a second time may be sentenced up to 5 days of active imprisonment and up to 6 months of probation. A person convicted a first time may be sentenced up to 5 days of suspended imprisonment and up to 6 months of probation.

Section 11

AS 12.55.135(p) – Sentences of imprisonment for misdemeanors.

Creates a process for establishing the new aggravating factor for class A misdemeanors.

Section 12

AS 12.55.145(a) – Prior convictions.

Establishes a 5-year “look back” period for the purpose of considering prior convictions in imposing a sentence for a class A misdemeanor.

Section 13

AS 12.63.100(6) – Definitions.

Updates the statute reference in the definition of “sex offense” to conform to changes to sex trafficking in the third degree.

Section 14

AS 18.67.101 – Incidents and offenses to which this chapter applies.

Updates the statute reference to conform to changes to sex trafficking in the third degree.

Section 15

AS 28.15.011 – Drivers must be licensed.

Reduces the offense of No Valid Operator’s License to a violation.

Section 16

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 33.07.010 – Pretrial services program; establishment.

Limits the assessment of pretrial risk to defendants brought into custody, or any defendant if requested by prosecution.

Section 18

AS 33.16.130(c) – Parole procedures.

Deletes language giving the Board of Parole explicit authority to hold discretionary parole hearings following a denial.

Section 19

AS 33.30.061 – Commissioner to designate facility.

Allows the commissioner to return a prisoner to a correctional facility if the prisoner violates the terms and conditions of home confinement.

Section 20

AS 34.03.360(10) – Definitions.

Updates a statute reference in the definition of “illegal activity involving a place of prostitution” to conform to changes to sex trafficking in the third degree.

Section 21

AS 47.37.040 – Duties of department.

Authorizes the Alcohol Safety Action Program to accept referrals from the court for misdemeanor drug possession.

Section 22

Repealed statutes

Repeals duplicative felony DUI sentencing provisions and certain sex trafficking statutes.

Section 23

Uncodified law

This section contains applicability provisions.

Section 24

Effective date

Section 17 takes effect January 1, 2018.

Section 25

Effective date

Other than section 21, this bill takes effect immediately.

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SENATE BILL 54 **SUMMARY OF CHANGES** Crime and Sentencing Version A to Version N

Section 5

AS 11.66.150 – Definitions.

Establishes a definition for “compensation” that applies to sex trafficking in the third and fourth degrees.

Section 6

AS 12.55.125(e) – Sentences of imprisonment for felonies.

Increases the sentencing range from zero to 90 days to zero to 1 year for a class C felony that is a first felony conviction.

Section 7

AS 12.55.125(q) – Sentences of imprisonment for felonies.

Establishes mandatory minimum probation term lengths for felony sex offenders. 15 years for an unclassified felony; 10 years for a class A or B felony; and 5 years for a class C felony.

Section 8

AS 12.55.135(a) – Sentences of imprisonment for misdemeanors.

Increases the sentencing range for distributing an explicit image of a minor on an Internet website that is accessible to the public.

Section 10

AS 12.55.135(l) – Sentences of imprisonment for misdemeanors.

Provides for up to 5 days of active imprisonment and 6-months of probation for a second conviction of Theft in the 4th Degree (and similar offenses).

Additionally, establishes up to 5 days of suspended imprisonment for a first conviction.

Section 11

AS 12.55.135(p) – Sentences of imprisonment for misdemeanors.

Creates a process for establishing the new aggravating factor for class A misdemeanors.

Section 12

AS 12.55.145(a) – Prior convictions.

Establishes a 5-year “look back” period for the purpose of considering prior convictions in imposing a sentence for a class A misdemeanor.

Section 15

AS 28.15.011 – Drivers must be licensed.

Reduces the offense of No Valid Operator’s License to a violation.

Section 17

AS 33.07.010 – Pretrial services program; establishment.

Clarifies language relating to the Department of Corrections’ requirement to conduct risk assessments.

Section 18

AS 33.16.130(c) – Parole procedures.

Deletes language giving the Board of Parole explicit authority to hold discretionary parole hearings following a denial.

Section 19

AS 33.30.061 – Commissioner to designate facility.

Allows the commissioner to return a prisoner to a correctional facility if the prisoner violates the terms and conditions of home confinement.

Section 21

AS 47.37.040 – Duties of department.

Authorizes the Alcohol Safety Action Program to accept referrals from the court for misdemeanor drug possession.

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SENATE BILL 54 INVITED TESTIMONY Crime and Sentencing

Alaska Court System

Nancy Meade, General Counsel

Public Defender

Quinlan Steiner

Department of Law

John Skidmore

Alaska Criminal Justice Commission

Greg Razo, Chair

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version:	CSSB 54(JUD)
Fiscal Note Number:	2
(S) Publish Date:	3/13/2017

Identifier: SB054-LAW-CRIM-02-13-17
 Title: CRIME AND SENTENCING
 Sponsor: COGHILL
 Requester: (S) JUD

Department: Department of Law
 Appropriation: Criminal Division
 Allocation: Criminal Justice Litigation
 OMB Component Number: 2202

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 2018	FY 2019	FY 2020	FY 2021	FY 2022
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:

Not applicable, initial version.

Prepared By: Valerie Rose, Budget Analyst
 Division: Administrative Services
 Approved By: Jahna Lindemuth, Attorney General
 Agency: Department of Law

Phone: (907)465-3674
 Date: 02/11/2017 09:35 AM
 Date: 02/13/17

REPORTED OUT OF
 SFC 04/03/2017

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION**Analysis**

This legislation makes a number of amendments to the criminal code following consultation with the Alaska Criminal Justice Commission.

- The offense of Violating Conditions of Release is amended to be a B misdemeanor punishable by up to five days of imprisonment.
- The crimes of Sex Trafficking in the Third and Fourth degrees are amended to clarify that a person violates those statutes if they receive compensation for prostitution services which are rendered by another person.
- The presumptive sentence for a class C felony is amended to include a presumptive range of zero to 90 days if it is the person's first felony conviction.
- Language is inserted to require a court to impose a period of probation for felony sex offenders.
- The misdemeanor sentencing structure is amended to allow a court to impose up to 60 days for persons who have been previously convicted of an offense similar in nature to their current offense.
- The crime of Theft in the Fourth Degree is amended to allow a court to impose a sentence of up to 10 days of imprisonment upon the third conviction.

The Department of Law does not anticipate a fiscal impact from this legislation.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version:	CSSB 54(JUD)
Fiscal Note Number:	3
(S) Publish Date:	3/13/2017

Identifier: SB054-DHSS-PS-2-10-17
 Title: CRIME AND SENTENCING
 Sponsor: COGHILL
 Requester: (S) JUD

Department: Department of Health and Social Services
 Appropriation: Juvenile Justice
 Allocation: Probation Services
 OMB Component Number: 2134

Expenditures/Revenues

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

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	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? n/a

Why this fiscal note differs from previous version:

Not applicable; initial version.

Prepared By: Barbara Murray, Acting Division Director
 Division: Juvenile Justice
 Approved By: Shawnda O'Brien, Asst. Commissioner
 Agency: Health and Social Services

Phone: (907)465-2339
 Date: 02/10/2017 03:05 PM
 Date: 02/10/17

REPORTED OUT OF
SFC 04/03/2017

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

Analysis

This bill contains technical corrections to the Criminal Justice Reform bill (SB91) that passed last session. The only impact of version "A" on the Department of Health and Social Services is the changes to the definition of sex trafficking. The changes are not expected to have a programmatic or fiscal impact on the Division of Juvenile Justice.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version:	CSSB 54(JUD)
Fiscal Note Number:	1
(S) Publish Date:	3/13/2017

Identifier: SB054-DPS-DET-02-11-17
 Title: CRIME AND SENTENCING
 Sponsor: COGHILL
 Requester: (S) JUD

Department: Department of Public Safety
 Appropriation: Alaska State Troopers
 Allocation: Alaska State Trooper Detachments
 OMB Component Number: 2325

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 2018	FY 2019	FY 2020	FY 2021	FY 2022
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:

Not applicable, initial version.

Prepared By: Kelly Howell
 Division: Administrative Services
 Approved By: Walt Monegan
 Agency: Public Safety

Phone: (907)465-4336
 Date: 02/11/2017 09:30 AM
 Date: 02/11/17

REPORTED OUT OF
SFC 04/03/2017

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

Analysis

This legislation makes changes to criminal laws and procedures relating to violation of conditions of release, sex trafficking, sentencing, and probation.

Passage of this legislation is not expected to have a significant impact on the enforcement efforts of the Alaska State Troopers. Therefore, a zero fiscal note is being submitted.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version:	CSSB 54(FIN)
Fiscal Note Number:	6
(S) Publish Date:	4/3/2017

Identifier: SB054CS(FIN)-DOC-IDO-03-30-17
 Title: CRIME AND SENTENCING
 Sponsor: COGHILL
 Requester: (S)FINANCE

Department: Department of Corrections
 Appropriation: Population Management
 Allocation: Institution Director's Office
 OMB Component Number: 1381

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	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Personal Services	***		***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	0.0	***	***	***	***	***

Fund Source (Operating Only)

None							
Total	***	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:

This fiscal note is revised to reflect as indeterminate to reflect the potential ranges of the impacts to the offender population.

Prepared By: April Wilkerson
 Division: Administrative Services - Department of Corrections
 Approved By: Dean Williams, Commissioner
 Agency: Department of Corrections

Phone: (907)465-3460
 Date: 03/30/2017 06:00 PM
 Date: 03/30/17

REPORTED OUT OF
SFC 04/03/2017

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

Analysis

This legislation amends several changes to violation of condition of release, sentencing and probation statutes passed under Chapter 36, SLA '16 (SB91). Changes to the violation of condition of release, sentencing and probation statutes will impact the length of imprisonment of those individuals placed under the department's custody and adjusts the anticipated inmate population reductions projected with SB91.

Based on CY2015 offender data and future sentencing assumptions the Department of Corrections (DOC) is projecting an increase to the inmate population of approximately 108 persons per day up to 253 persons per day. It is anticipated that this legislation will increase the institutional expenditures by \$1,635,536.00 (108 persons) up to \$3,831,394.00 (253 persons) annually based on a daily marginal rate of \$41.49. Expenditures would range from personal services of existing positions, inmate travel, security and safety services as well as commodity expenditures associated with inmate housing i.e. food, clothing, bedding, medical and security supplies, etc.

The following is a breakdown of the cost stated above by section:

AS 12.55.125(e) (l) amends first time felony C convictions allowing for imprisonment of zero to 365 days. Using the Department of Law's future assumptions on sentencing time for different categories of class C felonies (alcohol, drugs, person, property, public order/administration, transportation, weapons), the DOC projects an increase to the inmate population from approximately 108 persons per day up to 163 persons per day at an annual cost of \$1,635,536.00 up to \$2,467,825.00 annually based on a daily marginal rate of \$41.49/bed. This assumption is based on the number of persons convicted of a first time C felony during 2015 and adjusting for the Department of Law's anticipated future sentencing ranges to identify the anticipated daily increase to the offender population that will be incarcerated under this section. DOC will track and monitor for future fiscal impacts if passed.

AS 12.55.135(a) amends class A misdemeanor sentencing for those with one prior conviction similar in nature to the offense for which the defendant is being sentenced to not more than 60 days from the current 30 days. It is projected that this section will increase the institutional expenditures by \$0.00 (no persons) up to \$1,105,501.05 (73 persons) annually based on a daily marginal rate of \$41.49. This assumption is based on the number of offenders incarcerated during CY2015 where a misdemeanor A was the only offense and excluding those offenders who were incarcerated for a person offense. It is assumed that a person would not receive the maximum sentence but could receive additional suspended time up to the maximum sentence length. Based on departmental data a portion could receive approximately zero (suspended time) to one third of the allowable sentence length resulting in an anticipated daily increase of 0 to 73 offenders that could be incarcerated under this section. DOC will track and monitor for future fiscal impacts if passed.

AS 12.55.135(b) amends violation of conditions of release as a B misdemeanor and allows sentences of not more than five days for violations of AS 11.56.757. It is projected that this section will increase the institutional expenditures by \$0.00 (no persons) to \$136,294.65 (nine persons) annually based on a daily marginal rate of \$41.49. This assumption is based upon previous offender projections and preliminary DOC offender data. DOC will track and monitor for future fiscal impacts if passed.

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. SB 54

Analysis

AS 12.55.135(l) amends sentencing for a person convicted of theft in the fourth degree and adds a sentence of not more than 10 days of active imprisonment and a term of probation of not more than six months if the person has previously been convicted two or more times of an offense; or a sentence of active imprisonment and a term of probation of more than six months if the person has been previously convicted once. It is anticipated that this section will increase the institutional expenditures by \$0.00 (no persons) up to \$121,150.80 (eight persons) annually based on a daily marginal rate of \$41.49. This assumption is based upon previous offender projections and preliminary DOC offender data. DOC will track and monitor for future fiscal impacts if passed.

AS 12.55.145(a)(5) adds a new section establishing a period of look back when considering prior convictions in imposing sentencing under AS 12.55.135(a). The department is unable to quantify the impacts of this section at this time. For example, not all misdemeanor convictions result in incarceration. The department only has data on individuals who are or were incarcerated. DOC will track and monitor for future fiscal impacts if passed.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version:	CSSB 54(JUD)
Fiscal Note Number:	5
(S) Publish Date:	3/13/2017

Identifier: SB054CS(JUD)-JUD-ACS-03-01-17
 Title: CRIME AND SENTENCING
 Sponsor: COGHILL
 Requester: Senate Judiciary

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	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	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	Phone:	(907)463-4736
Division:	Alaska Court System	Date:	03/01/2017 11:00 AM
Approved By:	Nancy Meade for Christine Johnson, Administrative Director	Date:	03/01/17
Agency:	Alaska Court System		

REPORTED OUT OF
SFC 04/03/2017

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION**Analysis**

The Senate Judiciary Committee Substitute for Senate Bill 54 makes a number of changes to criminal laws; none of the changes in the bill would result in a fiscal impact to the court system.

Sections 1, 2, 6, 8, 9, and 10 increase permissible sentence lengths for certain offenses (violating conditions of release, Class C felonies, second-time Class A misdemeanors, and theft in the fourth degree). Section 11 addresses procedures that will apply when the state seeks to establish the aggravating factor for a second-time Class A misdemeanor. Section 12 sets time periods for determining which prior convictions are counted when determining what maximum sentence the court may impose for a Class A misdemeanor.

Section 7 provides mandatory minimum terms of probation for the different classes of sexual felonies.

Sections 3, 4, 5, 13, 14, and 19 refine the definition of certain conduct that constitutes the crime of sex trafficking, and make conforming changes to provisions that refer to sex trafficking. These would have no impact on the court system.

Section 15 changes the offense of driving without a valid operator's license into an infraction, rather than an "unclassified misdemeanor." This will align that offense with the similar offense of driving with a license suspended or revoked.

Section 16 corrects an anomaly from 2016 legislation that limited a municipality's ability to set fine amounts for violations of its own ordinances, such as traffic ordinances. That section now provides that a municipality cannot have a penalty more severe than a state law penalty for crimes, which excludes minor offenses.

Sections 17 and 18 revise duties of the Department of Corrections' new Pretrial Services Office regarding which defendants they must assess upon arrest, and to whom they must distribute the pretrial risk assessment before the initial court hearing; these changes will not impact the court system.

In sum, the changes would have no fiscal impact on the court system, which therefore submits this zero fiscal note.

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.



Alaska's Criminal Justice Reforms

Comprehensive law improves pretrial, sentencing, and corrections policies

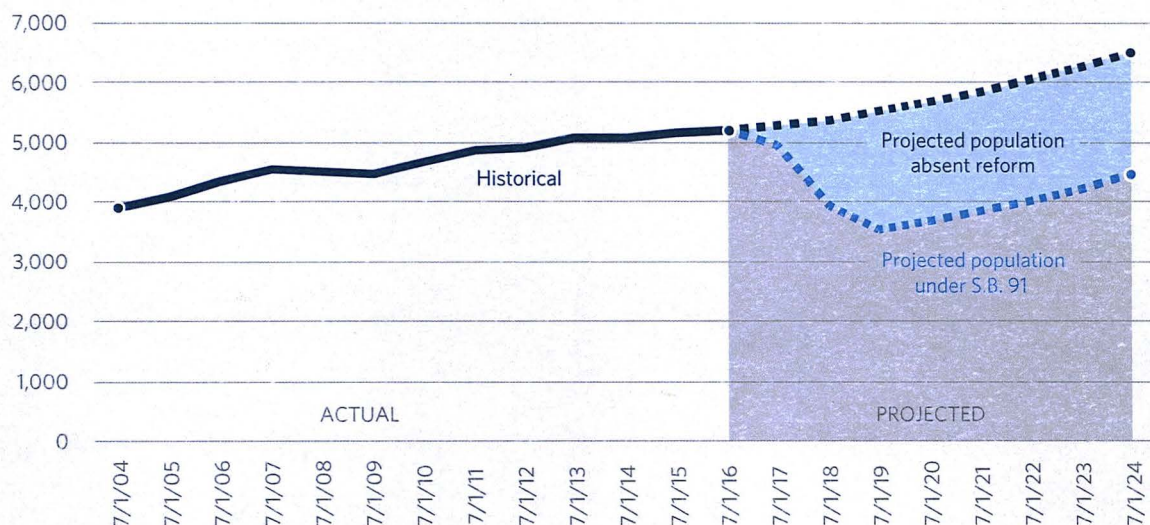
Overview

On July 11, 2016, Alaska Governor Bill Walker (I) signed into law research-driven legislation that aims to deliver a greater public safety return on the state's spending. The Alaska Criminal Justice Commission, an interbranch task force of state and local officials and practitioners, developed the policy foundations for S.B. 91 with technical assistance from The Pew Charitable Trusts as part of the Justice Reinvestment Initiative, a partnership between Pew and the U.S. Department of Justice's Bureau of Justice Assistance. The pretrial, sentencing, and corrections reforms are expected to reduce the number of inmates by 13 percent. The state estimates that the law will yield savings of \$380 million, and it plans to invest nearly \$100 million of that in victims' services and evidence-based prison alternatives.

Figure 1

Alaska's Criminal Justice Reform Expected to Cut Prison Population 13%

Number of inmates had been projected to rise by 27%



Source: Alaska Department of Corrections

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This is an historic moment, a massive realignment of our public safety spending and priorities.”

—Governor Bill Walker, signing S.B. 91 on July 11, 2016

Highlights

Problem

Between 2005 and 2014, the population of Alaska’s unified jail and prison system increased 27 percent, almost three times faster than the state’s resident population.¹ This rapid growth spurred the 2012 opening of a new correctional center at a cost to the state of \$240 million. That capital expenditure came on top of the corrections system’s \$300 million annual operating budget, which itself had risen 60 percent over the previous two decades.² Without policy changes, the state projected that its inmate population would grow by another 27 percent, or 1,416 inmates, by 2024, costing at least another \$169 million at a time when the state was facing a multibillion-dollar revenue shortfall.

Findings

The commission conducted an extensive data review and found that the state’s pretrial population—those who have been arrested and are detained while awaiting court hearings—had increased by 81 percent between 2005 and 2014, driven by longer detention. The post-conviction population had also increased, in part because of longer time served for felony offenses. Three-quarters of newly sentenced prisoners were convicted of nonviolent offenses. On any given day in 2015, roughly 1 in 5 inmates was incarcerated for a technical violation of probation or parole conditions.

Reforms

With instructions from state leaders to identify policy options that would cut the prison population by as much as 25 percent, the commission developed 21 recommendations covering all aspects of the system: Create a new evidence-based pretrial release system; prioritize prison space for individuals convicted of serious, violent offenses; and strengthen probation and parole to reduce recidivism. Specific reforms included eliminating secured money bond—that is, cash bail paid upfront, before release—for certain pretrial defendants, reducing felony sentence ranges, reclassifying drug possession offenses as misdemeanors, and adopting three-, five-, and 10-day limits on revocations to prison for technical violations of probation and parole.

Impact

After more than 50 legislative hearings, S.B. 91 passed with large bipartisan majorities in both chambers and was signed into law by the governor. Alaska officials expect the criminal justice reform measure to avoid all anticipated jail and prison population growth, reduce the number of people incarcerated in the state by 13 percent by 2024, and save \$380 million (\$169 million in avoided costs and \$211 million of net savings). (See Figure 1.) Accompanying fiscal notes reinvest \$98.8 million over six years in substance use disorder and mental health treatment in prison and the community, re-entry supports for those leaving prison, pretrial risk assessments and supervision, violence prevention programming, and crime victim services.

Background

Alaska is one of only six states that operate jails—typically a function of local government—as well as prisons. The state’s incarcerated population, which includes both pretrial and post-conviction inmates in jails and prisons, grew by 27 percent between 2005 and 2014, nearly three times faster than the resident population. The total corrections population—those incarcerated as well as people on community supervision— grew 45 percent over the same 10 years, all at significant state expense. Alaska spent \$327 million on corrections in fiscal year 2014, up from \$184 million in fiscal 2005.³ In addition, corrections growth required significant capital expenditures, including construction of the \$240 million Goose Creek Correctional Center, which opened in 2012.

The state’s growing prison population and increased corrections spending, however, had not produced commensurate improvements in recidivism: Nearly 2 in 3 people released from Alaska prisons returned within three years.

Without a shift in pretrial, sentencing, and corrections policy, the state’s Department of Corrections projected that the average daily prison population would grow by another 1,416 inmates by 2024. This increase would surpass existing capacity by 2017 and force the state to reopen a closed facility and either transfer inmates out of state or build a new prison. The department estimated that accommodating the projected growth would cost at least \$169 million.

Alaska Criminal Justice Commission

In an effort to control prison and jail growth and recalibrate the state’s correctional investments to ensure the best possible public safety returns, the state Legislature in 2014 unanimously passed S.B. 64, establishing the interbranch Alaska Criminal Justice Commission. The 13-member task force includes legislators, judges, law enforcement officials, the state attorney general and public defender, the corrections commissioner, the Mental Health Trust Authority director, and members representing crime victims and Alaska Natives. (See the list of members on Page 22.)

Gov. Walker, Senate President Kevin Meyer (R), Speaker Mike Chenault (R), and then-Chief Justice Dana Fabe directed the commission to conduct a comprehensive review of Alaska’s criminal justice system and develop recommendations for legislative and budgetary changes. From summer 2015 through the end of the calendar year, the commission conducted a rigorous review of Alaska’s pretrial, sentencing, and corrections data, policies, and programs, as well as best practices and models from other states.

In addition to its formal meetings and work group sessions, the commission and its staff held five public hearings with a wide range of stakeholders across the state, including outreach in rural hub communities and remote villages, and roundtable discussions with crime victims, survivors, and victim advocates. Commissioners and staff also received input and guidance from prosecutors, defense attorneys, behavioral health experts, and others.

Pew and its partner, the Crime and Justice Institute at Community Resources for Justice, provided the commission with technical assistance, which included analyzing Alaska’s pretrial, sentencing, and corrections data and systems; facilitating policy development discussions; and educating policymakers and the public about the commission’s recommendations. This assistance was provided as part of the Justice Reinvestment Initiative.

Key findings

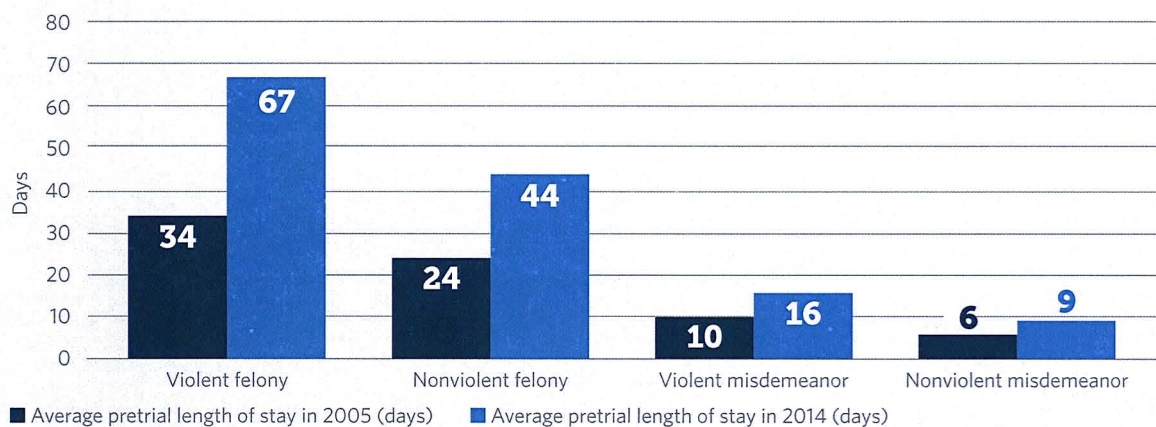
The commission identified six principle factors that contributed to the growth in Alaska's incarcerated population.

1. Growth in the pretrial population

The number of pretrial inmates rose by 81 percent between 2005 and 2014, significantly outpacing the growth of the post-conviction population. Seemingly minor increases in pretrial length of stay drove the spike in Alaska's pretrial detention population. People detained for nonviolent misdemeanors, for example, were held in prison three more days on average in 2014 than those detained for the same charges in 2005. (See Figure 2.) Multiplied across thousands of admissions each year, those extra few days dramatically increased the share of the state's jail and prison space occupied by pretrial detainees.

Figure 2

Pretrial Length of Stay in Alaska Increased for All Charges Average days in jail between arrest and conviction by offense type, 2005 and 2014



Source: Alaska Department of Corrections

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A significant contributor to pretrial length of stay in Alaska was the use of secured money bond. Although Alaska law presumed that pretrial defendants would be released on personal recognizance—a promise to return to court without having to pay money—a review of bail conditions for a random sample of defendants found that courts departed from this presumption in the vast majority of cases.⁴ Less than half of the defendants sampled were released pretrial. Of those who were, costlier bonds translated into longer initial jail stays. For example, only 38 percent of those with bond amounts between \$1,000 and \$2,500 were able to post that amount and be released, and they still spent an average of seven weeks in detention, eight times as long as those with bonds between \$500 and \$1,000.⁵ Defendants in Alaska were not assessed for risk of pretrial failure, and no supervision was provided for those released while awaiting court hearings.

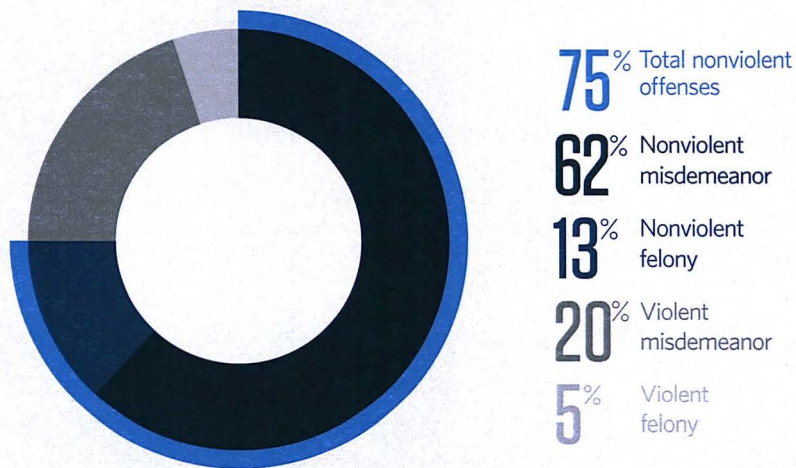
2. Most post-conviction admissions were for lower-level, nonviolent offenses

In 2014, the majority (62 percent) of people sentenced and admitted to prison in Alaska had been convicted of nonviolent misdemeanor offenses. Including both misdemeanors and felonies, nonviolent offenses comprised three-quarters of all post-conviction admissions. (See Figure 3.) The commission found that alternatives to prison for people whose criminal behavior was related to addiction and mental health disorders were limited and underutilized and that the state's prison system had become the default treatment provider for many people whose needs were not being met in the community.

Figure 3

75% of People Sent to Prison in Alaska Were Convicted of Nonviolent Crimes

Percentage of admissions for sentenced individuals by offense type



Source: Alaska Department of Corrections

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“What we saw in the data were many of the same trends we in the law enforcement community see every day: a failure to effectively address mental health issues and curb addiction and addiction-fueled crime, and a revolving prison door.”

—commission members Gary Folger, former Department of Public Safety commissioner, and Juneau police Lt. Kris Sell (op-ed, *Alaska Dispatch News*, Feb. 28, 2016)

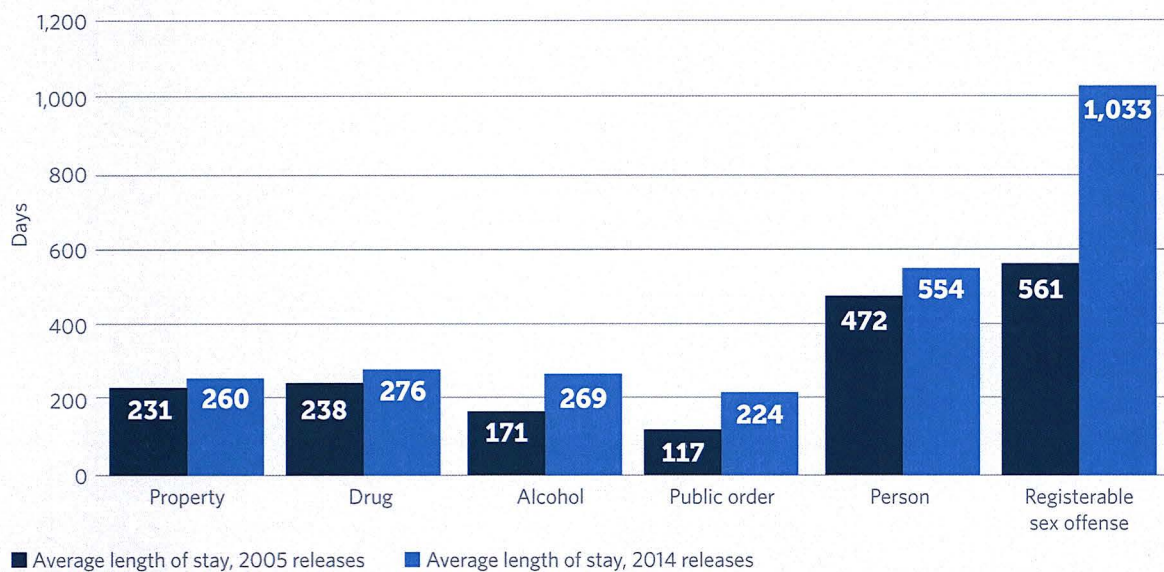
3. Longer prison stays for felony offenses

Length of stay for felony convictions increased across all offense types and felony classes. Those who were released in 2014 after serving time for drug and property offenses, for example, spent 30 more days in prison on average than similar inmates released in 2005. Further, length of stay increased by an average of roughly three months for alcohol and public order offenses and 16 months for registerable sex offenses. (See Figure 4.)

Figure 4

Time Served Increased in Alaska for All Felonies

Average post-conviction length of stay by category, 2005 and 2014



Source: Alaska Department of Corrections

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4. More people admitted to prison for technical violations of supervision conditions

The commission also examined the growing number of inmates in Alaska entering prison for a technical violation of the conditions of their probation or parole—such as consuming alcohol, missing or failing drug tests, or failing to report to a supervision officer—rather than for a new criminal offense. The number of people who were returned to prison for technical violations increased by 32 percent between 2005 and 2014, with nearly half staying more than a month and 29 percent more than three months. Alaska had no systemwide framework for swift, certain, and proportional jail sanctions for probation and parole violators or other intermediate sanctions short of a revocation to prison.

5. People kept on community supervision past the point of diminishing returns

Over the same decade that Alaska's prison population grew by 27 percent, its probation and parole population rose 62 percent, driven in part by longer terms. Between 2005 and 2014, the average period of supervision increased by 13 percent, from 23.5 months to 26.5, despite the fact that probationers and parolees were found to be at highest risk of reoffending in the first three months after release. This meant that more probation and parole resources were dedicated to supervising people long after the time when they posed the highest risk.

Through its assessment process, the Department of Corrections identified a large portion of those on probation and parole—39 percent on a snapshot day in 2014—as low risk, meaning they were unlikely to engage in new criminal behavior. Even with less intensive supervision levels, these individuals required significant staff time that would otherwise have been focused on those more likely to engage in new criminal activity. The state had no policies that shortened supervision terms for those who comply with their conditions to encourage prosocial behavior and focus limited resources on those with a higher likelihood to reoffend.

6. Lack of community-based resources

Although state agencies and stakeholder coalitions had made significant efforts to increase access to treatment and re-entry supports for incarcerated and supervised people, substantial unmet needs persisted. The state had insufficient mental health and substance use disorder treatment, with regional disparities in community-based access and limited capacity in state prisons. People with felony convictions also faced a shortage of affordable housing and extensive barriers to housing and employment after release from prison. In addition, the Legislature cut \$2.7 million from violence prevention programming in 2015, and shelter and supportive services for crime victims in Alaska's rural and bush communities were costly and scarce.

Comprehensive legislative reform package

In December 2015, the Alaska Criminal Justice Commission presented the Legislature with 21 policy recommendations, which were subsequently drafted into legislation and introduced as S.B. 91. After extensive vetting by five legislative committees in over 50 public hearings, the Legislature passed the measure by votes of 16-2 in the Senate, 28-10 in the House, and a 14-5 Senate concurrence vote. Gov. Walker signed S.B. 91 into law on July 11, 2016.

The legislation contains five primary objectives:

Implement evidence-based pretrial practices

To reduce pretrial detention and improve public safety and court appearance rates, the law:

- **Expands officers' discretion to issue citations in lieu of arrest.**
 - Authorizes law enforcement officers to issue citations with a summons to appear in court rather than place people under arrest for nonviolent class C felonies, such as theft or driving under the influence (DUI), expanding an option that was previously limited to nonviolent misdemeanors.
- **Modifies penalties for failure to appear and violation of release conditions.**
 - Reclassifies these offenses as violations in most circumstances rather than misdemeanors or felonies.

- **Shortens time to first court appearance.**
 - Mandates that defendants be brought before a judge within 24 hours of arrest, except when a court finds compelling circumstances for delay, rather than the 48 hours allowed under previous law.
- **Directs the Department of Corrections to develop a pretrial services program.**
 - Requires the commissioner of the Department of Corrections to approve and validate a pretrial risk assessment tool.
 - Authorizes and funds the department to hire its first pretrial services officers and mandates that, before a defendant's first appearance in court, the officers conduct a risk assessment and prepare a report for the judge with recommendations on the appropriateness of release on recognizance, the least restrictive release conditions to reasonably ensure court appearance and public safety, and the appropriateness of pretrial supervision.
- **Restricts the use of secured money bond. (See "Shifting from money bond to risk-based release decisions" on Page 16.)**
 - Establishes a class of pretrial defendants, based on charge and risk level, who must be released on recognizance or on unsecured bond.
 - Requires pretrial services officers to recommend release on recognizance for a broader group of pretrial defendants, based on charge and risk level, and establishes a high evidentiary standard (clear and convincing evidence) for the court to depart from that recommendation.
- **Requires review of release conditions that result in detention.**
 - Mandates that courts review and revise conditions that prevent a defendant from being released, except where clear and convincing evidence indicates that less restrictive conditions cannot reasonably ensure public safety and court appearance.
 - Authorizes one additional bail review hearing for consideration of a defendant's inability to post the required bond, which under previous law was not sufficient to justify a subsequent hearing.
- **Establishes pretrial supervision and court date reminders.**
 - Authorizes pretrial services officers to supervise defendants during the pretrial period provided that the officers impose the least restrictive level of supervision necessary to reasonably ensure public safety and court appearance, and prioritize higher levels of supervision for higher-risk defendants and those accused of serious charges.
 - Prohibits the court from ordering a defendant to be supervised by a third-party custodian when pretrial supervision is available, money bond has been ordered, or other release conditions can reasonably ensure court appearance and public safety.
 - Mandates that courts send reminders to defendants about upcoming hearings at least 48 hours before each required appearance.

Prioritize prison space for those convicted of serious and violent offenses

The law reflects a consensus that for many people in the criminal justice system noncustodial sanctions and shorter prison stays provide sufficient accountability while costing less and working at least as well as extended incarceration to reduce recidivism. Specifically, the law:

- **Establishes a new diversion sentencing option.**
 - Authorizes the courts in some cases to suspend a conviction, allow the defendant to serve time on probation, and dismiss the case upon successful completion of the supervision term.
- **Limits the use of incarceration for low-level misdemeanors.**
 - Reclassifies certain class B misdemeanors, including disregard of highway obstruction and gambling, as noncriminal violations, and reduces the maximum sentence for most other class B misdemeanors from 90 days in jail to 10.
 - Creates a presumptive range of zero to 30 days for most nonsex-offense class A misdemeanors and allows judges to impose sentences of more than 30 days only when specific aggravating factors are established beyond a reasonable doubt.
 - Prohibits the use of incarceration as a sanction for the first two offenses of theft with a value under \$250 and limits the use of incarceration to five days of suspended imprisonment and six months of probation for subsequent shoplifting offenses.
- **Increases the felony theft threshold and adjusts for inflation.**
 - Raises the value at which theft-related offenses qualify as felonies from \$750 to \$1,000.
 - Requires that the threshold value be adjusted every five years to account for inflation.
- **Modifies drug penalties.**
 - Classifies possession of controlled substances except GHB (gamma hydroxybutyrate) as a class A misdemeanor, eliminates the imposition of prison time for the first two such offenses, and allows imprisonment only upon a failure of supervision.
 - Reduces commercial drug offenses relating to less than 1 gram of a Schedule IA controlled substance (e.g., heroin) from class A to class C felonies and those involving more than 1 gram of a IA substance from class A to class B.
 - Reduces commercial drug offenses related to less than 2.5 grams of a Schedule IIA or IIIA controlled substance (e.g., cocaine and methamphetamine) from class B to class C felonies.
- **Modifies penalties for DUI and driving with a suspended license.**
 - Requires that first-time DUI mandatory minimum sentences be served on electronic monitoring rather than in prison.
 - Reclassifies driving with a suspended license as an infraction rather than a misdemeanor when the underlying suspension is not related to a DUI.
 - Reduces the mandatory minimums for first- and second-time driving with a suspended license offenses when the underlying suspension is DUI-related.
- **Modifies presumptive sentencing ranges for felonies. (See Table 1.)**
 - Reduces the ranges for most nonsex-offense felonies.
 - Increases the mandatory minimum sentence for first- and second-degree murder.

Table 1

Alaska Reduced Presumptive Sentence Ranges for Most Felonies

Penalty changes under S.B. 91

Felony class	Prior law penalties (in years)	S.B. 91 penalties (in years)
Unclassified felonies (nonsex offenses)	<u>mandatory minimum</u> - maximum sentence	
Murder I	<u>20</u> [*] -99	<u>30</u> [*] -99
Murder II	<u>10</u> [*] -99	<u>15</u> [*] -99
Attempted murder I, misconduct involving a controlled substance I, and kidnapping	5-99	Unchanged
Class A felonies (nonsex offenses)	(presumptive sentence range) - maximum sentence	
First felony offense	(5-8)-20	(3-6)-20
Exception: Offense committed with a dangerous weapon, offense directed at first responder	(7-11)-20	(5-9)-20
Exception: Manufacture of methamphetamine in the presence of children	(7-11)-20	(3-6)-20
Second felony offense	(10-14)-20	(8-12)-20
Third and subsequent felony offense	15-20	13-20
Class B felonies (nonsex offenses)	(presumptive sentence range) - maximum sentence	
First felony offense	(1-3)-10	(0-2)-10
Exception: Criminally negligent homicide of a child	(2-4)-10	Unchanged
Exception: Criminally negligent homicide of an adult	(1-3)-10	Unchanged
Exception: Attempt or conspiracy to manufacture methamphetamine in the presence of children	(2-4)-10	(0-2)-10
Second felony offense	(4-7)-10	(2-5)-10
Third and subsequent felony offense	6-10	4-10
Class C felonies (nonsex offenses)	(presumptive sentence range) - maximum sentence	
First felony offense	(0-2)-5	(0-18 months suspended)-5 years
Exception: Waste of a wild food animal or hunting on the same day airborne by a registered guide	(1-2)-5	Unchanged
Exception: First-time felony DUI	(120-239 days)-5 years	Unchanged
Second felony offense	(2-4)-5	(1-3)-5
Third and subsequent felony offense	3-5	2-5

* Underlined numbers indicate mandatory minimum sentences.

Notes: Under Alaska law, unclassified felonies are the most serious crimes, punishable by the longest prison terms. The state has established statutory maximum terms according to offense class and presumptive sentencing ranges (shown in parentheses) below the maximum term according to the number of a defendant's prior felony convictions. The court must impose a sentence within the presumptive range unless aggravating or mitigating factors have been established.

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- **Expands eligibility for discretionary parole and streamlines parole hearings.**

- Extends eligibility for discretionary parole to nearly everyone sentenced to at least 181 days in prison, except those convicted of class A and unclassified sex offenses and those serving a mandatory 99-year term for first-degree murder. (See Table 2.)
- Establishes an administrative process that grants parole release without a hearing for those incarcerated for first-time nonviolent, nonsex misdemeanors and class B and C felonies who have completed a required, individualized course of programming and followed institution rules, unless a victim requests a parole hearing.
- Streamlines the hearing process for inmates who do not qualify for administrative parole by requiring the Parole Board to hold hearings for all parole-eligible inmates, rather than wait for applications.
- Creates a new category of discretionary parole eligibility for inmates over 60 who have served at least 10 years of their sentences and have not been convicted of unclassified or sex-offense felonies.

Table 2
Alaska Expanded Parole Eligibility
 Changes under S.B. 91

Offense class and criminal history	Nonsex-offense convictions		Sex-offense convictions	
	Prior law	S.B. 91	Prior law	S.B. 91
Unclassified felony				
	Parole eligible	Parole eligible	Not eligible	Not eligible
Class A felony				
No prior felony	Not eligible	Parole eligible	Not eligible	Not eligible
1 prior felony	Not eligible	Parole eligible	Not eligible	Not eligible
2 prior felonies	Not eligible	Parole eligible	Not eligible	Not eligible
Class B felony				
No prior felony	Parole eligible	Parole eligible	Not eligible	Parole eligible
1 prior felony	Not eligible	Parole eligible	Not eligible	Parole eligible
2 prior felonies	Not eligible	Parole eligible	Not eligible	Parole eligible
Class C felony				
No prior felony	Parole eligible	Parole eligible	Not eligible	Parole eligible
1 prior felony	Parole eligible	Parole eligible	Not eligible	Parole eligible
2 prior felonies	Not eligible	Parole eligible	Not eligible	Parole eligible

Incorporating Crime Victims' Priorities

The Alaska Criminal Justice Commission hosted roundtables in Fairbanks and Bethel with crime victims, survivors, advocates, community- and system-based victims' service providers, and justice professionals to identify priorities for improving victim safety, services, and support in Alaska. The Bethel event specifically sought to capture the concerns of victims and advocates in the state's remote jurisdictions.

The top two priorities that emerged from these discussions were strengthening victim-assistance services in remote areas and expanding programs focusing on crime prevention and bystander intervention. The Legislature provided \$11 million over six years for these programs and services as part of the S.B. 91 reinvestment package. The state will provide the funds each year to the Alaska Council on Domestic Violence and Sexual Assault, which will then disburse them as grants to community-based programs.

The legislation included provisions to address several issues identified during and after the roundtables, specifically to:

- Require prosecuting attorneys to confer with victims in felony and domestic violence cases before entering into plea agreements.
- Prohibit law enforcement from disclosing to employers information about sexual assault reports and investigations, and prohibit employer retaliation against workers for making these reports.
- Garnish Permanent Fund Dividend payments for purposes of collecting court-ordered victim restitution.
- Authorize the Parole Board to require perpetrators of domestic violence to participate in rehabilitative programming as a condition of parole.
- Notify victims of the dates of expected release from incarceration and expected discharge from supervision, and provide victims with opportunities to request information and offer input.

Bystander intervention refers to empowering and equipping members of the public who observe sexual violence, domestic violence, and other forms of victimization, or who witness the conditions that perpetuate violence, to speak up and effectively assist in prevention efforts.



The commission hosted roundtables [and] ... conducted personal interviews with survivors to help identify their most salient needs. ... Even after the commission's recommendations were translated into legislation, the bill's sponsor spent weeks continuing to meet with crime victim advocates to ensure we understood the bill language and we had a chance to negotiate appropriate amendments that would go further to protect individual and public safety."

—commission member Brenda Stanfill, victim advocate and executive director, Interior Alaska Center for Nonviolent Living (op-ed, *Fairbanks Daily News-Miner*, April 1, 2016)



Criminal justice reforms are not just pro-offender or pro-victim. That's a false dichotomy. This rethinking of how we spend money will get much better outcomes for offenders and for victims, meaning improved public safety and also improved personal safety."

—Kara Nelson, director, Haven House Juneau (op-ed, *Juneau Empire*, March 31, 2016)

Strengthen probation and parole

The law incorporates evidence-based practices to reduce recidivism into probation and parole supervision. It:

- **Adopts administrative sanctions and incentives.**
 - Directs the Department of Corrections to establish a program of administrative sanctions and incentives to facilitate prompt and effective responses to compliance with or violations of conditions of probation and parole.
- **Caps prison stays for technical violations.**
 - Limits the maximum prison sentence for technical probation or parole violations to three days for the first revocation, five days for the second, 10 days for the third, and up to the remainder of the suspended sentence for subsequent revocations.
 - Limits the maximum prison sentence for absconding to 30 days.
- **Establishes earned compliance credits.**
 - Requires the commissioner of the Department of Corrections to establish a program that allows probationers and parolees to earn 30 days off their supervision sentence for each 30 days served in compliance.
- **Streamlines early discharge from probation and parole.**
 - Requires probation and parole officers, with some exceptions, to recommend to the court and Parole Board that a supervision period be terminated after one year for class C felonies and after two years for class A and B felonies for those who have complied with the conditions of their supervision and completed required treatment programs.
- **Modifies maximum probation sentences.**
 - Limits probation sentences to 15 years for sex offenses; 10 years for unclassified nonsex-offense felonies; five years for other felonies; three years for misdemeanor assaults, domestic violence, or sex offenses; two years for second-time misdemeanor DUIs; and one year for any other offense. Previously, maximum terms were 25 years for a sex offense and up to 10 years for all other offenses.
- **Strengthens other prison alternatives.**
 - Requires community residential centers to provide treatment, reduce mixing of low- and high-risk individuals, and adopt quality assurance measures.
 - Restricts the state's Alcohol Safety Action Program referrals to people who have been referred by a court for a DUI-related offense, and requires the program to screen for risk of reoffending and monitor participants based on risk level.
 - Extends good time credits—which reward inmates who comply with institutional rules with time off of their prison terms—to include time off of supervision terms for individuals on electronic monitoring.
 - Prohibits converting community work service into a sentence of imprisonment and increases the value of an hour of community work from \$3 to the state minimum wage, currently \$9.75 per hour, for purposes of working off a fine.

Remove barriers to re-entry

To smooth inmates' transition from prison back to the community and promote their long-term success, the law:

- **Mandates re-entry planning.**
 - Directs the Department of Corrections to prepare re-entry plans with inmates, beginning at least 90 days before their discharge dates.
 - Requires coordination with community nonprofit organizations, the Department of Labor and Workforce Development, and the Department of Motor Vehicles to identify re-entry resources in the community, provide job training and employment assistance, and help inmates obtain valid state IDs before release.
- **Removes collateral consequences.**
 - Lifts restrictions on Supplemental Nutrition Assistance Program eligibility for those convicted of drug felonies, provided they comply with supervision conditions and treatment requirements.
 - Directs the Department of Motor Vehicles to grant limited driver's licenses to those convicted of DUI offenses who have completed court-ordered treatment and complied with insurance and other requirements.

Ensure oversight and accountability

To help policymakers, criminal justice practitioners, and the public evaluate implementation of S.B. 91 and assess the performance of Alaska's corrections system, the law:

- **Establishes an oversight role for the Alaska Criminal Justice Commission.**
 - Extends the term of the commission through June 2021 and requires it to assess the law's implementation; report annually on performance metrics, outcomes, and savings; and make recommendations each year on how savings should be reinvested to further reduce recidivism.
- **Mandates collection and reporting of performance data.**
 - Requires the courts and the Departments of Public Safety and Corrections to report data on key performance measures.

Requires the commission to analyze the data as part of its oversight and recommend additional reforms as appropriate.

Disproportionate Confinement of Alaska Natives

Alaska Natives represent 15 percent of the state's resident population, but they account for 36 percent of its prison population.* (See Figure 5.) To address this overrepresentation, the Alaska Criminal Justice Commission reached out to tribal courts, councils, and communities for help in assessing the pretrial, sentencing, and corrections systems.

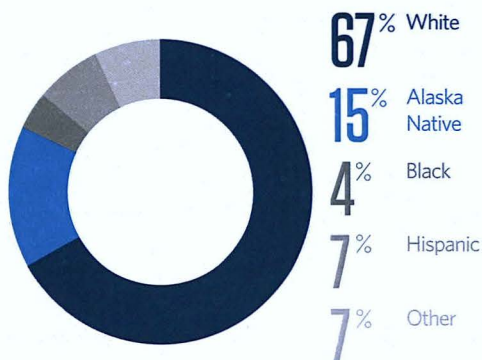
* Alaska Department of Corrections and U.S. Census Bureau.

Figure 5

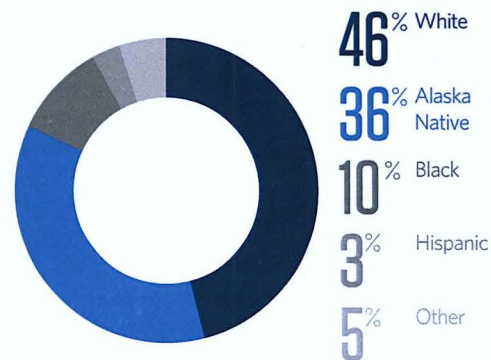
Alaska Natives Make Up a Disproportionate Share of the State's Inmates

Confinement by race and ethnicity

Percent of Alaska resident population, 2013



Percent of Alaska prison population, July 1, 2014



Source: Alaska Department of Corrections and U.S. Census Bureau

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The legislation creating the commission required the appointment of at least one member by the Alaska Native Justice Center. In addition, the commission and its staff sought input at the annual convention of the Alaska Federation of Natives and conducted outreach in the rural hub communities of Nome, Kotzebue, and Bethel and in remote villages in the surrounding areas. Alaska Native people and organizations weighed in on the priorities for reform, and hundreds of Alaska Natives later voiced their support for S.B. 91 in endorsements and testimony before legislative committees.

“

Like so many of those incarcerated, Alaska Native men and women often end up in prison for behavior related to substance abuse, alcoholism or mental illness. Without sufficient behavioral treatment facilities in rural hub communities, these issues escalate and Alaska prisons become de facto rehabilitation centers. As a result, Alaskans pay much more to address these problems with prison beds and get far worse results than if we would have invested in treatment-oriented rehabilitation programs.”

—Julie Kitka, president, Alaska Federation of Natives (op-ed, *Alaska Dispatch News*, May 17, 2016)

Shifting from money bond to risk-based release decisions

The Alaska Criminal Justice Commission's recommendation of a new pretrial services program was based on a strong and growing body of evidence suggesting that pretrial detention often may be unnecessary and counterproductive. Specifically:

- Pretrial failure, defined as new criminal activity during the pretrial period or failure to appear for court hearings, is rare.⁶
- Actuarial assessment tools can estimate the risk of pretrial failure and should inform decisions about release conditions.⁷
- Detention can lead to higher rates of pretrial failure.⁸
- In many cases, pretrial risks can be managed with alternatives to detention.⁹
- Restrictive release conditions should be used rarely and primarily on higher-risk defendants.¹⁰

Notably, there is little evidence to suggest that secured money bonds improve public safety and court appearance rates. They do, however, commonly result in detention of lower-risk individuals and enable the release of some high-risk but well-resourced individuals. Because it makes access to money rather than assessed risk of pretrial failure the determining factor for release, money bond is a flawed method for ensuring court appearance and public safety.¹¹

S.B. 91 eliminates the use of secured money bond for many nonviolent misdemeanor and class C felony defendants and strengthens the presumption of release on recognizance for those charged with nonviolent offenses and for low-risk defendants charged with violent crimes.

By placing statutory restrictions on the recommendations pretrial services officers may make to the court as well as on judges' authority to order secured money bond, the law reserves secured money bond for higher-risk defendants with more serious charges. (See Tables 3 and 4.) Although the restrictions on pretrial services officers and those on courts mostly overlap, pretrial services officers must recommend release on recognizance or unsecured bond for misdemeanor defendants assessed as high risk, class C felony defendants assessed at moderate or high risk, and defendants charged with DUI or who refused a chemical test and were assessed as low or moderate risk. However, judges may depart from those recommendations under limited circumstances.

Table 3

Pretrial Services Officers Will Recommend Most Defendants for Release on Recognizance

Statutory framework for pretrial services officers' release recommendations

Risk for pretrial failure	Nonviolent misdemeanors	Nonviolent class C felonies	DUI/refusal to submit to chemical test	Failure to appear/violation of pretrial release condition	Other
Low	Release on recognizance recommended	Release on recognizance recommended	Release on recognizance recommended	Release on recognizance presumptively recommended	Release on recognizance presumptively recommended
Moderate	Release on recognizance recommended	Release on recognizance recommended	Release on recognizance recommended	Release on recognizance presumptively recommended	Secured bond authorized
High	Release on recognizance recommended	Release on recognizance recommended	Release on recognizance presumptively recommended	Secured bond authorized	Secured bond authorized

“Release on recognizance recommended”: The pretrial services officer must recommend to the judge that the defendant be released on recognizance with a promise to appear in court or on unsecured bond—a commitment to pay an agreed-upon amount of money if the defendant fails to appear in court or violates release conditions. No money is paid upfront.

“Release on recognizance presumptively recommended”: The pretrial services officer must recommend that the defendant be released on recognizance or on unsecured bond unless the officer finds substantial evidence that no combination of nonmonetary conditions can reasonably ensure court appearance and public safety, in which case the officer may recommend secured bond.

“Secured bond authorized”: Permits recommendations of secured bond, though the pretrial services officer may still recommend that the defendant be released on recognizance or unsecured bond.

Notes: “Risk for pretrial failure” is determined using a validated assessment instrument. Exceptions to class C felonies include domestic violence offenses, offenses against a person, DUI/refusal to submit to a chemical test, and failure to appear; misdemeanor exceptions include all of those and violation of a release condition. “Other” includes class B and higher felony charges, as well as all other charges that fall under a misdemeanor or class C felony exception and are not listed in another column.

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Table 4

Courts Must Release Certain Defendants on Recognizance

Statutory framework for courts' pretrial release decisions

Risk for pretrial failure	Nonviolent misdemeanors	Nonviolent class C felonies	DUI/refusal to submit to chemical test	Failure to appear/violation of pretrial release condition	Other
Low	Mandatory release on recognizance	Mandatory release on recognizance	Presumptive release on recognizance	Presumptive release on recognizance	Presumptive release on recognizance
Moderate	Mandatory release on recognizance	Presumptive release on recognizance	Presumptive release on recognizance	Presumptive release on recognizance	Secured bond authorized
High	Presumptive release on recognizance	Presumptive release on recognizance	Presumptive release on recognizance	Secured bond authorized	Secured bond authorized

“Mandatory release on recognizance”: Requires release on recognizance or unsecured bond, though the court may also impose appropriate nonmonetary conditions.

“Presumptive release on recognizance”: Requires release on recognizance or unsecured bond unless the judge finds clear and convincing evidence that these terms, even in combination with nonmonetary conditions, cannot reasonably ensure court appearance and public safety, in which case secured money bond is authorized.

“Secured bond authorized”: Permits orders of secured bond, though the court may still release the defendant on recognizance or unsecured bond.

Notes: Exceptions to misdemeanors and class C felonies include offenses against a person, sex offenses, domestic violence offenses, DUI/refusal to submit to a chemical test, failure to appear in court, and violation of a condition of release. “Other” includes class B and higher felony charges, as well as all other charges that fall under a misdemeanor or class C felony exception that are not listed in another column.

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“Reducing our state prison population is vital to making conditions inside the facilities safer, both for prison inmates and correctional officers. Senate bill 91 will reduce unnecessary pretrial detention and also strengthen alternatives to prison for those convicted of nonviolent offenses.”

—Department of Corrections Commissioner Dean Williams, from the governor’s news release at bill signing (June 11, 2016)

Reinvestment

Facing a multibillion-dollar budget shortfall, Gov. Walker and legislative leaders advised the commission that investment in substance use disorder and mental health treatment, prison alternatives, and victims’ services would be possible only with a prison population reduction that resulted in significant net savings to the state.

The governor’s Office of Management and Budget and the House and Senate Finance committees reviewed proposals for investment in priority services, and approved fiscal notes for a total of \$98.8 million between 2016 and 2022. (See Table 5.) Much of the funding involves direct reinvestment of savings arising from the pretrial, sentencing, and corrections policy changes in S.B. 91. The state supplemented its reinvestment of these savings by establishing a Recidivism Reduction Fund using 50 percent of the state’s new tax revenue from the sale of marijuana. Grant funds for community-based treatment and re-entry resources and for victims’ services and violence prevention programming in rural and remote communities will pass through the state Department of Health and Social Services and the Alaska Council on Domestic Violence and Sexual Assault, respectively. More than half of the reinvestment funding is dedicated to creating the pretrial services program.

Table 5

Alaska Will Direct Nearly \$100 Million to Reduce Recidivism and Support Victims

Reinvestment funds established in S.B. 91 fiscal notes, 2016-22

Services	Amount
Pretrial services and supervision	\$54.2 million
Victims' services and violence prevention	\$11 million
Substance use disorder and behavioral health treatment services in prison	\$11 million
Community-based behavioral health and re-entry services	\$15.5 million*
Implementation costs (database upgrades, Alcohol Safety Action Program resources, and Parole Board and Alaska Judicial Council staffing)	\$7.1 million
Total reinvestment	\$98.8 million

* \$6 million of this reinvestment line item will be reimbursed by the federal government through Medicaid beginning in 2019.

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“ We knew investing in treatment and victims’ services was critical. S.B. 91 averts millions in future spending to allow for that reinvestment. This was an enormous achievement that will reduce recidivism, hold offenders accountable, and get the most public safety out of each dollar spent on our criminal justice system.”

—Senator John Coghill (R), S.B. 91 sponsor (news release, July 11, 2016)

Supporting organizations

S.B. 91 and the reinvestment package were supported by a broad group of local stakeholders, including:

Aiding Women in Abuse and Rape Emergencies	Alaska Violent Crimes Compensation Board
Alaska Criminal Justice Commission	Arctic Women in Crisis
Alaska Department of Corrections	Bristol Bay Native Corporation
Alaska Department of Law	Cordova Family Resource Center
Alaska Department of Health and Social Services	Fairbanks Diversity Council
Alaska Department of Public Safety	Fairbanks Native Association
Alaska Federation of Natives	Greater Fairbanks Chamber of Commerce
Alaska Mental Health Board—Advisory Board on Alcoholism and Drug Abuse	Jeffersonian Project
Alaska Mental Health Trust Authority	Kawerak Inc.
Alaska Network on Domestic Violence & Sexual Assault	Mat-Su Health Foundation
Alaska Policy Forum	NAACP—Anchorage
Alaska Public Defender	Partners for Progress
Alaska Republican Party	Supporting Our Loved Ones Group
Alaska Regional Coalition	Tanana Chiefs Conference
	Unalaskans Against Sexual Assault & Family Violence

Members of the Alaska Criminal Justice Commission

Gregory Razo (chair), Alaska Native Justice Center designee

Justice Alexander Bryner, Alaska Supreme Court (retired)

Senator John Coghill (R), Alaska State Senate

Commissioner Walt Monegan, Alaska Department of Public Safety

Jeff Jessee, Alaska Mental Health Trust Authority

Representative Wes Keller (R), Alaska House of Representatives

Commissioner Dean Williams, Alaska Department of Corrections

Judge Stephanie Rhoades, Anchorage District Court

Jahna Lindemuth, attorney general

Lt. Kris Sell, Juneau Police Department

Brenda Stanfill, Interior Alaska Center for Nonviolent Living

Quinlan Steiner, Alaska public defender

Judge Trevor Stephens, Ketchikan Superior Court

Craig Richards, former attorney general, Gary Folger, former commissioner of the Department of Public Safety, Terry Vrabec, former deputy commissioner of the Department of Public Safety, and Ron Taylor, former commissioner of the Department of Corrections, were previous members of the commission and participants in the justice reinvestment process.

Full text of the legislation is available at <http://www.akleg.gov/basis/Bill/Text/29?Hsid=SB0091Z>.

Full commission report is available at <http://www.ajc.state.ak.us/sites/default/files/commission-recommendations/akjrireportfinal2015-12-15.pdf>.

The commission is staffed by the Alaska Judicial Council.

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Endnotes

- 1 Alaska Department of Corrections and U.S. Census Bureau.
- 2 Unless otherwise noted, Pew conducted analyses in this report for the Alaska Criminal Justice Commission using state data provided by the Alaska Department of Corrections.
- 3 Adjusted for inflation to 2014 dollars.
- 4 File review of 310 court case files from Anchorage, Fairbanks, Juneau, Bethel, and Nome, with analysis by Pew and the Alaska Judicial Council.
- 5 Ibid.
- 6 Audrey Hickert, Erin B. Worwood, and Kort Prince, *Pretrial Release Risk Study, Validation & Scoring: Final Report*, University of Utah (2013), http://ucjc.utah.edu/wp-content/uploads/PretrialRisk_UpdatedFinalReport_v052013.pdf; and Bureau of Justice Assistance, "Pretrial Risk Assessment 101: Science Provides Guidance on Managing Defendants" (2012), https://www.bja.gov/Publications/PJI_PretrialRiskAssessment101.pdf.
- 7 Kristen Bechtel, Christopher Lowenkamp, and Alexander Holsinger, "Identifying the Predictors of Pretrial Failure: A Meta-Analysis—Final Report" (2011), [https://www.pretrial.org/download/risk-assessment/Identifying%20the%20Predictors%20of%20Pretrial%20Failure%20-%20A%20Meta%20Analysis%20\(June%202011\).pdf](https://www.pretrial.org/download/risk-assessment/Identifying%20the%20Predictors%20of%20Pretrial%20Failure%20-%20A%20Meta%20Analysis%20(June%202011).pdf); Timothy Cadigan and Christopher T. Lowenkamp, "Implementing Risk Assessment in the Federal Pretrial Services System," *Federal Probation* 75, no. 2 (2011): 30–4, <https://www.pretrial.org/download/risk-assessment/Implementing%20Risk%20Assessment%20in%20the%20Federal%20Pretrial%20Services%20System%20-%20Cadigan%20et%20al%202011.pdf>; and Marie VanNostrand and Gena Keebler, *Pretrial Risk Assessment in the Federal Court*, U.S. Department of Justice (2009), [https://www.pretrial.org/download/risk-assessment/Pretrial%20Risk%20Assessment%20in%20the%20Federal%20Court%20Final%20Report%20\(2009\).pdf](https://www.pretrial.org/download/risk-assessment/Pretrial%20Risk%20Assessment%20in%20the%20Federal%20Court%20Final%20Report%20(2009).pdf).
- 8 Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, "The Hidden Cost of Pretrial Detention" Laura and John Arnold Foundation (2013), <https://www.pretrial.org/download/research/The%20Hidden%20Costs%20of%20Pretrial%20Detention%20-%20LJAF%202013.pdf>; and Alexander M. Holsinger, "Research Brief: Exploring the Relationship Between Time in Pretrial Detention and Four Outcomes," Crime and Justice Institute (2016), <http://www.crj.org/page/-/publications/Exploring%20Pretrial%20Detention.pdf>.
- 9 VanNostrand and Keebler, *Pretrial Risk Assessment in the Federal Court*.
- 10 Ibid.
- 11 See Michael R. Jones, "Unsecured Bonds: The as Effective and Most Efficient Pretrial Release Option" Pretrial Justice Institute (2013), <http://www.pretrial.org/download/research/Unsecured+Bonds,+The+As+Effective+and+Most+Efficient+Pretrial+Release+Option+-+Jones+2013.pdf>.

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