City Manager/General Manager | 334 Front Street, Ketchikan AK 99901 | (907)228-5603

TRANSMITTAL MEMORANDUM

7d

TO: Honorable Mayor & City Council

FROM: Delilah A. Walsh, City Manager Initials:

DATE: May 22, 2024 File #: MGR24-346

RE: Ordinance No. 24-1990, Amending Ketchikan Municipal Code Section 9.04.030; Entitled "Penalty" Relating to Disorderly Conduct and Disturbing the Peace; and Establishing an Effective Date

During the regular Council meeting of May 2, 2024, Councilor Riley Gass requested a future agenda item increasing the fines and penalties for public intoxication, assault and disturbing the peace. The attached ordinance, prepared by City Attorney Mitch Seaver, increases penalties under Ketchikan Municipal Code (KMC) 9.04.030 related to disorderly conduct. Mr. Seaver's accompanying memo clarifies that public intoxication was decriminalized by the State in 1972 and that more severe assaults fall under the State Criminal Code.

The ordinance, if adopted after first and second reading, increases the penalties for disturbing the peace and disorderly conduct from a maximum of $1,500 or 24-hours imprisonment to a maximum of $2,000 or 72-hours imprisonment. Please also note that the City of Ketchikan is financially responsible for incarceration stemming from charges made under the KMC.

Many individuals who commit disorderly conduct are released on their own recognizance (ROR) after arrest. Increased fines or jail time may not deter repeat offenses if the underlying reasons (e.g., complex issues like homelessness, mental health challenges, and substance abuse) for their behavior are not addressed. I've included a memorandum from Police Chief Jeffrey Walls presented to Council on 10/05/2023 explaining their challenges with enforcement.

In my ongoing effort to understand police challenges, I conducted research and prepared tables that may be helpful in your analysis. These are also included with this memo as it is important the public understands the limitations of our enforcement.

A motion has been prepared for City Council Consideration.

Motion: I move the City Council adopt Ordinance No. 24-1990 in first reading, amending Ketchikan Municipal Code Section 9.04.030; entitled "Penalty" relating to disorderly conduct and disturbing the peace; and establishing an effective date.

SB91 Prison Reform

Senate Bill 91 (SB 91), a significant piece of legislation enacted in the summer of 2016, aimed to reduce Alaska's prison population by approximately 13%. It achieved this by implementing reforms across pretrial, sentencing, and corrections aspects of the criminal justice system.

The Anchorage Daily News published a comprehensive three-part series in October 2017 exploring the impact of SB 91. For your reference, I've included the links to all three parts of this series in the footnotes of this memorandum.[1]

While this memo doesn't delve into potential changes made since SB 91's enactment, it focuses on a key element: pretrial release. A report by the Pew Charitable Trusts, included in this packet[2] summarizes the reforms and highlights the statutory framework established by SB 91. This framework recommends, and in some cases mandates, the release of defendants on their own recognizance (ROR) for most non-violent misdemeanors. Two tables from the Pew report outlining these recommendations and mandates are included below for your reference. The full report can be found in the attached documents.

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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[1] Part 1: https://www.adn.com/features/alaska-news/crime-courts/2017/10/21/people-in-anchorage-are-fed-up-with-crime-did-sb-91-make-it-worse/
Part 2: https://www.adn.com/alaska-news/crime-courts/2017/10/21/how-alaskas-big-criminal-justice-reform-law-came-to-be/
Part 3: https://www.adn.com/alaska-news/crime-courts/2017/10/21/how-sb-91-has-changed-alaskas-criminal-justice-system/

[2] www.pewtrusts.org/~/media/assets/2016/12/alaskas_criminal_justice_reforms.pdf

Process of Arrest to Prosecution

Alaska's criminal justice system follows a specific path from arrest to potential prosecution. Upon arrest, a suspect may be booked and held in jail while awaiting a hearing. However, in many cases, particularly for non-violent offenses, defendants are released ROR. This means they are released from jail with the promise to appear for future court dates. Pretrial services play a crucial role in this process, evaluating a defendant's flight risk and potential danger to the community.

* The City of Ketchikan is financially responsible for incarcerations stemming from charges made under the KMC. Currently, our incarceration costs are structured as follows:

- $50.55 for detentions lasting 0-4 hours
- $202.21 for detentions lasting 4-24 hours

** The process of arrest signifies the filing of charges against an individual, either on behalf of the State or the City of Ketchikan. If a prosecutor chooses not to pursue charges by the arraignment date, the charges are dropped, and the case is dismissed from the court system. However, the prosecutor does have the option to re-file charges at a later date.

*** Under the current KMC code 9.04.030, a judge can impose a maximum fine of $1,500 and imprisonment for up to 24 hours for charges of disorderly conduct. If Ordinance 24-1990 is approved, these penalties would increase to a maximum fine of $2,000 and imprisonment for up to 72 hours.

Mitch Seaver
City Attorney
City of Ketchikan, Alaska

334 FRONT STREET
Ketchikan, Alaska 99901
Telephone (907) 228-5611
Facsimile (907) 247-2111

MEMORANDUM

TO: **Delilah Walsh, City Manager**

FROM: **Mitch Seaver**
City Attorney

DATE: **May 21, 2024**

SUBJECT: **City Criminal Penalties**

Councilmember Gass has asked about the possibility of increasing the penalties for certain city criminal offenses.

Ketchikan Municipal Code 9.04.010(a) sets forth the offenses that constitute disorderly conduct:

(a) A person who does any of the following is guilty of a misdemeanor:

> (1) In a public place repeatedly or continuously shouts, blows a horn, plays a musical or recording or amplifying instrument, or otherwise generates loud noises intending to disturb or acting with reckless disregard for the peace and privacy of others, or, in a private place, engages in the same conduct with the same intent or reckless disregard, having been informed by another that the conduct is disturbing the peace and privacy of others not in the same place;
>
> (2) In a public place when a criminal offense has occurred, refuses to comply with a lawful order of the police to disperse, or in a private place refuses to comply with an order of the police to leave a premises in which he has neither a right of occupancy nor the express invitation to remain of the person having the right of possession;
>
> (3) In a public or private place challenges another to fight, or engages in fighting other than in self-defense; or
> (4) In a public or private place acts in a violent or tumultuous manner toward another whereby a person of common intelligence would reasonably be put in fear of safety of his life, limb, or health;
>
> (5) In a public or private place acts in a violent or tumultuous manner toward another whereby the property of any person is placed in danger of being destroyed or damaged;

(6) In a public or private place by acts of violence interferes with another's pursuit of a lawful occupation;

(7) In a public or private place addresses abusive language or threats to any person present which creates a clear and present danger of violence;

(8) In a public place assembles together with two or more persons with intent to do any unlawful act with force or violence against the person or property of another, and who makes any overt act to carry out such unlawful purpose;

(9) (A) Knowingly consumes any alcoholic beverage, or knowingly possesses an open container of any alcoholic beverage, in any public carrier, or in any business establishment offering goods or services to the public, or in any other public place,

(B) Subsection (a)(9)(A) of this section shall not apply to the premises of a business establishment licensed to dispense alcoholic beverages for consumption on its premises,

(c) As used in this section "alcoholic beverage" includes, but is not limited to, whiskey, brandy, rum, gin, wine, ale, porter, beer, and all other spirituous, vinous, malt and other fermented or distilled liquors intended for human consumption;

(10) Damages, befouls, or disturbs public property or property of another so as to create an unhealthy or physically offensive condition;

(11) In a public place willfully exposes his sexual organs or private parts; or in a private place willfully exposes his sexual organs or private parts where such exposure can be seen from a public or private place and is annoying or offensive to any other person or persons;

(12) In a public or private place unlawfully assaults or threatens another in a menacing manner, or unlawfully strikes or wounds another, or otherwise assaults or commits assault.

While this ordinance encompasses certain assaultive conduct, more serious situations and forms of assault are prosecuted by the State of Alaska under the State Criminal Code. At one point the State Legislature set the jail time for disorderly conduct for not more than 24 hours. It has since authorized a greater penalty of a fine not to exceed $200, up to 72 hours imprisonment for a first conviction and up to 10 days for a second or subsequent conviction. A proposed ordinance to change the City's penalty is transmitted

herewith. The proposed ordinance also increases the fine to $2000, the current maximum for class B misdemeanors under state law.

Councilmember Gass also asked about public intoxication. Public intoxication was decriminalized in 1972 by the State Legislature's adoption of the Uniform Alcohol and Treatment Act. The policy behind that Act is set forth in AS 47.37.010:

> It is the policy of the state to recognize, appreciate, and reinforce the example set by its citizens who lead, believe in, and support a life of sobriety. *It is also the policy of the state that alcoholics and intoxicated persons should not be criminally prosecuted for their consumption of alcoholic beverages* and that they should be afforded a continuum of treatment that can introduce them to, and help them learn, new life skills and social skills that would be useful to them in attaining and maintaining normal lives as productive members of society. (Emphasis added).

Under the Act, a person who appears to be incapacitated by alcohol in a public place is not arrested, but is to be taken into protective custody by a peace officer.[1]

cc: Jeff Walls, Chief of Police

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[1] AS 47.37.170 provides in part:

> (b) A person who appears to be incapacitated by alcohol or drugs in a public place shall be taken into protective custody by a peace officer or a member of the emergency service patrol and immediately brought to an approved public treatment facility, an approved private treatment facility, or another appropriate health facility or service for emergency medical treatment. If no treatment facility or emergency medical service is available, a person who appears to be incapacitated by alcohol or drugs in a public place shall be taken to a state or municipal detention facility in the area if that appears necessary for the protection of the person's health or safety. However, emergency protective custody under this subsection may not include placement of a minor in a jail or secure facility.
> . . .
> (e) A person who is not admitted to an approved public treatment facility, is not referred to another health facility, and has no funds, may be taken to the person's home, if any. If the person has no home, the approved public treatment facility shall assist the person in obtaining shelter.
> . . .
> (g) A person may not bring an action for damages based on the decision under this section to take or not to take an intoxicated person or a person incapacitated by alcohol or drugs into protective custody, unless the action is for damages caused by gross negligence or intentional misconduct.

THE CITY OF KETCHIKAN, ALASKA

ORDINANCE NO. 24-1990

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA; AMENDING KETCHIKAN MUNICIPAL CODE SECTION 9.04.030; ENTITLED "PENALTY" RELATING TO DISORDERLY CONDUCT AND DISTURBING THE PEACE; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA, AS FOLLOWS:

Section 1: Amendment. Section 9.04.030 of the Ketchikan Municipal Code, entitled "Penalty," is hereby amended to read as follows:

> "Any person who violates any provision of this chapter, or performs any unlawful act as defined in this chapter, or fails to perform any act required by this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed $**2,000** [~~1,500~~] or imprisonment for not more than **72** [~~24~~] hours **if the offense is a first conviction or 10 days if the offense is a second or subsequent conviction**, or both such fine and imprisonment.

Section 2: **Effective Date**. This ordinance is effective one (1) month after its final passage and publication, but in any event, no earlier than August 1, 2024.

PASSED ON FIRST READING _____.

FINAL PASSAGE _____.

_____
Dave Kiffer, Mayor

ATTEST:

_____

Kim L. Stanker
City Clerk

FYI: Bracketed language is intended to be removed from the existing ordinance, and underlined language in bold type is intended as an addition to the existing Ketchikan Municipal Code.

EFFECTIVE DATE:			
ROLL CALL	YEA	NAY	ABSENT
FINNEGAN			
FLORA			
GAGE			
GASS			
KISTLER			
MAHTANI			
ZENGE			
MAYOR			

KETCHIKAN POLICE DEPARTMENT
361 Main Street
Ketchikan, Alaska 99901
Phone (907) 225-6631
Fax (907) 247-6631

TO: Delilah Walsh, City Manager

FROM: Jeffrey Walls, Chief of Police

DATE: September 12, 2023

RE: **Enforcement issues for Police**

The purpose of this memo is to address and educate the council on concerns, discussed during this past City Council meeting, regarding enforcement issues faced by our officers on daily basis, as well as offer suggestions to improve these issues. Also for reference is a previous memorandum from August 22, 2022, which addresses homeless issues and why alternatives to police enforcement are the best options.

Currently, our officers respond to over 200 complaint calls per month involving homeless individuals. In most of these cases, the complaint involves a crime that would follow under the charge of disorderly conduct and the perpetrator suffers from a mental illness. Those individuals suffering from mental illness typically self-medicate with illegal drugs and alcohol making their symptoms worse. A major issue that needs to be addressed is the need for adequate mental health assistance. Please refer to my August 2022 memo.

As far as enforcement of crimes, we have Issues with municipal violations such as disorderly conduct due to the lack of prosecution or punishment for these offenses. In addition, it is compounded when individuals have mental illness or under the influence of drugs or alcohol. In these cases it pulls our officers off the street for hours to have these individuals sober enough to be accepted by the correctional system. Once they are accepted, because of the nature of the crimes these individuals are then released on their own recognizances. In most of these cases the individual is released even before the officers have finished the necessary paperwork to process the arrest. Unless the defendant in some way provokes public interest and excitement they are not held by the court system and usually in these cases the charges are dismissed. Especially if it is established that the individual has a mental illness.

I made the comment that we are not going to arrest our way out of this situation because in today's environment, under the current criminal justice system, we are not. We continue to make arrests expecting a different outcome, but that is not the case. The more arrest we make seems to only convolute the problem by inundating the courts with pending cases, which in turn bogs down the system. Again, unless the case we present provokes public interest and excitement they are often overlooked for those cases that do.

For example, on September 11, 2023 at about 10:24 p.m., our officers arrested, "Harry" in the 600 block of Dock St, for Disorderly Conduct, Violation of Conditions of Release and Misconduct Involving Weapons 5th degree. Due to the arrested subject having a previous injury, he was transported to the hospital to be medically cleared prior to booking. This was the second arrest of the subject that day. He had been previously arrested for Theft 4 and Violations of Conditions of Release earlier in the afternoon. He was in jail, approximately 5 hours before he was released to only be re-arrested.

Prior to these two arrest, the arrested subject had been arraigned and released in 6 pending criminal cases for which he is currently awaiting trial and is out on conditions of release which stipulate he obey all laws. These cases included 4 cases of Theft in the 4th degree, 1 case of Trespass, and Violations of Conditions of Release, and 1 case of Disorderly Conduct and Violation of Conditions of Release.

The arrested subject has a criminal history spanning 29 years in Alaska including 6 felony convictions and 30 misdemeanor convictions. Our first contact with the arrested subject was in June of 2022. Since then we have had over 167 contacts with him. The arrested subject was a resident of Metlakatla, who due to tribal laws, has been banished from Annette Island. He is currently homeless in Ketchikan.

Another example is Joseph Schacher Jr. who we have almost daily encounters. At the time of the Arson he was under Misdemeanor Probation and had 5 previous Misdemeanor Arrests, as well as 2 previous Felony Arrests.

These are just two examples of the problems we see daily.

Recommendations for City Development

We need a sobering center to relieve our officers from spending hours sitting on individuals. This would free officers up to be in the areas we need them to be a deterrent to others from committing crimes. We believe the best option would to make this part of the hospital.

We need a public intoxication charge, such as Drunk in Public. We currently do not have this charge and it could be enforced in conjunction with the Sobering

Center. Individuals under the influence of narcotics or alcohol could be charged and brought to the sobering center to detox without requiring our officers to sit on these individuals for hours at a time.

We need adequate mental health programs to ensure individuals who suffer from mental illness receive the treatment they need and currently do not get here. When we respond to an issue involving a subject with mental illness, our only option is the Emergency Room, which evaluates but does not treat their illness. The hospital stabilizes and releases these individuals back into the public. This could also be a part of the sobering center as most of our habitual offenders suffer from mental illness and self-medicate with drugs and alcohol. Having an evaluation and treatment center would help eliminate some of our habitual offenders, who self-medicate.

The city should hire an Assistant City Attorney to prosecute municipal arrest. Our City Attorney handles an overwhelming number of duties for the city. When not in court, the Assistant City Attorney could assist in other city issues. If needed, I can elaborate more.

We would also recommend the city fence off centennial lot and add additional lighting. This area could still be used as public parking with a ticket and an app allowing pedestrian entrance to return to the owner's vehicle. The gate would open and close both to entry and exit by the vehicle. We currently deal with individuals using this area to administer drugs out of sight.

The last recommendation is what I believe everyone is already in agreement with the moving of First City Homeless away from high drug areas. Where the facility is currently located allows easy access to drugs, allowing for self-medicating.

What the Department is doing

We are scheduling all of our officers to receive Crisis Intervention Training. This allows the officers to quickly evaluate individuals and determine if the individual is suffering from a mental issue. This helps prevent injuries to the subject, as well as officers. It also helps us get these individuals the care they need.

Focusing enforcement on what is compounding the issues by the use of self-medicating with drugs and alcohol.

The placement of Crime Cameras, which will be directly fed to the police department. These cameras will be fitted with red and blue LED lights on top that constantly activate to draw ones attention to the cameras. The lights are only to draw the attention to the camera and will not be bright enough to disturb residents or businesses. Cameras such as these have been used in other cities to reduce crime where they were placed. They provide a visible deterrent and causes individuals to think before acting.

We will also continue to enforce all laws currently established.

In conclusion, we feel that the aforementioned steps need to be taken by the city to help with ongoing issues the police and fire departments face. Regarding homelessness, as I have previously stated, we need a whole community approach to resolve this issue. Regarding crime and enforcement, as you can see from Joseph Schacher and "Harry" we have a lack of prosecution unless the case we present provokes public interest and excitement. These cases are often overlooked for those cases that do and the punishment for misdemeanor offenses, such as these, it is also lacking any real consequences.

Respectfully Submitted,

Chief Jeffrey H. Walls
Ketchikan Police Department

Approved / Disapproved

Delilah Walsh
City Manager

Comments:

KETCHIKAN POLICE DEPARTMENT
361 Main Street
Ketchikan, Alaska 99901
Phone (907) 225-6631
Fax (907) 247-6631

TO: Lacey Simpson, Acting City Manager

FROM: Jeffrey Walls, Chief of Police

DATE: August 22, 2022

RE: **Homeless issues relative to Disorderly Conduct and Open Containers**

The purpose of this memo is to address and educate the council on concerns, discussed during this past City Council meeting, regarding the homeless and police response. It will specifically discuss the enforcement of the municipal ordinance on Disorderly Conduct – Disturbing the peace.

Homelessness is often wrongly seen as an issue that law enforcement should be tasked with handling. Unfortunately, this is not the case as law enforcement only has two tools to deal with the issue of the homelessness. Law enforcement can either arrest or temporarily make the homeless move in order for areas to be cleaned. Criminalizing homelessness is unconstitutional and only makes the problem worse for the city. All individuals have the same rights and if anyone decides they would like to live on the street, they can do so without violating any laws. What we see with most of our homeless is very typical of most cities. We have homeless that have had a bad turn of luck and are working to get back on their feet and then there are those homeless who have resistance to assistance. The latter tends to be our problem homeless and most have substance abuse, mental health problems or a combination of both. They take up a majority of our calls and most have medical issues related to their addictions or mental illness. These individuals when they do commit crimes punishable by arrest either are refused due to their medical condition or released in less than 24 hours. In order to address the homeless problems we need a whole community approach. We will not arrest our way out of this situation.

For the month of July, the city handled 22 calls for service associated with First City Homeless Shelter. Those calls included the following complaints. 7 medical complaints, 4 assistance rendered / welfare checks, 4 disorderly conduct complaints, 4 suspicious activity may involve drug use, 2 trespassing complaints, and 1 civil complaint. With only 7 of the calls being handled by EMS and Fire,

the police department handles the bulk of the complaints involving our homeless. For the month of July we arrested 10 individuals for Disorderly Conduct – Disturbing the Peace complaints. Below is the municipal code for Disorderly Conduct – Disturbing the Peace, which includes open containers. Also included for understanding is the possible fine and punishment for this offense. Note that they are released within 24hrs.

Disorderly Conduct –Disturbing the Peace

9.04.010 Certain acts declared misdemeanors. SHARE

(a) A person who does any of the following is guilty of a misdemeanor:

(1) In a public place repeatedly or continuously shouts, blows a horn, plays a musical or recording or amplifying instrument, or otherwise generates loud noises intending to disturb or acting with reckless disregard for the peace and privacy of others, or, in a private place, engages in the same ***conduct*** *with the same intent or reckless disregard, having been informed by another that the* ***conduct*** *is disturbing the peace and privacy of others not in the same place;*

(2) In a public place when a criminal offense has occurred, refuses to comply with a lawful order of the police to disperse, or in a private place refuses to comply with an order of the police to leave a premises in which he has neither a right of occupancy nor the express invitation to remain of the person having the right of possession;

(3) In a public or private place challenges another to fight, or engages in fighting other than in self-defense; or

(4) In a public or private place acts in a violent or tumultuous manner toward another whereby a person of common intelligence would reasonably be put in fear of safety of his life, limb, or health;

(5) In a public or private place acts in a violent or tumultuous manner toward another whereby the property of any person is placed in danger of being destroyed or damaged;

(6) In a public or private place by acts of violence interferes with another's pursuit of a lawful occupation;

(7) In a public or private place addresses abusive language or threats to any person present which creates a clear and present danger of violence;

(8) In a public place assembles together with two or more persons with intent to do any unlawful act with force or violence against the person or property of another, and who makes any overt act to carry out such unlawful purpose;

(9) (A) Knowingly consumes any alcoholic beverage, or knowingly possesses an open container of any alcoholic beverage, in any public carrier, or in any business establishment offering goods or services to the public, or in any other public place,

(B) Subsection (a)(9)(A) of this section shall not apply to the premises of a business establishment licensed to dispense alcoholic beverages for consumption on its premises,

(C) As used in this section "alcoholic beverage" includes, but is not limited to, whiskey, brandy, rum, gin, wine, ale, porter, beer, and all other spirituous, vinous, malt and other fermented or distilled liquors intended for human consumption;

(10) Damages, befouls, or disturbs public property or property of another so as to create an unhealthy or physically offensive condition;

(11) In a public place willfully exposes his sexual organs or private parts; or in a private place willfully exposes his sexual organs or private parts where such exposure can be seen from a public or private place and is annoying or offensive to any other person or persons;

(12) In a public or private place unlawfully assaults or threatens another in a menacing manner, or unlawfully strikes or wounds another, or otherwise assaults or commits assault.

(b) In a prosecution under subsection (a)(1) of this section:

(1) If the loud noise constitutes speech, the content of speech or evidence of specific words used by the defendant is admissible in evidence against him only as permitted by court rule;

(2) In this section a noise is a "loud noise" if, considering the nature and purpose of the defendant's ***conduct*** *and the circumstances known to the defendant, including the nature of the location and the time of day or night, the* ***conduct*** *involves a gross deviation from the standard of* ***conduct*** *that a reasonable person would follow in the same situation. "Loud noise" also includes noises which are loud enough to inhibit the ability of the average person in the same or adjacent place to speak freely. Noise does not include speech to the extent that the speech is constitutionally protected.*

(c) In this section a "public place" is a place where the public is permitted to assemble, enter or pass through, whether publicly or privately maintained, including but not limited to places of accommodation, transportation, business and entertainment, or any other place which is not a private place. (Ord. 1404 § 1, 1998; Ord. 1073 § 1, 1986; Ord. 778 § 1, 1973)

9.04.030 Penalty. SHARE

Any person who violates any provision of this chapter, or performs any unlawful act as defined in this chapter, or fails to perform any act required by this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed $1,500 or imprisonment for not more than 24 hours, or both such fine and imprisonment. (Ord. 1824 § 1, 2016; Ord. 1528 § 1, 2005; Ord. 839 § 1, 1975; Ord. 778 § 1, 1973)

Unfortunately, what is too often missed is the amount of work that is being done by law enforcement to address the homeless problem through alternative responses. The Ketchikan Police Department does more for the homeless than any other city organization. We engage the homeless 24 hours a day, 7 days a week. We provide, transportation, food and social work on a regular basis. Right now we have homeless individuals that no shelter, and no hospital will take because of prior behavior. In the same breath the jails will not incarcerate them on misdemeanor offenses because of their physical or mental condition. Most of our homeless function with a much higher level of alcohol in their system making them an instant refusal and requiring a medical release from the hospital. That being said, we are unable to sit an officer down with a subject at the hospital until their alcohol levels lower enough to be accepted in the jail. For a misdemeanor offense like disorderly conduct – disturbing the peace, they would be released before we would receive medical clearance at the hospital for them.

In particular we have been dealing with a homeless female who is an alcoholic in need of hip replacement but refuses to follow the rules at the shelters or stop drinking in order to get a new hip. The hospital refuses to take her because her only need is a hip replacement. She gets around by having others push her in a wheel chair. She will find places out of sight and drink till she is in a drunken stupor and then begins screaming for help. We are called and move her and remove any alcohol she has on her person. The department of corrections will not take her because of her medical condition. With no facilities available or willing to take her we give her as much assistance as we can until she is sober enough to go her own. This turns into a revolving door for us and is very frustrating to everyone involved.

We need a whole community approach to resolve our homeless issues. I would suggest looking at the United States Interagency Council on Homelessness (USICH.gob), and Alaskan Housing Finance Corporation (AHFC.US) for alternative ideas.

We can learn cautionary tales from cities that have made efforts to address their homeless population with tax dollars. It has become a lucrative business within large cities bringing in millions of dollars but providing very little for the people it was intended to help along with exacerbating the problem by increasing the number of homeless. San Francisco doubled their spending on homeless and have more permanent supportive housing units per capita than any other city but have seen a 13% increase in homeless when the national numbers were decreasing. Housing alone will not address this problem, ancillary services are needed for substance abuse and mental healthcare.

Respectfully Submitted,

Chief Jeffrey H. Walls
Ketchikan Police Department

Alaska's Criminal Justice Reforms

Comprehensive law improves pretrial, sentencing, and corrections policies

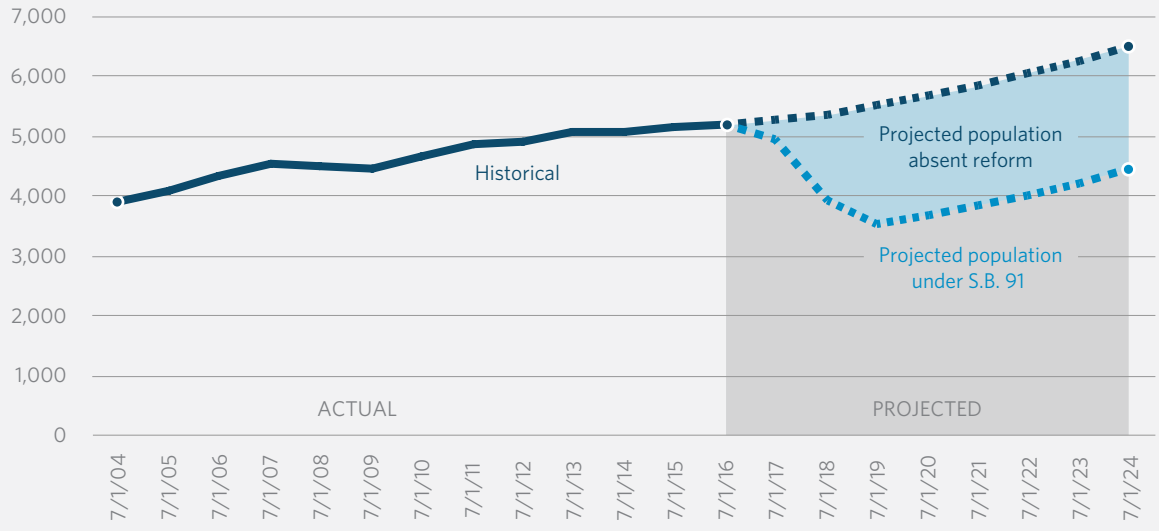
Overview

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.

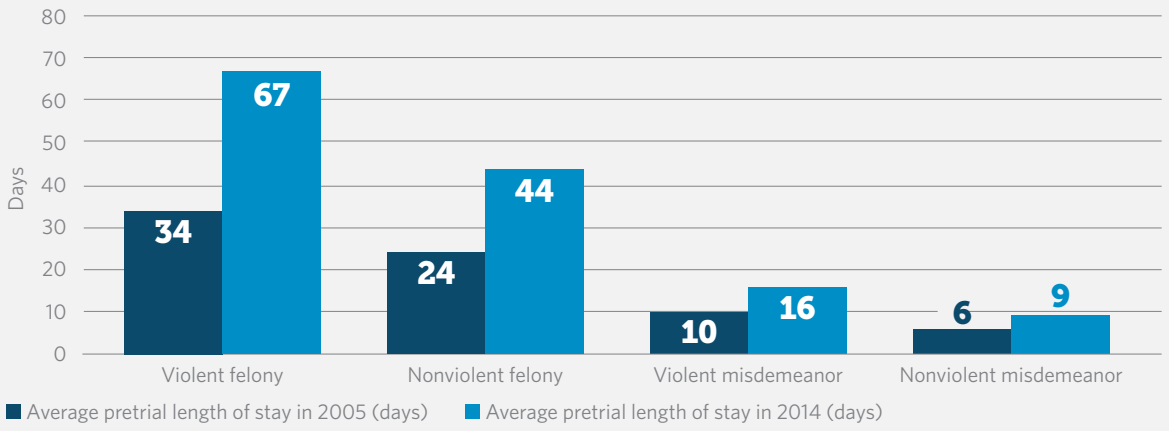
1. Growth in the pretrial population

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.

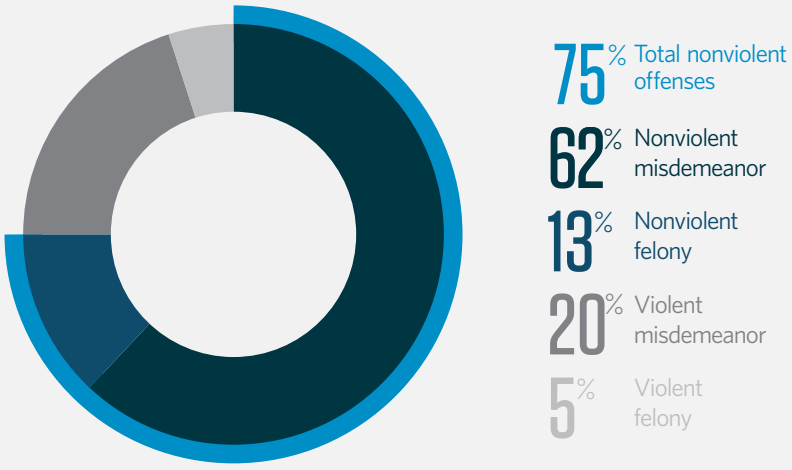
2. Most post-conviction admissions were for lower-level, nonviolent offenses

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)

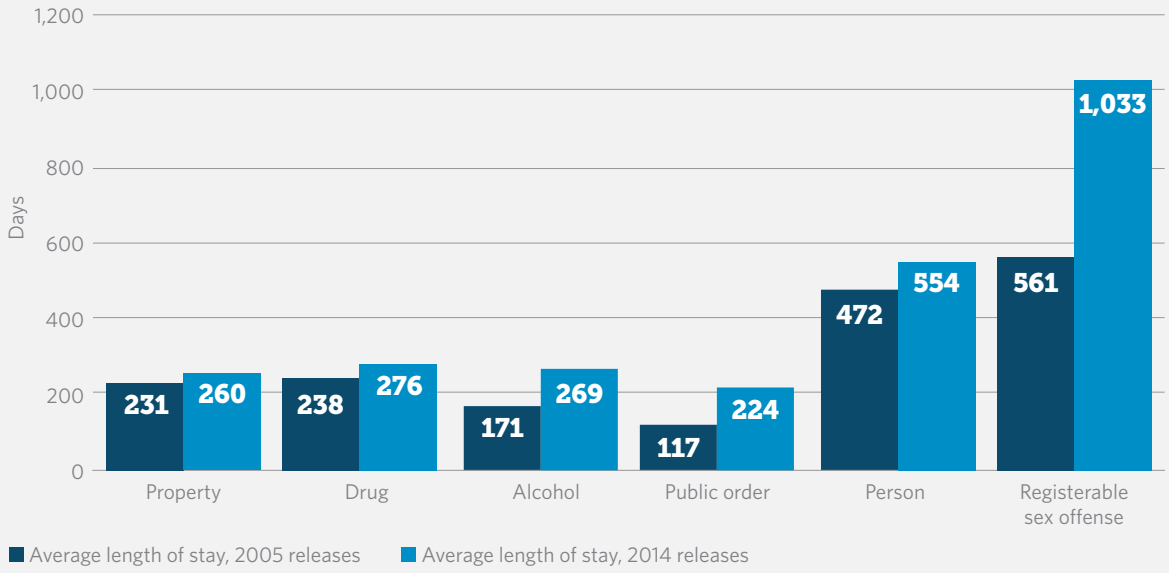
3. Longer prison stays for felony offenses

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)	mandatory minimum - maximum sentence	
Murder I	20*-99	30*-99
Murder II	10*-99	15*-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**

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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

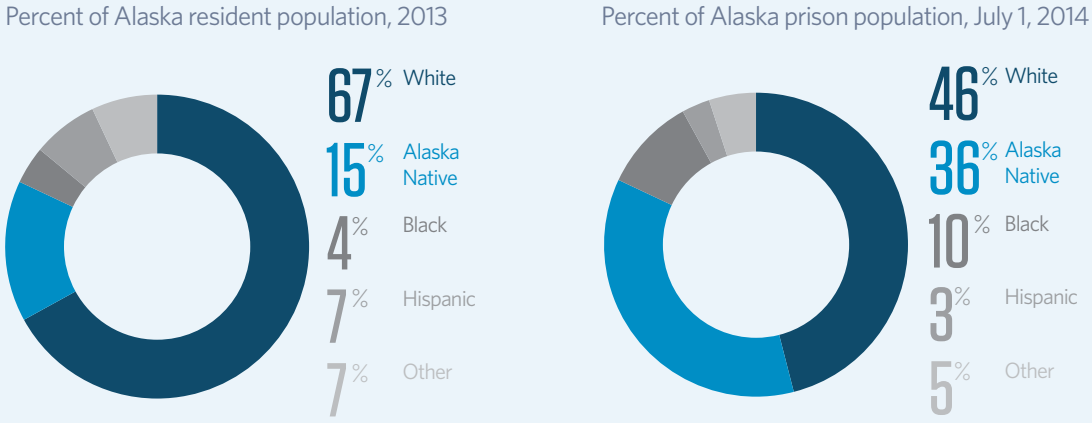
Alaska Natives represent 15 percent of the state's resident population, but they account for 36 percent of its prison population.* (See Figure 5.) To address this overrepresentation, the Alaska Criminal Justice Commission reached out to tribal courts, councils, and communities for help in assessing the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



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 Criminal Justice Commission

Alaska Department of Corrections

Alaska Department of Law

Alaska Department of Health and Social Services

Alaska Department of Public Safety

Alaska Federation of Natives

Alaska Mental Health Board—Advisory Board on Alcoholism and Drug Abuse

Alaska Mental Health Trust Authority

Alaska Network on Domestic Violence & Sexual Assault

Alaska Policy Forum

Alaska Public Defender

Alaska Republican Party

Alaska Regional Coalition

Alaska Violent Crimes Compensation Board

Arctic Women in Crisis

Bristol Bay Native Corporation

Cordova Family Resource Center

Fairbanks Diversity Council

Fairbanks Native Association

Greater Fairbanks Chamber of Commerce

Jeffersonian Project

Kawerak Inc.

Mat-Su Health Foundation

NAACP—Anchorage

Partners for Progress

Supporting Our Loved Ones Group

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; 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.

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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