



# ALASKA CRIMINAL JUSTICE COMMISSION

Annual Report

October 22, 2017

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## Executive Summary

### SB 91 Implementation & Performance Report

In July 2016, following a two-year process of data analysis, stakeholder meetings, public hearings, policy development and legislative scrutiny, the Alaska Legislature passed and Governor Bill Walker signed into law Senate Bill 91 (SB 91), the Omnibus Criminal Law, Procedure and Corrections Act.

Prior to the passage of SB 91, the state was facing a rapidly growing prison population and corrections budget as well as persistently high recidivism rates – nearly two out of every three people released from Alaska prisons returned within three years. Following lessons learned from successful criminal justice reform efforts in other states as well as the best available research, Alaska developed a comprehensive, data-driven plan designed to help the state tackle recidivism in a more cost-effective manner.

Implementation of SB 91 is a multiyear process involving numerous state agencies and non-profit partners. Key dates include:

- **July 2016:** Sentencing reforms go into effect; reinvestment begins
- **January 2017:** Community supervision and parole policies go into effect
- **January 2018:** Pretrial reforms go into effect

At this time, not all of SB 91 has gone into effect. Other reforms – particularly the reinvestment efforts and improvements to reentry and community supervision practices designed to reduce recidivism – will take time to show results. It will take years before the full impact of SB 91 on Alaska’s criminal justice system can be measured.

This report discusses the early results of SB 91 as well as some key trends following passage. Additional details on implementation and reinvestment efforts, as well as recommendations to the Legislature for future system improvements, are included in the full Alaska Criminal Justice Commission report.

#### SB 91 GOALS

- 1) Reinvest in Programs Proven to Reduce Recidivism & Protect Public Safety
- 2) Implement Evidence-Based Pretrial Practices
- 3) Focus Prison Beds on Serious & Violent Offenders
- 4) Strengthen Probation & Parole Supervision
- 5) Improve Reentry Programming
- 6) Ensure Oversight and Accountability

## Early Results of SB 91

### Reducing Alaska's Prison Population

Alaska's prison population has decreased by 9.38% in the first year after passage, reducing the state's prison population from 4,658 in July 2016 to 4,221 in July 2017.

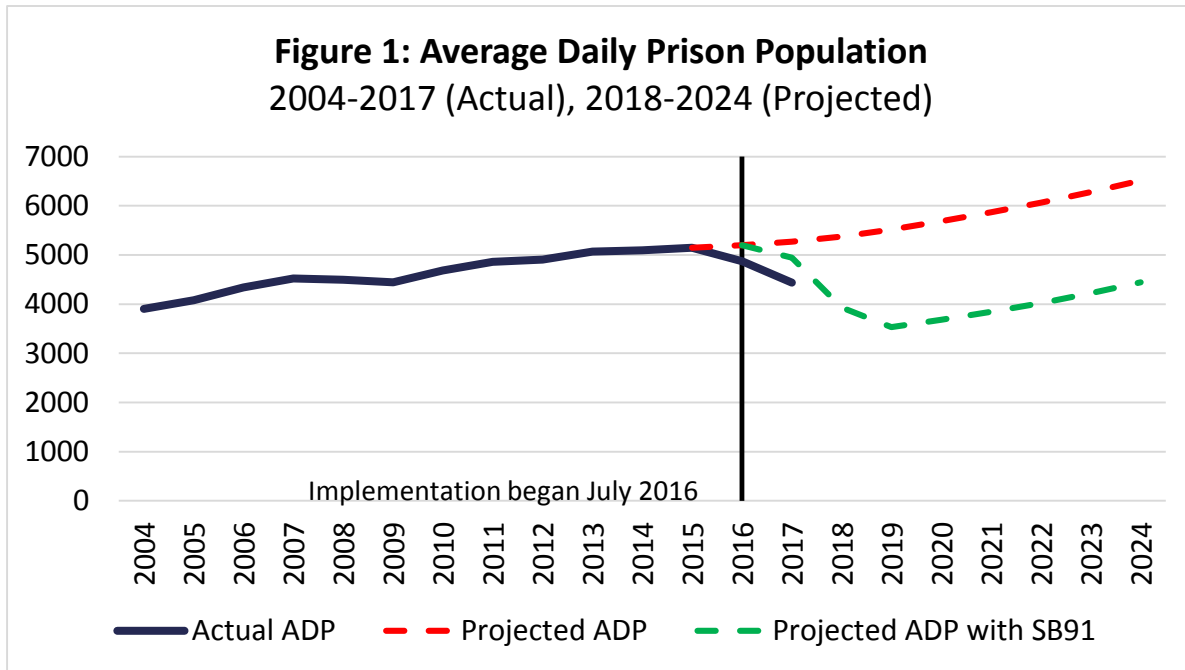


Figure 1 Source: Department of Corrections

### Millions in Savings

In the first year of implementation, SB 91 has saved Alaska millions in direct and avoided costs. By reducing the prison population by 437 beds from July 1, 2016 to July 1, 2017, Alaska has avoided \$3.8 million in annual prison growth costs and directly reduced operational costs, including \$5.6 million saved by DOC's closure of the 500-bed Palmer Correctional Center.

### Reinvesting in Programs that Reduce Recidivism and Protect Public Safety

Alaska has dedicated over \$25 million in upfront and ongoing investment to support the state's recidivism reduction goals and successful implementation of new programs and policies.

Approximately half of the funding – \$13.5 million – is being used to develop a brand new Pretrial Enforcement Division within the Department of Corrections. Starting in January 2018, Alaska will be providing pretrial supervision for defendants released pending trial for the first time.

Total Investments (FY17 and FY18)	
Substance Abuse Treatment	\$2,500,000
Reentry Support	\$3,000,000
Violence Prevention	\$3,000,000
Pretrial Enforcement	\$13,447,800
Technology Investments	\$1,500,000
Other Implementation Costs	\$2,059,700
<b>Total</b>	<b>\$25,507,500</b>

An additional \$2.5 million has been dedicated to increasing the availability of substance abuse treatments in DOC facilities, while \$3 million is being used to enhance reentry support for individuals released from prison and another \$3 million has gone to violence prevention programming.

## Key Trends Following Passage of SB 91

In the year following passage, Alaska state agencies – including the Department of Corrections, the Department of Law, the Alaska Court System and the Parole Board – have been hard at work implementing new policies and practices. Although it will be several years before the full results of these efforts will be seen, early progress on several fronts can be seen in the first year of implementation:

### *Focusing Prison Beds on Serious and Violent Offenders*

As a result of changes to Alaska’s drug and property laws as well as strategic changes in prosecutorial practices by the Department of Law, Alaska’s prison beds are increasingly focused on violent offenders. From FY 16 to FY 17, admissions for non-violent misdemeanors, as a proportion, dropped by 19.5%, while admissions for non-violent felonies dropped by 9%. This means that relatively more of Alaska’s prison resources are devoted to those committing more serious, violent offenses, as is demonstrated in the chart below.

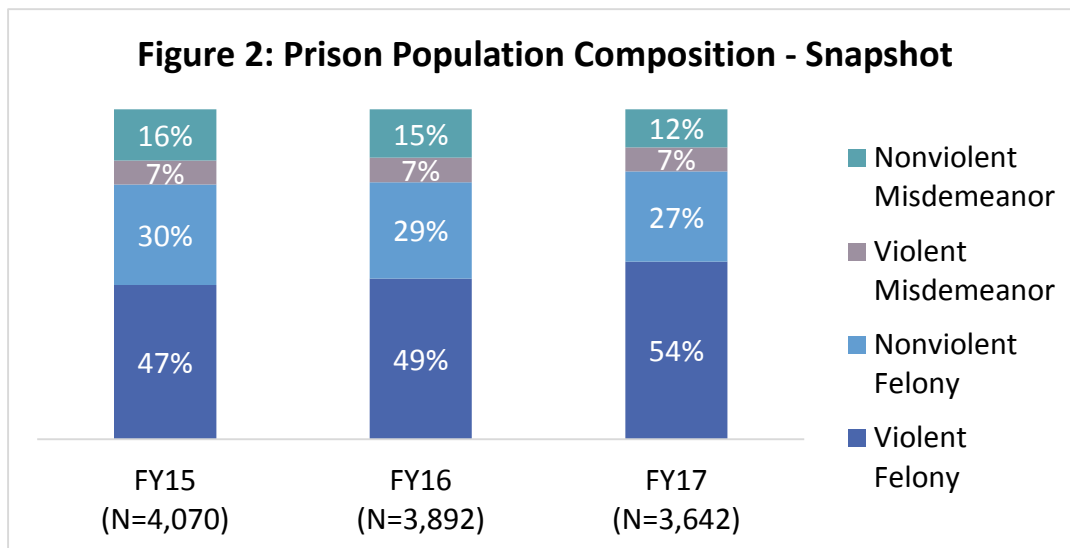


Figure 2 Source: Department of Corrections

### *Reduction of Use of Prison for Violations of Supervision*

Between 2005 and 2014, the number of people who returned to prison for violations of the conditions of their probation or parole increased 32%. Approximately three-quarters of those returns to prison were for technical violations – behaviors such as consuming alcohol, missing or failing a drug test, or failing to report to a probation officer.

Since 2015, the Department of Corrections (DOC) has been working to improve supervision practices, with an increased focus on high-risk offenders, frontloading resources in the months immediately following release, and responding to technical violations in a swift, certain, and proportionate manner – practices research indicates is successful in changing behavior and ultimately reducing recidivism. The passage of SB 91 helped support and accelerate these efforts: now, the sanction for technical violations involves a much shorter time in prison, but the prison time is served immediately after discovery of the violation.

As a result of these changes, the share of individuals in prison on a supervision violation has declined by 5.6 percentage points from January 2015 to April 2017, with the decline accelerating in the months leading up to and following the effective date of SB 91's community supervision reforms.<sup>1</sup>

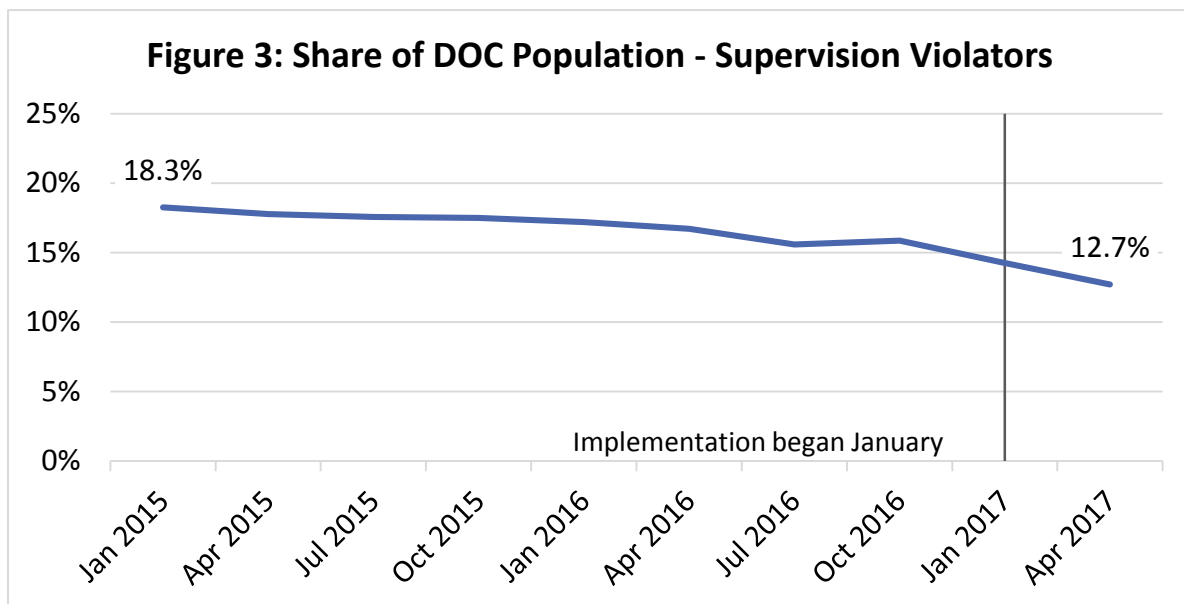


Figure 3 Source: Department of Corrections

### *Increased Opportunities for Parole*

Under SB 91, opportunities for parole have increased. A study of DOC's files in 2015 found that only a small percentage of inmates who were eligible under the law for discretionary parole consideration were appearing before the Parole Board, which was attributed to a cumbersome application and review process. In response, SB 91 required that all eligible prisoners be considered by the Parole Board for release.

This change has resulted in a 141% increase in the number of discretionary parole hearings. Despite hearing more cases, the Board's parole grant rate has remained virtually unchanged. This preliminary evidence suggests the goals of the parole reform are being met:

<sup>1</sup> Anecdotally, some judges began imposing revocations in line with SB 91 before the revocation limits went into effect in January 2017.



more individuals who are eligible for discretionary parole are being considered, but the Parole Board continues to exercise its judgment in the same manner with respect to which inmates should be granted discretionary parole.

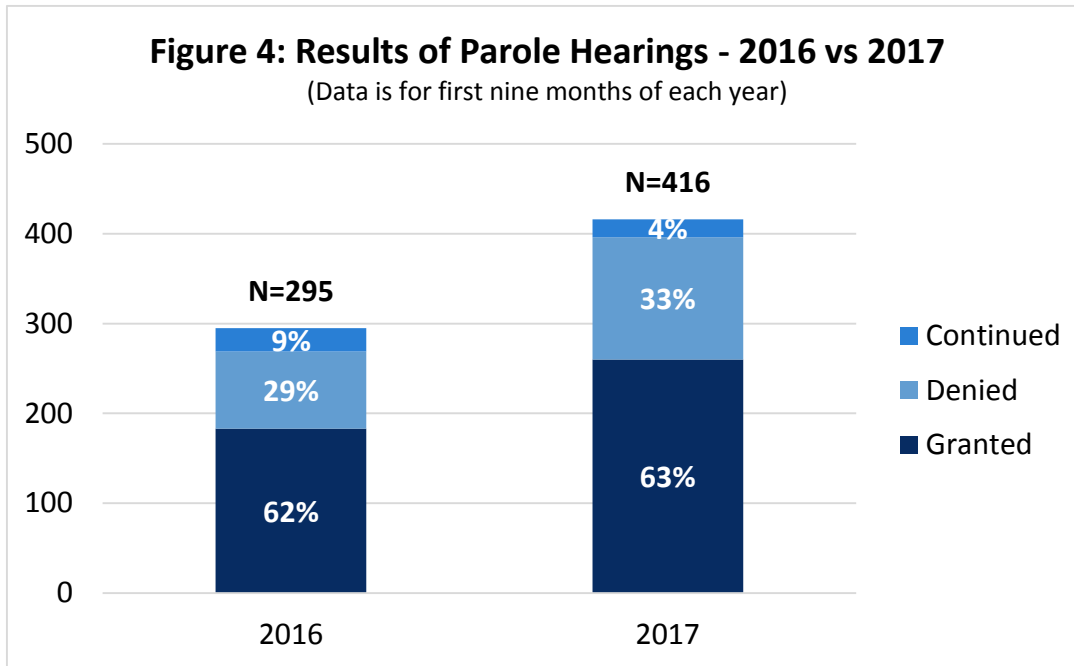


Figure 4 Source: Parole Board

## Next Steps for SB 91

As we take stock of the progress made one year after the passage of SB 91, more is yet to come. The three biggest areas of focus are: the pretrial reforms that take effect in January; continued data collection; and further reinvestment in treatment and community services.

### Pretrial Reforms

One major part of JRI has not yet been implemented. Reforms to Alaska's pretrial system will become effective on January 1, 2018. SB 91 enacted evidence-based pretrial practices to improve public safety and pretrial outcomes, including creating a pretrial enforcement division and changing bail practices to focus pretrial release decisions on risk.

Pretrial Before and After SB 91 – What's the Difference?	
Pre-SB 91	Starting January 2018
<ul style="list-style-type: none"> <li>✓ Release based on payment of bail to ensure appearance</li> <li>✓ Amount of bail set is used as a proxy for a defendant's risk</li> <li>✓ No supervision of defendants who are released</li> <li>✓ Heavy reliance on civilian third-party custodians</li> </ul>	<ul style="list-style-type: none"> <li>✓ Release based on results of a risk assessment and the offense</li> <li>✓ Risk assessment calculates a defendant's risk of failure to appear and of a new arrest</li> <li>✓ Supervision (based on risk level) of defendants who are released</li> <li>✓ Restrictions on use of third-party custodians</li> </ul>

The Pretrial Enforcement Division, created in 2016, is a new function for Alaska DOC. The Pretrial Service Officers in this division will:

- Perform pretrial risk assessments.
- Provide court reports and recommendations.
- Monitor and supervise individuals released pretrial and ordered to supervision.
- Remind defendants of court appearances and provide more intensive supervision if necessary.

### *Additional Data Collection*

As SB 91 implementation continues, the Alaska Criminal Justice Commission will continue to collect and analyze data to assess performance, and use this data to inform recommendations for refinements, adjustments, and additional reforms.

More data will become available on the effects of the law the longer it is in effect. Future reports are expected to contain additional information about community supervision reforms, performance measures on the pretrial reforms, and changes in recidivism over time.

### *Continued Reinvestment*

In addition to funding the Pretrial Enforcement Division detailed above, during this fiscal year, Alaska will continue to use reinvestment funding to:

- Expand the availability of substance abuse treatment services in DOC facilities, including a pilot Medication-Assisted Treatment program for individuals with opioid use disorder.
- Support the expansion of reentry case planning and services to more communities in Alaska.
- Continue programming focused on preventing violence, particularly domestic violence and sexual assault.

## **Recommendations for the Future**

### *Reinvestment*

The Commission has made and will continue to make recommendations on how best to allocate reinvestment money. Given the importance of effective treatment in reducing recidivism, the Commission strongly recommends further reinvestment in treatment for substance use and mental health issues going forward. Both are essential to help returning citizens succeed and to keeping individuals out of the criminal justice system.

Within this key priority area, the Commission recommends the Legislature base future reinvestment on the following principles:

1. Reinvestment should be strategic, data-driven, and collaboratively implemented.
2. Most reinvestment should be directed towards programs that are evidence-based.
3. Direct reinvestment towards evidence-based programs shown to reduce repeat offending.
4. Direct reinvestment towards programs that generate positive return on investment.
5. Prioritize funding for programs that target offender groups who are at high risk (and medium risk) for reoffending.
6. Target reinvestment at all areas of the state, including rural Alaska.
7. Maintain and expand funding for victims' services and prevention programming.

The Commission believes these focus areas will promote healthier communities and public safety, and ensure Alaska achieves the projected future savings.

### *Improvements to the Criminal Justice System*

The Alaska Criminal Justice Commission has, through research and study during the past year, crafted further recommendations to improve access to justice and the efficiency of the criminal justice system. These recommendations involve:

- **Restitution.** The Commission has developed a series of recommendations to improve the collection of restitution for crime victims.
- **Impaired Driving and Related Offenses.** The Commission has made several recommendations about license revocations, license reinstatement, and limited licenses.
- **Behavioral Health.** The Commission recommends allowing defendants with a mental illness to return to a group home on bail, adding behavioral health information to felony presentence reports, and adding the Commissioner of the Department of Health and Social Services to the Criminal Justice Commission.
- **Sentencing.** The Commission recommends adding statutory mitigators for acceptance of responsibility, amending statutes relating to the three-judge panel, and enacting vehicular homicide statutes.

## I. Introduction/Background

This is the Alaska Criminal Justice Commission's third annual report to the Alaska State Legislature. The Commission's reports are due to the Legislature by November 1 of every year.

The Alaska Criminal Justice Commission was formed by Senate Bill 64 (SB 64), an omnibus bill signed into law in July 2014. The bill was the product of a bipartisan effort to introduce evidence-based reforms to Alaska's criminal justice system. SB 64 gave the Commission a broad mandate to examine the state's criminal laws, sentences and practices.

### Members of the Alaska Criminal Justice Commission

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MATT CLAMAN, EX OFFICIO

ALASKA HOUSE OF REPRESENTATIVES

JOHN COGHILL, EX OFFICIO

ALASKA STATE SENATE

Since the Commission began meeting in September 2014, it has heard from community stakeholders, state agencies, experts, and the public about what works and what does not work in Alaska's criminal justice system.

The Commission has sent a number of recommendations to the Legislature, many of which have been enacted into law. The most notable piece of legislation to arise from the Commission's recommendations was Senate Bill 91 (SB 91), enacted in 2016, which made broad changes to Alaska's criminal justice system.

SB 91 tasked the Commission with monitoring the implementation of these reforms. Though there has been relatively little time for these reforms to show results (and many provisions have not yet taken effect by law), the following report contains some preliminary data and information about the implementation of SB 91.

This report also includes the Commission's additional recommendations for reforms to Alaska's criminal justice laws and for reinvestment in programs to reduce recidivism and improve public safety.

## II. The Commission's Work and Recommendations

The Commission is required by AS 44.19.645 to evaluate the effect of sentencing laws and criminal justice practices on the criminal justice system, including examination of public safety, community condemnation, the rights of crime victims and offenders, restitution, and the principle of reformation. The Commission discharges this responsibility through research and study, and through soliciting input from the public and experts within the criminal justice system. The Commission then makes recommendations to improve the criminal justice system if needed.

The Commissioners meet regularly to review and analyze information, take public input, and discuss policy issues and recommendations. To assist with this work, the Commissioners created several working groups that meet between Commission meetings (often several per month). These working groups enable Commissioners to develop data and information at a more detailed level in order to inform their deliberations. In the last year, the Commission and its working groups met over 30 times. All meetings are open to the public. Members of the public and interested stakeholders regularly attend Commission and workgroup meetings.

Since the Commission's last annual report, the Commission has made 23 recommendations and issued three reports. The Commission has also included three new recommendations in this report. The following sections detail all recommendations and reports from the last year.

Appendix A gives more details on the procedural aspects of the Commission's work.

Appendix B gives more information about the Commissioners.

Appendix C lists all of the Commission's recommendations since 2015.

Appendix D outlines what is currently on the agenda for the Commission's workgroups.

### A. Previous Recommendations and Reports

**Report on Victim Restitution, sent December 2016.** In December 2016 the Commission sent findings and recommendations to the Legislature in a report on victim restitution.<sup>2</sup> The report was researched in 2016 by the Restitution and Restorative Justice Workgroup. The workgroup studied various aspects of victim restitution, gathering data on collection rates and collection mechanisms. The Commission found that about half of restitution awards in state cases were under \$1,000, that many offenders do make payments on restitution obligations, but that some victims are unaware of how to ask for restitution. In response, the Commission recommended:

- Increase opportunities for victims to request restitution by modifying court judgment forms and requiring prosecutors to clearly notify victims of deadlines and procedures for applying for restitution.
- Develop ways to monitor the restitution obligations of those not on felony probation or parole.

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<sup>2</sup> Report available at: <http://www.ajc.state.ak.us/sites/default/files/commission-recommendations/acjcrestitutionreportdecember12016v2.pdf>

- Amend AS 12.55.045 to remove the requirement that a defendant provide a financial statement.
- Amend AS 12.45.120, the statute providing for civil compromise for misdemeanors, to allow the compromise of larceny offenses.
- Streamline civil execution.
- Expand opportunities for victims to receive “bridging” restitution funds that cover costs to the victim until the offender is able to pay the victim restitution.
- Use technology to encourage offenders to make immediate in-person payments and online payments of restitution.
- Amend AS 43.23.005 to allow offenders who serve only short prison sentences to retain their PFD eligibility and require those offenders to apply for the PFD each year in which they are eligible until restitution is paid in full.

## December 2016 Reports

- **Restitution;** includes recommendations on how to improve restitution collection for victims of crime
- **Impaired Driving and Related Offenses;** includes recommendations on license revocation, limited licenses, and license reinstatement
- **Social Impact Bonds;** includes information on how social impact bonds operate and how they might work in Alaska

Notably, the responsibility for the collection of restitution changed hands from the Department of Law to the Court System in 2017. The Commission may reconvene this workgroup to discuss that change and to discuss the topic of restorative justice.

**Report on Impaired Driving and Related Offenses, sent December 2016.** In December 2016, the Commission sent the Legislature a report detailing findings and recommendations on offenses related to driving and drinking.<sup>3</sup> The findings and recommendations, developed by the Commission's Title 28 Workgroup at the request of the Legislature, reviewed Alaska's laws on impaired driving and related offenses over the course of 2015 and 2016. The following is a summary of those recommendations:

- Revision of the offenses relating to impaired driving in Title 28 is necessary.

<sup>3</sup> Report available at: [http://www.aic.state.ak.us/sites/default/files/commission-recommendations/acjtitle28reportdecember12016v2002\\_0.pdf](http://www.aic.state.ak.us/sites/default/files/commission-recommendations/acjtitle28reportdecember12016v2002_0.pdf)

- Administrative license revocation (ALR) should be maintained. Judicial license revocation, which often serves a distinct function from administrative license revocation, also should be maintained.
- The DMV should not require use of an Ignition Interlock Device (IID) as a predicate for license reinstatement, unless it is so ordered by a court.
- Use of an IID should remain a prerequisite for approval of limited licenses during the pendency of a revocation period, though remote continuous alcohol monitoring technologies should be allowed as an alternative to IID use in this case.
- Offenders convicted of Refusal should also be eligible for limited licenses, just as offenders convicted of DUI are.

**Report on Social Impact Bonds, sent December 2016.** The Commission sent the Legislature a report on social impact bonds, as required by SB 91. Social Impact Bonds are a type of funding mechanism developed as a public-private partnership.

**Recommendations to Amend SB 91, sent January 2017.** The Commission sent the Legislature recommendations to amend SB 91, the omnibus crime bill passed in 2016 that was based in large part on the Commission's recommendations from December 2015. The amendments covered a variety of provisions. The more technical amendments were enacted in SB 55, which passed the Legislature in May. The more substantive amendments were contained in SB 54, which has passed the Senate and has been referred to several House committees. SB 54 was placed on the call for the special session of the Legislature beginning October 23.

**Recommendation Regarding Suspended Entry of Judgment Cases, sent February 2017.** The Commission resolved that shock incarceration is not an appropriate condition of probation for defendants who have been granted suspended entry of judgment, and recommended that the statutes be clarified to reflect this. This recommendation was enacted in SB 55.

## B. Recommendations Related to the Behavioral Health System

Recognizing the significant overlap in the areas of criminal justice and behavioral health, the Commission decided that the Behavioral Health Workgroup would become the Standing Committee on Behavioral Health at the October 2016 Commission meeting. The Standing Committee typically meets every other month and includes representatives from DOC, DHSS, the Department of Public Safety, the Alaska Mental Health Trust, the Department of Law, the Public Defender Agency, the Office of Public Advocacy, the Alaska Native Tribal Health Consortium, and community providers.

**Previous recommendations.** The following recommendations were sent to the Legislature in December 2016. To date, they have not been made the subject of any pending legislation.

- [Allow defendants to return to a group home on bail.](#) The Commission recommended an amendment to AS 12.30.027(b), which concerns bail conditions for those charged with crimes involving domestic violence. The statute currently prohibits judicial officers from ordering or

## Behavioral Health Recommendations

- Allow defendants to return to a group home on bail
- Add behavioral health information to felony presentence reports
- Include the Commissioner of DHSS on the Criminal Justice Commission

permitting a person charged with a crime involving domestic violence from returning to the residence of the victim of the offense for a period of 20 days.

This statute affects individuals with behavioral health disorders who, as a result of their disorder, will sometimes lash out at or assault caregivers or other residents in an assisted living facility or similar group home. Under the current statute, these individuals are not able to return home, and with nowhere to go, the individuals' behavioral health conditions may worsen. Often the victim of the assault – the caregiver or co-resident – is not opposed to the individual returning to live at the facility.

The Commission recommended amending the statute to allow defendants charged with assault on a co-resident or staff of an assisted living facility, nursing home, or other supported living environment to return to that living environment while on bail, provided the victim is given notice and the victim's safety can reasonably be assured.

- [Add behavioral health information to felony presentence reports.](#) The Commission recommended that the legislature amend the relevant statutes and court rules to require that felony presentence reports discuss any assessed behavioral health conditions that are amenable to treatment, if such assessments exist, so that judges will have information on a defendant's behavioral health needs at sentencing. The reports should also include recommendations for appropriate treatment in the offender's community.
- [Include the Commissioner of DHSS on the Commission.](#) Given the significant number of justice-involved individuals with behavioral health needs, the Commission recommended including the Commissioner of the Department of Health and Social Services as a member of this Commission. Commission members felt that this would allow for easier communication and interaction with DHSS as it implements significant reforms related to justice reinvestment.



## C. Recommendations Related to Sentencing

The Commission considered several proposals from its Sentencing Workgroup (previously titled the Presumptive Sentencing Workgroup). The workgroup expanded its focus to include a variety of sentencing issues rather than just the presumptive sentencing structure.

**Previous recommendation – Acceptance of Responsibility Mitigators.** In December 2016, the Commission forwarded a recommendation to amend AS 12.55.155(d) (Factors in Aggravation and Mitigation) to include two statutory mitigating factors for “acceptance of responsibility.” Statutory mitigating factors (“mitigators”) allow a judge to sentence an offender below the presumptive term if the judge finds that the mitigator applies to that offender or offense. This recommendation has not yet been the subject of legislation.

The Commission recommended adding two mitigators for defendants who demonstrate an acceptance of responsibility for their conduct. One mitigator would apply if the defendant has entered into a plea agreement, and one would apply if the defendant has not. The Commission expects that both of the recommended mitigators would conserve prosecutorial, defense and court resources by promoting timely resolutions of criminal cases. Timely resolutions are usually consistent with victims’ interests.

The full text of this recommendation is posted on the Commission’s web site: [http://www.ajc.state.ak.us/sites/default/files/commission-recommendations/1-2016\\_0.pdf](http://www.ajc.state.ak.us/sites/default/files/commission-recommendations/1-2016_0.pdf).

**New Recommendation – Three Judge Panel.** In August 2017, the Commission unanimously voted to recommend amendments to the law concerning sentencing by a three judge panel.

Most defendants in Alaska are sentenced by a single judge, who may impose sentence only as authorized by statute. In certain cases, if the sentencing judge finds that manifest injustice would result from imposing a sentence that is within the range authorized by statute, that judge may refer the case to a three judge panel. If the panel agrees that manifest injustice would result from imposing a sentence within the authorized range, the panel may sentence the defendant to a definite term of imprisonment outside that range.

In practice, the three judge panel is not often used. The standards for its use are not clear to practitioners, and the infrequency of its use means that many judges are unfamiliar with the process as well. Furthermore, when a panel does not find manifest injustice, the case must be sent back to the original sentencing judge for sentencing within the authorized range. This can extend the sentencing of a case by weeks, if not months, and delays closure for the victims. If the panel were authorized to impose a sentence within the authorized range, it would save this last step.

The Commission therefore recommends clarification of the three judge panel’s authority. It recommends amending the relevant statutes so that the three judge panel may consider requirements for consecutive sentencing and restrictions on discretionary parole eligibility in its manifest injustice analysis. If the panel takes the case after finding manifest injustice, it may also allow the person to be eligible for discretionary parole during any portion of the active term of imprisonment.

If the panel does not find manifest injustice, and the defense and prosecution agree, the panel may retain jurisdiction over the case and sentence the person in accordance with the sentencing laws applicable to the trial court. This allows the panel to impose sentence within the presumptive range adjusted for statutory aggravators or mitigators, but only if both the prosecution and defense are in agreement.

The current limitation on the type of testimony that the three judge panel may consider should also be eliminated. The panel should be able to consider written and oral testimony. Additionally, the victim should be allowed to address the panel. The current statute provides that a victim may “testify” at the panel. This does not comport with usual sentencing procedures, which allow a victim to address the court rather than testify. (Testimony involves being sworn in and subject to cross examination.)

Finally, the non-statutory mitigators of “extraordinary potential for rehabilitation” and “exemplary behavior after the offense” should be codified in statute. Other references to a person’s potential for rehabilitation found in the three judge panel statutes should be repealed. These mitigators have already been recognized by the Court of Appeals as grounds for sentencing by the three judge panel.

Codifying these mitigators removes this analysis from three judge panel’s jurisdiction and places it with the trial court. Therefore defendants who seek a mitigated sentence on this basis would ask for sentencing by the panel; a single (ordinary) sentencing judge could consider these factors in sentencing. This would save time and state resources as sentencing in these cases could be completed without the need for an additional sentencing hearing in front of the three-judge panel. Timely resolution of a case also benefits victims, who typically favor speedy and final resolutions.

This recommendation was approved unanimously by the Commission. The full text of the proposed statutory amendments is in Appendix E.

**New Recommendation – Vehicular Homicide.** This recommendation was developed to respond to concerns that in cases of second-degree murder involving a vehicle crash (for example, if an intoxicated driver causes a crash that kills the occupants of the driver’s vehicle or another vehicle), the mandatory minimum sentence may be disproportionate. Alaska’s statutes do not currently contain separate vehicular homicide provisions, so anyone who causes the death of another person while operating a motor vehicle would be guilty of second-degree murder, manslaughter, or criminally negligent homicide.

Second-degree murder has a mandatory minimum of 20 years, which must be imposed separately and consecutively for every death caused. For example, if a person causes the death of four people in a vehicle crash and is convicted of second-degree murder, that person would receive a mandatory minimum sentence of 80 years.

## Sentencing Recommendations

- Add statutory mitigators for acceptance of responsibility
- Amend statutes relating to the three judge panel
- Enact vehicular homicide statutes

The following is a recommendation to enact or amend several statutes to create three new offenses as well as separate sentencing provisions for those offenses. The new offenses would be aggravated vehicular homicide, vehicular homicide, and negligent vehicular homicide. These offenses are comparable to second-degree murder, manslaughter, and criminally negligent homicide.

Aggravated vehicular homicide would be an unclassified felony and carry a mandatory minimum of 15 years. Vehicular homicide would be a class A felony and negligent vehicular homicide would be a class B felony; both of these offenses would be subject to the usual presumptive sentencing scheme.

For consecutive sentences in cases where the defendant has caused multiple deaths, the defendant would have to be sentenced to at least one fourth of the mandatory minimum or presumptive term for each additional victim; the rest could be served concurrently. (This provision would not prevent a judge from imposing the entirety of each sentence consecutively, but it would no longer be required in all cases.)

This recommendation was approved unanimously by the Commission. The full text of the proposed amendments is contained in Appendix E.

## D. Recommendation Related to Barriers to Reentry

The Barriers to Reentry Workgroup identifies the challenges returning citizens face upon release from prison and solutions to mitigate the impact of these challenges to reduce recidivism.

**CourtView Recommendation.** In October 2017, the Commission voted to make a recommendation to the Alaska Supreme Court to order the removal of the records of certain offenses from CourtView, the online record database for the Alaska Court System.

The Commission's recommendation was based on testimony and studies showing that online records of conviction can inhibit a person's ability to find employment, often long after the date of the conviction. Furthermore, there are records of conviction on CourtView for offenses which have since been reclassified or for convictions that were later set aside.

Suspended Imposition of Sentence (SIS) is a sentencing mechanism available in certain cases. At sentencing, the court may suspend a defendant's sentence and impose probation. If the defendant successfully completes the term of probation, the court may set aside the defendant's conviction.<sup>4</sup> Setting aside a conviction after a successful term of probation therefore means that the defendant has taken the opportunity to turn things around and has not reoffended. Many defendants who received an SIS believed that if they successfully completed probation and had their conviction set aside, the conviction would "disappear." The record of this set aside conviction, however, is still available on CourtView.

Minor consuming alcohol (MCA) has been criminalized in various ways in the past. It has been both a misdemeanor and a violation for a first-time offense. Recently, only the third offense was a misdemeanor. In 2016, SB165 reduced all MCA offenses to a violation.<sup>5</sup> It also directed the Court System not to publicly publish the record of any such violation. This means that going forward, records of MCA violations will not be accessible to the public on CourtView. Past records, however, are still publicly accessible.

The offenses of minor on unlicensed premises, minor operating a vehicle after consuming alcohol, minor refusal to submit to a chemical test, and minor driving during the 24 hours after being cited for alcohol or breath test offenses are also all based on a person under 21 consuming alcohol (but do not involve intoxicated driving, which is covered under the DUI statutes). These offenses were not reduced to a violation, but the Commission feels they should be treated similarly to MCA.

The Commission therefore voted to recommend that the above offenses be removed from the public view on CourtView. The Commission recognizes that this will not achieve the effect that a more global expungement statute would have, but the Commission felt that it would give some relief to those who have experienced some barriers to employment, lending, or housing based on the records of these offenses being publicly available. The Commission will continue to look into expungement in the coming year.

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<sup>4</sup> See AS 12.55.085.

<sup>5</sup> Ch. 32 SLA 2016.

### III. SB 91 Implementation

SB 91 directed the Commission to oversee the implementation of justice reinvestment. The Commission is required to track outcomes of any changes made to the law pursuant to the Commission's 2015 Justice Reinvestment Report. The Commission must receive and analyze data from the Department of Corrections, the Alaska Court System, and the Department of Public Safety. These agencies are required to send information to the Commission every quarter. The Commission also must continue to make recommendations for reinvestment should additional savings be realized.

Implementing the reforms has required a substantial amount of work on the part of the departments and agencies tasked with making operational changes. The Commission is monitoring the progress of these efforts. Also on the Commission's agenda is to monitor the funding appropriated by the Legislature for treatment, programming, and victim's priorities as part of the reinvestment package. The Commission's findings on the progress of implementation are detailed below; its report on reinvestment activities is contained in section IV.

#### A. The Prison Population has Changed

The following is an analysis of the data that has been provided to the Commission thus far. **It is important to note that it is too soon to calculate some metrics, such as recidivism measures,** because not enough time has passed since the enactment of SB 91 for enough offenders to be sentenced under the new law, serve time, and be released to produce a representative sample. The Commission is only now starting to see data that *may* indicate the bill's effect. We will not have the full picture of SB 91's impact for some years.

Information from the Department of Corrections shows that some post-reform changes are already evident in the form of a reduction in the total prison population, a significant shift in the composition of inmates to include fewer supervision violators, and a modest decrease in nonviolent offenders compared to violent offenders.

**Decrease in total prison population.** Figure 5 below shows that the post-reform average daily population at DOC's prisons has decreased compared to what it would have been without reform.

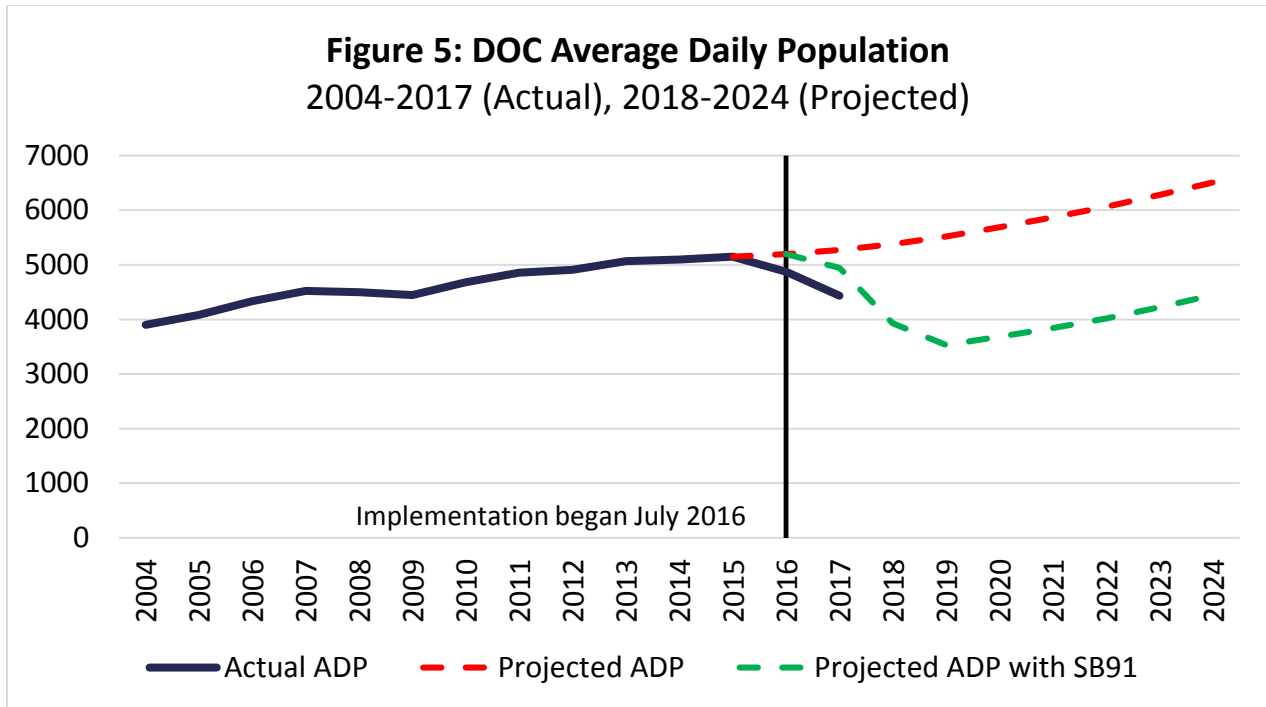


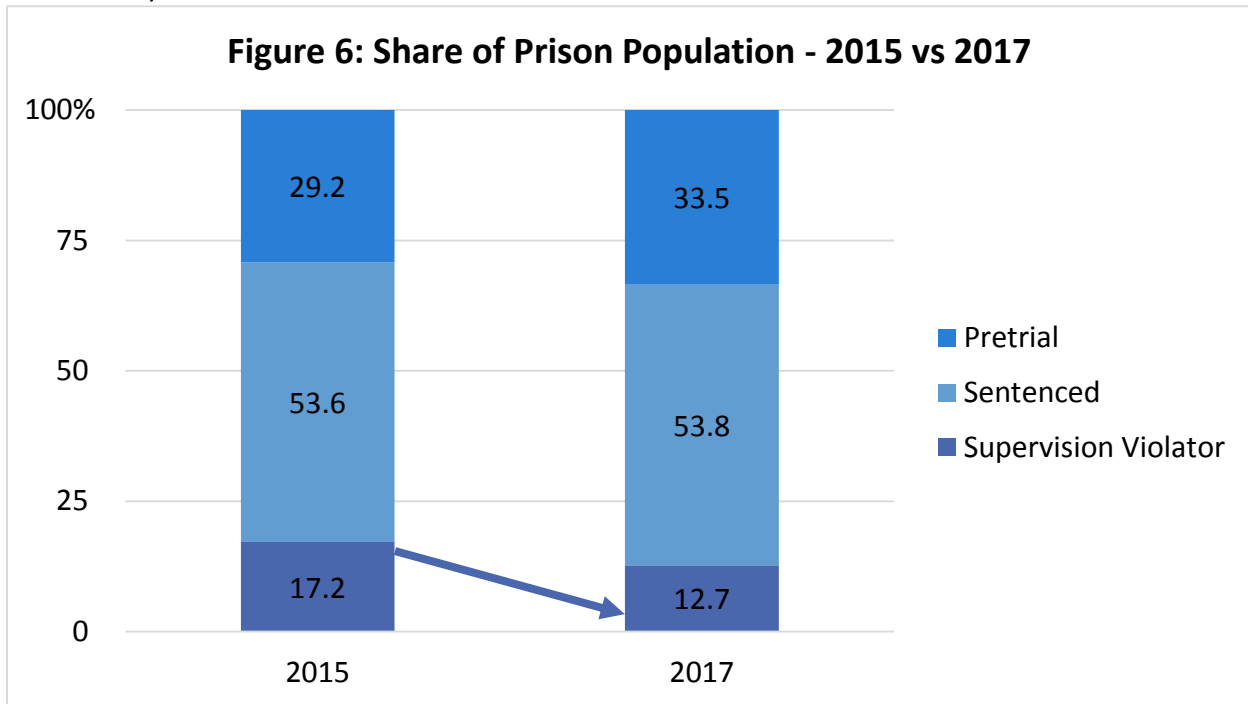
Figure 5 Source: Department of Corrections

The figure also shows that the actual population has decreased more than was projected as a result of SB 91.

**Sentenced offenders, pretrial defendants, and supervision violators.** Figure 6 below shows the pre-reform status of offenders in DOC facilities sorted by those who had been sentenced for crimes, those who had been returned to prison for committing technical violations of their parole or probation conditions (“supervision violator”), and those who had been charged but not convicted of a crime (“pretrial”). On a single day in 2014, supervision violators were 22% of the prison population, pretrial detainees were 28%, and sentenced offenders were half. By 2016 these ratios had begun to change, with the proportion of supervision violators falling, while pretrial detainees and sentenced offender ratios increased. The changes accelerated in 2017, following the effective date of SB 91’s reforms to community supervision practices.

Figure 6 Source: Department of Corrections

A decrease in supervision violators was expected due to the probation and parole reforms described above. Further, to the extent that the proportion of beds being occupied by pretrial defendants increased, that result would be consistent with the fact that SB 91's pretrial reforms do not go into effect until January of 2018.



**Violent and nonviolent offenders.** In 2014, the Commission found that 62% of post-conviction admissions to prison were nonviolent misdemeanants. The Commission's research also showed that for many people in the criminal justice system, noncustodial sanctions and shorter prison stays provide sufficient accountability and work at least as well as longer periods of incarceration to reduce recidivism. The Commission therefore recommended limiting the use of prison beds for lower-level and nonviolent misdemeanor offenders. Limiting prison bed use for lower-level offenders also allows the system to focus resources on serious and violent offenders—the “people we’re afraid of.”

The figures below compare the situation with respect to violent and nonviolent offenders pre- and post-reform. Figure 7 shows the ratio of violent and nonviolent offenders. It indicates a small post-reform decline in the ratio of nonviolent offenders.

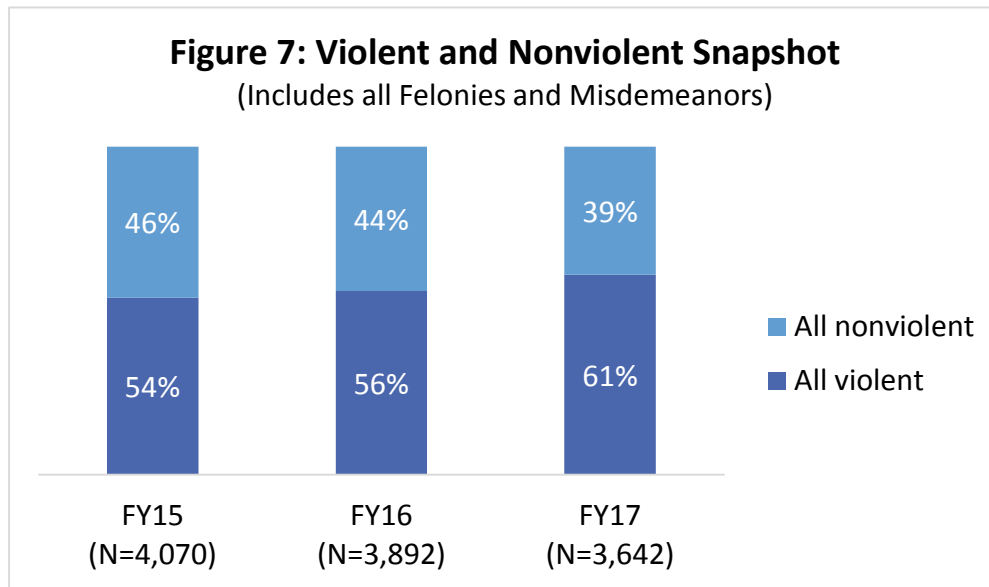


Figure 7 Source: Department of Corrections

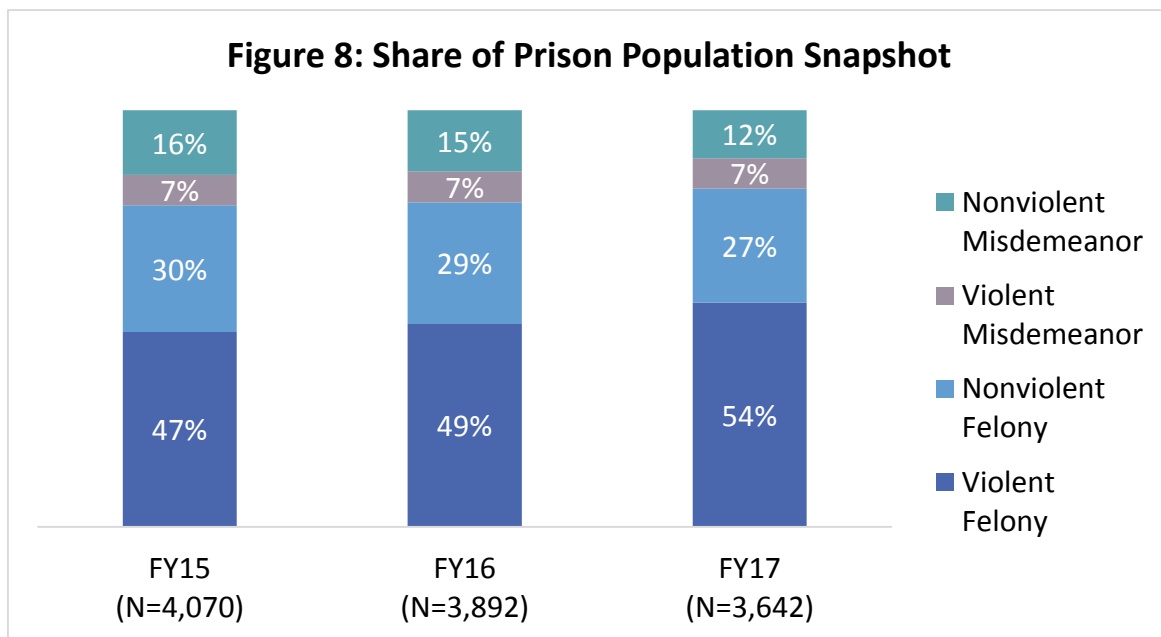


Figure 8 Source: Department of Corrections

Figure 8 shows the composition of prisoners on a snapshot day, broken down by level of offense.<sup>6</sup> Snapshot data is illustrative of what the population looks like at a sample moment in time. Again, this

<sup>6</sup> The FY17 snapshot was calculated as the average of July 1, 2016, October 1, 2016, January 1, 2017 and April 1, 2017.



figure shows moderate progress toward the criminal justice reform goal of reducing prison-bed usage among nonviolent misdemeanants, and concentrating resources on violent offenders.

Figure 9 shows admission patterns. The figure illustrates that the majority of offenders admitted to a DOC facility in FY17 were non-violent misdemeanants. This is illustrative of the “churn” that occurs, where, among admissions, low-level offenders are booked and released in quick succession. Despite the large number of non-violent misdemeanor admissions, the data does show a moderate decrease in the share of admissions for nonviolent misdemeanors and a moderate increase in the share of admissions for violent felonies.

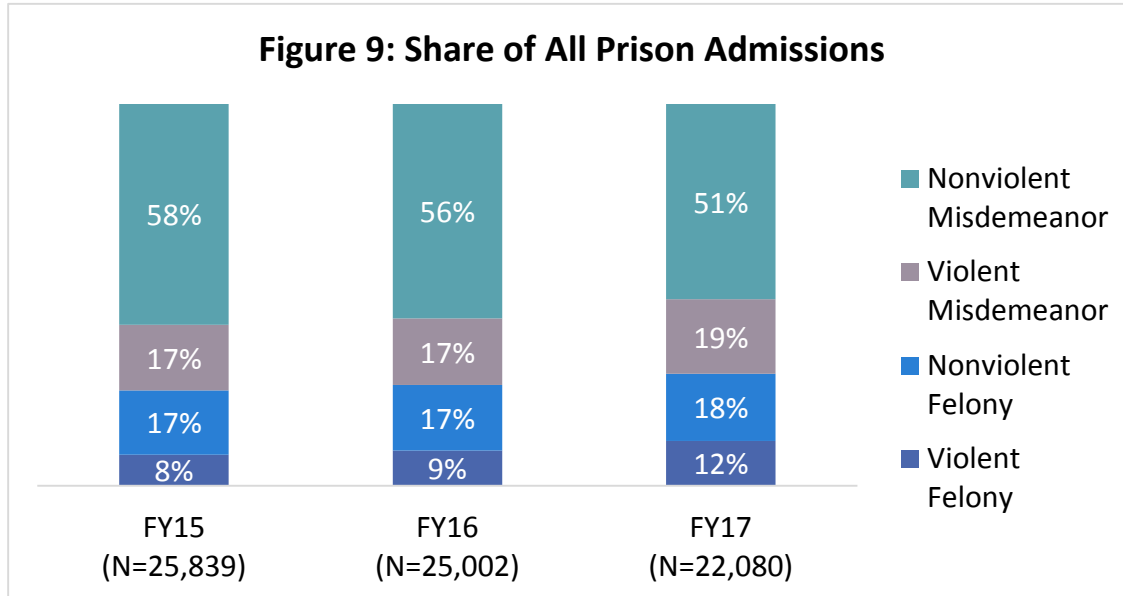


Figure 9 Source: Department of Corrections

**Drug offenders.** The Commission recommended reclassifying simple possession of heroin, meth, and cocaine to an A misdemeanor, and limiting the maximum penalties for first- and second-time possession to suspended sentences for the first two offenses.<sup>7</sup> The Commission also recommended creating a tiered system for commercial drug offenses based on the amount of drug to be bought or sold.

The Commission made these recommendations because in the decade leading up to SB 91, admissions to prison for drug offenses increased by 35%, while the average length of stay for felony drug offenders increased by 16%. The Commission’s research also showed that long prison terms have a low deterrent value for drug offenders. Typical street-level drug transactions have such a low risk of detection, so drug offenders are unlikely to be dissuaded by the remote possibility of a longer stay in prison.

Data from the Department of Corrections shows that admissions for Class C felony drug possession dropped 68% after the changes in SB 91 went into effect (from 835 admissions in FY15 to 259 in FY17). At the same time, admissions for Class A misdemeanor drug offenses rose by 46% (from 97 in FY15 to 181 in FY17). These changes were in line with expectations.

<sup>7</sup> First offense: up to 30 days suspended; second offense: up to 180 days suspended; third and all subsequent: 30 days or 10 days of active incarceration. See SB 91 section 93.

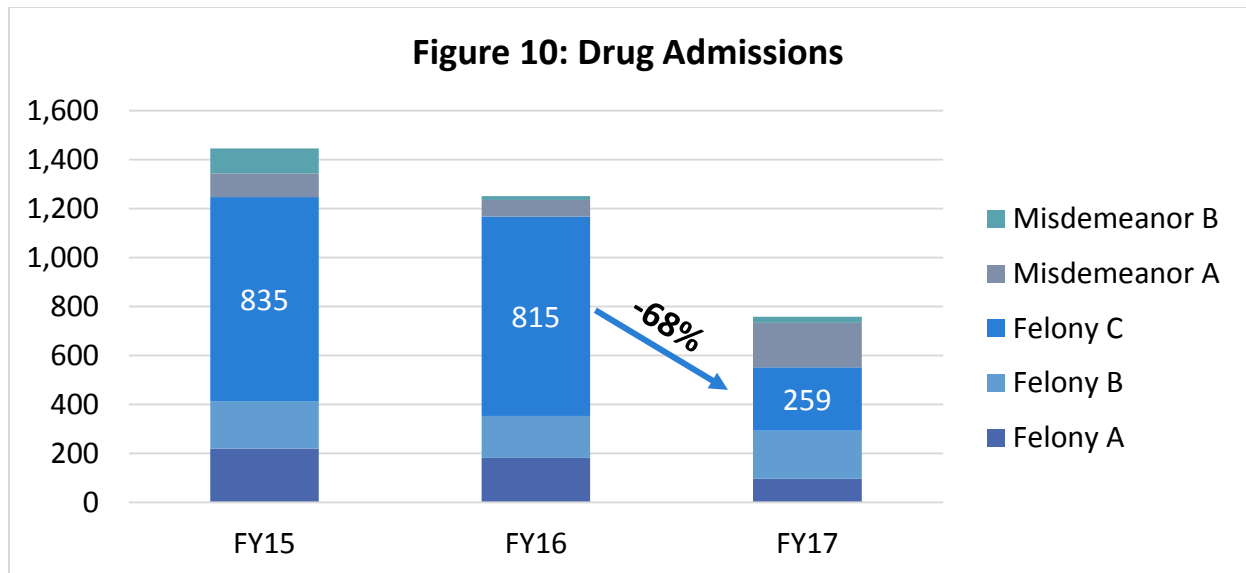


Figure 10 Source: Department of Corrections

The Commission also examined the number of misdemeanor drug cases being processed by the courts. Court records show that only 160 misdemeanor drug possession cases were filed statewide between July 1, 2016 and June 30, 2017,<sup>8</sup> and only 62 misdemeanor drug possession cases were disposed during that same period. In contrast, 528 misdemeanor drug possession cases were filed with the court in FY15, the year before the law changed. The decrease in the number of misdemeanor drug possession cases being processed by the courts was not predicted. The Commission will continue to monitor arrest, charging, and disposition trends for drug possession.

**Theft offenders.** As noted above, the Commission recommended limiting the use of incarceration for low-level misdemeanants. This included eliminating jail time for first- and second-time offenders convicted of Theft 4 (theft of property valued under \$250).

SB 91 also raised the felony theft threshold from \$750 to \$1000, to be adjusted for inflation every 5 years. The Commission recommended this change because the original threshold was set at \$500 in 1978. The equivalent value in today's dollars would be more than \$1800. The Commission also noted that between 2001 and 2011, 23 states raised their felony theft thresholds. Analysis of these changes found that the change in the threshold had no statistically significant impact, up or down, in the states' overall property crime or larceny rates.

<sup>8</sup> All of these cases were charged by the Anchorage Municipal Prosecutor; none were charged by the Department of Law or other municipal prosecutors.

Figure 11 shows the number of admissions for felony and misdemeanor theft pre- and post-reform. Notably, admissions for felony theft increased 22% after the enactment of SB 91.

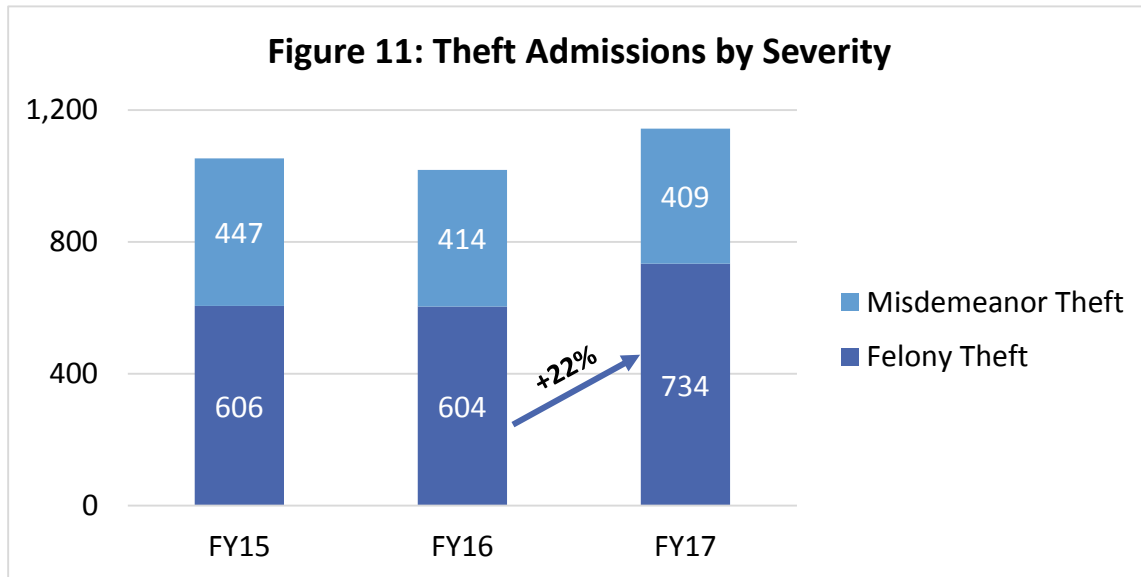


Figure 11 Source: Department of Corrections

Thus despite SB 91 reducing the use of incarceration for misdemeanor theft, there has not been a significant drop in admissions to prison for that offense. (The Commission will have data on length of stay for these offenders in the future.) And despite SB 91 increasing the felony theft threshold, felony theft admissions also have increased.

The picture on felony theft may be related to the changes in drug crime classification discussed above. Realignment of priorities at the Department of Law in response to budget cuts has included a focus on felonies and violent crimes, and a decrease in prosecution of nonviolent misdemeanors. Thus it may be that misdemeanor drug prosecutions have been displaced to some degree by felony theft prosecutions.

## B. Creation of the Pretrial Enforcement Division

The number of pretrial inmates in Alaska's prisons grew by 81% over ten years (2004-2014), driven in large part by increases in how long defendants were staying behind bars before their cases were disposed. Moreover, the traditional bail system meant that in some cases, low-risk defendants who were unlikely to engage in new criminal activity remained behind bars because they couldn't afford bail, while high-risk defendants who were likely to engage in new criminal activity and who paid bail were released.

In response, SB 91 adopted evidence-based pretrial reforms designed to improve public safety and pretrial outcomes. These reforms will go into effect January 2018. A major part of these reforms is a new pretrial unit called the Pretrial Enforcement Division, housed within the Department of Corrections. Although SB 91 does not require the unit to be up and running until January 2018, DOC has been planning and preparing for the unit since August 2016.

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***The Pretrial Enforcement Division:***  
*A new unit within the Department of Corrections  
 that will assess and monitor defendants pretrial. It  
 will begin operations in January 2018.*

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The Pretrial Enforcement Division will employ around 60 pretrial service officers who will provide pretrial risk assessments, court reports and recommendations, and monitoring and supervision of defendants who are released from custody pretrial and ordered to pretrial supervision as a condition of release. Pretrial services officers will remind defendants of court appearances and provide more intensive supervision if necessary. Alaska has never before had any state-run pretrial monitoring services. The following paragraphs explain the duties of the Pretrial Enforcement Division in more detail.

**Development and use of a Pretrial Risk assessment tool.** The pretrial officers will perform a risk assessment for each defendant who is arrested and booked into jail. An actuarial risk assessment tool has been developed for this task, and the Pretrial Enforcement Division is currently testing the tool prior to deployment.

To develop the tool, DOC worked in close collaboration with the Commission, with a large stakeholder group, and with qualified and experienced researchers from the Crime and Justice Institute (CJI) who are familiar with the creation and validation of risk assessment tools. The Commission and the stakeholder group advised DOC and CJI about local conditions and concerns that might affect development of the tool, and on logistical and implementation issues. Crucially, the tool was developed using Alaska data about Alaska defendants.

The current version of the risk assessment instrument is referred to as "AK – 2S" or the "Alaska 2 Scale". Researchers pored over large quantities of data on Alaska's defendants to determine which factors are most predictive of whether a defendant will be successful on pretrial release. **It is important to note that Alaska's Pretrial Risk Assessment Tool is developed from, and validated for, the Alaska population.**

The tool requires use of static data that is pulled from available data sources. The risk assessment process does not include an interview with the defendant.

## The Alaska 2-Scale

### Alaska's Pretrial Risk Assessment Tool

- Developed in 2017 using Alaska's data, specifically for use in Alaska
- Uses information contained in pre-existing databases on the defendant's criminal history
- Produces two scores, one assessing the risk that the defendant will fail to appear for court, and one assessing the risk that the defendant will be arrested again if released
- Validated to ensure no demographic group will be treated differently
- One of many factors to consider in the pretrial release decision

Pretrial officers will use the instrument to score a defendant's risk based on a number of factors. The scores indicate the risk that the defendant will fail to appear for court hearings or will be arrested for new criminal activity. The tool does *not* predict what type of offense someone might commit in the event they obtain release from pretrial secure custody.

The term "risk" does not necessarily imply a risk to community safety or likelihood of violence, but rather, a risk for failure to appear or risk for a new criminal arrest if the defendant is released from custody pretrial. While no risk assessment tool can perfectly predict the behavior for each and every defendant in each and every circumstance, research shows that the use of a risk assessment tool combined with professional judgment in the release decision typically produces better outcomes when compared to not using any assessment tool. Risk assessment scores are only one factor among many the judicial officers will consider in making release decisions or setting conditions of release.

**Pretrial reports and release recommendations.** For any defendant held in custody pretrial, pretrial officers must submit a report to the court. Officers will use the risk assessment score, combined with a review of the offense for which a defendant is charged, to prepare a release recommendation. The report will be sent to the court in time for the defendant's first court appearance, typically within 24 hours of booking. The report also will include recommendations for conditions of release in the event the defendant is released pretrial.

**Supervision and monitoring.** Pretrial officers will bring a new public safety function to the state of Alaska when and if a defendant obtains release from a secure setting. If a defendant is released, they may be required to comply with supervision by the pretrial officers while living in the community. For those

defendants, pretrial officers will be responsible for monitoring the defendants to ensure they comply with the conditions of release. Defendants may be required to comply with such things as meetings with officers, drug and alcohol testing, or electronic monitoring. Under the previous pretrial model, defendants were not monitored unless they hired a private company.

**Release based more on risk.** Additionally, in the new pretrial model, defendants will be released based on their risk of failure to appear or risk of a new criminal arrest. Under the previous model, defendants were released if they could make bail, without any benefit of a risk assessment instrument. The amount of bail was used as a proxy for risk. The new model enhances public safety by strategically identifying the individuals most likely to pose the greatest risk of pretrial failure.

## Pretrial Release pre- and post- SB 91 – What’s the Difference?

### Pre-SB 91 (Current System)

- Release based on payment of a money bond to ensure appearance
- Amount of money bond is used as a proxy for a defendant’s risk of flight or danger to the community
- No supervision of defendants who are released
- Heavy reliance on civilian third-party custodians

### Post-SB 91 (Beginning January 2018)

- Release based on results of a risk assessment and the crime charged
- Risk assessment calculates the risk of a defendant’s failure to appear and risk of a new arrest
- Supervision (based on risk level) of defendants who are released
- Restrictions on use of third-party custodians

## C. Improved Parole and Probation Supervision Procedures

Felony offenders in Alaska are supervised by DOC probation or parole officers after conviction and/or release from prison. The role of the probation or parole officer is to ensure the offender completes any conditions of probation or parole and does not engage in new criminal activity or prohibited behavior. Probation and parole officers have the authority to return offenders to prison if they violate conditions of supervision, and judges or the parole board can impose suspended prison time on offenders who have violated their conditions of supervision.

If someone on probation or parole violates the conditions of their supervision but does not commit a new crime, that violation is called a technical violation. (Technical violations can include behaviors such as consuming alcohol, missing or failing drug tests, or failing to report to a probation or parole officer).

**A need for a new approach.** Before SB 91, many offenders would accumulate a number of technical violations before receiving any consequences, and then ultimately serve a long cumulative sentence for those violations. Between 2005 and 2014, the number of people who were returned to prison for violations of the conditions of their probation or parole increased by 32%. Approximately three quarters of these violations were for technical violations.

The Commission found that in 2014, offenders who were sent back to prison for supervision violations served about one month in custody *before* having a hearing. For those who were given a sentence of incarceration for their violations, the average post-hearing length of stay was 106 days.<sup>9</sup> Probation and parole officers also did not have many tools to incentivize compliance.

**New strategies starting in January 2017.** In response to these problems, SB 91 required Alaska to develop and adopt evidence-based strategies to increase success

### Rethinking Probation and Parole

#### Before SB 91:

- Between 2005 and 2014, the number of people returning to prison for supervision violations increased by 32%
- In the same period, approximately 3 violations in 4 were technical violations
- Offenders accumulated a number of violations before being sanctioned
- Offenders charged with a violation spent a month in custody before having a hearing
- The average sentence for a violation was 106 days

<sup>9</sup> The data from this period did not specifically track whether violations were technical or non-technical, but it is estimated that around three-quarters of the violations were technical.

## New Supervision Procedures

- Swift, certain, and proportionate sanctions for violating conditions of probation and parole to encourage early course-correction
- Incentives to encourage compliance
- Reduced reliance on incarceration
- Frontloading supervision resources – most recidivism happens within the first year post-release
- Evidence-based practices

rates for those supervised in the community. DOC has been working hard to implement these changes to post-incarceration supervision procedures, which became effective in January 2017. The Department of Corrections developed new policies and procedures for probation and parole officers to respond effectively to negative and positive offender behavior. It also trained all its probation and parole officers in the effective use of these sanctions and incentives, and on other new requirements.

**Sanctions and incentives.** Parole and probation officers now use a system of administrative sanctions and incentives to facilitate prompt and effective responses to compliance with or violations of conditions of supervision. The administrative sanctions are used before filing a petition with the court or the parole board to revoke probation or parole. The sanctions are designed to be swift, certain, and proportionate to the transgression; this is an evidence-based practice that studies show is more effective in encouraging course correction.

Incentives are available for those who meet case-specific goals of supervision. Research shows that providing rewards and incentives enhances individual motivation, and individuals on supervision are more successful (fewer violations, less recidivism) when rewards outnumber sanctions.

SB 91 requires the Department of Corrections to track how often its probation and parole officers are using the new administrative sanctions and incentives to address behavior informally before filing a formal petition to revoke probation or parole. After developing the program of administrative sanctions and incentives, and training all officers on how to use them, the Department of Corrections modified its case management system to allow probation and parole officers to record their use of administrative sanctions and incentives, and it trained officers to do so. The Department of Corrections is also required to report this information to the Commission. DOC has not yet been able to provide information about

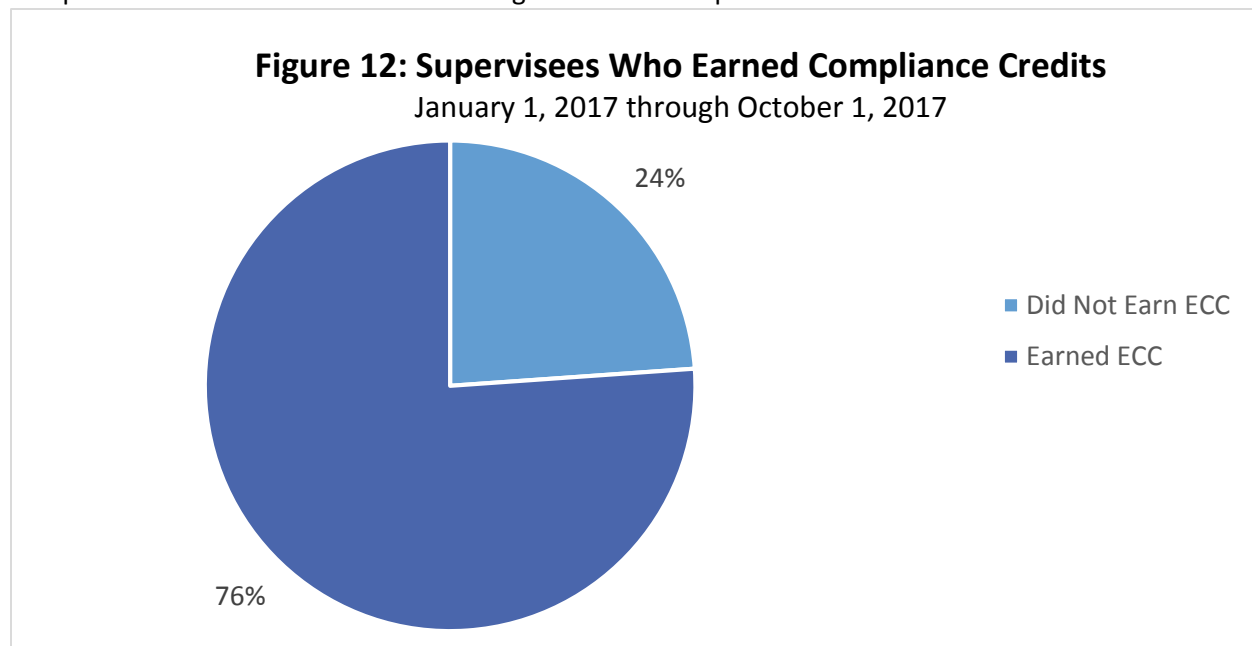


the average number of sanctions issued before a petition to revoke parole or probation is filed.<sup>10</sup> The Commission looks forward to working with DOC to report and analyze this information in the future.

**Earned compliance credits.** Research shows that allowing probationers and parolees to earn their way off supervision for compliance with conditions encourages them to play by the rules, and allows probation officers to allocate resources based on which offenders are exhibiting problem behaviors. Since January 2017, probationers and parolees are eligible to earn 30 days off their total supervision time for each 30 days they are in compliance with supervision conditions (supervision conditions include requirements such as staying free of drugs or alcohol, paying victim restitution, and looking for employment).

These changes are intended to create a more intensive supervision atmosphere and concentrate supervision resources where they are needed—on offenders most likely to recidivate. In addition, this provision is expected to allow low-risk supervisees – who are the most likely to follow the rules and earn compliance credits – to leave caseloads sooner, thus freeing up probation officers to deal with higher-risk individuals.

The Department of Corrections has provided some preliminary data on the use of earned compliance credits. It is important to note that this data is preliminary; DOC employees are working to ensure that data collection and verification is accurate but these are new data points that DOC has not tracked before. Additionally, the earned compliance system has been in effect for only 10 months, and not all supervisees will have had an equal chance to earn compliance credits. For example, someone who has been on parole for just one month will have had less opportunity to earn compliance credits than someone who has been on parole for nine months. In other words, this is a simple snapshot of a complex situation. With those caveats in mind, this figure shows that about three-quarters of individuals earned compliance credits at least one time during the ten-month period.



*Figure 12 Source: Department of Corrections*

<sup>10</sup> DOC is required to provide this information quarterly to the Commission under AS 44.19.645.

### Preliminary data on the effect of changes to parole and probation supervision procedures.

Baseline data from the Department of Corrections shows that before these changes went into effect in 2017, probation officers filed about 361 petitions to revoke probation and 81 parole revocations per month. In 2014, offenders who were remanded to prison for supervision violations spent about one month before the disposition of the petition to revoke probation. For those supervision violators who were given time to serve for their violations, the average post-resolution length of stay was 106 days.

Figure 13 shows that during the first eight months of implementation, officers filed on average slightly more petitions with the court (PTRP) and the parole board (PVR) than before reform.<sup>11</sup>

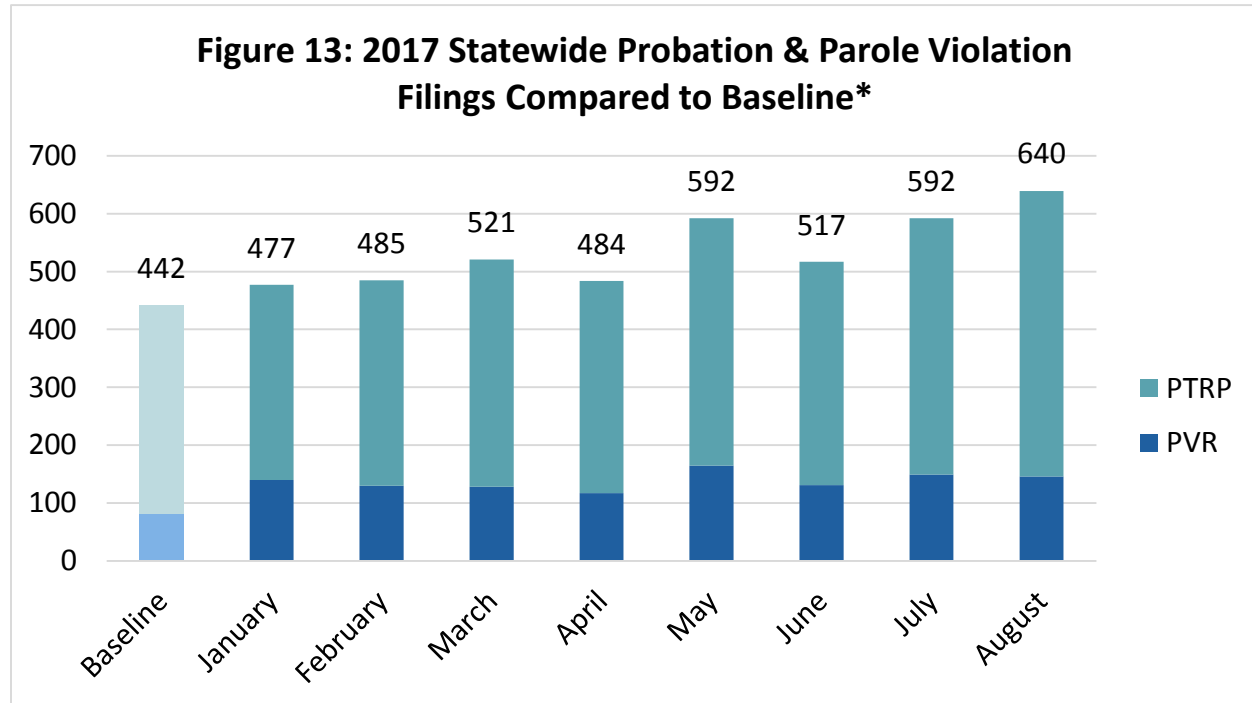


Figure 13 Source: Department of Corrections \*Baseline is the average for October, November, and December 2016.

By far the most common reasons for filing a technical violation against a supervisee were drug or alcohol use, or failure to report to the probation officer. Together, these two reasons for technical violations accounted for around 78% of all technical violations pre-reform, and about 83% of all technical violations post-reform. (The statistics do not include supervisees in the PACE program, an intensive supervision model for higher-risk supervisees. This model was employed before SB 91 and uses many of the same procedures that are now being used with all offenders on probation or parole.)

Some supervisees are charged with new crimes while being supervised in the community on probation or parole. Both pre- and post-reform, the situations in which a supervisee was charged with a new crime were a small fraction of the situations in which a supervisee was accused of a technical violation. Pre-reform, about 15% of all supervision violations involved accusation of a new crime. Post-reform, the average was closer to 10% in some months, although the data are too preliminary to draw

<sup>11</sup> Note: This figure does not include information about probation violators in the DOC's PACE program for higher-risk supervisees. The PACE program existed before criminal justice reform was enacted, and it already employed many of the same types of procedures that are now used with all supervisees.

solid conclusions. If this trend continues in the future, it could indicate that the officers are using the new revocation procedures more proactively to address problematic behavior early, in some instances preventing the supervisee from progressing to new criminal behavior.

Supervision violation filings do not always result in incarceration, but when they do the incarceration should be proportionate to the severity of the violation. SB 91's reforms were designed to sanction violators quickly and in more proportionate periods initially, allowing serial violators to be sanctioned more severely. It is important to know, then, when violators went to prison, how many days they stayed. Preliminary data shows that the average number of incarceration days for both technical and non-technical parole and probation violations decreased since enactment of the supervision reforms.

Figure 14 summarizes the average length of incarceration for non-PACE violators.<sup>12</sup>

**Figure 14: Probation and Parole Violations by Length of Stay**  
Pre and Post SB 91

Pre SB 91		Post SB 91 <sup>13</sup>		
Type	Av. Length of Stay	Type	Violation Type <sup>14</sup>	Av. Length of Stay
Before Hearing <sup>15</sup>	30 days	Parole	Non-Technical	24.44 days
After Hearing	106 days	Parole	Technical	15.44 days
		Probation	Non-Technical	19.07 days
		Probation	Technical	14.14 days

SB 91 made major changes to Probation and Parole prison stays. Despite the differences in data breakdowns for pre SB 91 and post SB 91 data, it is clear length of stay has dropped significantly post SB 91.

Figure 14 Source: Department of Corrections

<sup>12</sup> More recent data from DOC which calculated length of stay for PACE and non-PACE supervision violators through October of 2017 showed similar results.

<sup>13</sup> For those discharged from incarceration from 1/1/2017 through 10/17/2017.

<sup>14</sup> If an individual had both a technical and non-technical, it was counted as a non-technical

<sup>15</sup> "Before hearing" and "after hearing" here cannot be combined: some supervisees were released on time served at their hearing, and so are not counted in the "after hearing" section [ALASKA CRIMINAL JUSTICE COMMISSION](#) | Annual Report

This post-reform decrease in supervision violators' incarceration days likely contributed to the overall decrease in supervision violators in prison. Even though probation officers now remand supervisees to prison more often for technical violations, data available thus far shows that DOC's population of supervision violators decreased post-reform, as intended. Figure 15 below shows that supervision violators accounted for only about 13% of the average daily prison population. In contrast, two years before reform, supervision violators accounted for about 18% of prison beds. This data is taken from one-day snapshots.

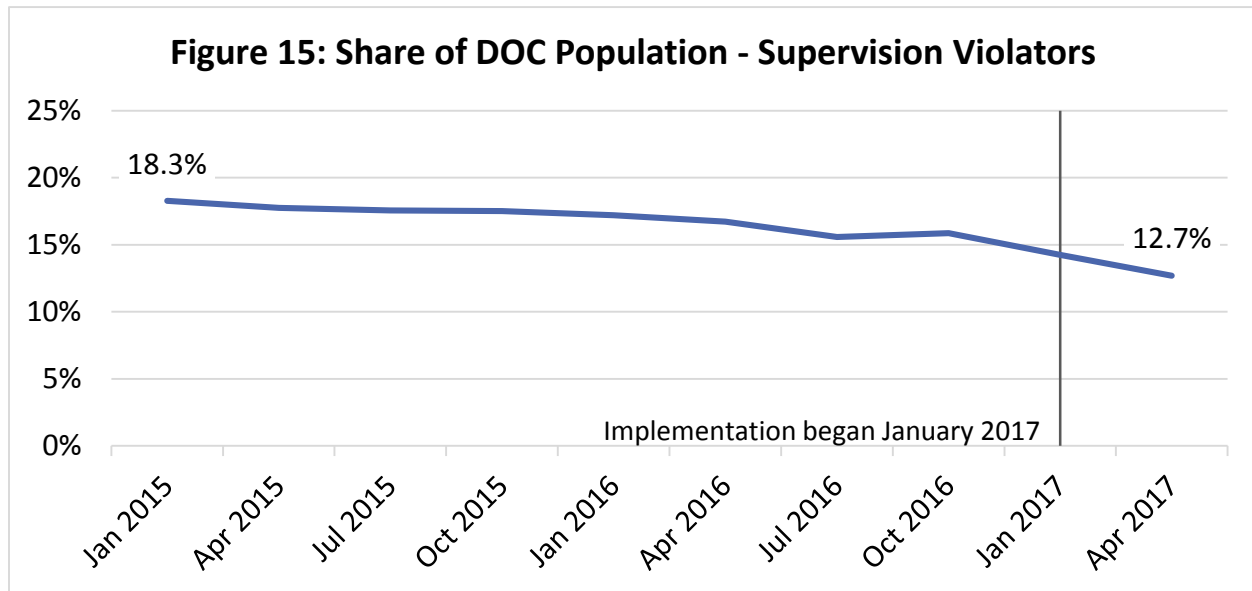


Figure 15 Source: Department of Corrections

## D. New Parole Procedures and Expanded Parole Eligibility

Alaska law allows some imprisoned offenders to be released on parole before the end of their full sentence of incarceration. Release on parole is subject to review by the parole board, and the board can impose conditions of parole. Once released on parole, an offender is under the authority of the parole board and is supervised by an officer at the Department of Corrections. Under Alaska law, there are different circumstances under which a prisoner can be released on parole. Generally speaking, SB 91 expanded access to parole.

**Discretionary parole process.** A study of DOC's files in 2015 found that only a small percentage of inmates who were eligible for discretionary parole had in fact applied for parole or appeared before the Parole board. Commissioners heard from a number of sources that this low percentage was attributable to a cumbersome application and review process. In response, SB 91 streamlined the hearing process for discretionary parole by requiring the parole board to hold hearings for all prisoners who are eligible, rather than wait for prisoners to determine eligibility and prepare an application before a hearing.

**Expanded eligibility for discretionary parole.** Before SB 91, discretionary parole was available to a prisoner who had served either 1/4 or 1/3 of their active term of imprisonment, applied for parole, and was reviewed by the parole board. SB 91 expanded eligibility for discretionary parole for many, but not all, classes of offenders.<sup>16</sup>

**Early data on discretionary parole reforms.** These changes went into effect on January 1, 2017. It was expected that these reforms would increase the number of parole board hearings, and potentially result in more eligible offenders being released on parole than pre-reform. The parole board has provided information that in fact the number of discretionary parole hearings in 2017 increased 141% over the same period in 2016. As seen in Figure 16, these discretionary parole hearings have resulted in similar rates of grants, continuances, and denials as before SB 91's provisions went into effect.

### New Parole Procedures

- **Discretionary parole eligibility increased; procedure streamlined.** Discretionary parole hearings have increased. The rate of grants and denials is largely the same.
- **Administrative and geriatric parole procedures created.** Only 3 inmates have been eligible for administrative parole and no inmates have been eligible for geriatric parole.

<sup>16</sup> For example, eligibility for discretionary parole was not expanded for Unclassified or Class A sex offenders.

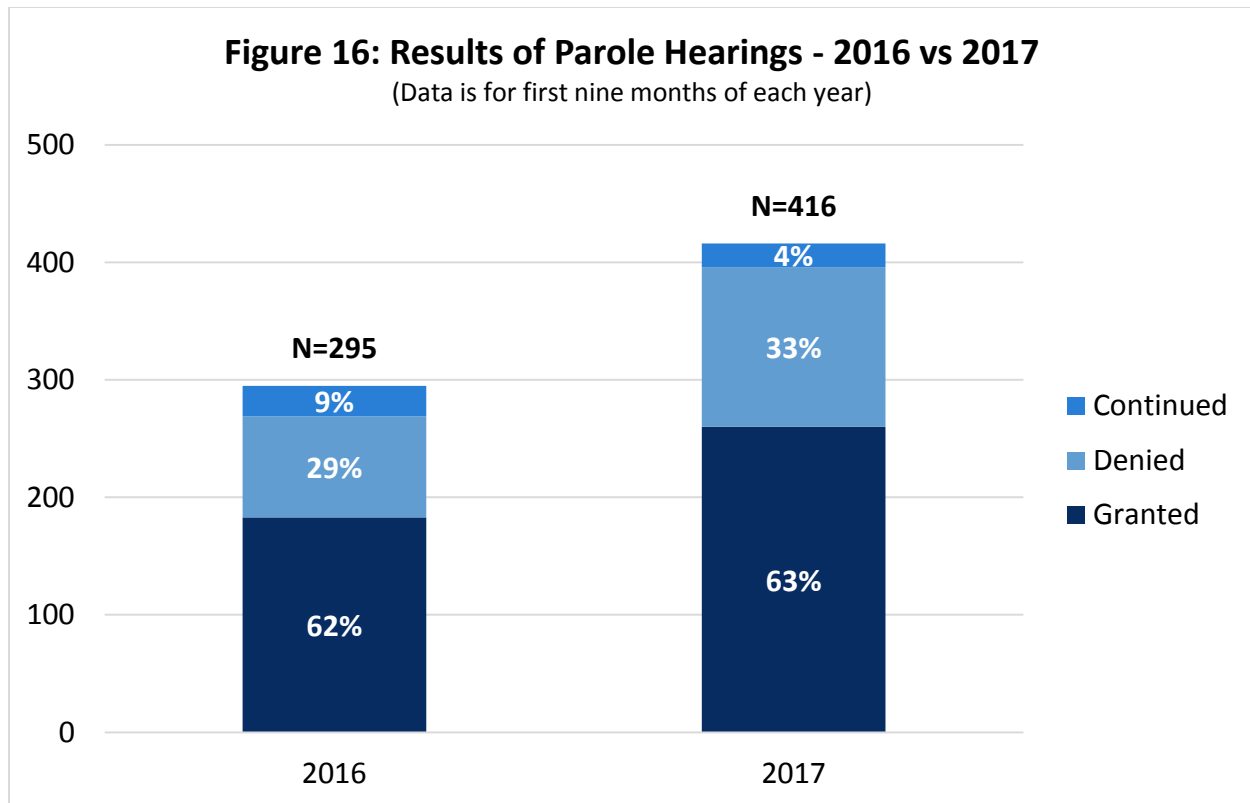


Figure 146 Source: Parole Board

The data are preliminary evidence suggesting that the goals of the parole process reforms are being met: namely, that more inmates who are eligible for discretionary parole are being considered, but the board of parole continues to exercise its judgment with respect to which inmates should be granted discretionary parole.

**Administrative and geriatric parole.** Before SB 91, Alaska law provided for three types of parole: special medical, discretionary, and mandatory.<sup>17</sup> SB 91 created two new types of parole: administrative and geriatric. Administrative parole allows inmates convicted of a first-time, non-violent Class C or B felony who are compliant with their case plan to release to parole without a parole hearing, unless a victim requests a hearing.

Geriatric parole is a new method by which an inmate may be considered for discretionary parole. The inmate must be 60 years of age or older, served 10 years of the active jail time imposed, and the offense cannot have been a sex offense or an Unclassified felony.

Adding these new types of parole appears to have had little effect thus far. As of October 1, 2017, three inmates have been released to administrative parole, and no inmates have been released to geriatric parole.

<sup>17</sup> Special medical parole was based on a medical need. Mandatory parole, otherwise known as “good time,” is based on the accumulation of one day of “good time credit” for every three a defendant serves in prison without having caused behavioral problems.

## E. Reentry Planning and Access to Health Care

In an effort to implement both SB 91 and SB 74 (the Medicaid reform bill), DOC and DHSS have been working together to improve treatment, reentry planning, and access to health care for those leaving DOC custody.

### Medication Assisted Treatment at DOC.

Many offenders released from DOC facilities suffer from serious opioid addiction. These reentrants are particularly vulnerable to relapse during the first few days of freedom, when they may suffer from drug cravings but not yet have stable treatment situations. Responding to this problem, DOC decided to offer medication assisted treatment (MAT) for releasing opioid addicts.<sup>18</sup> The idea is to administer medication before the prisoner is released to cut down on cravings, allowing the reentering citizen time to arrange counseling or other recovery supports. In March of 2017, DOC began offering one medication, Vivitrol, to some releasing offenders with serious opioid addiction.<sup>19</sup> From March to October of 2017, the Department of Corrections received just over 500 referrals for Vivitrol and administered 69 injections.<sup>20</sup> DOC also intends to secure case management services for these offenders upon release to help them continue with treatment and Vivitrol in the community. Vivitrol is just one

### Medication Assisted Treatment – Vivitrol

- Vivitrol is the commercial name for Naltrexone, and is administered via monthly injection
- It blocks the body's ability to feel the effects of opioids or alcohol
- Medication must be used in conjunction with counseling and treatment

<sup>18</sup> Medication-assisted treatment (MAT) for opioid use disorder combines counseling and other recovery supports with prescribed medications. These medications help reduce the cravings and withdrawal symptoms that come from stopping opioid use. Research shows that using MAT can increase the chances of successful recovery. The longer people stay in treatment and use recovery support programs, the better they do at staying drug-free and maintaining recovery. But medications alone are usually not enough. Lifestyle changes and other services may be needed.

<sup>19</sup> Vivitrol currently is available for certain offenders releasing from Anchorage Correctional Complex, Hiland Mountain Correctional Center, Mat-Su Pretrial Facility, Fairbanks Correctional Center, Anvil Mountain Correctional Center, and Wildwood Correctional Center.

<sup>20</sup> Not all individuals referred met the DOC's participation requirements, and some referrals are in the process of being assessed for suitability.

## SB 74- Medicaid Reform

In 2016, the Alaska Legislature passed a monumental Medicaid reform mandate. Senate Bill 74 (SB 74) is a multi-dimensional Medicaid reform package that includes direction to apply for a federal waiver to enable the state to more efficiently manage a **comprehensive and integrated behavioral health system**. The system will involve partnerships across a diverse network of providers and clinical disciplines to build a foundation for evidence and data-driven practices.

The bill also directs the state to **reduce operational barriers, minimize administrative burdens, and improve the effectiveness and efficiency of Alaska's behavioral health system**.

The Department of Health and Social Services is collaborating with the Department of Corrections to provide supports to the reentry population including case management. The federal waiver is the mechanism with which the Department of Health and Social Services will enhance programs to provide treatment and medically necessary behavioral health supports in efforts to reduce recidivism.

option in a Medication Assisted Treatment program, and the Department is looking at ways to implement a full MAT program.

In an example of inter-departmental coordination, the Department of Health and Social Services used a portion of its FY17 reinvestment allocation to fund a study of the effectiveness of the Department of Corrections' Vivitrol Intervention Program. This is a two-year study being conducted by the University of Alaska.

**Medicaid and behavioral health reform.** In addition to the above activities undertaken with SB 91 reinvestment allocations, the Division of Behavioral Health, per SB 74, has undertaken comprehensive reform to the Behavioral Health system, which will include services to help meet the treatment needs of the population impacted by SB 91. DHSS behavioral health treatment supports are leveraged with criminal justice specific supports such as: linkages to treatment providers pre-release; transitional, rapid or permanent housing placements; increased enrollment in Medicaid (to facilitate greater access to treatment resources); transportation support for individuals trying to make appointments; and cognitive behavioral supports.

As part of the combined Medicaid and criminal justice reform efforts, DOC and DHSS are working together to provide assistance in completing hardcopy Medicaid applications to offenders who are within 30 days to their release date. In FY17, 832 returning citizens were successfully enrolled in Medicaid. The Department is also continuing to work toward electronic submissions of the applications.



In addition, in FY17 \$1.65 million was paid in Medicaid claims (total billed charges were \$6.39 million) for hospital care for individuals in the custody of the DOC (130 inpatient stays).

**Reentry planning and services.** As noted above, collaboration efforts between DOC, DHSS, and the Alaska Mental Health Trust Authority have paved the way for a quick rollout of new services for reentrants. For its part, DOC has done significant work to revamp reentry planning. All offenders sentenced to 30 days or more are required to have an Offender Management Plan (OMP)/release plan completed. Ninety days before release, the OMP is updated by the institutional Probation Officer. This update includes information such as programming statuses and release information regarding things like housing, work, and treatment. SB 91 also required DOC to work with offenders to get them an ID upon release; through July 31, 2017, DOC expended \$7,850 for 360 IDs of which 70 had an alcohol restriction.

As noted above, DHSS has put significant effort into leveraging the reinvestment money for reentry services to expand services provided by reentry coalitions and to implement case management services. The combined efforts from the two departments, along with the collaboration of the Alaska Mental Health trust, has streamlined reentry services starting before release. The increased communication between and within departments has facilitated a more fluid transition from DOC custody to community supervision.

The success of these reentry coordination efforts has been tempered somewhat by challenge of finding behavioral health treatment. Service providers report it is difficult to enroll reentrants in treatment programs immediately after release, and the waiting time for assessments (a prerequisite to enrolling in treatment) is long.

## Cross-Department Collaboration on Reentry

Staff from the Department of Corrections, the Department of Health and Social Services, and the Alaska Mental Health Trust Authority have worked together to improve interdepartmental coordination for reentry services. This collaboration has produced innovations such as:

- The facilitation of referrals from the DOC institutions to the community reentry case managers
- Information exchanges between DOC and reentry case managers starting 90 days before release
- One-on-one in-reaches with reentry staff for offenders inside of facilities 30-days before release
- Single-point-of-contact for reentry case managers within each DOC facility statewide
- Probation office contacts for each reentry case manager



## The Department of Corrections' Approach to Reentry

*"The Department recognizes that there are many facets in providing effective services while maintaining secure facilities, and we are working to ensure we have a coordinated approach and a plan that best serves the offender population while maintaining public safety. This approach is to have an effective plan that allows a coordinated effort between resources within the facilities to outside supportive agencies particularly with emphasis on the current opioid epidemic and our efforts toward detoxing and treatment options for justice involved individuals returning to their communities."*

- Department of Corrections Commissioner Dean Williams

### F. Changes to CRCs

Community Residential Centers (CRCs), otherwise known as halfway houses, have the potential to effectively support offenders who are transitioning back to the community from prison. However, in 2015 the Commission found that Alaska's CRCs likely were mixing low and high risk offenders, which research has shown can lead to increased recidivism for the low risk offenders. Additionally, the Commission found that CRCs would be more effective at reducing recidivism if the facilities offered treatment for offenders in addition to supervision. This is because research shows that a combination of surveillance and treatment focused on offenders' criminogenic needs (changeable risk factors that increase an offender's likelihood of committing a crime, such as anti-social behavior and substance abuse) is more effective at reducing recidivism than supervision consisting of surveillance alone.

SB 91 included language, effective in July of 2017, explicitly requiring a treatment component at CRCs. The new language calls for "comprehensive treatment for substance abuse, cognitive behavioral disorders, and other criminal risk factors including aftercare support." The bill also directed the Commissioner of Corrections to add certain elements to DOC's regulations that govern the operation of CRCs to include quality assurance measures, standards for treatment, and a process to limit the mixing of low and high risk prisoners.

Before these changes went into effect, DOC had made changes that decreased use of CRCs. DOC cut 100 beds from the total number in Anchorage in 2016, and yet it still struggled to find people of the appropriate custody level who had sufficient time incarcerated to be appropriate for CRC placement. This situation resulted in part from DOC's increased use of furlough and electronic monitoring for lower custody level prisoners. Under DOC's policies, prisoners with large amounts of time left to serve, too many disciplinary infractions, or a sex offense conviction are not appropriate for CRC placement. Some communities also object to the placement of sex offenders in a CRC as opposed to a hard bed.

Instead of CRC placements, the Department is exploring how it might provide transitional housing on a smaller scale (10-15 people) for specific populations such as prisoners taking Vivitrol, Native-centered housing, religious-based housing, or a veterans' home. The housing would be combined with work release and possibly include small supports such as vouchers for clothing, transportation, and food, or possibly schooling.

## G. Early Results, Concerns, and Adjustments

As noted elsewhere in this report, it is too soon to draw evidence-based conclusions about whether SB 91 is having its intended consequences on recidivism (to be meaningful, recidivism rates are calculated in three-year increments). However, some preliminary information can be gleaned about the initial effects of certain provisions. This section describes a few of the challenges and successes during the first 15 months of implementation.

During the weeks and months after the early provisions of SB 91 became effective, two things were clear: (1) SB 91 was the subject of intense public interest, and (2) the law was poorly understood. The first crucial months of implementation were hampered by a lack of understanding, or active misunderstandings, about how and what the law had changed. For example, many law enforcement officers erroneously believed that SB 91 restricted their arrest authority. These misunderstandings, some of which persisted for months, caused frustration and generated misplaced criticism. The Commission and others responsible for implementation responded by offering seminars, briefings, and presentations to the media and any others who were interested; however, those efforts did not completely remedy the misinformation.

- **Technical changes to SB 91:** SB 91 was a comprehensive bill, and it was complex. During the legislative process, it was anticipated that tweaks and drafting errors would be addressed later, as they became apparent. In the months after passage, the Commission and the Legislature became aware of technical or drafting errors that had been overlooked in SB 91. In January of 2017, after study and public input, the Commission voted to forward to the Legislature a number of technical fixes to SB 91; these recommendations became SB 55. SB 55 passed both the House and the Senate and was signed into law by Governor Walker in the summer of 2017.
- **Substantive Changes to SB 91.** Though SB 91 has not been in effect long enough to collect data on many outcomes, the Commission has heard both positive and negative commentary from the public and from practitioners during SB 91's implementation. After soliciting and hearing concerns from the public and practitioners about certain provisions of SB 91, the Commission voted in January 2017 to forward a number of recommendations to revise SB 91. In transmitting these recommendations to the Legislature, the Commission noted that contrary to its previous practice, the recommendations were not based on peer-reviewed or data-driven research, but rather on community feedback and anecdotal reports from prosecutors and law enforcement officers.

The Commission's January 2017 recommendations for substantive changes to SB 91 became the subject of SB 54. During the 2016-17 regular session, SB 54 passed the Senate and was referred to committees in the House. More recently, Governor Walker set SB 54 on the agenda for the special legislative session on October 23, 2017.

SB 54 contains revisions to sentencing for first-time class C felony offenders, sentencing for repeat class A misdemeanor offenders, violating conditions of release, and repeat petty theft offenders. Some of the bill's provisions differ from the Commission's recommendations. The Commission's recommendations for substantive changes to SB 91 are included in Appendix F.

- **Violating conditions of release.** SB 91 reclassified violating conditions of release (VCOR) in most circumstances from a criminal offense to a violation. The purpose of this change was to handle VCOR behavior by bringing the defendant back before a judge to re-examine the release decision, rather than charging a new crime. Recognizing, however, that defendants who violate conditions of release may pose a risk to public safety, the Commission recommended and SB 91 provided that defendants in violation of their conditions of release are subject to arrest.<sup>21</sup>

Despite this explicit arrest authority, it became clear in the first few months of implementation that law enforcement and others did not understand the new procedures. Some law enforcement officers were unaware of their authority to arrest and so took no action against release violators. Other officers were arresting defendants for VCOR but became frustrated when defendants were released as soon as they were brought to jail. In response, the Alaska Court System revised its bail forms to order defendants arrested for VCOR be held in jail and immediately be brought before a judge to have bail conditions reviewed.

In January of 2017, the Commission heard complaints about the new procedure; it subsequently recommended that VCOR be changed back to a Class B misdemeanor. In the months since that recommendation, the Commission has received some information that the court system's new VCOR procedures are operating as intended.

- **Arrests and citations.** Before July of 2016, law enforcement officers were required by law to arrest all persons charged with felony offenses. After that date, they were given the discretion either to arrest persons charged with Class C felonies or to use a citation to summons them to court. Data from the Department of Public Safety shows that officers chose to issue a citation instead of arrest in about 9% of all situations involving a C felony (they arrested 4,231 C felons and cited 423). Officers mostly issued citations for non-violent C felonies (86% of the citations issued). Figure 17 shows all C felony arrests and citations for the first half of 2017.

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<sup>21</sup> 2016 SLA Ch. 36, sections 29-30 (2016).

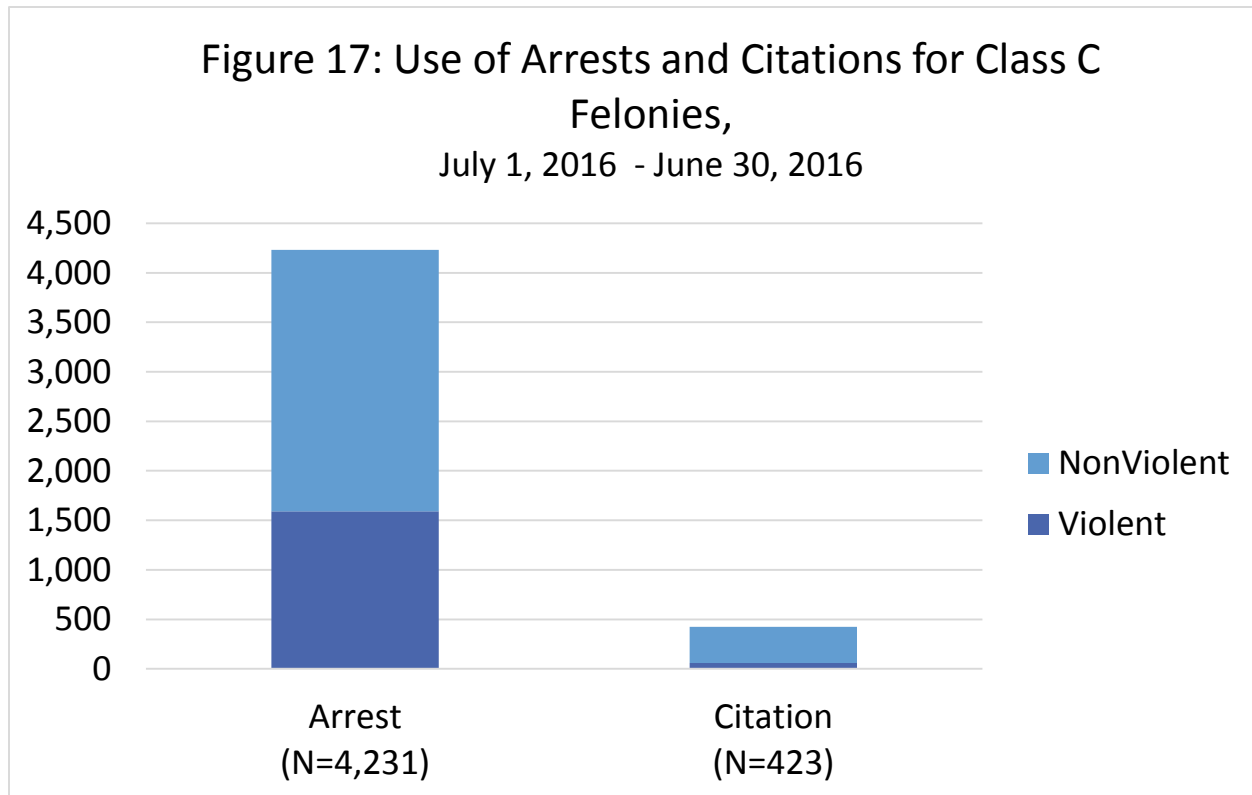


Figure 157 Source: Department of Public Safety

- Suspended Entry of Judgment:** SB 91 created the Suspended Entry of Judgment (SEJ), a new mechanism that allows a court to defer the entry of judgment against a defendant, who is then be placed on probation. If the defendant completes probation successfully, the charges against the defendant will be dismissed and the defendant will not have a conviction on their record. (Certain violent felonies and crimes involving domestic violence are not eligible.) Both the prosecutor and the defendant must agree to the SEJ.

Because this provision only became effective in July 2016, and recipients must complete a term of probation that is often longer than one year, it is not yet known how many SEJ defendants' cases have been completed, and no real information is available about the recidivism rate for recipients. Preliminary reports suggest that SEJs are being used, more often in some jurisdictions than in others. Information from court system dockets indicates that about 129 cases have involved an SEJ between July 1, 2016, and May 13, 2017. This represents only a very small fraction of criminal cases disposed during that time period. It also significantly less than cases disposed with an SIS during that time period. The Commission will monitor whether SEJ use increases, and if not, whether there are aspects of the disposition that are not meeting the justice system's needs.

Soon after the SEJ disposition became effective, the Commission was asked whether incarceration should be permitted for recipients of the SEJ disposition. The Commission considered the question and recommended that incarceration not be available as part of the SEJ probationary disposition. This recommendation was included in SB 55 and has now been passed into law.

- **Food Stamps:** SB 91 lifted the restriction on eligibility for food stamps (SNAP) for persons convicted of drug felonies, so long as the person is compliant with the conditions of probation, or completed probation and required treatment. Outreach workers report that word has not reached everyone who might be eligible, and people are continuing to apply for waivers. Several who completed probation and treatment some time ago report having some difficulty obtaining the required documentation because their probation officer had left state employment. Those who have received a waiver report significant relief.

The Division of Public Assistance estimates that around 252 individuals who may have had a drug felony conviction received SNAP benefits after SB 91 was enacted. This is a very rough estimate because DPA does not specifically track this population.



*"I work as a reentry case manager, and I am a person who has benefited from SB 91. I am a graduate of the Juneau Therapeutic court and I am able to drive on a limited license today because of SB 91. This allows me to function as an adult. I am able to help other re-entrants today because I am able to get around.*

*I have a colleague who is also a therapeutic court graduate who is able to drive now because of SB 91. She is a peer support specialist and provides recovery coaching to people re-entering from prison. The re-entrants really get excited when they work with me and my colleague because it gives them hope. I plan to utilize some of the successful re-entrants to become reentry coaches to further inspire the future re-entrants. The main thing I see is that people need hope and a purpose. I am very grateful for the changes that have happened because of SB 91."*

Michael VanLinden  
Reentry & Recovery Support Coordinator, National Council on Alcoholism and Drug  
Dependence, Juneau Affiliate

## IV. Reinvestment

Reinvestment in recidivism reduction and violence prevention is an important component of criminal justice reform. When SB 91 was passed, the Commission recommended that the Legislature directly reinvest savings expected to arise from the pretrial, sentencing, and corrections policy changes of the law. The Commission recommended part of the expected savings be reinvested in implementation activities, and that other funds be reinvested in programming to reduce recidivism, prevent violence and improve public safety.

The Commission has been following the progress of the initiatives funded with reinvestment funds. In FY17 and FY 18, reinvestment was allocated to four areas:

- Substance abuse treatment within DOC facilities (prisons and CRCs)
- Victims' services and violence prevention programs (through the Council on Domestic Violence and Sexual Assault)
- Reentry Services (administered by DHSS)
- Implementation activities for the Pretrial Enforcement Division, the Parole Board, the Alcohol Safety Action Program, and the Alaska Judicial Council.

Figure 18 summarizes the reinvestment allocations for FY17 and FY18. Per the fiscal note accompanying SB 91, a planned total of around \$100 million is to be reinvested by 2022.

<b>Figure 18: Summary of FY17 &amp; FY18 Reinvestment Allocations For Criminal Justice Reform Programs</b>			
<b>Item</b>	<b>FY17</b>	<b>FY18 (SB 91 Fiscal Note)</b>	<b>Total FY17 &amp; FY 18</b>
<b>DOC</b>			
Substance Abuse Treatment in Prison	\$700,000	\$1,000,000	\$1,700,000
Substance Abuse Treatment at CRCs	\$300,000	\$500,000	\$800,000
<b>DHSS</b>			
Community-Based Reentry Services	\$1,000,000	\$2,000,000	\$3,000,000
<b>DPS</b>			
CDVSA Victims' Services & Violence Prevention	\$1,000,000	\$2,000,000	\$3,000,000
<b>Treatment &amp; Prevention Subtotal</b>	<b>\$3,000,000</b>	<b>\$5,500,000</b>	<b>\$8,500,000</b>
<b>Implementation costs</b>			
Pretrial Services, Commission staffing, ASAP, Parole Board	\$5,828,000	\$11,179,500	\$17,007,500
<b>Reinvestment Total</b>	<b>\$8,828,000</b>	<b>\$16,679,500</b>	<b>\$25,507,500</b>

Figure 168 Source: SB 91 Fiscal Notes

Starting in 2019 the state is planning to receive an estimated \$6 million of this funding in the form of Medicaid reimbursement from the federal government.<sup>22</sup> Changes to Medicaid at the federal level could affect that plan.

### A. Reinvestment in substance abuse treatment at DOC

Most incarcerated individuals in Alaska suffer from a diagnosable substance abuse disorder or mental illness. A report published in 2014 found that people with mental illness or substance abuse disorders accounted for 65% of inmates in a DOC facility on a given day in 2012.<sup>23</sup> Of these offenders with reported clinical characteristics, about 70% were substance abuse-related (many had both substance abuse and mental illness). For mentally ill or substance abusing offenders, the median length of a prison stay was significantly longer than for other offenders, and they recidivated at higher rates than other offenders.

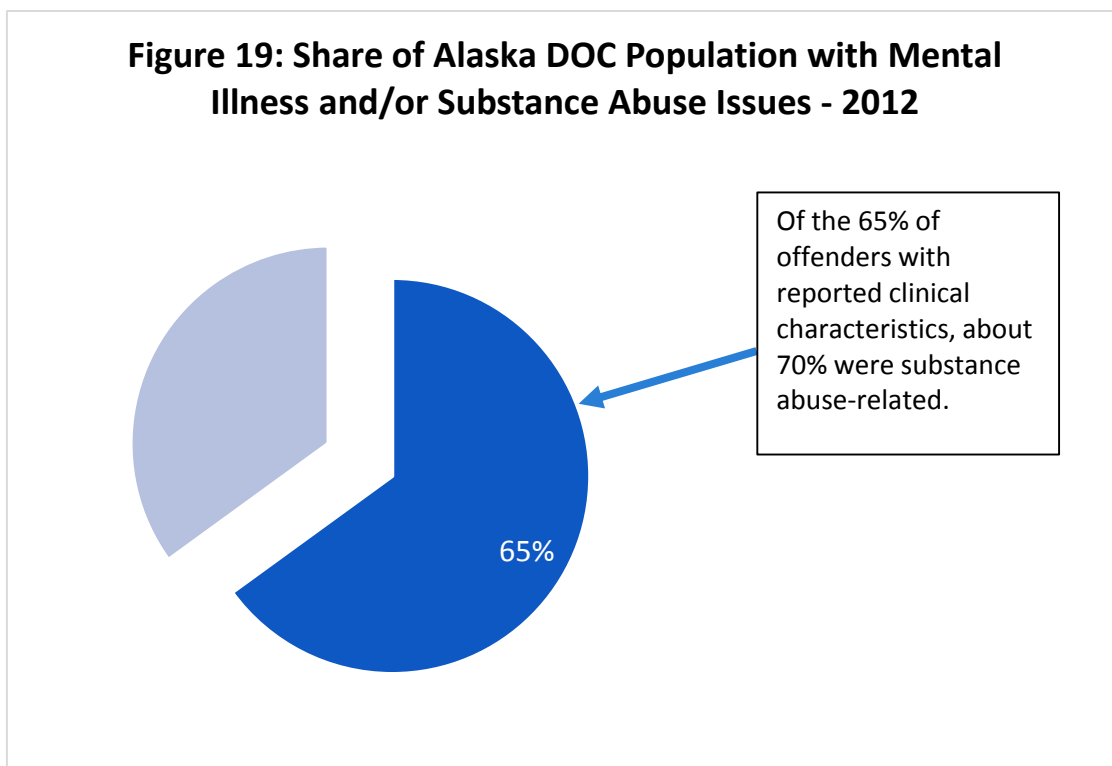


Figure 179 Source: Hornby Zeller Associates, Inc., *TRUST BENEFICIARIES IN ALASKA'S DEPARTMENT OF CORRECTIONS* (May 2014)

Research shows that substance abuse treatment programming for offenders while they are incarcerated decreases recidivism.<sup>24</sup> Thus, improving prisoners' access to substance abuse treatment was

<sup>22</sup> Starting in FY19, DHSS predicts it will have redesigned the behavioral health system such that a portion of reentry center services will be billable to Medicaid. This scenario assumes a blended rate of 75%, leaving 25% match to the State treasury. So, for example, in FY19 DHSS expects to receive \$1,125,000 in federal Medicaid funds, matched by \$375,000 in State funds, for a total of \$1,500,000 to be spent on referral and case management services to expand access to treatment and support services.

<sup>23</sup> Hornby Zeller Associates, Inc., *TRUST BENEFICIARIES IN ALASKA'S DEPARTMENT OF CORRECTIONS* (May 2014).

<sup>24</sup> Alaska Justice Information Center, *ALASKA RESULTS FIRST INITIATIVE: ALASKA CRIMINAL JUSTICE COMMISSION* | Annual Report ADULT CRIMINAL JUSTICE PROGRAM BENEFIT COST ANALYSIS (September 29, 2017) at page 17.



one focus of reinvestment efforts. In FY17 the Legislature appropriated \$1,000,000 to DOC to enhance substance abuse treatment for individuals in prisons and CRCs. Of that total, \$700,000 was allocated for substance abuse treatment programs within DOC facilities, and \$300,000 for substance abuse treatment programs at CRCs.

The DOC had difficulty maintaining substance abuse treatment programming in prisons after its sole treatment provider withdrew from its contract in December 2016. Because of these difficulties, final FY17 expenditures were below allocations (about \$165,000 was spent). Despite this, DOC was able to continue basic substance abuse programming in several facilities while working to secure a new contract provider. DOC reports it is making progress in securing contracts for treatment programs inside of facilities. Substance Abuse Treatment materials/curriculum were purchased in anticipation of the new contract and expansion of substance abuse services.

In regard to expanding treatment options at CRCs, final expenditures for FY17 also were below allocations (about \$13,991 was spent). Nevertheless, some services were expanded, including the addition of outpatient substance abuse services at the Nome Seaside Center. DOC intends to fully utilize the funding in FY18 due to the further expansion of treatment options that are currently underway. The Northstar Center in Fairbanks continues to offer CBI-SA, which is a low-level outpatient substance abuse treatment program that uses cognitive behavioral intervention. Outpatient treatment is currently being added to the Cordova Center in Anchorage. Next, the Department is hoping to expand these efforts and offer additional substance abuse treatment services at Glacier Manor in Juneau.

In FY18, the Legislature appropriated \$1,500,000 to DOC for substance abuse treatment (\$1,000,000 for substance abuse treatment programs within DOC, and \$500,000 for substance abuse treatment programs at CRCs). The Department advises that it plans to fully utilize all substance abuse treatment funding in FY18.

## B. Reinvestment in Victim's Services and Violence Prevention

An important goal of SB 91 was to focus criminal justice system resources on serious and violent crime. Alaska has for many years had high rates of violent crime, and high rates of domestic violence and sexual assault. When the Commission solicited input from victims' groups (including victims and advocates in rural Alaska) about how best to improve victim safety, services, and support, victims' advocates said a top priority was to expand programs focused on crime prevention and bystander intervention. The Commission thus recommended, and the Legislature agreed, to make violence prevention and bystander intervention a priority for reinvestment.

As part of the total FY17 reinvestment appropriation, the **Council on Domestic Violence and Sexual Assault (CDVSA)** received \$1,000,000 for primary prevention programs. Alaska has used state resources for primary prevention programming since 2009, however, it was not until the passage of SB 91 that funding amounts for primary prevention work were stabilized. In FY17, the CDVSA used reinvestment funds for these programs:

- [The COMPASS project](#) – COMPASS promotes male and youth leadership through mentorship; uses a guide to help adult male mentors create a safe atmosphere for men and boys to learn about and practice healthy lifestyles, healthy identities, and safe and violence-free communities. In FY17, the focus was on sustaining existing efforts, expanding the Train the Trainer project,

providing technical assistance, and standardizing the model and evaluation tools for the Train the Trainer.

- [Stand Up Speak Up](#) – A media and engagement campaign to teach youth how to more effectively speak up and encourage other youth to stand up to end violence. FY17 funding supported mini-grants for community-based projects led by youth to promote healthy relationships, respect among peers, and leadership.
- [Talk Now Talk Often](#) – A parent engagement project for parents of teenagers; provides resources for parents to speak with their teens about healthy dating relationships. FY17 funds were used to develop a new engagement series for parents to talk to teens about healthy sexuality.
- [Coaching Boys into Men](#) – Engages athletic coaches of high school male athletic teams to help shape the attitudes and behaviors of young male athletes. The program equips coaches to talk with their athletes about respect for women and girls and that violence does not equal strength. In FY2017, training was held in Juneau and brought in 16 new high school coaches representing school districts from across the state.
- [The Green Dot](#) – A nationally recognized bystander intervention program with the goal of preparing organizations or communities to take steps to reduce power-based personal violence including sexual violence and domestic violence. The “green dot” refers to any behavior, choice, word or attitude that promotes safety for everyone and communicates intolerance for violence. FY17 funds were used to support ongoing technical assistance, expansion into two additional communities, contracts to maintain the existing Green Dot Alaska sites, and collation of evaluation data.
- [Girls on the Run](#) – An after school program for girls in the 3<sup>rd</sup> through 5<sup>th</sup> grade that encourages positive emotional, social, mental and physical development, healthy adult peer and adult role modeling, and healthy relationships. The FY17 funding was used for statewide coordination support and the addition of one new community to the program.
- [Prevention summits, conferences, and victim’s services training](#) – A LeadON! conference was held in Anchorage with FY17 funds to engage youth to help change norms around teen dating violence. Also, the FY17 funds paid for a Prevention Summit (held every two years) at which participants learn about coalition building and then apply for mini-grants. Other funds went for statewide training of victim service providers on new legislation.
- [Community Based Primary Prevention Grants \(CBPPP\)](#) – FY17 reinvestment funding provided funding for a full time staff person in the community, and funding to prepare for CBPPP. Four communities that already were working towards comprehensive program planning and implementation under the Community Based Primary Prevention Program (CBPPP) grant were able to evaluate their efforts. In addition, reinvestment funding supported two new communities to build their agency capacity and community readiness.

All prevention programming funded through CDVSA has an evaluation component. Evaluation designs exist on a continuum from simple website metrics to peer-reviewed quality research.

The CDVSA successfully expended \$977,711 of its FY17 allocation on these programs. In FY18, it received \$2,000,000 for Victims’ Services & Violence Prevention. During FY18, the CDVSA intends to continue developing violence prevention programs, with an emphasis on primary prevention, bystander intervention, and robust evaluation of effectiveness.

## C. Reinvestment in reentry planning and services

One major driver of recidivism (and prison bed use) is the category of offenders who are released from prison, but who subsequently fail on community supervision. The Commission found that almost two-thirds of offenders released from prison returned to prison within three years; 62% of those offenders return to prison *within the first three months* of release.

Offenders fail on supervision for many reasons, but lack of housing, need for employment, and need for substance abuse or mental health treatment have been identified as important barriers to their successful reentry into the community. The fact that so many reentering offenders fail so quickly after release suggests that these barriers are immediate.

Evidence-based research shows that when support services are frontloaded for medium to high-risk offenders reentering the community, they are more likely to stay out in the community rather than return to prison. In order to reduce or delay offenders' failure on community supervision, funds were invested in programs whose goal it is to help offenders successfully reenter the community. In Alaska, these efforts have been undertaken by community reentry coalitions, reentry case managers, and existing community reentry programs, such as the Anchorage Partners Reentry center. Through community collaborations and partnerships, released offenders can be connected with necessary services and supports such as healthcare, employment, transportation, education/training, and housing.

SB 91 requires DOC officers to work with offenders to develop a reentry plan that the offender will follow upon release. DOC, DHSS, and the Alaska Mental Health Trust are working closely with each other and with local reentry coalitions to connect newly-released citizens with services. More details on this are included in subsection E below.

### Reentry Services

Reinvestment funding supported direct services for reentrants in the areas of Anchorage, Fairbanks, the Mat-Su, and Juneau:

- Individual case management
- Housing Assistance (Placement and Transitional Supports)
- Treatment (Linkage and non-Medicaid billable supports)
- Employment Assistance (Linkage, Job Search and Application Assistance)
- Medicaid Enrollment
- Public Assistance Linkage (including for SNAP assistance)
- Transportation Assistance
- Emergency Assistance Supports, including clothing vouchers and identification

In FY17, DHSS received \$1,000,000 to fund Reentry Services.<sup>25</sup> DHSS allocated 77% of these funds for rural reentry coalitions and direct service supports. The majority of the total funding went to reentry case management services and expanded services at the Anchorage Partners Reentry Center. In addition, rural coalitions on the Kenai Peninsula, and in Nome, Dillingham, and Ketchikan were supported with FY17 funds. Also, case managers were funded in Anchorage, Fairbanks, Mat-Su, Dillingham, and Juneau. All the case managers have been hired and have started taking referrals. The case managers target individuals exiting DOC facilities who are at a higher risk of reoffending. These are offenders who have served over 30 days in prison and are within 90 days of release who are medium to high-risk felons or high-risk misdemeanants. Case managers use the risk-needs-responsivity principle, and collect and monitor program data.

An important element of case management is DOC's ability to share information about reentrants with the community reentry programs. In order to improve information sharing, DHSS used a portion of its reinvestment funds for technology platform improvements to the Alaska Corrections Offender Management System (ACOMS) and the Alaska Automated Information Management System (AKAIMS). These improvements allowed secure case management tracking and increased functionality. DHSS spent about 23% of its reinvestment funding on these improvements as well as the study to evaluate the success of the Department of Corrections' Vivitrol Intervention Program, as mentioned above.

In FY18, DHSS was allocated \$2,000,000 for reentry services. DHSS will continue to work in collaboration with DOC and other stakeholders to monitor and ensure the outcomes of SB 91. Reentry direct service supports and rural coalition initiatives will continue to be supported and enhanced, and efforts to improve the Medicaid eligibility process for justice-involved citizens will continue, including policy changes and enhanced data tracking by DHSS and DOC.

## D. Funding for implementation

The Legislature recognized that SB 91 imposed new and increased responsibilities on some state agencies and it appropriated funding to ensure that the agencies could fulfill these duties. FY17 appropriation for implementation activities was \$5,828,000. This included:

- **ASAP resources:** \$30,300 to the Department of Health and Social Services to implement recommended improvements to the Alcohol Safety Action Program.
- **Parole Board:** \$775,900 to the Department of Corrections for increased staffing and travel for the parole board for increases in the number of parole hearings (hearings increased by 141%).
- **Pretrial Enforcement Division:** \$3,260,100 to the Department of Corrections to hire and train officers, develop a Pretrial Assessment Tool and software, lease office space, and buy office equipment.
- **Technical upgrades:** \$1,500,000 to the Department of Corrections for database upgrades.

<sup>25</sup> In a separate appropriation, DHSS received \$6,000,000 for Treatment and Recovery Grants, with the plan to distribute \$2,000,000 in FY17, \$2,000,000 in FY18, and \$2,000,000 in FY19. These funds were not considered criminal justice reinvestment, and the programs were not targeted at criminal justice offenders or recidivism reduction.

- **Commission support:** \$261,700 to the Alaska Judicial Council for staffing, travel, and research support for the Alaska Criminal Justice Commission.

The FY18 funding for implementation was \$11,201,100 (the FY18 increase reflects full staffing of the Pretrial Enforcement Division). Breaking down the FY18 appropriations shows that Pretrial Enforcement received \$10,187,700 (plus an additional allocation of \$21,600 over the SB 91 fiscal note projection because of salary and health insurance increases); the Parole Board received \$700,900; the Alaska Judicial Council received \$261,700; and ASAP received \$29,200. Full implementation of criminal justice reform through 2022 is expected to cost \$73,226,700.

## E. Programs funded by the Bureau of Justice Assistance

After SB 91 was passed in July 2016, the Commission sought technical assistance to support Alaska during the first two years of implementation. The Commission applied for and received a federal grant from the Bureau of Justice Assistance (BJA) to provide funding and technical assistance to implementation efforts. The technical assistance and grant management is being provided by the Crime and Justice institute (CJI, a division of the nonprofit Community Resources for Justice).

**DOC training.** BJA approved the Commission's request for the first round of funding in September 2016 for training and implementation assistance. CJI assisted the Department of Corrections (DOC) in implementing the reforms related to parole and probation. CJI assisted DOC in developing policies and procedures for probation and parole officers to respond effectively to negative and positive offender behavior, and trained all community supervision officers in the effective use of these sanctions and incentives, and on other new requirements. CJI also provided training for all institutional parole offices on effective case management practices. Subsequently, CJI provided a "Train the Trainer" course so that DOC has the capacity to train staff on the graduated responses and effective case management skills in the future. BJA funding covered the travel costs to bring DOC staff in for trainings.

### The Crime and Justice Institute

- A division of the Boston-based nonprofit Community Resources for Justice
- Provides nonpartisan policy analysis, consulting, and research services to improve public safety throughout the country
- Providing Alaska with technical assistance, including training for state employees, for the implementation of SB 91

BJA approved the Commission's request for the second round of funding in July of 2017 for the following needs:

- **DOC Justice Reinvestment Coordinator:** The Coordinator, expected to begin work in October of 2017, will coordinate and oversee implementation efforts for various initiatives related to SB 91 and any successive bills relating to criminal justice reform and reinvestment efforts. This work will involve ensuring the successful completion of all SB 91 requirements, assisting with the reporting of performance measures to the Commission, reporting to the Legislature, and managing capacity building opportunities.
- **DOC Pretrial Diversion Coordinator:** AS 33.07.020 requires the Commissioner of Corrections to develop regulations that include guidelines for Pretrial Enforcement officers to make diversion recommendations to the court. The statute requires these regulations to be developed in consultation with the Department of Law, the public defense bar, the Department of Public Safety, the Office of Victims' Rights, and the Alaska Court System. To advance this initiative, the Commission supported DOC's request for federal grant funding to hire a coordinator to develop such a program. The funding approved in July of 2017 will be used to hire a coordinator for approximately one year; the Department is in the process of filling that position.
- **Juneau Avert Chronic Shoplifting Pilot Project:** A third need was identified after public testimony at a Commission meeting in Juneau in early 2017. The City and Borough of Juneau (CBJ) attorney shared frustration about chronic shoplifting offenders in Juneau, the effects their offenses were having on local merchants, and the inability of the criminal justice system to reform these repeat offenders.

Commission staff subsequently reached out to the CBJ attorney and offered to help design and seek funding for a pilot program to reduce recidivism among these repeat petty theft offenders. A program was designed based on interventions that had worked in other contexts, partners in the community were solicited by the CBJ attorney, and the Commission agreed to seek federal grant funding for the project.

The Juneau Avert Chronic Shoplifting Pilot Project began in October of 2017. This innovative program will identify 40 to 50 repeat petty theft offenders in the Juneau area and offer them a diversion opportunity. Program participants will be assessed in terms of risk of re-offense, and the municipal prosecutor will dismiss their case if they engage in motivational interviewing (an evidence-based practice), work on overcoming a personal obstacle, make restitution, and complete cognitive-behavioral therapy, which includes an anti-shoplifting program.

The project is a collaborative effort with the City and Borough of Juneau, the Central Council Tlingit and Haida Indian Tribes of Alaska's Second Chance Reentry Program, and the Juneau Alliance for Mental Health. The Alaska Judicial Council has agreed to evaluate the effectiveness of the program.

## V. Trends of Note: Crime Rates, Opioids, and Budget Cuts

Section III above contains the data the Commission has gathered thus far on the implementation of SB 91 and the effect it may be having on the prison population. This section includes data on crime rates, the opioid crisis, and the effect of budget cuts on public safety, all of which are provided here to help guide policymakers when considering further reforms to the criminal justice system.

### A. Crime Rates

There has been a great deal of discussion and commentary on crime rates in Alaska, particularly following the release of the Department of Public Safety's 2016 crime report. In looking at crime rate data, it is important to note that the causes of crime are notoriously difficult to pinpoint. Evidence shows that crime is driven by a number of factors.<sup>26</sup>

The following graphs document the 30-year crime rate trends in Alaska, using data collected through the end of 2016.

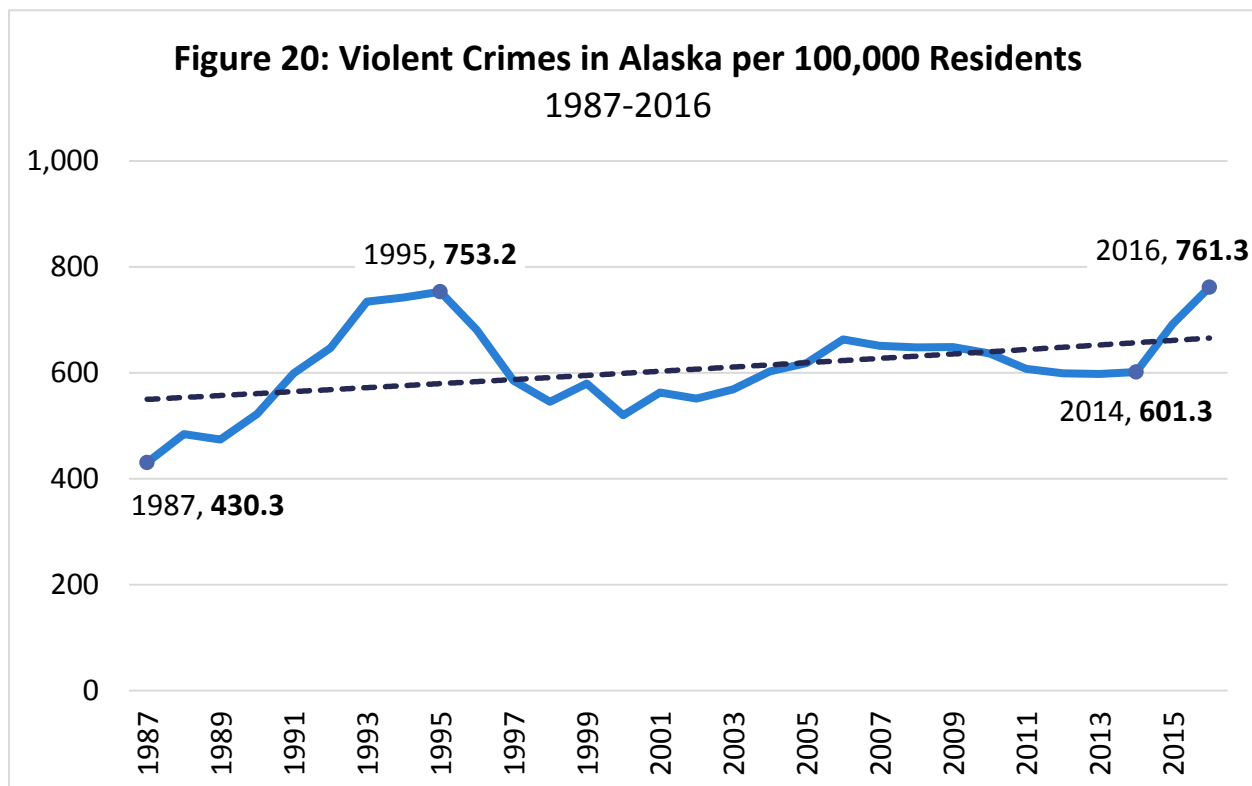


Figure 20 Source: Department of Public Safety

<sup>26</sup> Research indicates that incarceration rates cannot necessarily be correlated with crime rates. A recent study showed that between 2010 and 2015, the overall imprisonment rate in the United States fell by 8.4% and the violent and property crime rate fell by 14.6%. See

[http://www.pewtrusts.org/~media/assets/2017/03/pspp\\_national\\_imprisonment\\_and\\_crime\\_rates\\_fall.pdf](http://www.pewtrusts.org/~media/assets/2017/03/pspp_national_imprisonment_and_crime_rates_fall.pdf).



Figure 20 shows violent crime rates in Alaska have risen over the last thirty years on average, with a recent uptick starting in 2015. Property crime rates, on the other hand, have declined over the last thirty years on average.

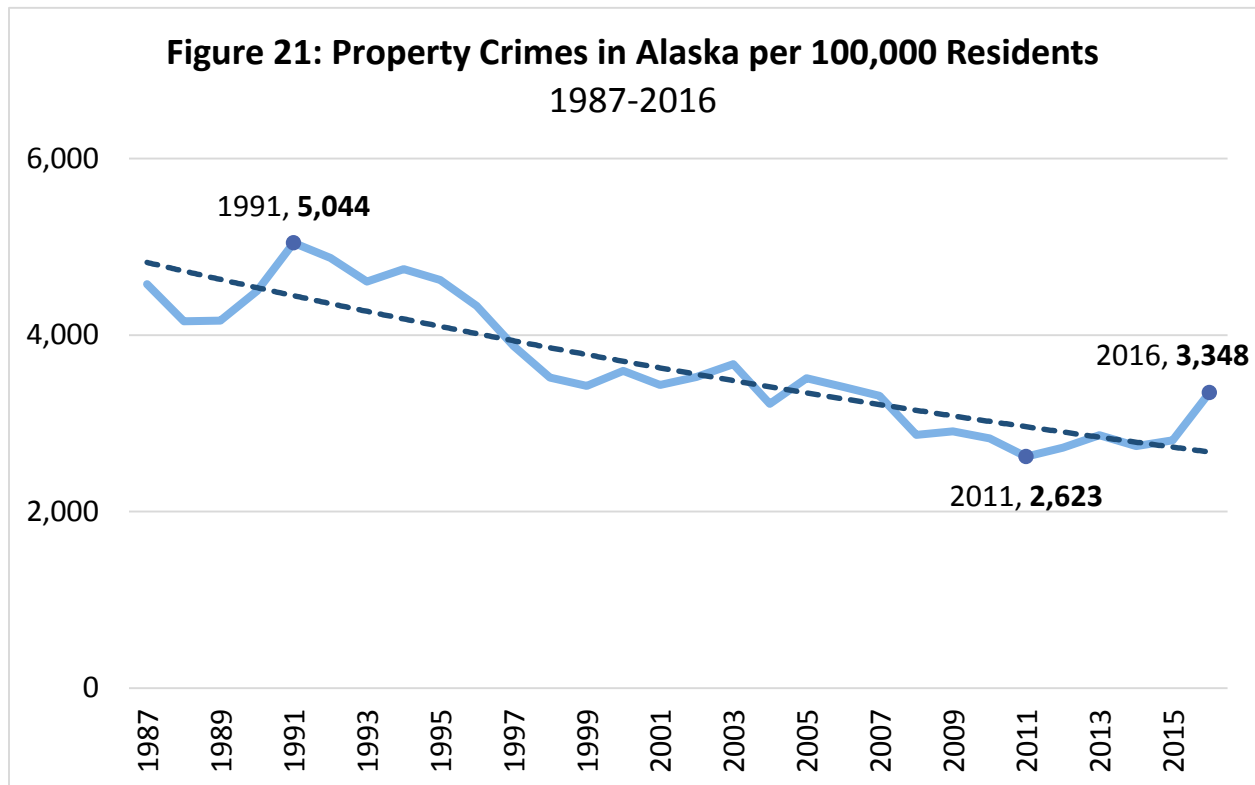


Figure 21 Source: Department of Public Safety

Despite a 30-year downward trend, there was an uptick in property crime rates starting in 2011. In addition, data from Anchorage over the same period shows crime rates following a similar trend.



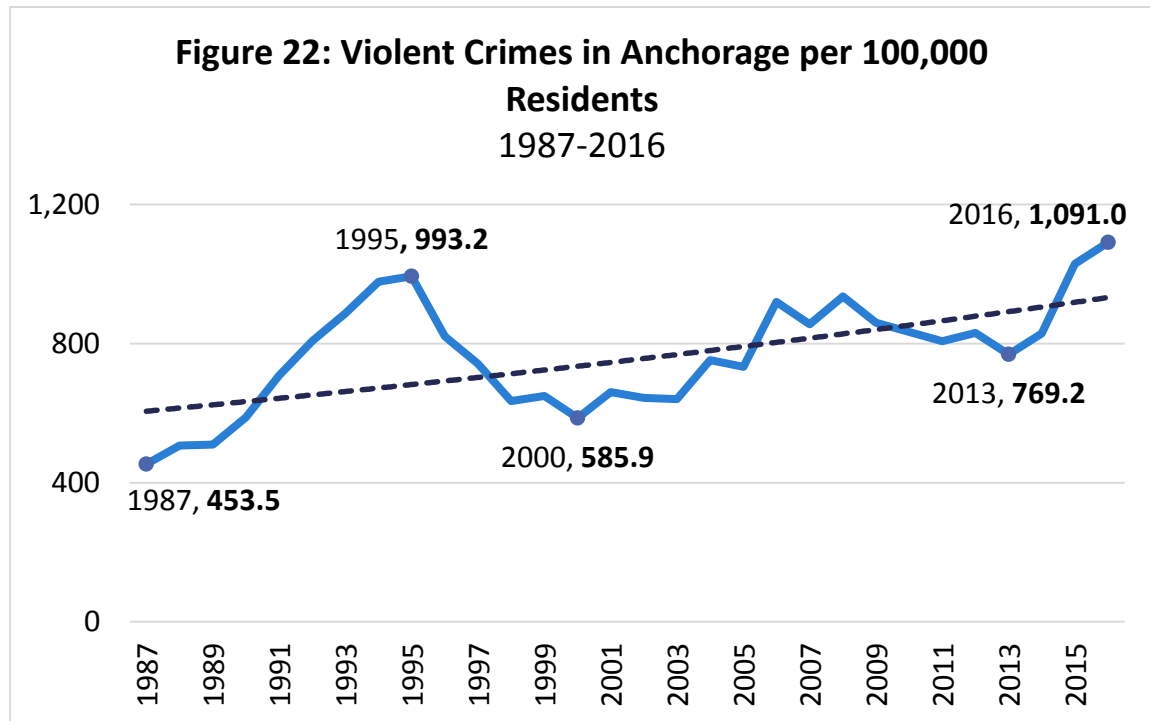


Figure 22 Source: Department of Public Safety

Looking at historical crime rates in Anchorage from 1985–2016 for shoplifting, burglaries, motor vehicle thefts, and larceny thefts, 2016 rates are neither the highest nor lowest over the last 30 years.

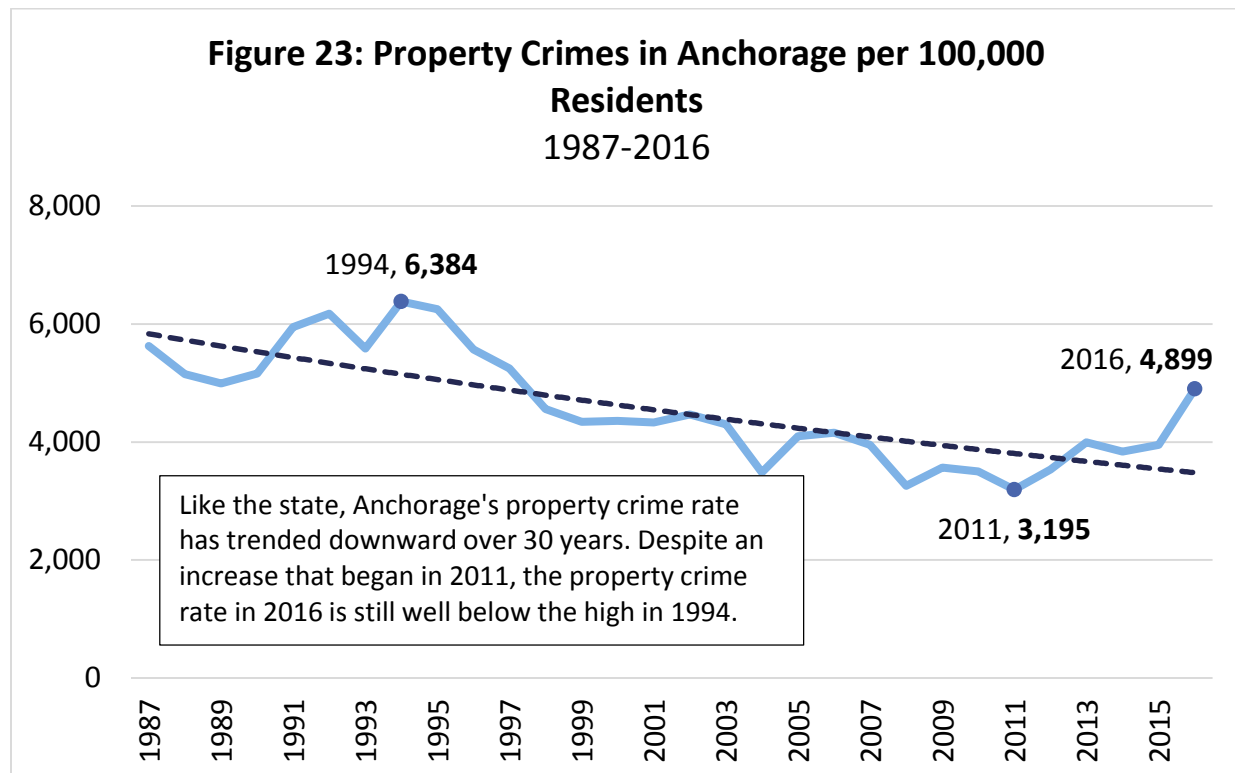


Figure 183 Source: Department of Public Safety

## B. The Opioid Crisis

The opioid crisis has likely affected crime rates and should be kept in mind in any discussion concerning criminal justice policy. The crisis led Governor Walker to issue a disaster declaration in February 2017.<sup>27</sup> The rise in opioid use in recent years has produced some startling statistics:<sup>28</sup>

- From 2008 to 2012, hospitalizations in Alaska for heroin poisoning nearly doubled, and heroin-related inpatient and outpatient hospital costs exceeded \$2million.
- The number of Medicaid health care services payment requests in Alaska for heroin poisoning increased almost ten-fold from 2004 to 2013.
- During the years 2009–2013 in Alaska, heroin-related admissions to publicly funded substance use treatment centers nearly doubled, and the majority of patients admitted for heroin use treatment were aged 21–29 years; the number of treatment admissions for all patients reporting heroin as their primary substance of choice increased by 58%; and the number of treatment admissions for patients aged 21–29 reporting heroin as their primary substance of choice increased by 74%.

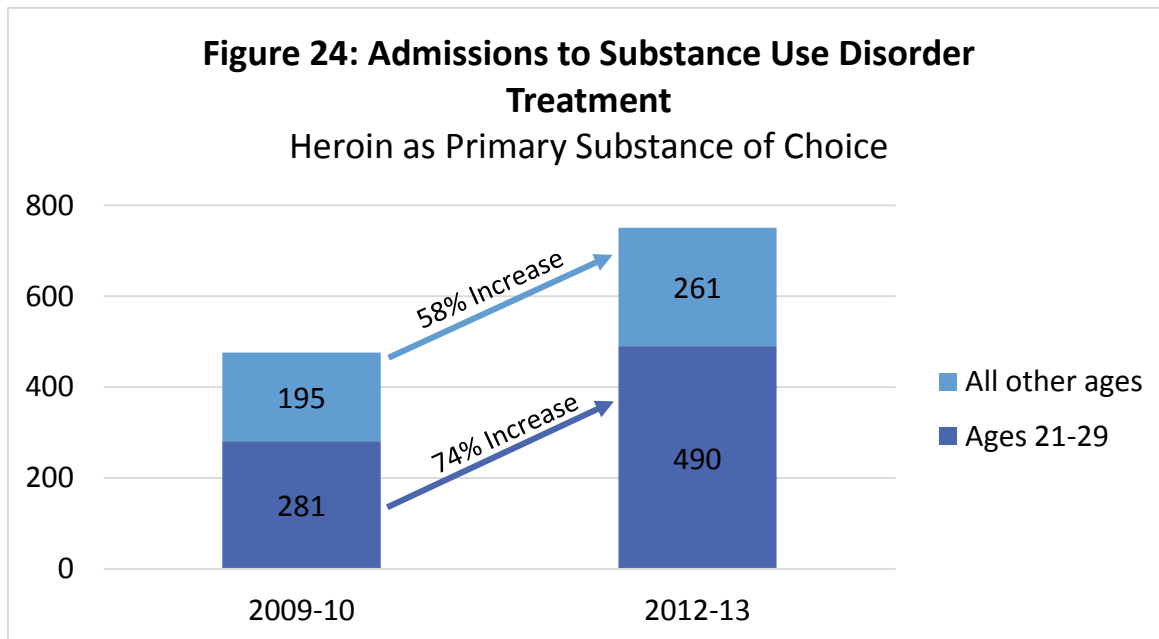


Figure 194 Source: Alaska Department of Health and Social Services, Division of Public Health

- From 2009 to 2015, the number of heroin-associated deaths in Alaska more than quadrupled.

<sup>27</sup> See <https://gov.alaska.gov/newsroom/2017/02/governor-walker-issues-disaster-declaration-on-opioid-epidemic/>

<sup>28</sup> Statistics from <http://dhss.alaska.gov/dph/Director/Pages/heroin-opioids/data.aspx> and <http://epibulletins.dhss.alaska.gov/Document/Display?DocumentId=12>

- In 2012, Alaska's prescription opioid pain reliever overdose death rate was more than double the national average. Alaska's heroin-associated overdose death rate was over 50% higher than the national average.

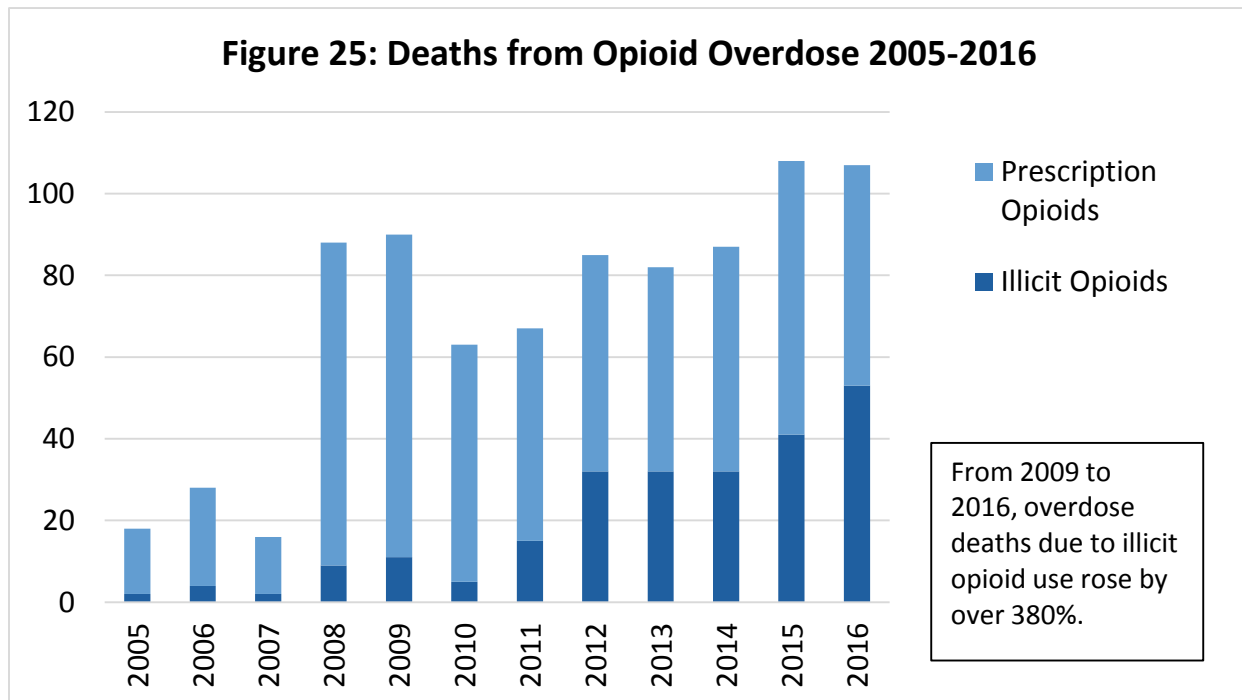


Figure 205 Source: Alaska Department of Health and Social Services, Division of Public Health

### C. Budget cuts

Revenue available to fund state government has declined significantly over the last three years in Alaska. The Alaska Legislature has responded by decreasing the operating budget, which funds criminal justice agencies and the court system. Cuts to the budgets of criminal justice agencies and the court system impact the ability of the system to respond to crime.

**Department of Law.** Compared to FY14, the Criminal Division of the Alaska Department of Law had 22 fewer filled attorney positions in FY17. DOL had 19 fewer filled support staff positions in FY17 compared to FY14. DOL estimates that its capacity to prosecute misdemeanors is down 33% (or 6,863 prosecutions) compared to 2013. The capacity to prosecute felony crimes is down 3% (or 187 cases) compared to 2013. When deciding how to allocate prosecution resources, the DOL has had to prioritize felonies over misdemeanors, and violent crimes over property crimes.

**The Department of Corrections'** budget decreased 7.1% between FY15 and the current FY18 budget. DOC submitted a fiscal note with SB 91 containing budget reductions of \$3,594,600 in FY17 based on projections of reduced prison population, and for FY18 a reduction of \$18,713,600.

The **Department of Public Safety's** operating budget has been reduced by 7% since FY15. As a result, the DPS has lost 37 Trooper positions and closed 8 Trooper posts. In addition, DPS reports 36 current Trooper vacancies (of which 8 are wildlife troopers) because of recruitment and retention

problems. The Village Public Safety Officer Program's budget has been cut by 23.8% since FY15. DPS had 77 filled VPSO positions in June of 2015, compared to 61 in June of 2016 and 51 in June of 2017.

The **Office of Public Advocacy** and the **Public Defender Agency** budgets have not kept up with the workload. When criminal defense attorneys must carry larger caseloads or more serious cases, it can contribute to delay in resolution of cases.

In the last three years, the **Alaska Court System** budget has been managing a 10.1% cut, equal to about \$11,000,000. To meet the budget challenges, the court system reduced the number of employees by almost 9%, significantly reduced expenditures on supplies and equipment, increased operational efficiency through improved use of technology and other means, closed courts statewide on Friday afternoons, and received savings from employees across the state who took voluntary leave without pay.

## VI. Savings and Recommendations for Reinvestment

AS 44.19.645 requires the Alaska Criminal Justice Commission to “annually make recommendations to the governor and the Legislature on how savings from criminal justice reforms should be reinvested to reduce recidivism.” This section of the report first examines savings related to criminal justice reform, and it then sets forth four principles that the Commission recommends should be followed when making decisions about reinvestment.

### A. Analysis of Savings from Criminal Justice Reforms

This section examines predicted and actual cost savings in the criminal justice system that have occurred since criminal justice reform began in July of 2016. Included in this discussion is an analysis of predicted and actual savings attributable to changes in prison bed usage at DOC, and money appropriated to the Recidivism Reduction Fund created by SB 91.

**Savings at DOC- Predicted savings.** The criminal justice reforms contained in SB 91 were anticipated to decrease use of prison beds and result in \$380 million in savings to the state: \$169 million in avoided costs over ten years and \$211 million of net savings over the next eight years. Both of these items are discussed below.

- **Avoided Costs.** Before criminal justice reform was enacted, DOC projected that its average daily prison population would increase by 1,146 inmates by 2024. This growth would have surpassed DOC’s existing capacity by 2017 and forced the state to reopen a closed facility, and then 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 by 2024.<sup>29</sup> Breaking down the \$169 million figure by year, it was estimated that the state would have needed to spend an extra \$3.8 million to house increasing numbers of offenders between July of 2016 and July of 2017 unless reform were enacted.
- **Net Savings.** The predicted net savings of \$211 million were to be accrued by reducing the prison population 13% by 2024. In 2017, it was estimated that SB 91 would reduce prison bed use by 328 beds, resulting in an anticipated net savings of \$4,973,620.<sup>30</sup>

**Savings at DOC- Actual reductions in prison bed usage.** Since Alaska’s criminal justice reform package was enacted in July of 2016, DOC has not surpassed its existing capacity, thus averting the need to spend an additional \$169 million on prison bed expansion (\$3.8 million in the first year of reform). Also as predicted, the DOC population decreased during the first year of criminal justice reform, driven primarily as expected by the big drop in the supervision population and the parole changes. Quantifying the magnitude of this reduction depends on the methodology used to count bed use. A straightforward

<sup>29</sup> With the projected growth, DOC calculated that institutional capacity (around 5,200 beds) would be reached in 2017. To accommodate growth after that, it was assumed that DOC would first re-open a closed 128-bed facility (an additional \$3.8 million/year in operating costs). After that capacity was projected to be filled, the overage would be contracted out of state at a cost of \$100/day for housing and \$2,000/person for roundtrip travel. Using these assumptions, the total cost of accommodating the projected growth through 2024 was estimated at \$168,968,500.

<sup>30</sup> Calculated using the marginal per-inmate cost savings, which DOC [ALASKA CRIMINAL JUSTICE COMMISSION](#) | Annual Report has estimated at \$41.49/day. The calculation is  $328 \times \$41.49 \times 365 = \$4,973,620$ .

point-in-time comparison<sup>31</sup> of the DOC population on July 1, 2016 (when the first reforms began to go into effect) to July 1, 2017 shows there were 4,658 inmates on July 1, 2016, and only 4,221 inmates on July 1, 2017, **a post-reform decrease of 437**. Alternatively, beds in use on July 1 of 2017 can be compared to beds in use on July 1 of 2014 (the last full year before reform legislation was introduced). The difference between beds in use on July 1, 2014 and beds in use on July 1, 2017 is 874 fewer beds.

Another approach is to compare the average prison bed use over one year to the average use over a subsequent year (yearly daily average). Using this method shows that the yearly daily average for prison bed use in FY16 (before reform) was 4,873, compared to 4,437 in FY17, **a decrease of 436 beds on average** during the year. This method has the advantage of accounting for the daily fluctuations in the number of beds being used; however, it is somewhat more complicated to calculate than point-in-time estimates.

As time goes on, other methods may be used to examine changes in prison bed use.<sup>32</sup> Any method of understanding prison bed use has advantages and drawbacks. The point-in-time estimates fail to account for bed changes over the course of the year, but they are easy to understand and replicate. The daily averages are more complicated to calculate but could give a more accurate accounting of changes over the course of the year.

Whichever method is used to examine the post-reform changes in the prison population, the results are the same: **prison bed use decreased faster than predicted**. Depending on which method is used, the actual decrease varies; however, both methods described above yield results exceeding the predicted decrease of 328 for the first year of implementation.

**Context for Understanding Bed Usage and Cost Savings at DOC.** Discussions of bed usage and cost savings must be understood in the context of ongoing budget cuts at DOC. In the very first year of criminal justice reform, the Legislature and the Department of Corrections enacted funding cuts based on anticipated annual population reductions.<sup>33</sup> For example, in FY17 the DOC budget was decreased by \$7,094,600. These cuts were calculated on the assumption that a year's worth of anticipated bed reductions would be achieved beginning on Day 1 of the fiscal year. This assumption of course is not exactly accurate, because a year's worth of bed decreases does not occur all at once; rather it occurs over the course of the year. So even though DOC eventually surpassed the targeted 326 bed reduction for FY17, it did not do so until more than half of the fiscal year was over. In other words, for at least half of the FY17 fiscal year, the population remained above the target and DOC's costs to house those inmates were therefore higher than allocated.

<sup>31</sup> This method has several benefits: It is easy to explain and understand, simple to replicate going forward, and consistent with earlier analyses. It is also the method used to inform the Commission's justice reinvestment recommendations. On the negative side, point-in-time comparisons do not account for fluctuations in the number of beds being used over the course of the year.

<sup>32</sup> Another approach is to compare the number of beds in use after one year of reform (July 1, 2017) to predictions of how many beds would have been in use on that same day if reform had not been enacted. If reform had not been enacted, prison bed use on July 1, 2017 was projected to have been 1,051 beds higher than it actually was. Like method 1, this method does not take into account the daily fluctuations in the number of beds being used.

<sup>33</sup> The Department of Corrections submitted a fiscal note for SB 91 projecting annual savings totaling \$17,350,500 over six years.

The Commissioner of Corrections responded to the FY17 short funding in part by closing a facility. The Commissioner closed the 500-bed Palmer Correctional Center during phases in 2016 and sent the inmates to other facilities. Closing Palmer saved DOC an estimated \$5.6 million over the course of 2016 even though the inmates went to other facilities, including 128 beds at the Point McKenzie Farm that were brought online specifically to handle the Palmer inmates.

The Legislature cut DOC's budget by an additional amount in FY18 based on continuing anticipated decreases to the prison population. Thus, in the time that Alaska has been discussing and implementing criminal justice reform, the Legislature has decreased institutional funding for DOC by a total of \$18,713,600.<sup>34</sup> Because of this decreased funding and because bed reductions were not achieved starting at the beginning of each fiscal year, DOC is currently operating at a deficit. In other words, while the intended bed reductions did happen, the exact timing of those reductions over the year impacted savings.

It also may be useful to consider the post-reform reductions in prison bed use in the context of historical trends in DOC bed use. Before 2014, the prison population in Alaska had risen 27% in the prior 10 years, and the prison utilization rate had risen 13%. After 2014, however, DOC bed usage began falling. Figure 26 shows the institutional population as a snapshot on July 1 of each year since 2015. The

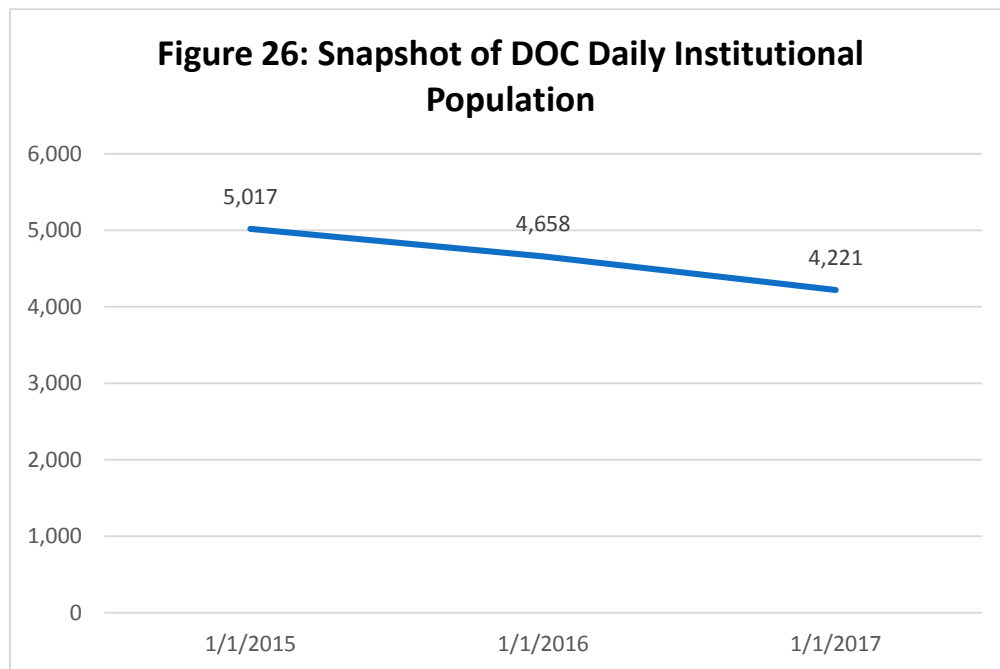


Figure 216 Source: Alaska Department of Corrections

downward trend shown by Figure 26 is likely attributable to a number of factors, including: budget cuts to the Departments of Law and Public Safety; changes made by practitioners in anticipation of criminal justice reform being enacted; SB 91 reforms to criminal sentencing laws that went into effect in July of 2016; and SB 91 changes to post-release supervision practices that went into effect in January of 2017.

<sup>34</sup> Decrements in addition to the ones discussed here have been made to DOC's budget; however, the items described here are the decrements explicitly tied to criminal justice reform.

**Tax Revenue from Marijuana Sales.** The Legislature supplemented its initial reinvestment of savings by establishing a Recidivism Reduction Fund using 50% of the state's new tax revenue from the sale of marijuana.<sup>35</sup> These monies are available to the Legislature to make appropriations to the Department of Corrections, the Department of Health and Social Services, or the Department of Public Safety to fund recidivism reduction programs.<sup>36</sup>

In August of FY17, the Department of Revenue reported that it had collected \$1,748,500 in marijuana tax revenue. Of that amount, DOR transferred 50% (\$838,391) to the Department of Administration's Recidivism Reduction Fund.<sup>37</sup> Just over \$3 million has been collected by Alaska's tax division since marijuana payments began in October of 2016.

## B. Recommendations for Reinvestment

**Recommendations for Further Reinvestment.** The Commission is tasked by statute to make recommendations to the Legislature for reinvestment. As demonstrated in the discussion above, the Legislature invested \$8,500,000 in criminal justice reform programs in FY17 through FY18. From July 2016 through July 2017, the state set aside an additional \$838,391 in marijuana revenue for reinvestment in recidivism reduction programs.

Implementation funding and investment over the last two years has provided important resources to Alaskan communities. Nevertheless, the Commission recommends that the Legislature continue to increase its investment in recidivism reduction programs. Savings the state has accrued because of SB 91 will only be temporary if Alaska does not continue to concurrently invest resources to tackle the broader societal issues that drive individuals into the criminal justice system. Though the full amount of savings

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*The Commission recommends the Legislature devote substantial funding for justice reinvestment now, in advance of the total anticipated savings to be achieved long-term.*

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<sup>35</sup> See AS 43.61.010(c): "The recidivism reduction fund is established in the general fund. The Department of Administration shall separately account for 50 percent of the tax collected under this section [excise tax on the sale or transfer of marijuana from a cultivation facility to a retail store or manufacturing facility] and deposit it into the recidivism reduction fund."

<sup>36</sup> AS 43.61.010(d). If the marijuana taxes collected were lower than projected for fiscal year 2017, the Legislature intended to cover the shortfall by supplementing the fund with appropriations from the alcohol and other drug abuse treatment and prevention fund established in AS 43.60.050. See Section 1 of SB 91 which amends the uncodified law of the State of Alaska as follows: "LEGISLATIVE INTENT.... (a) It is the intent of the Legislature that, if the taxes collected under AS 43.61.010 are lower than projected for fiscal year 2017, the Legislature appropriate funds from the alcohol and other drug abuse treatment and prevention fund established in AS 43.60.050 to cover the shortfall", and "(b) It is the intent of the Legislature that reinvestment of excess funds be made into providing additional law enforcement resources in communities throughout the state."

<sup>37</sup> Allocations from the Recidivism Reduction Fund are controlled by the Department of Administration. The money DOR received in July for June activities was accrued and included as a total in its Annual Report, but the monthly transfer to the Department of Administration was in FY18.



has not yet been realized, the projected net savings through 2024 was over \$200,000,000. The Commission recommends “frontloading” the reinvestment of this anticipated savings.

Without investing in behavioral health treatment, education, and violence prevention, Alaska may see the financial gains from criminal justice reform disappear within a matter of years. The Commission therefore recommends a robust reinvestment commitment to support and redouble ongoing state efforts to aid those facing mental health crises, drug and alcohol addiction, homelessness, and cycles of violence—problems which are commonly found in criminal offenders.

Additional reinvestment must continue to be targeted and focused on individual rehabilitation, promoting healthier communities and public safety. The Commission’s duty is to make recommendations based on research and best practices. To that end, the Commission has carefully considered how best to optimize Alaska’s investment in adult criminal justice programs. The Commission’s analysis and approach is based in large part on the work of the Alaska Justice Information Center’s *Results First* project.<sup>38</sup> The *Results First* benefit-cost analysis and AJiC’s findings are explained below, followed by the Commission’s recommendations.

**Alaska Justice Information Center/Results First.** AJiC used the *Results First* model to develop comprehensive estimates of the benefits and costs of state-funded adult criminal justice programs in Alaska. Benefit-cost analysis is an analytical method that assesses the *costs* associated with each adult criminal justice program, and the avoided costs (*benefits*) to the state and crime victims achieved through recidivism reduction. For the state, avoided costs include the arrest process, incarceration, court, and probation. Associated societal costs to crime victims include both tangible and intangible costs. Tangible costs include items such as lost wages and medical care. Intangible costs include emotional hardship, pain, and suffering.

AJiC used data supplied by the administrators of Alaska’s criminal justice programs to estimate the costs of delivering those programs. It also used Alaska-specific data about recidivism rates and the costs of recidivism in Alaska to estimate the benefits that are expected to be generated by each program’s

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<sup>38</sup> Report available at: <https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/alaska-justice-information-center/alaska-results-first.cshtml> .

ability to reduce recidivism. It should be noted that AJiC used national data, not Alaska-specific data, to determine the ability of each program to reduce recidivism.<sup>39</sup>

AJiC's inventory of adult criminal justice programs in Alaska provides important information about how Alaska spends its criminal justice program dollars. AJiC's inventory identified 54 adult criminal justice programs operating in Alaska. It found that 32 of those programs matched the national evidence base. Of the 32 programs matched, 26 were funded wholly or in part by the State of Alaska. Approximately 90% of the state's total monetary investment in adult criminal justice programs is directed to programs matched to the evidence base.<sup>40</sup>

Of the 32 programs in the evidence base, 19 qualified for further analysis in the *Results First* model.<sup>41</sup> These 19 programs accounted for 82% of the state's total monetary investment in adult criminal justice programming. The programs ultimately included in the model were: the Alcohol Safety Action Program administered by DHSS; batterer intervention programs certified by the Council on Domestic Violence and Sexual Assault (CDVSA); electronic monitoring programs administered by DOC

## Results First

- An analysis of the cost effectiveness of Alaska's criminal justice programs
- Conducted by the Alaska Justice Information Center
- Looked at 19 programs which represent 82% of the state's investment in criminal justice programming
- Cost-benefit analysis based on the ability of each program to reduce recidivism

<sup>39</sup> AJiC could not use Alaska-specific program data on recidivism reduction effects because no Alaska program has been rigorously evaluated as to effects on recidivism. Before adopting a national recidivism effect size, AJiC consulted with program administrators in Alaska to "match" the Alaska programs to similar programs in the national evidence base. If the Alaska program "matched" a program in the evidence base, AJiC assumed that the Alaska program would achieve the same effects on recidivism as had been shown by the national evidence base.

<sup>40</sup> Reasons some of the programs did not qualify for further analysis included: (1) the program was in the evidence base but its purpose was not to reduce recidivism (for example, 12-step programs); (2) the evidence was insufficient to determine a reliable recidivism reduction effect (too few studies, studies of substandard scientific rigor), and (3) the program did not receive dedicated state funding (for example, the Ignition Interlock program, which is essentially self-pay).

<sup>41</sup> Reasons some of the programs did not qualify for further analysis included: (1) the program was in the evidence base but its purpose was not to reduce recidivism (for example, 12-step programs); (2) the evidence was insufficient to determine a reliable recidivism reduction effect (too few studies, studies of substandard scientific rigor), and (3) the program did not receive dedicated state funding (for example, the Ignition Interlock program, which is essentially self-pay).

for sentenced offenders<sup>42</sup>, intensive outpatient substance abuse treatment (community-based, prison-based and dual diagnosis); Probation Accountability with Certain Enforcement (PACE); Psych-Educational Substance Abuse Program; residential substance abuse treatment administered by DOC; sex offender treatment administered by DOC (community-based outpatient, prison “outpatient,” and residential/therapeutic community); therapeutic courts; and vocational/adult general education. Of these 19 adult criminal justice programs, all but one produced positive return on state investment.

The AJIC Results First report is a baseline report of Alaska’s ongoing state funded programs. The Commission urges entities administering adult criminal justice programs to review the Results First report with an eye toward analyzing cost structure, cost drivers, and addressing those problems where possible (for example, increase program capacity or usage; re-negotiate treatment contracts, etc.), with the goal of reaching “break even” or positive return on investment.

**Suggested Principles for Reinvestment Decisions.** The Commission recommends state investment in programs based on the following principles.

**Principle 1: Reinvestment should be strategic, data-driven and collaboratively implemented.**

The Commission also recognizes that reinvestment spending must be coordinated in order to be most effective. While the programming that has been funded has improved the lives of many Alaskans, the return on investment of such efforts can be maximized through a coordinated approach. The Commission therefore recommends appropriating reinvestment funds according to a strategic plan. The strategic plan should pay particular attention to the need for substance abuse treatment, which has been shown to reduce recidivism, and mental health treatment. The need for treatment is great, and funding should be coordinated so as to have the maximum benefit to Alaskans.

Key criminal justice stakeholders should regularly review updated data to determine what factors drive who enters the criminal justice system and why. Collaborative and strategic planning is especially important when reinvesting around populations that are significantly overrepresented in the criminal justice system – such as those with mental and other behavioral health disorders – and are also high utilizers of state services. Implementation of reinvestment programs should be collaborative to reduce gaps between agencies that must cooperate to implement successful programming and to break down funding silos that prevent maximum service delivery to shared populations.

**Principle 2: Most reinvestment should be directed towards programs in the evidence base.**

The Commission recommends funding be directed to the extent possible to programs that have been rigorously evaluated. By focusing primarily on programs within the evidence base, Alaska maximizes its ability to predict program effects, and minimizes the chance of investing in programs that have no effect on recidivism or even increase recidivism. Currently, 90% of state investment in adult criminal justice programs goes to programs matched in the evidence base; the state should endeavor to maintain this ratio of investment in evidence-based programs.

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<sup>42</sup> These are offenders who qualify to serve part of their sentence at home (see [www.correct.state.ak.us/probation-parole/electronic-monitoring](http://www.correct.state.ak.us/probation-parole/electronic-monitoring) ).

Of particular note are programs to treat substance abuse. Many substance abuse treatment programs, which can be administered in prison or in the community while the offender is under community supervision, are in the evidence base. Alaska already invests and has reinvested in evidence-based substance abuse treatment programs, but the Commission has heard repeatedly from the public and stakeholders that treatment slots are inadequate and are not available soon enough.

The Commission does not recommend that *all* state funding be directed to programs in the evidence base, because opportunity for innovation and adaptation is needed. State funding for programs not in the evidence base should be limited to programs that target Alaska-specific problems or cultural groups. To be eligible for state funding, programs not in the evidence base should demonstrate that they follow some evidence-based practices or are based on best available research. To the extent that the state funds recidivism reduction programs that are not within the evidence base, funding should include a rigorous evaluation component.

**Principle 3: Reinvestment should be directed towards evidence-based programs that have been shown to reduce repeat offending, thereby decreasing future crime.**

Programs that have been shown to reduce recidivism should be chosen over programs that have no effect or a negative effect on recidivism. This principle holds public safety paramount, because programs that reduce recidivism avoid future victimization.

Again, the Commission would point out the effectiveness of programs that treat substance abuse in reducing recidivism. Alaska already invests and has reinvested in evidence-based substance abuse treatment programs, but the Commission has heard repeatedly from the public and stakeholders that treatment slots are inadequate and are not available soon enough.

As explained below, the Commission also strongly supports funding of evidence-based violence prevention. It also supports innovation in programs designed to reduce domestic violence recidivism, and rigorous evaluation of all adult criminal justice programs currently operating in Alaska.

The Commission understands that some programs that do not reduce recidivism may have other positive attributes or outcomes. For example, studies have shown that batterer intervention programs (BIPs) using the Duluth Model can have a negative impact on recidivism;<sup>43</sup> however, these programs also provide a great deal of support to victims. Regulations governing state-certified BIPs in Alaska are generally understood to require conformance to the Duluth model.<sup>44</sup>

The Commission acknowledges that Alaska's BIPs have not been individually evaluated, and therefore it cannot be known what effect our specific programs may have on offender

<sup>43</sup> It should be noted that victim advocacy agencies in Alaska do not agree that Duluth-based batterer intervention programs do not reduce recidivism.

<sup>44</sup> Specifically, the regulations (at 22 AAC 25.010 - .090) require state-certified programs to, among other things, require attendance for a minimum of 24 weeks in gender-specific counseling sessions; use confrontation as an educational tool; address "issues of power and control, the beliefs and values that lead to domestic violence in our society, and a participant's responsibility for domestic violence"; and report program participants' non-compliant behavior to the court, the prosecutor, the local law enforcement agency, and the participant's probation or parole officer.

recidivism.<sup>45</sup> It is possible that Alaska's programs perform better than the national average, although it is also possible that they perform the same (or worse) than the national average. Programs operating in Alaska have changed over the years, and new BIP certification regulations have been proposed by CDVSA that more accurately reflect the actual programs being offered in Alaska. The Commission strongly supports opportunities for rigorous evaluation of Alaska's batterer intervention programs to understand their current functioning and their effect on recidivism before investing more funds into these programs.

**Principle 4: Whenever possible, reinvestment should be directed towards programs that generate tangible monetary benefits and positive return on investment.**

When a program achieves significant recidivism reduction effects, it creates tangible benefits in the form of reduced future criminal justice administration and future victimization costs. Yet, due to inherent structural and contextual factors that inflate programmatic costs (for example, small populations and/or geographic isolation) even some highly effective Alaska adult criminal justice programs cannot produce benefits that exceed programmatic costs. Rural Alaska, as an example, is a high-cost environment where service delivery is often more expensive than elsewhere. Nevertheless, recidivism-reducing programs in rural areas and programs that target important groups of offenders who may live in rural areas should receive state investment.

The Commission urges entities administering adult criminal justice programs to analyze cost structure, identify cost drivers, and address those problems where possible (for example, increase program capacity or usage; re-negotiate treatment contracts, etc.), with the goal of reaching "break even" or positive return on investment.

**Principle 5: Prioritize funding for programs that target high risk (and medium risk) offender groups.**

High-risk offenders tend to have substantial problems in multiple areas, little motivation to change, live in criminogenic environments, and engage in a wide range of antisocial behaviors. They often are more difficult to manage than lower-risk offenders and therefore are often the first to be excluded from programming. Yet when high risk offenders reoffend, the composition and severity of the reoffending patterns are a greater threat to safety and community well-being than low risk offenders. Thus, state investments in adult criminal justice should be directed primarily at recidivism reduction efforts aimed at high-risk offenders.

This principle should not be construed to recommend excluding any funding for programs that divert low-level offenders from further involvement in the criminal justice system. The Commission is concerned about the inappropriate use of incarceration for the mentally ill.

To the extent that resources permit, appropriate services tailored to the needs of low-risk offenders should also be funded, in accordance with the risk-needs-responsivity principle. This evidence-based practice dictates that programs should match the level of service to the offender's risk to re-offend – and also adjust supervision accordingly. Therefore low-risk offenders should receive some degree of attention, but not so much that it produces a negative result.

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<sup>45</sup> DOC's regulations require state-certified BIP programs to monitor program participants' recidivism for 12 months after the participant completes or drops out.

**Principle 6: Reinvestment should be targeted at all areas of the state, including rural Alaska.**

The Commission has received testimony about the dearth of adult criminal justice programs in rural Alaska, as well as the need for expanding program capacity in urban areas. The Commission recommends that some reinvestment funds be directed to capacity building for community-based justice services in rural Alaska (for example, rural reentry coalitions). Building capacity in rural Alaska would allow at least some offenders to return to their home communities or rural hubs to complete treatment or programming. Offenders who wish to complete treatment or programming closer to home believe they will be better supported and more successful than doing so while living in urban areas.

This principle may operate in tension, to some degree, with principle 4. Running programs in rural areas of Alaska tends to be costly and therefore a monetary return on investment may be more difficult to demonstrate. Nevertheless, there is a great need for services in rural Alaska, and rural Alaskans have an equal right to the services enjoyed by their urban counterparts. Of particular concern is the availability of substance abuse treatment services in rural Alaska, since many such programs are in the evidence base and have been shown to reduce recidivism.

**Principle 7: Maintain and expand funding for victim’s services and violence and other prevention programming.**

The Commission strongly supports funding for evidence-based violence prevention programming, because prevention has the effect of reducing offending. For example, many of the efforts of the CDVSA in recent years have been directed at prevention, and the most recent Alaska Victimization Survey shows that fewer women reported being victims of domestic violence and sexual assault compared to the previous survey.<sup>46</sup> The Commission is encouraged by these results.

The Commission also supports funding for evidence-based prevention programming that target at-risk youth and children who may be affected by adverse childhood experiences (ACEs). Research shows that children affected by ACEs are overrepresented in the criminal justice population. Funding should be directed toward breaking the intergenerational cycle of criminal justice involvement.

Furthermore, funding for victim’s services provides an element of restorative justice that is often overlooked in the criminal justice system. Providing support to victims takes many forms and the Commission commends the many organizations working across Alaska working in this field. Similarly, the Commission encourages the facilitation of victim restitution as outlined in its December 2016 report—including expanded funding for “bridging” funds which help cover victim expenses until the defendant is able to pay restitution.

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<sup>46</sup> Comparing results of the 2015 Alaska Victimization Survey to the results of the 2010 survey shows that 50.3% of adult women in Alaska experienced sexual violence, intimate partner violence, or both, in their lifetime, versus 58.6% in 2010 – a rate that is still too high but nevertheless represents a seven percentage point reduction. Similarly, 8.1% of adult women in Alaska experienced sexual violence, intimate partner violence, or both in the past year, versus 11.8% in 2010.

## VII. Conclusion

Attempts to change a system as large and complex as Alaska's criminal justice system cannot be accomplished immediately, and the effects of any changes will take time to manifest. The agencies charged with implementing SB 91 have worked hard to improve their policies and procedures in accordance with the law, while managing staff shortages and reduced operating budgets.

Understanding that few conclusions about outcomes can yet be drawn, the Commission has submitted in this report its findings on some initial trends in the use of prison beds, supervision and discretionary parole procedures, and an accounting of accomplishments to date from reinvestment initiatives. With a few exceptions, these results are positive or trending in the expected direction.

But the Commission's assessment also has highlighted factors other than changes to the law that are significantly impacting criminal justice practice – namely, reductions in the operational capacity of criminal justice agencies and courts (and the concurrent realignment of priorities); the rise of opioid drugs; and an unexpectedly pervasive misunderstanding about key provisions of the law, even among law enforcement. The Commission also has heard complaints about rising crime rates and has attempted to investigate these concerns. The best available data shows that any increasing crime trends began some time before SB 91, crime rates are different in different cities, crime has many variables and is influenced by many factors, and crime is best understood by taking the long view rather than a few months. Attempting to quantify the effects any of these situations may be producing compared to the effects of reform is difficult.

Finally, the Commission has carefully considered reinvestment. Reinvestment in treatment and other recidivism reduction programs is key to achieving good public safety outcomes. The Commission has submitted for consideration a few principles for reinvestment that emphasize coordination of efforts, statewide distribution of resources, and reliance on evidence-based programs most likely to deliver positive benefits.

The Commission wishes to thank all the individuals who provided data for this report, and looks forward to updating its findings in future reports.

### Further information

For more information regarding the work of the Criminal Justice Commission, contact Commission Staff Attorney Barbara Dunham at 907-279-2526 or [bdunham@ajc.state.ak.us](mailto:bdunham@ajc.state.ak.us).



## APPENDIX A: Organization

**Representation.** The legislative history of SB64’s enactment showed a desire for convening a diverse group of agencies and interested parties in the criminal justice area who could work jointly to identify, vet and forward proposed reforms to the Legislature. Although the statute allowed for the designation of representatives, Commissioners almost always directly participate in Commission meetings.

**Leadership.** SB64 required the yearly election of Commission leadership. The Commission’s first Chair, retired Supreme Court Justice Alexander O. Bryner, was elected in September 2014. Gregory Razo, elected in October 2015 and re-elected August 2016 and August 2017, succeeded Justice Bryner. Brenda Stanfill is the Vice Chair, filling in when Commissioner Razo is absent.

**Voting.** The two Commission chairs have sought to have proposals resolved by consensus. Policies which lack consensus but have majority support will also be forwarded to the Legislature, with an explanatory note regarding majority support.

**Meetings.** The Legislature expected the Commission to meet “at least quarterly” as a plenary body. It adopted a monthly meeting schedule for its first 18 months. Later, the Commission moved to an every-other-month schedule. The Commission chair occasionally calls special meetings outside the typical schedule if there are time-sensitive matters to discuss.

The Commission typically meets in Anchorage or Juneau. Commission and public members utilize video- and audio-conferencing facilities to attend meetings when physical attendance is not possible.

In addition to attending plenary sessions, individual Commissioners have been present at numerous workgroup (committee) meetings staffed by the Alaska Judicial Council.

**Workgroups.** The Commission has several workgroups and one standing committee which engage stakeholders and community members in studying various aspects of the criminal justice system. The groups identify problems and then develop recommendations for solutions to these problems. Workgroup recommendations are then vetted by the full Commission, and if the full Commission approves the recommendation, it is forwarded to the Legislature, the Governor, or other appropriate authority for consideration and implementation.

The Commission has active workgroups covering the subjects of sex offenses, sentencing, and barriers to reentry, as well as a standing committee devoted to the subject of behavioral health. These workgroups and the standing committee were all active over the last year, and their recommendations are detailed in section II of this report.

Additionally, the Commission has two workgroups which were dormant this past year; they were devoted to drug and alcohol-related driving offenses (Title 28) and restitution and restorative justice. These groups produced the findings and recommendations in two reports that were sent to the Legislature last year. They may reconvene if the Legislature acts upon those reports.



**Public notice and participation.** All meetings are noticed on the State’s online public notice website, as well as the Commission’s website. Interested persons can also be placed on pertinent mailing lists notifying them of upcoming meetings and content. An audio-teleconference line is used for all meetings. All meetings allocate time for public comment.

**Staffing.** Although the Commission is one of the boards and commissions organized under the Office of the Governor, the Legislature and the Governor’s Office tasked the Alaska Judicial Council (AJC) with its staffing and administrative support. A full-time attorney and a part-time research analyst hired by the Judicial Council staff the Commission; they are assisted by existing Judicial Council staff.

**Assessments & evaluations.** The Commission is required to receive and analyze information to measure changes to the criminal justice system related to laws enacted in SB 91. The Alaska Judicial Council and the Justice Center at the University of Alaska are jointly reviewing and analyzing data for the Commission, in consultation with the Criminal Justice Working Group. Alaska Statute 44.19.645 requires DOC, DPS, and the Court System to send information to the Commission on a quarterly basis.

**Website.** The Commission maintains a website with meeting times, agendas, and summaries for all plenary meetings and workgroup meetings. The website also has extensive substantive information, including research that the Commission has relied upon in formulating its recommendations.

**Outreach and Education.** The Commission is committed to engaging with the public and continues to seek opportunities for public participation in and education about the Commission’s work. The Commission’s meetings are open to the public and advertised on the Commission’s website. These meetings are routinely attended by at least 15-20 community stakeholders and interested citizens. Each meeting has a designated time for public comment and any public testimony is recorded by staff.

Commissioners and staff have also been invited to make numerous presentations to community and professional groups and attend community events, including forums on public safety. Commissioners and staff have also responded to requests to brief media, attorney groups, and citizen groups about SB 91. The Commission’s website also contains a wealth of explanatory and educational materials about the Commission’s work, the research behind the Commission’s recommendations, and the provisions in SB 91.

## APPENDIX B: Commission Members

### **Joel H. Bolger**

Justice Joel H. Bolger was appointed to the Alaska Supreme Court in January 2013. Born and raised in Iowa, he received a B.S. in Economics from the University of Iowa in 1976 and a J.D. in 1978. He came to Alaska as a VISTA attorney with Alaska Legal Services Corporation in Dillingham and also served as a public defender in Barrow and in private practice in Kodiak. Justice Bolger was appointed to the District Court in Valdez in 1997, to the Superior Court in Kodiak in 2003, and to the Alaska Court of Appeals in 2008. He serves as chair of the Fairness, Diversity, and Equality Committee and co-chair of the Criminal Justice Working Group.

### **Sean Case**

Captain Sean Case was raised in Alaska and received his Bachelor's Degree in Justice from the University of Alaska, Anchorage. He began his law enforcement career at the Los Angeles Police Department before returning to Alaska to work for the Anchorage Police Department. He has been with APD for 16 years and has served in multiple areas of the department including as a School Resource Officer, Canine Handler, SWAT Operator, Internal Affairs, Shift Commander, and Captain of the Inspection Division. Captain Case has a Master's Degree in Criminology from Indiana State University and is currently working on a Master's Degree in the Psychology of Leadership from Penn State University. He now serves as Acting Deputy Chief of Administration.

### **John Coghill**

John Coghill is a third-generation Alaskan and grew up in Nenana. He attended the University of Alaska Fairbanks. Coghill served in the US Air Force, worked as a school teacher, pastor's assistant and has been a small business owner. He began his political career in 1999 when he became a member of the House of Representatives for the 11<sup>th</sup> district. From 2003 to 2006, he was the House Majority Leader. In 2009, he was elected State Senator for District A. Coghill became the Senate Majority leader in 2013.

### **Matt Claman**

Matt Claman first came to Alaska in 1980 to work in a mining camp. After graduating from law school, Matt returned to Alaska to make his home, raise his family, and establish his career. Matt was elected to the Alaska State House in November 2014 and now serves as the Chair of the House Judiciary Committee. Prior to service in the State House, Matt served on the Anchorage Assembly beginning in 2007, was elected Chair of the Anchorage Assembly in 2008, and served as the Acting Mayor of Anchorage in 2009. An attorney for over 29 years, Matt managed his own small law business for over 11 years, taught law classes at the University of Alaska Anchorage, and was elected to the Board of Governors of the Alaska Bar Association in 2002, serving as its President in 2007-08.

### **Jahna Lindemuth**

Jahna Lindemuth was born and raised in Anchorage and received her J.D. from U.C. Berkeley in 1997. Ms. Lindemuth started her new role as Attorney General for the State of Alaska on August 8, 2016. Before becoming Attorney General, she spent 18 years in private practice at Dorsey & Whitney, LLP. While

keeping up a full caseload, she donated many hours providing pro bono legal services to clients who could not afford an attorney, including representing one of the Fairbanks Four in a post-conviction relief proceeding in 2015. In reaching a settlement with the State of Alaska in December 2015, she helped secure the Fairbanks Four's release after eighteen years of imprisonment and the court vacated their convictions.

### **Walt Monegan**

Walt Monegan is of Irish, Yupik, and Tlingit descent and grew up in Niyac, Alaska. He has a degree in Organizational Management from Alaska Pacific University and received training at Northwestern University, the John F. Kennedy School at Harvard University, and the FBI National Executive Institute. He was a member of the Anchorage Police Department and its chief, and served as the Interim Commissioner of the Alaska Department of Corrections. Currently, he is the Public Safety Commissioner.

### **Gregory P. Razo**

Greg Razo is of Yupik and Hispanic descent and grew up in Anchorage. He is the Vice President of Government Contracting for Cook Inlet Region, Inc. (CIRI). Mr. Razo has a J.D. degree from Willamette University. Before working at CIRI, Razo practiced law in Kodiak. He has also served as a deputy magistrate and Assistant District Attorney. He is a director of Alaska Legal Services Corporation, the Alaska Federation of Natives, the Alaska Pro Bono Program, and is the board vice-chair for the Alaska Native Justice Center.

### **Stephanie Rhoades**

Stephanie Rhoades moved to Alaska in 1986. She has a J.D. from Northeastern University School of Law. Rhoades worked in private practice and as an Assistant District Attorney. In 1992, she was appointed to the District Court in Anchorage. In 1998, she established the first mental health court in Alaska. Judge Rhoades served on the Alaska Criminal Justice Assessment Commission from 1997 to 2000 where she chaired the Decriminalizing the Mentally Ill Committee. She also served on the Alaska Prisoner Reentry Taskforce.

### **Brenda Stanfill**

Brenda Stanfill is the Executive Director of the Interior Alaska Center for Non-Violent Living and has been a victim advocate in the state of Alaska for 20 years. She holds a Master's Degree in Public Administration from the University of Alaska, Southeast and serves on the Governing Board of the Alaska Network on Domestic Violence and Sexual Assault. Ms. Stanfill is active in many groups in her community such as the Domestic Violence Task Force, the Housing and Homeless Group, and the Wellness Coalition.

### **Quinlan Steiner**

Quinlan Steiner was raised in Anchorage and is a fourth-generation Alaskan. He holds a Juris Doctor from the Northwestern School of Law of Lewis and Clark College and a B.A. in Business Administration from Seattle University. Mr. Steiner has been an attorney for the State Public Defender agency since 1998 and was appointed Public Defender and head of the agency in 2005. He has been a member of the Criminal Rules Committee since 2006 and the Criminal Justice Working Group since 2008.

### **Trevor Stephens**

Trevor Stephens was raised in Ketchikan. After obtaining a JD degree from Willamette University, he returned to Ketchikan, working in private practice, as an Assistant Public Defender, Assistant District

Attorney and the District Attorney. On the bench since 2000, Stephens is the presiding judge of the First Judicial District, a member of the three-judge sentencing panel, and a member of the Family Rules Committee, Jury Improvement Committee, and the Child in Need of Aid Court Improvement Committee.

### **Dean Williams**

Dean Williams started his state career in 1981 as a youth counselor in juvenile justice. He was the juvenile justice superintendent in Nome, and then eventually moved back to Anchorage to finish his first state career as the juvenile justice superintendent at McLaughlin Youth Center. There, he focused on school discipline and the over use of expulsion/suspension. Along with many partners, Commissioner Williams spearheaded the start of Step Up, Anchorage's first alternative school focused on expelled and suspended youth. The work on expulsion/suspension lead to several national appointments to continue the work on closing the "school to prison pipeline." Commissioner Williams then came back to public service as a special assistant in the Department of Public Safety, which eventually lead him to be Governor Walker's special assistant. He is currently the Commissioner of the Department of Corrections where he has the privilege to lead a fantastic team.

### **Steve Williams**

Steve Williams has lived in Alaska since 1992. He holds a master's degree in social work from the University of Michigan focused on mental health and nonprofit management and a bachelor of arts from Loyola University Maryland. For most of his career, Williams has worked on statewide policies and programs focused on achieving better outcomes for Alaskans who have been involved with the criminal justice system and improving the overall effectiveness and efficiency of the criminal justice and community health systems. Currently, he is the chief operating officer for the Alaska Mental Health Trust. He has been a member of the Criminal Justice Working Group since 2008 and is chair of its therapeutic court and legal competency subcommittees.

## APPENDIX C: Recommendations to Date

No.	Recommendation	Date of vote	Any action taken?	Result
1-2015	Enact a waiver for SNAP (food stamp) ban for people with felony drug convictions	Jan. 23, 2015	Y	Included in SB 91 (Enacted 2016)
2-2015	Invite technical assistance from Pew Justice Reinvestment Initiative and Results First Initiative	Feb. 24, 2015	Y	Invitation sent and technical assistance provided
3-2015	Alaska Court System should provide ongoing judicial education on evidence-based pretrial practices and principles	Mar. 31, 2015	Unknown	Unknown
4-2015	Amend the Community Work Service (CWS) statute to convert any unperformed CWS to a fine, rather than jail time	Mar. 31, 2015	Y	Included in SB 91 (Enacted 2016)
5-2015	Amend the SIS statutes	Oct. 15, 2015	Y	Included as the SEJ provision in SB 91 (Enacted 2016)
6-2015	JRI package	Dec. 10, 2015	Y	Included in SB 91 (Enacted 2016)
1-2016	Add two new mitigators for sentencing offenders who have accepted responsibility for their actions	Oct. 13, 2016	N	
2-2016	DOC should establish a voluntary Pretrial Diversion program	Aug. 25, 2016	Y	DOC applied for a grant for a Pretrial Diversion coordinator
3-2016	Allow defendants to return to a group home on bail with victim notice and consent	Aug. 25, 2016	N	

4-2016	Enact a statute for a universally accepted release of information form for health and behavioral health care service providers	Aug. 25, 2016	N	
5-2016	Include behavioral health information in felony presentence reports	Aug. 25, 2016	N	
6-2016	Include the Commissioner of the Department of Health and Social Services on the Commission	Oct. 13, 2016	N	
7-2016	DHSS should review the proposed statutory changes recommended in the UNLV report and report back to the Commission on its findings in September 2017	Oct. 13, 2016	Y	DHSS delivered a report at the August 23 Commission meeting
8-2016	Restitution report	Nov. 29, 2016	Y	Rep. Kopp is working on a bill
9-2016	Title 28 report	Nov. 29, 2016	N	
1-2017	Return VCOR to misdemeanor status, punishable by up to 5 days in jail	Jan. 19, 2017	Y	Included in SB 54 (currently in House)
2-2017	Increase the penalty to up to 10 days in jail for an offender's third Theft 4 offense	Jan. 27, 2017	Y	Included in SB 54 (currently in House), modified
3-2017	Amend the "binding provision" of SB 91 to allow municipalities to impose different non-prison sanctions for non-criminal offenses	Jan. 27, 2017	Y	Included in SB 54 (currently in House)
4-2017	Revise the sex trafficking statute to clarify the intent of that statute and define the term "compensation"	Jan. 27, 2017	Y	Included in SB 54 (currently in House)

5-2017	Enact a presumptive term of 0-90 days for Class C Felonies for first-time felony offenders	Jan. 27, 2017	Y	Included in SB 54 (currently in House), modified
6-2017	Enact an aggravating factor for Class A misdemeanors for defendants who have one prior conviction for similar conduct; would allow a judge to impose a sentence of up to 60 days	Jan. 27, 2017	Y	Included in SB 54 (currently in House)
7-2017	Clarify the law so that people cited for Minor Consuming Alcohol may participate in the Alcohol Safety Action Program (ASAP).	Jan. 27, 2017	Y	Included in SB 55 (Enacted 2017)
8-2017	Ensure that sex offenders are required to serve a term of probation as part of their sentence	Jan. 27, 2017	Y	Included in SB 54 (currently in House)
9-2017	Clarify the length of probation allowed for first- and second-time Theft 4 offenders	Jan. 27, 2017	Y	Included in SB 54 (currently in House)
10-2017	Require courts to provide certain notifications to victims if practical	Jan. 27, 2017	Y	Included in SB 55 (Enacted 2017)
11-2017	Reconcile the penalty provisions for DUI and Refusal	Jan. 27, 2017	Y	Included in SB 54 (currently in House)
12-2017	Clarify which defendants shall be assessed by the Pretrial Services program	Jan. 27, 2017	Y	Included in SB 54 (currently in House)
13-2017	Fix a drafting error in SB 91 regarding victim notification	Jan. 27, 2017	Y	Included in SB 55 (Enacted 2017)
14-2017	Technical fixes to SB 91	Jan. 19, 2017	Y	Included in SB 54 (currently in House) or SB 55 (Enacted 2017)

15-2017	Shock incarceration should not be used for SEJ	Feb. 23, 2017	Y	Included in SB 55 (Enacted 2017)
16-2017	Use the highest of the two risk assessment scores for pretrial release decisions	Aug. 23, 2017	Y	DOC has adopted this procedure
17-2017	Amend the three-judge panel statute	Aug. 23, 2017	N	
18-2017	Enact a vehicular homicide statute	Oct. 12, 2017	N	
19-2017	Remove SIS and underage cases from CourtView	Oct. 12, 2017	N	



## APPENDIX D: Currently on the Agenda

**Currently on the agenda for the Behavioral Health Standing Committee.** The Commission also made recommendations in 2016 that the Behavioral Health Standing Committee is working to address. First, the Commission recommended that the state implement a universal release of information (ROI) that would be accepted universally by all providers in Alaska. The Commission has heard testimony that justice-involved individuals with behavioral health needs were struggling with continuity of treatment because of differing ROI standards among providers. The Commission's recommendation was to enact a statute providing for the universal ROI. That remains the Commission's recommendation; however, the Standing Committee is working with DHSS to develop a recommended ROI for implementation.

The Commission was asked by the Criminal Justice Working Group to review a report developed by the University of Las Vegas Nevada (UNLV) that assesses Alaska's behavioral health statutes. The report includes a number of recommendations to improve certain civil, criminal, and juvenile justice statutes that relate to behavioral health issues. The Commission agreed to review the report to see which if any recommendations it might endorse. As part of that review, it asked DHSS to respond to the suggestions in the report. In September of 2017, DHSS sent the Commission a detailed response to the suggestions in the UNLV report. The Commission then asked the Behavioral Health Standing Committee to continue to work with DHSS to identify consensus-based reforms to these statutes.

Finally, the Commission recommended that DOC develop and implement a Pretrial Diversion program for the behavioral health population. AS 33.07.020 requires the Commissioner of Corrections to develop regulations that include guidelines for Pretrial Services officers to make diversion recommendations to the court. The statute requires these regulations to be developed in consultation with the Department of Law, the Public Defender, the Department of Public Safety, the Office of Victims' Rights, and the Alaska Court System. To advance this initiative, the Commission supported DOC's request for federal grant funding to hire a coordinator to develop such a program. The Department of Corrections did receive grant funding to hire a coordinator for approximately one year starting in October of 2017. The Standing Committee on Behavioral Health will assist the DOC Coordinator, with participation and consultation from the statutorily-mandated stakeholders, to develop a vision for that program.

**Currently on the agenda for the Sentencing Workgroup.** In addition to the recommendations contained in this report, the Sentencing Workgroup has also discussed the law surrounding Guilty But Mentally Ill (GBMI) verdicts and has gathered a great deal of information on the subject from practitioners. Very few people are convicted with a GBMI finding, though there may be many people in DOC custody who have a mental illness severe enough to warrant that verdict. But because the consequences of a GBMI verdict are severe—a defendant could be held in DOC custody indefinitely, even after completing the prescribed prison sentence—defendants and their counsel very rarely reveal the existence of the defendant's mental illness to the court.<sup>47</sup> This means that there are potentially people who need mental

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<sup>47</sup> Alaska's standard for being found not guilty by reason of insanity is quite narrow, and there are even fewer defendants found not guilty by reason of insanity than are found GMBI.

health treatment, or who may even be appropriate for diversion programs, who are not being identified in the system. The workgroup has not yet come up with any proposal on this topic.

The Sentencing Workgroup has also recently begun to talk about the automatic waiver provision for juvenile offending. The automatic waiver provides that juveniles ages 16 and 17 will automatically be charged as adults for certain crimes. The workgroup is in the process of gathering information on this topic and has not decided whether to pursue a proposal.

**Currently on the agenda for the Barriers to Reentry Workgroup.** Expungement is a mechanism by which those who have a conviction on their record and have demonstrated rehabilitation can mitigate the collateral consequences of that conviction by limiting access to the record of conviction. Alaska has no expungement statute, although dismissed charges may be removed from CourtView and in certain cases sealed at the Department of Public Safety. The Barriers Workgroup is in the process of taking a comprehensive look at expungement practices around the country to see if an expungement statute might work for Alaska.

In addition to the above, the Barriers Workgroup has also been looking at the regulations which prevent people from getting professional licenses in certain fields if they have certain crimes on their records (barrier crimes). The group has also been discussing ways to encourage employers to hire people with criminal convictions.

Many jurisdictions around the country have implemented “Ban the Box” policies in recent years. This effort aims to limit the use of questions about a person’s criminal history on job applications, to give those with a record more opportunities to reach the interview stage in the application process. The Workgroup looked at the Ban the Box model, but noted that some preliminary studies indicate that Ban the Box can have the unintended consequence of increasing racial disparities in hiring. Because of this, and because Ban the Box is a relatively new concept, the Workgroup elected to table consideration of this policy until further studies become available.

**Forthcoming Report: Sex Offenses.** The Commission established a Sex Offenses Workgroup in response to language in SB 91 requiring it to send the Legislature a report on sexual offending. This workgroup began meeting in December 2016. The Workgroup is gathering information and data from a variety of stakeholders and practitioners to inform the report that will be sent to the Legislature. Though the Legislature did not set any particular deadline for this report, the Commission hopes to send the report in advance of the 2019 legislative session.

## APPENDIX E: Sentencing Recommendations

**Three judge panel.** The Commission recommends the following statutory amendments:

AS 12.55.165(a)-(b) **Extraordinary Circumstances** is amended to read:

(a) If the defendant is subject to sentencing under AS 12.55.125(c), (d), (e), or (i) and the court finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155, **FROM REQUIREMENTS FOR CONSECUTIVE SENTENCING, FROM RESTRICTIONS ON DISCRETIONARY PAROLE ELIGIBILITY,** or from imposition of a sentence within the presumptive range, whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under AS 12.55.175.

(b) [REPEALED]

AS 12.55.175(b)-(e) **Three-judge sentencing panel** is amended to read:

(b) Upon receipt of a record of proceedings under AS 12.55.165, the three-judge panel shall consider all pertinent files, records, and transcripts, including the findings and conclusions of the judge who originally heard the matter. The panel may [HEAR ORAL TESTIMONY TO] supplement the record before it **AND** [IF THE PANEL SUPPLEMENTS THE RECORD, THE PANEL] shall permit the victim to **ADDRESS** [TESTIFY BEFORE] the panel. If the panel finds that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155, **FROM REQUIREMENTS FOR CONSECUTIVE SENTENCING, FROM RESTRICTIONS ON DISCRETIONARY PAROLE ELIGIBILITY,** or from imposition of a sentence within the presumptive range, whether or not adjusted for aggravating or mitigating factors, it shall sentence the defendant in accordance with this section. If the panel does not find that manifest injustice would result, it shall remand the case to the sentencing court, with a written statement of its findings and conclusions, for sentencing under AS 12.55.125 **UNLESS THE PARTIES AGREE THAT THE PANEL MAY IMPOSE A SENTENCE AUTHORIZED BY LAW APART FROM THIS SECTION.**

(c) The three-judge panel may in the interest of justice **GRANT DISCRETIONARY PAROLE ELIGIBILITY DURING ANY PORTION OF THE ACTIVE TERM OF IMPRISONMENT IMPOSED, AND** sentence the defendant to any definite term of imprisonment up to the maximum term provided for EACH [THE] offense or to any sentence authorized under AS 12.55.015. **IF THE PARTIES AGREE THAT THE PANEL MAY IMPOSE SENTENCE AUTHORIZED BY LAW APART FROM THIS SECTION, THE PANEL SHALL IMPOSE SENTENCE IN ACCORDANCE WITH SENTENCING LAW GOVERNING ORDINARY SENTENCING COURTS.**

(d) Sentencing of a defendant or remanding of a case under this section shall be by a majority of the three-judge panel.

(e) [REPEALED]

Additionally, the Commission recommends adding the following statutory mitigators:

AS 12.55.155(d) **Factors in aggravation and mitigation** is amended to read:

(22) THE DEFENDANT HAS AN EXTRAORDINARY POTENTIAL FOR REHABILITATION;

(23) THE DEFENDANT ENGAGED IN EXEMPLARY BEHAVIOR AFTER THE OFFENSE.

**Vehicular homicide offenses.** The Commission also recommends enacting the following:

**\* Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE FINDINGS AND INTENT OF THIS ACT. It is the intent of the Legislature to create a specific offense related to homicide committed when operating a motor vehicle. Nothing in this Act should be interpreted by a court to overturn the decisions in *State v. Dunlop*, 721 P.2d 604 (Alaska 1986) and *Jeffries v. State*, 169 P.3d 913 (Alaska 2007). It is the intent of the Legislature that the holdings in these cases apply to cases brought under the aggravated vehicular homicide and vehicular homicide statutes enacted in Sec. 2 of this Act.

**\* Sec. 2.** AS 11.41 is amended by adding a new sections to read:

**Sec. 11.41.131. Aggravated vehicular homicide.**

(a) A person commits the crime of aggravated vehicular homicide if the person causes the death of another person while operating a motor vehicle under circumstances manifesting an extreme indifference to the value of human life.

(b) Aggravated vehicular homicide is an unclassified felony and is punishable as provided in AS 12.55.

**Sec. 11.41.132. Vehicular homicide.**

(a) A person commits the crime of vehicular homicide if the person recklessly causes the death of another person while operating a motor vehicle under circumstances not amounting to aggravated vehicular homicide.

(b) Vehicular homicide is a class A felony.

**Sec. 11.41.133. Negligent Vehicular Homicide.**

(a) A person commits the crime of negligent vehicular homicide if, with criminal negligence, the person causes the death of another person while operating a motor vehicle.

(b) Criminally negligent homicide is a class B felony.

\* **Sec. 3.** AS 11.41.140 is amended to read:

In AS 11.41.100-11.41.140,

(a) "person", when referring to the victim of a crime, means a human being who has been born and was alive at the time of the criminal act. A person is "alive" if there is spontaneous respiratory or cardiac function or, when respiratory and cardiac functions are maintained by artificial means, there is spontaneous brain function;

(b) "motor vehicle" has the meaning in AS 28.90.990(a)(17).

\* **Sec. 4.** AS 11.41.135 is amended to read:

If more than one person dies as a result of a person committing conduct constituting a crime specified in **AS 11.41.100-11.41.133** [AS 11.41.100 - 11.41.130], each death constitutes a separately punishable offense.

\* **Sec. 5.** AS 11.81.250 is amended to read:

(a) For purposes of sentencing under AS 12.55, all offenses defined in this title, except murder in the first **degree**, [AND] **murder in** the second degree, **aggravated vehicular homicide**, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, murder of an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, sex trafficking in the first degree under AS 11.66.110(a)(2), and kidnapping, are classified on the basis of their seriousness, according to the type of injury characteristically caused or risked by commission of the offense and the culpability of the offender. Except for murder in the first **degree**, [AND] **murder in** the second degree, **aggravated vehicular homicide**, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, murder of an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, sex trafficking in the first degree under AS 11.66.110(a)(2), and kidnapping, the offenses in this title are classified into the following categories:

(1) class A felonies, which characteristically involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person;

(2) class B felonies, which characteristically involve conduct resulting in less severe violence against a person than class A felonies, aggravated offenses against property interests, or aggravated offenses against public administration or order;

(3) class C felonies, which characteristically involve conduct serious enough to deserve felony classification but not serious enough to be classified as A or B felonies;

(4) class A misdemeanors, which characteristically involve less severe violence against a person, less serious offenses against property interests, less serious offenses against public administration or order, or less serious offenses against public health and decency than felonies;

(5) class B misdemeanors, which characteristically involve a minor risk of physical injury to a person, minor offenses against property interests, minor offenses against public administration or order, or minor offenses against public health and decency;

(6) violations, which characteristically involve conduct inappropriate to an orderly society but which do not denote criminality in their commission.

\* **Sec. 6.** AS 12.37.010 is amended to read:

The attorney general, or a person designated in writing or by law to act for the attorney general, may authorize, in writing, an ex parte application to a court of competent jurisdiction for an order authorizing the interception of a private communication if the interception may provide evidence of, or may assist in the apprehension of persons who have committed, are committing, or are planning to commit, the following offenses:

(1) murder in the first or second degree under AS 11.41.100 - 11.41.110;

(2) kidnapping under AS 11.41.300;

(3) a class A or unclassified felony drug offense under AS 11.71;

(4) sex trafficking in the first or second degree under AS 11.66.110 and 11.66.120;

or

(5) human trafficking in the first degree under AS 11.41.360;

**(6) aggravated vehicular homicide under AS 11.41.131.**

\* **Sec. 7.** AS 12.50.201(b) is amended to read:

(b) A peace officer who temporarily detains a person under (a) of this section may

(1) detain the person only as long as reasonably necessary to accomplish the purposes of that subsection;

(2) take one or more photographs of the person, if photographs can be taken without unreasonably delaying the person or removing the person from the vicinity; and

(3) if the person does not provide valid government-issued photographic identification or other valid identification that the officer finds to be reliable to identify the person, or the officer has reasonable suspicion that the identification is not valid,

(A) serve a subpoena on the person to appear before the grand jury where the crime was committed; and

(B) take the person's fingerprint impressions if

(i) the crime under investigation is murder, attempted murder, **aggravated vehicular homicide**, or misconduct involving weapons under AS 11.61.190 or 11.61.195(a)(3); and

(ii) fingerprint impressions can be taken without unreasonably delaying the person or removing the person from the vicinity.

\* **Sec. 8.** AS 12.55.035(b) is amended to read:

(b) Upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of not more than

(1) \$500,000 for murder in the first or second degree, **aggravated vehicular homicide**, attempted murder in the first degree, murder of an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, sex trafficking in the first degree under AS 11.66.110(a)(2), or misconduct involving a controlled substance in the first degree;

(2) \$250,000 for a class A felony;

(3) \$100,000 for a class B felony;

(4) \$50,000 for a class C felony;

(5) \$25,000 for a class A misdemeanor;

(6) \$2,000 for a class B misdemeanor;

(7) \$500 for a violation.

\* **Sec. 9.** AS 12.55.125(a) is amended to read:

(a) A defendant convicted of murder in the first degree or murder of an unborn child under AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment of at least 30 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, firefighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

**(D) aggravated vehicular homicide under AS 11.41.131;**

(3) the defendant subjected the murder victim to substantial physical torture;

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery; or

(5) the defendant is a peace officer who used the officer's authority as a peace officer to facilitate the murder.

\* **Sec. 10.** AS 12.55.125(b) is amended to read:

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree, **aggravated vehicular homicide**, or murder of an unborn child under AS 11.41.150(a)(2) - (4) shall be sentenced to a definite term of imprisonment of at least 15 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adoptive parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

\* **Sec. 11.** AS 12.55.127(c) is amended to read:

(c) If the defendant is being sentenced for

(1) escape, the term of imprisonment shall be consecutive to the term for the underlying crime;



(2) two or more crimes under AS 11.41, a consecutive term of imprisonment shall be imposed for at least

(A) the mandatory minimum term under AS 12.55.125(a) for each additional crime that is murder in the first degree;

(B) except as provided in subsection (G) below, the mandatory minimum term for each additional crime that is an unclassified felony governed by AS 12.55.125(b);

(C) the presumptive term specified in AS 12.55.125(c) or the active term of imprisonment, whichever is less, for each additional crime that is

(i) manslaughter; or

(ii) kidnapping that is a class A felony;

(D) two years or the active term of imprisonment, whichever is less, for each additional crime that is criminally negligent homicide;

(E) one-fourth of the presumptive term under AS 12.55.125(c) or (i) for each additional crime that is sexual assault in the first degree under AS 11.41.410 or sexual abuse of a minor in the first degree under AS 11.41.434, or an attempt, solicitation, or conspiracy to commit those offenses; and

(F) some additional term of imprisonment for each additional crime, or each additional attempt or solicitation to commit the offense, under AS 11.41.200 - 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, or 11.41.500 - 11.41.520.

**(G) one-fourth of the mandatory minimum term specified under AS 12.55.125(b) or one fourth the presumptive term specified under AS 12.55.125(c) for each additional crime that is aggravated vehicular homicide under AS 11.41.131, vehicular homicide under AS 11.41.132 or negligent vehicular homicide under AS 11.41.133.**

\* **Sec. 12.** AS 18.67.101 is amended to read:

The board may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death that resulted from

(1) an attempt on the part of the applicant to prevent the commission of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police officer to do so, or aiding a victim of crime; or

(2) the commission or attempt on the part of one other than the applicant to commit any of the following offenses:

- (A) murder in any degree;
- (B) manslaughter;
- (C) criminally negligent homicide;
- (D) assault in any degree;
- (E) kidnapping;
- (F) sexual assault in any degree;
- (G) sexual abuse of a minor;
- (H) robbery in any degree;
- (I) threats to do bodily harm;

(J) driving while under the influence of an alcoholic beverage, inhalant, or controlled substance or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is under the influence of an alcoholic beverage, inhalant, or controlled substance;

- (K) arson in the first degree;
- (L) sex trafficking in violation of AS 11.66.110 or 11.66.130(a)(2);
- (M) human trafficking in any degree; or
- (N) unlawful exploitation of a minor;

**(O) aggravated vehicular homicide, vehicular homicide, or negligent vehicular homicide under AS 11.41.131-11.41.133.**

\* **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to offenses committed on or after the effective date.

\* **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).

## APPENDIX F: Recommendations to Amend Certain Provisions of SB 91

**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.<sup>48</sup>

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 SB 91, 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.<sup>49</sup>

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

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<sup>48</sup> See AS 44.19.646. This statute was enacted in 2014 as part of SB 64.

<sup>49</sup> *Id.*

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.<sup>50</sup> 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,<sup>51</sup> 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 conviction of this offense, the maximum term is 5 days suspended with 6 months of probation.<sup>52</sup> The Commission's original recommendation to limit jail time for this offense was based on information from

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<sup>50</sup> 2016 SLA Ch. 36 ("SB 91") §§ 29-30.

<sup>51</sup> SB 91 § 51.

<sup>52</sup> 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.

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.<sup>53</sup>

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 91<sup>54</sup>) 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 SB 91 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.<sup>55</sup>

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.

### **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.<sup>56</sup> In other words, state and municipal crimes that are equivalent must have equivalent punishments.

<sup>53</sup> 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.

<sup>54</sup> SB 91 § 179. (Referring to former AS 11.46.140(a)(3).)

<sup>55</sup> 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.

<sup>56</sup> SB 91 §113.

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.<sup>57</sup> 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.

#### **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.<sup>58</sup> 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.

<sup>57</sup> SB 91 §§ 39 and 40.

<sup>58</sup> 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.

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. 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.<sup>59</sup> 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 convictions, as was the case). Accordingly, SB 91 limits ASAP to offenders who have been convicted of DUI and Refusal offenses.<sup>60</sup>

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.**

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<sup>59</sup> SB 91 § 91.

<sup>60</sup> SB 91 §§ 170-173.



### **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.<sup>61</sup> 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.<sup>62</sup>) **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.<sup>63</sup> 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 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 Pretrial 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:**

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<sup>61</sup> SB 91 § 93.

<sup>62</sup> SB 91 § 79.

<sup>63</sup> SB 91 § 65.

“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.<sup>64</sup> **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.

<sup>64</sup> SB 91 §§ 12, 13, 23.

- **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.<sup>65</sup> 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.
- **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.”

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<sup>65</sup> SB 91 § 91.

- 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.