Alaska Criminal Justice Commission

March 9, 2015

Hon. Lesil McGuire
State Capitol Room 121
Juneau AK, 99801

Dear Senator McGuire:

The Alaska Criminal Justice Commission has asked me to write you in your capacity as Chair of the Senate Judiciary Committee.

As you know, SB 64, now codified at AS 44.19.645, mandates that the Commission "evaluate sentencing laws and criminal justice practices to determine if they provide for protection of the public, community condemnation of the offender, the rights of victims of crimes, the rights of the accused and the person convicted, restitution from the offender, and the principle of reformation." The commission "shall make recommendations for improving" those laws and practices and may recommend either legislative or administrative changes.

Consistent with those directions, the Commission RECOMMENDS that the Legislature enact an 'opt-out,' as permitted by Congress, from Section 862a(a)(2) of Title 21, United States Code. Section 862a(a)(2) permanently excludes any person convicted of a drug felony after August 1996 from eligibility for federal food assistance, also known as Food Stamps or SNAP. Section 842a(d) specifies the means by which state legislatures can either opt out or modify the ban.

Language for the enactment is respectfully suggested below.[1] In another footnote, I explain why the Commission recommends a simple or unqualified opt-out. [2]

Alaska is one of only ten states that have maintained a lifetime ban for any person convicted after August 1996 of any state or federal drug felony, including possession. Most States have concluded that the exclusion from Food Stamp eligibility is counter-productive in several significant ways.

[1] The following language, taken from Maine Revised Statutes, Annotated, Title 22, section 3104 (14), may suffice:
A person who is otherwise eligible to receive federal food assistance [under the Food Stamp Act of 1977, 7 USC sections 2011-2036, and which was reauthorized by the Farm Bill in February 2014] may not be denied that assistance because the person has been convicted of a drug-related felony as described in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Public Law 104-193, section 115, 110 Stat. 2105.

[2] Many states have modified bans, conditioning eligibility on the satisfaction of certain conditions. The Commission does not recommend this approach. Many of these predicates seem quite duplicative of probation and parole conditions. Some appear to deny eligibility for persons who are still participating in drug treatment programs, an approach we do not endorse. Other conditions appear unduly burdensome for state agencies or courts to administer, or for individuals to understand and satisfy.

Alaska Judicial Council
Mary Geddes, Project Attorney
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- First, the lifetime exclusion of all drug felons from food assistance benefits is unduly punitive. The lifetime exclusion applies no matter how old the offense, how short the sentence, or how well rehabilitated the ex-offender.
- Second, the disqualification works a double penalty as it persists even after an offender has served his or her sentence and completed any probation and/or parole requirements.
- Third, the lifetime exclusion of all drug felons – as opposed to other felons – is unwarranted today. The issuance of electronic cards with the recipient's photo have significantly reduced any perceived risk that food benefits be bartered. And those persons who still manage to engage in food-drug trafficking are subject to a lifetime exclusion under a different law.
- Fourth, the specific exclusion of convicted drug offenders from food assistance upon their release from prison does not solve a problem, but rather exacerbates one. Many ex-offenders reentering their communities are destitute and require some short-term public assistance as they seek stable housing, legitimate work, and try to reunite with their families.
- Fifth, the lifetime ban may hurt victims of domestic violence. There is a growing recognition and evidence of a connection between drugs, sexual assault and domestic violence. Denying food assistance to former drug felons may make it more likely that these individuals may return to situations of sexual exploitation and domestic violence.
- Sixth, the ban undercuts family reunification, not supports it. If the parent was convicted of a drug offense, her presence in the home effectively reduces the household's overall benefit as any income will be counted. See Section 862a(b)(2) of Title 21, United States Code.

After due consideration of this matter, the Commission concluded that maintaining a lifetime ban on eligibility for Food Stamps was unduly punitive, unwarranted for this specific group of offenders, and counter-productive in terms of offender reformation.

Finally, in this economic climate, it must be noted that this proposal would bring in additional federal dollars and involve little state expenditure. Food Stamp benefits are fully (100%) federally funded. While States do cover 50% of the cost of administering the benefit, the USDA says that every federal dollar spent on food assistance creates a $1.79 boost in economic activity, in mostly local markets.

Please let me know if I can be of assistance in providing you with any additional information concerning this recommendation or other matters before the Commission.

Sincerely yours,

Alexander O. Bryner, Chair
Alaska Criminal Justice Commission

cc: Senator John Coghill
Vice-Chair, Senate Judiciary Committee

Alaska Criminal Justice Commission

March 9, 2015

Hon. Gabrielle LeDoux
Chair, House Judiciary Committee
State Capitol Room 118
Juneau AK, 99801

Dear Representative LeDoux,

The Alaska Criminal Justice Commission has asked me to write you in your capacity as Chair of the House Judiciary Committee. I serve as Chair for the Commission.

As you know, SB 64, now codified at AS 44.19.645, mandates that the Commission "evaluate sentencing laws and criminal justice practices to determine if they provide for protection of the public, community condemnation of the offender, the rights of victims of crimes, the rights of the accused and the person convicted, restitution from the offender, and the principle of reformation." The commission "shall make recommendations for improving" those laws and practices and may recommend either legislative or administrative changes.

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Sincerely yours,

Alexander O. Bryner, Chair
Alaska Criminal Justice Commission

cc: Representative Wes Keller
Vice-Chair, House Judiciary Committee

Alaska Criminal Justice Commission

March 9, 2015

Honorable Bill Walker
Governor of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Walker:

The Alaska Criminal Justice Commission has asked me to write you on its behalf.

As you know, SB 64, now codified at AS 44.19.645, mandates that the Commission "evaluate sentencing laws and criminal justice practices to determine if they provide for protection of the public, community condemnation of the offender, the rights of victims of crimes, the rights of the accused and the person convicted, restitution from the offender, and the principle of reformation." The commission "shall make recommendations for improving" those laws and practices and may recommend either legislative or administrative changes.

Consistent with those directions, the Commission RECOMMENDS that the Legislature, the Governor and the Court System invite to Alaska and partner with the Justice Reinvestment Initiative (JRI). [1]

The Commission also RECOMMENDS that these same branches of statement invite and partner with the Results First Initiative.[2]

The Commission has heard presentations from each Initiative, and has studied their very impressive products, i.e. the results of technical assistance provided to other states. The two programs are distinctly different, but they would each serve to advance the Commission's own time-limited mission to provide an effective review of our criminal justice system and make recommendations for reform where needed. Not insignificantly, the technical assistance they offer is free.

[1] JRI is a high intensity, short-term offer of technical assistance. JRI creates a comprehensive picture of incarceration to create a clear picture of the individuals in jail, and which bail, probation and sentencing practices keep them there. Working closely with local stakeholders, the JRI analysts identify evidence-based programs that are recommended specifically for Alaska's problems and incarceration population.

[2] Results First is a capacity building initiative. The RF team works with states to create a comprehensive inventory of agency programs, assess whether programs have an evidence-base for gauging their effectiveness, and help analyze the costs and benefits of justice system expenditures. RF consultants will train staff within the state to collect and analyze data and communicate findings using RF approach.

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The Criminal Justice Commission encourages your invitation to Justice Reinvestment and Results First Initiatives, and makes its own commitment, to offer coordination and collaboration to these projects.

Please let me know if I can be of assistance in providing you with any additional information concerning this recommendation or other matters before the Commission.

Sincerely yours,

Alexander O. Bryner, Chair
Alaska Criminal Justice Commission

Alaska Criminal Justice Commission

March 9, 2015

Honorable Dana Fabe
Alaska Supreme Court
303 K Street, 5th Floor
Anchorage, AK 99501

Dear Chief Justice Fabe:

The Alaska Criminal Justice Commission has asked me to write you on its behalf.

As you know, SB 64, now codified at AS 44.19.645, mandates that the Commission "evaluate sentencing laws and criminal justice practices to determine if they provide for protection of the public, community condemnation of the offender, the rights of victims of crimes, the rights of the accused and the person convicted, restitution from the offender, and the principle of reformation." The commission "shall make recommendations for improving" those laws and practices and may recommend either legislative or administrative changes.

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Sincerely yours,

Alexander O. Bryner, Chair
Alaska Criminal Justice Commission

Alaska Criminal Justice Commission

March 9, 2015

Hon. Mike Chenault
Speaker of the House
State Capitol Room 208
Juneau AK, 99801

Hon. Gabrielle LeDoux
Chair, House Judiciary Committee
State Capitol Room 118
Juneau AK, 99801

Dear Mr. Speaker and Representative LeDoux,

The Alaska Criminal Justice Commission has asked me to write you on its behalf. I serve as Chair for the Commission.

As you know, SB 64, now codified at AS 44.19.645, mandates that the Commission "evaluate sentencing laws and criminal justice practices to determine if they provide for protection of the public, community condemnation of the offender, the rights of victims of crimes, the rights of the accused and the person convicted, restitution from the offender, and the principle of reformation." The commission "shall make recommendations for improving" those laws and practices and may recommend either legislative or administrative changes.

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Alexander O. Bryner, Chair
Alaska Criminal Justice Commission

cc: Representative Wes Keller
Vice-Chair, House Judiciary Committee

Alaska Criminal Justice Commission

March 9, 2015

Senate President Kevin Meyer
State Capitol Room 111
Juneau AK, 99801

Senator Lesil McGuire
State Capitol Room 121
Juneau AK, 99801

Dear President Meyer and Senator McGuire:

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Alexander O. Bryner, Chair
Alaska Criminal Justice Commission

cc: Senator John Coghill
Vice-Chair, Senate Judiciary Committee

RECOMMENDATION TO THE ALASKA COURT SYSTEM FROM THE ALASKA CRIMINAL JUSTICE COMMISSION Approved March 31, 2015 (#3-2015)

On March 31, 2015, the Alaska Criminal Justice Commission voted to recommend to the Alaska Court System that it provide ongoing judicial education on evidence-based pre-trial practices and principles that can improve how decisions are made in the earliest stages of a case to address the high percentage of pre-trial and unsentenced detainees in Alaska's DOC.

CURRENT LAW AND PROBLEM POSED

Pre-trial detainees are one main factor driving Alaska's prison population growth. The daily average of pretrial or unsentenced offenders has dramatically increased, at a rate that exceeds growth in the number of sentenced offenders. At any given time, unsentenced individuals account for around 40 percent of the ADOC's total population. Unsentenced individuals include those who are awaiting trial (not convicted), convicted and awaiting sentence, and probationers who have remanded on a Petition to Revoke Probation.

While an offender is in pretrial or unsentenced status, the ADOC is limited to where that person may be housed. This increases the cost of incarceration because inmates are transported from one facility to another trying to keep daily facility inmate counts down below max capacity. Further, most offenders are not eligible for reformative treatment during their pretrial status. [Information taken from *2015 Recidivism Reduction Plan: Cost-Effective Solutions to Slow Prison Population Growth and Reduce Recidivism,* pages 5-7].

Quantitative information about bail conditions of release, bail decision making, and factors that contribute to pretrial detainees' inability to make bail is not readily available in Alaska. In the absence of such information, no firm conclusions can be drawn about why so many unsentenced offenders are detained pending disposition. Nevertheless, Alaska should consider studies from other jurisdictions, which show that defendants who are high-risk and/or violent are often released (in two large jurisdictions examined in detail, nearly half of the highest-risk defendants were released pending trial); and low-risk, non-violent defendants are frequently detained. Other studies show that low-risk defendants who are detained pretrial are more likely to commit new crimes in both the near and long term, more likely to miss their day in court, more likely to be sentenced to jail and prison, and more likely to receive longer sentences. [Information taken from Laura and John Arnold Foundation, *Pretrial Criminal Justice Research*, November 2013, located at: http://www.pretrial.org/download/featured/Pretrial%20Criminal%20Justice%20Research%20Brief%20-%20LJAF%202013.pdf].

Effective pretrial decision-making has not been a priority area for judicial education nationally. With the rates of pre-trial detainees in Alaska's DOC rising, it is especially important for judges to become well educated about pretrial justice principles and best practices.

At the Conference of Chief Justices mid-year meeting in Puerto Rico last week, the nation's highest ranking state judicial officers adopted a bold and historic resolution calling upon our state courts to "adopt evidence based pretrial practices" and to "advocate for presumptive non-financial pretrial release."

In the resolution endorsing and commending the recent Conference of State Court Administrators (COSCA) Policy Paper on pretrial justice, the Conference of Chief Justices noted that judicial pretrial decisions, made thousands of times each day, have "significant and sometimes determinative" impact on defendants, dispositions and sentences and on the costs borne by local communities, which must pay for expensive and often needless pretrial detention.

With the passage of this resolution, the Conference of Chief Justices joins with COSCA, the International Association of Chiefs of Police, the Association of Prosecuting Attorneys, the American Council of Chief Defenders, the National Association of Criminal Defense Lawyers, the National Association of Counties and numerous other stakeholder and constituent groups that have answered Attorney General Eric Holder's challenge to establish safe, fair and effective pretrial justice and have publicly called for pretrial reform. *Pre Trial Justice Institute's press release: Conference of Chief Justices Endorse COSCA Policy Paper on Evidence-Based Pretrial Release.*

SOLUTION

The Alaska Criminal justice Commission recommends to the Alaska Court System that it conduct ongoing judicial education to support judicial leaders in moving toward improved pretrial practices.

The National Judicial College and the Pre Trial Justice Institute have developed pretrial justice curricula that can be adapted for statewide judicial education by those involved in planning judicial conferences for presentation – optimally by a mix of experts and sitting judges who have succeeded in achieving reforms – in one-hour to one-day segments at state judicial conferences. Such short programs could focus on key points about the current pre-trial detention situation and viable approaches to implementing improved practices, with examples from peer jurisdictions.

PROJECTED IMPACTS

The projected impacts are: the potential reduction of pretrial and unsentenced detainees through the use of evidence-based bail alternatives and proven practices in other jurisdictions, and the probable reduction in use of hard jail beds for this population.

RECOMMENDATION TO THE ALASKA STATE LEGISLATURE
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION
No. 4-2015, Approved March 31, 2015

On March 31, 2015, the Alaska Criminal Justice Commission voted to recommend that the Alaska State Legislature amend AS 12.55.055, the Community Work Service (CWS) statute. This change would allow courts to convert unperformed CWS to a fine and would eliminate the option of converting unperformed Community Work Service to jail.

SUMMARY

The Alaska Criminal Justice Commission proposes changes to AS 12.55.055, the Community Work Service (CWS) statute. The Commission proposes that: (1) the value of CWS be tied to the State's minimum wage so further adjustments are not required; (2) any sentencing court imposing CWS hours also set a future hearing as a deadline to determine if the hours have been performed; and (3) any CWS hours which are not performed by the time of that hearing be converted to a fine (at the minimum wage rate) and not converted to jail time.

The proposal would accomplish savings of jail days, prosecutor, state funded defense, law enforcement, judicial and court staff time required to process petitions to revoke probation for CWS violations.

CURRENT LAW AND PROBLEM POSED

AS 12.55.055 now reads in pertinent part:

> **(c) The court may offer a defendant convicted of an offense the option of performing community work in lieu of a fine, surcharge, or portion of a fine or surcharge if the court finds the defendant is unable to pay the fine. The value of community work in lieu of a fine is $3 per hour.**
>
> **(d) The court may offer a defendant convicted of an offense the option of performing community work in lieu of a sentence of imprisonment. Substitution of community work shall be at a rate of eight hours for each day of imprisonment. A court may not offer substitution of community work for any mandatory minimum period of imprisonment or for any period within the presumptive range of imprisonment for the offense.**

The CWS statute was likely intended to judges to offer a defendant the opportunity to perform CWS in lieu of jail, rather than ordering CWS and then converting to jail if not performed.

The way the statute is currently used, however, has led to the filing of ***494 misdemeanor petitions to revoke probation in FY 14*** (data supplied by the Alaska Court System) for failure to comply with the CWS requirement of a judgment. Each of these petitions require the prosecutor to prepare a formal petition and file it with the court. The court then reviews it, issues either a summons or a warrant for the defendant to appear in court, each of which require law enforcement to serve these on the defendant. Once the defendant appears in court, s/he is entitled to appointment of counsel, if indigent, a court hearing and court response.

In many of these cases, the court converts unperformed CWS hours into jail. This is so because a very high percentage of cases processed by the court are Driving While License Suspended (DWLS) cases. In FY 14 there were ***1,950 Motor Vehicle cases filed, most of which are DWLS cases*** filed in Anchorage. *Alaska Court System Annual Report FY 2014 page 132*.

A mandatory condition of probation for the first DWLS offense requires that the defendant complete 80 hours of CWS. AS 28.15.291 (A) and (C). No statute expressly allows a court to convert unperformed hours of community work service into a fine. State v. Fogg, 995 P.2d 675, 677 (Alaska App. 2000). Thus, because CWS only converts to jail time, a failure to complete 80 hours of CWS results in a 10 day jail sentence when calculated at the current statutory rate.

SOLUTION

The Alaska Criminal Justice Commission proposes that the Legislature amend AS 12.55.055 as follows. Changes are shown in bold type.

Sec. 12.55.055. Community work. (a) The court may order a defendant convicted of an offense to perform community work in addition to any term of imprisonment, fine or restitution ordered. If the defendant is sentenced to imprisonment, the court may recommend to the Department of Corrections that the defendant perform community work.

(b) Community work includes work on projects designed to reduce or eliminate environmental damage, protect the public health, or improve public lands, forests, parks, roads, highways, facilities, or education. Community work may not confer a private benefit on a person except as may be incidental to the public benefit.

(c) The court may offer a defendant convicted of an offense the option of performing community work in lieu of a fine, surcharge, or portion of a fine or surcharge if the court finds the defendant is unable to pay the fine. The value of community work in lieu of a fine is **the State of Alaska's minimum wage** [~~$3~~] per hour.

(d) **When a defendant has failed to perform community work in lieu of a fine, surcharge, or portion of a fine or surcharge as ordered, the court will send a notice to the defendant that the due date for demonstrating proof of community work has passed. If no request for hearing or proof of community work is filed with the court within 20 days of the date of the notice, the court shall convert those community work hours to a fine at the rate of Alaska's minimum wage per hour and issue a judgment against the defendant. The court shall not convert community work hours, even those mandated to be imposed by law, into a sentence of imprisonment**.

(e) ~~[re-lettered "d"]~~ The court may offer a defendant convicted of an offense the option of performing community work in lieu of days of imprisonment. Substitution of community work shall be at a rate of eight hours for each day of imprisonment. A court may not offer substitution of community work for any mandatory minimum period of imprisonment or for any period within the presumptive range of imprisonment for the offense. **At the time of sentencing, the court shall schedule a future hearing by which date the defendant shall either have performed the community work in lieu of days of imprisonment or be required to serve the days of imprisonment ordered.**

(f) Medical benefits for an individual injured while performing community work at the direction of the state shall be assumed by the state to the extent not covered by collateral sources. When the state pays medical benefits under this subsection, a claim for medical expenses by the injured individual against a third party is subrogated to the state.

PROJECTED IMPACTS

The impacts projected are the savings of jail days, prosecutor, state funded defense, law enforcement, judicial and court staff time required to process petitions to revoke probation for CWS violations.

The court system would experience a reallocation of resources as it would be required to send notices of non-compliance out and issue judgments in these cases. This is much as it does now in Suspended Imposition of Sentence cases where non-compliances have occurred. However, the reallocation would be from judges, in courts and staff to staff only and would result in less work than issuing the summonses and bench warrants required to hail defendants to court and conducting 498 hearings per year.

RECOMMENDATION TO THE ALASKA STATE LEGISLATURE BY
THE ALASKA CRIMINAL JUSTICE COMMISSION
No. 5-2015, Approved, October 15, 2015

The Alaska Criminal Justice Commission recommends that the Legislature amend AS 12.55.085 ("Suspended Imposition of Sentence"), AS 12.55.086 ("Imprisonment as a Condition of Suspended imposition of Sentence") and AS 33.05.080 ("Definitions') as described and for reasons given below. The proposed statutory language follows on pages 3-6.

- The conviction "set-aside" mechanism was intended to provide a clean slate for those who succeeded on probation after receiving a suspended imposition of sentence (SIS).[i] However, the 'set-aside" mechanism has had limited beneficial effect. This is because
    - Due to lack of legislative history and binding principles of statutory construction, the Alaska courts had to assume that, unlike other states, the Legislature wanted the SIS/set aside to have only limited effect.[ii] Therefore even after the conviction "set-aside," the public record showing conviction remains.[iii]
    - Research shows a "pernicious effect" from such records, e.g. an offender's ability to obtain meaningful employment is negatively impacted.[iv] Unemployment[v] and lack of stable housing[vi] are criminogenic factors, increasing the risk of future recidivism.
    - The record of a past adjucation or conviction may also categorically disqualify an ex-offender from many job opportunities, contracts, housing and other forms of assistance. [vii]
    - Also, judicial interpretation has also narrowed the class of offenders who may be considered for SIS.[viii] As too many non-violent offenders and substance abusers are taking up costly prison beds, community-based supervision and treatment has been shown to be more effective than incarceration in reducing recidivism for some types of offenders, and incentives for good conduct motivate many offenders, a broader grant of judicial discretion is appropriate.

- The statutes as now written:
    - Permit a court to delay sentencing so as to impose court supervision and probation, and
        - Permits the court "set-aside" the conviction if conditions of probation were satisfied within the time set.

- The recommended amendments would:
    - Permit a court to delay adjudication and conviction so as to impose "pre-conviction" probation during that period of delay, and
        - Permits the court to dismiss ("dismissed-diverted without conviction") the case if the conditions of probation were satisfied within the time set.
    - Allows the use of the SIC mechanism in "any" case (not just for particularly deserving first-offenders) as long as the offense involved is not categorically precluded by existing exclusions
    - Also change the maximum probation terms allowed
        - For a felony, up to 5 years (instead of "maximum term")
        - For a misdemeanor, 2 years (instead of "1 year")
    - Remove references to fees which can not be lawfully imposed
    - Require courts to make written findings if the defendant had ever previously received an SIC

- Notably, no changes are proposed for
    - the procedural predicate, i.e. a defendant's plea of guilt/no contest or a guilty verdict
    - the offenses which are now categorically excluded
    - the substantive predicate, i.e. that there are circumstances in mitigation of punishment or that the ends of justice will be served which allow the court to provide the SIS/SIC
    - the statute which allows for the imposition of jail time as a condition of probation

Additional Comment by the Commission:

The Commission did not achieve consensus among its members as to whether it should include in its recommendation a Workgroup proposal for a statutory provision providing retroactive relief. The Workgroup proposal limited relief to that class of individuals who had received an SIS and conviction "set-aside" and whose request would be unopposed by the prosecutor. A number of Commissioners favored the Workgroup proposal for such relief.[ix] Opposition to retroactive relief cited the potential for new administrative burdens and Law and Court fiscal impacts.

Date: October 15, 2105 The Alaska Criminal Commission :

Gregory Razo, Chair
Alexander O. Bryner
John Coghill (non-voting)
Gary Folger
Jeff Jessee
Wes Keller (non-voting)
Stephanie Rhoades
Craig Richards
Kris Sell
Brenda Stanfill
Quinlan Steiner
Trevor Stevens
Ronald Taylor

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[i] See, e.g., Mekiana v. State, 707 P.2d 918, 921 (Alaska App.1985), rev'd on other grounds, 726 P.2d 189 (Alaska 1986).
[ii] Journey v. State, 895 P.2d 955, 958-959 (Alaska 1995).
[iii] Doe v. State, 92 P.3d 398, 407 (Alaska 2004).
[iv] Journey v. State, 895 P.2d 955, 958-959 (Alaska 1995).
[v] See e.g. Crime and Unemployment: What's the Link? March 2009 Fact Sheet.
[vi] Council of State Governments, various sources.
[vii] See, e.g., State v. Platt, Case S-1273, Opinion 6182 (Alaska, Oct. 26, 2007)(not reported)
[viii] See e.g. State v. Huletz, 838 P.2d 1257, 1259 (Alaska App. 1992) ("By its very nature… a suspended imposition of sentence is primarily meant to be a one-time opportunity for particularly deserving first-offenders.").
[ix] The Workgroup proposal included the following provision for limited retroactive relief.

**Section 3. The uncodified law of the State of Alaska is amended by adding a new section to read:*

APPLICABILITY. (a) Except as stated in (b) of this section, the new provisions of this Act applies to offenses committed before, on, or after its effective date if a plea of guilty or nolo contendre or a guilty verdict is entered on or after the effective date of this Act. This Act takes effect on July 1, 2016.

(b) An individual found guilty prior to the effective date of this act, whose case was discharged without imposition of sentence and whose conviction was set-aside under the former AS 12. 55.085(e), may request the court for the relief available under current law. The court may grant such relief only if the request for such relief is unopposed by the prosecutor. That charge(s) shall be treated as "dismissed-diverted without conviction" in accordance with the AS 12.55.085 (h)(1)-(3).

A BILL

FOR AN ACT ENTITLED

"An act relating to a suspended imposition of conviction and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

***Section 1.** AS 12.55.085 is amended to read

Sec. 12.55.085. Suspending imposition of conviction [SENTENCE].

(a) Except as provided in (f) of this section, if it appears **in any case** that there are circumstances in mitigation of [THE] punishment, or that the ends of justice will be served, the court may, in its discretion, suspend the imposition of **conviction** [SENTENCE AND MAY DIRECT THAT THE SUSPENSION CONTINUE] for a period of time **not to exceed two years for a misdemeanor and five years for a felony** [NOT EXCEEDING THE MAXIMUM TERM OF SENTENCE THAT MAY BE IMPOSED OR A PERIOD OF ONE YEAR, WHICHEVER IS GREATER,] and upon the terms and conditions that the court determines **in accordance with paragraphs (b) and (c) of this section**, [AND SHALL PLACE THE PERSON ON PROBATION UNDER THE CHARGE AND SUPERVISION OF THE PROBATION OFFICER OF THE COURT DURING THE SUSPENSION.

(b) The court shall

(1) place the person on probation in accordance with AS 33.05.020(a), and as defined in AS 33.05.080(3), with only those conditions that are necessary to address public safety, promote the rehabilitation of the person, reduce the likelihood of his or her recidivism, and provide restitution to the victim; and

(2) order the defendant to comply with release conditions as authorized under AS 12.30.011(a)(1)-(4), AS 12.30.016 and AS 12.30.027.

(c) The court may order the defendant to pay costs associated with participation in court ordered treatment programs during the period of pre-conviction probation.

(d)[(b)] At any time during the **pre-conviction** probationary term [OF THE PERSON RELEASED ON PROBATION], a probation officer may, without warrant or other process, rearrest the defendant [PERSON] so placed in the officer's care and bring the defendant [PERSON] before the court, or the court may, in its discretion, issue a warrant for the rearrest of the defendant [person].

(e) The court may, at any time, revoke and terminate pre-conviction probation, convict, and pronounce sentence subject to the limitation specified in AS 12.55.086(c), if the court finds by a preponderance of the evidence that the defendant

(1) failed to complete the conditions of the suspended imposition of conviction within the time specified;

(2) violated the conditions of the suspended imposition of conviction;

(3) has not substantially complied with all conditions during the period of pre-conviction probation, or

(4) engaged in criminal practices.

[(b)THE COURT MAY REVOKE AND TERMINATE THE PROBATION IF THE INTERESTS OF JUSTICE REQUIRE, AND IF THE COURT, IN ITS JUDGMENT, HAS REASON TO BELIEVE THAT THE PERSON PLACED ON PROBATION IS

(1) VIOLATING THE CONDITIONS OF PROBATION;

(2) ENGAGING IN CRIMINAL PRACTICES; OR

(3) VIOLATING AN ORDER OF THE COURT TO PARTICIPATE IN OR COMPLY WITH THE TREATMENT PLAN OF A REHABILITATION PROGRAM UNDER AS 12.55.015(A)(10).

(c) UPON REVOCATION AND TERMINATION OF THE PROBATION, THE COURT MAY PRONOUNCE SENTENCE AT ANY TIME WITHIN THE MAXIMUM PROBATION PERIOD AUTHORIZED BY THIS SECTION, SUBJECT TO THE LIMITATION SPECIFIED IN AS 12.55.086(c)]

(f) [(d)] The court may**,** at any time during the period of **pre-conviction** probation**,** [REVOKE OR] modify its order [of] suspend**ing** [sion of] **the** imposition of **conviction** [SENTENCE]. It may at any time, when the ends of justice will be served, and when the good conduct and reform of the person held on **pre-conviction** probation warrant it, terminate the period of **pre-conviction** probation and discharge the **defendant** [person] held. If the court has not revoked the order of **pre-conviction** probation, [AND PRONOUNCED SENTENCE], the defendant shall, at the end of the term of probation, be discharged by the court. [(e) UPON THE DISCHARGE BY THE COURT WITHOUT IMPOSITION OF SENTENCE, THE COURT MAY SET ASIDE THE CONVICTION AND ISSUE TO THE PERSON A CERTIFICATE TO THAT EFFECT.]

(g)[(f)] The court may not suspend the imposition of **conviction if** [SENTENCE OF A PERSON WHO]

(1) **the present charge** is [CONVICTED OF] a violation of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400, AS 11.61.125 - 11.61.128, or AS 11.66.110 - 11.66.135;

(2) **the defendant used** [used] a firearm in the commission of the **present charge** [THE CHARGE FOR WHICH THE PERSON IS CONVICTED];

(3) **the present charge** is [CONVICTED OF] a violation of AS 11.41.230 - 11.41.250 or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if that conviction has been set aside under **former AS 12.55.085 (e)** or under the equivalent provision of the laws of another jurisdiction; or if

(4) the defendant has been previously placed on pre-conviction probation under this section unless the court makes written findings that there are specific circumstances in mitigation and that the ends of justice will be served by an order under this section.

(h) Upon discharge by the court under (f) of this section,

(1) the charges against the person shall be listed as "dismissed-diverted without conviction" and shall not constitute a criminal conviction and the court shall issue to the person a certificate to that effect;

(2) the person shall not be required to list this disposition on any application for employment, licensure, or otherwise unless required to do so by federal law;

(3) court records of the suspended imposition of conviction shall not be introduced as evidence in any court in a civil, criminal, or other matter without the consent of the person or an order of the court.

***Sec. 2.** Sec. 12.55.086 is amended to read:

AS 12.55.086 Imprisonment as a condition of suspended imposition of conviction [SENTENCE].

(a) When the imposition of **conviction** [SENTENCE] is suspended under AS 12.55.085, the court may require, as a special condition of **pre-conviction** probation, that the defendant serve a definite term of continuous or periodic imprisonment, not to exceed the maximum term of imprisonment that could have been imposed. [THE COURT MAY RECOMMEND THAT THE DEFENDANT SERVE ALL OR PART OF THE TERM IN A CORRECTIONAL RESTITUTION CENTER.]

(b) A defendant imprisoned under this section is entitled to a deduction from the term of imprisonment for good conduct under AS 33.20.010. Unless otherwise specified in the order of suspension of imposition of **conviction** [SENTENCE], a defendant imprisoned under this section is eligible for parole if the term of imprisonment exceeds one year and is eligible for any work furlough, rehabilitation furlough, or similar program available to other state prisoners.

(c) If **pre-conviction** probation is revoked and the defendant is **convicted and** sentenced to imprisonment, the defendant shall receive credit for time served under this section. Deductions for good conduct under AS 33.20.010 do not constitute "time served."

***Section 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. The new provisions of this Act applies to offenses committed before, on, or after its effective date if a plea of guilty or nolo contendre or a guilty verdict is entered on or after the effective date of this Act. This Act takes effect on July 1, 2016.

***Section 4**. The uncodified law of the State of Alaska is amended by adding a new subsection (3) to Sec. 35.05.080 ("Definitions').

(3) "pre-conviction probation," as authorized under AS 12.55.085, is a diversion procedure under which the trial court may release a defendant subject to conditions imposed by the court and subject to the supervision of the probation service as provided in this chapter. Pre-conviction probation is permitted for the period during which the trial court has deferred the entry of a conviction.

Alaska Criminal Justice Commission

Justice Reinvestment Report

December 2015

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Executive Summary

Alaska's prison population has grown by 27 percent in the last decade, almost three times faster than the resident population. This rapid growth spurred the opening of the state's newest correctional facility – Goose Creek Correctional Center – in 2012, costing the state $240 million in construction funds. On July 1, 2014, Alaska's correctional facilities housed 5,267 inmates, and the Department of Corrections ("DOC") had a fiscal year operating budget of $327 million.

Absent reform, these trends are projected to continue: Alaska will need to house an additional 1,416 inmates by 2024, surpassing the state's current prison bed capacity by 2017. This growth is estimated to cost the state at least $169 million in new corrections spending over the next 10 years.

The rising cost of Alaska's prison population coupled with the state's high recidivism rate – almost two-thirds of inmates released from the state's facilities return within three years – have led policymakers to consider whether the state is achieving the best public safety return on its corrections spending.

Seeking a comprehensive review of the state's corrections and criminal justice systems, the 2014 Alaska Legislature established the bi-partisan, interbranch Alaska Criminal Justice Commission ("Commission").

In April of the following year, state leaders from all three branches of government joined together to request technical assistance from the Public Safety Performance Project of The Pew Charitable Trusts and the U.S. Department of Justice as part of the Justice Reinvestment Initiative. Governor Bill Walker, former Chief Justice Dana Fabe, Senate President Kevin Meyer, House Speaker Mike Chenault, Attorney General Craig Richards, former Commissioner of the Alaska DOC Ron Taylor, and former Chair of the Commission Alexander O. Bryner tasked the Commission with "develop[ing] recommendations aimed at safely controlling prison and jail growth and recalibrating our correctional investments to ensure that we are achieving the best possible public safety return on our state dollars."

In addition, Senate President Meyer and Speaker Chenault requested that, because the state's difficult budget situation rendered reinvestment in evidence-based programs and treatment possible only with significant reforms, the Commission forward policy options that would not only avert future prison growth, but would also reduce the prison population between 15 and 25 percent below current levels.

Over a seven-month period, the Commission analyzed the state's criminal justice system, including a comprehensive review of sentencing, corrections, and community supervision data. Key findings include:

- Alaska's pretrial population has grown by 81 percent over the past decade, driven primarily by longer lengths of stay for both felony and misdemeanor defendants.

- Three-quarters of offenders entering prison post-conviction in 2014 were convicted of a nonviolent offense.
- Length of stay for sentenced felony offenders is up 31 percent over the past decade.
- In 2014, 47 percent of post-revocation supervision violators – who are incarcerated primarily for non-criminal violations of probation and parole conditions – stayed more than 30 days, and 28 percent stayed longer than 3 months behind bars.

Based on this analysis, and the directive from legislative leadership, the Commission developed a comprehensive, evidence-based package of 21 consensus policy recommendations that would protect public safety, hold offenders accountable, and reduce the state's average daily prison population by 21 percent, netting estimated savings of $424 million over the next decade.

Members of the Alaska Criminal Justice Commission

Gregory P. Razo (Chair)	Alaska Native Justice Center
Justice Alexander O. Bryner	Alaska Supreme Court (retired)
Senator John Coghill	Alaska State Senate
Commissioner Gary Folger	Alaska Department of Public Safety
Jeff Jessee	Alaska Mental Health Trust Authority
Representative Wes Keller	Alaska House of Representatives
Commissioner Walt Monegan	Alaska Department of Corrections
Hon. Judge Stephanie Rhoades	Anchorage District Court
Attorney General Craig Richards	Alaska Department of Law
Lieutenant Kris Sell	Juneau Police Department
Brenda Stanfill	Interior Alaska Center for Non-Violent Living
Quinlan Steiner	Alaska Public Defender
Hon. Judge Trevor Stephens	Ketchikan Superior Court

Terry Vrabec, former Deputy Commissioner of the Department of Public Safety and Ron Taylor, former Commissioner of the Department of Corrections, were previous members of the Commission and initial participants in the Justice Reinvestment process.

Challenges Facing Alaska

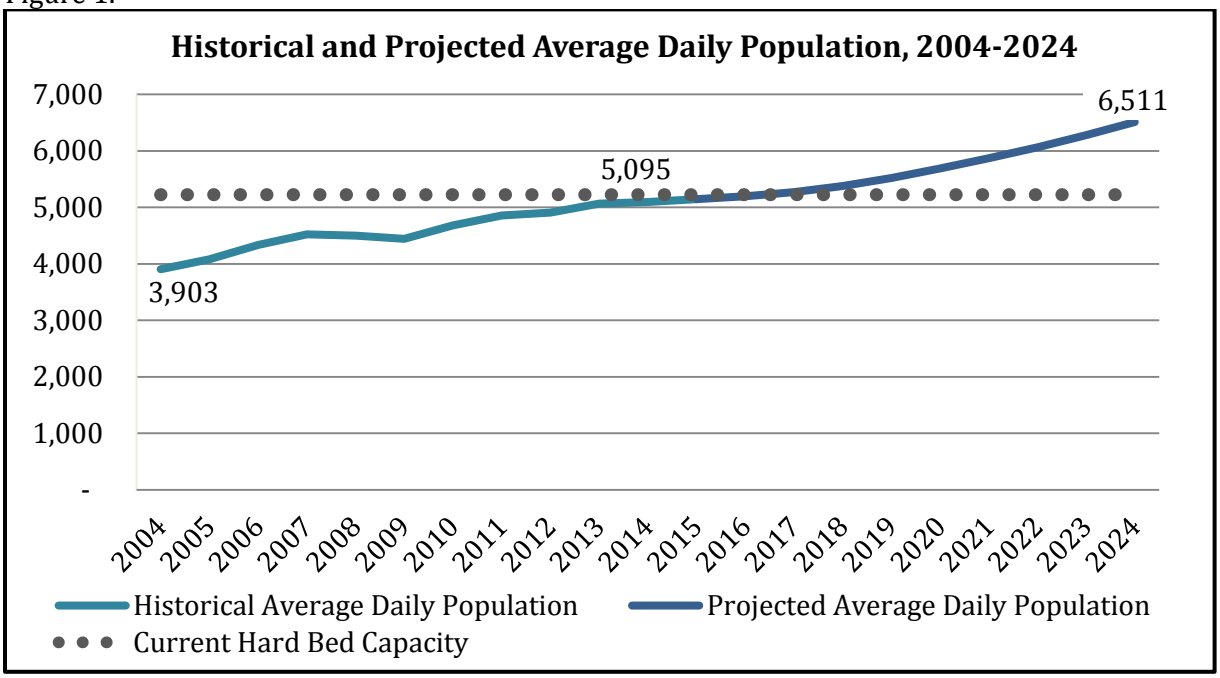
Alaska's prison population, which includes both pretrial and post-conviction inmates, has grown by 27 percent in the last decade, nearly three times faster than the resident population.[1] Alaska's overall correctional population, which includes incarcerated offenders as well as offenders on probation and parole, electronic monitoring, and in halfway houses, grew 45 percent over the last decade. On July 1, 2014, Alaska's correctional facilities housed 5,267 inmates and the total number of offenders under the Department of Corrections' ("DOC") control numbered 11,136.

Growth in the state's prison and community corrections populations has come at significant state expense. Alaska spent $327 million on corrections in fiscal year 2014, up from $184 million in 2005. In addition to these operating costs, recent corrections growth has also required significant capital expenditures, including the construction of the $240 million Goose Creek Correctional Center, which opened in 2012.[2]

Moreover, the state's growing prison population and increased corrections spending have failed to produce commensurate improvements in public safety: nearly two out of every three offenders released from Alaska correctional facilities return within three years.

Without a shift in sentencing and corrections policy, Alaska's average daily prison population is projected to grow by another 1,416 inmates over the next decade. (See figure 1, next page.) These additional inmates will surpass the state's capacity to house them in 2017, requiring both the re-opening of a currently unused 128-bed facility and, once that facility has been filled, transferring inmates to private facilities out of state. If policy makers decide to keep all the state's inmates in Alaska, accommodating the projected prison population growth will necessitate building another facility or expanding existing facilities, costing the state significantly more in capital expenditures.

Figure 1.



Source: Alaska Department of Corrections

Alaska Criminal Justice Commission

Seeking a comprehensive review of the state's corrections and criminal justice systems, the 2014 Alaska Legislature passed Senate Bill 64, which established the bipartisan, inter-branch Alaska Criminal Justice Commission ("Commission").

The Commission, comprised of 13 stakeholders including legislators, judges, law enforcement officials, the state's Attorney General and Public Defender, the Corrections Commissioner, and members representing crime victims, Alaska Natives, and the Mental Health Trust Authority, was charged with conducting a comprehensive review of Alaska's criminal justice system and providing recommendations for legislative and administrative action.

In April 2015, state leaders from all branches of government joined together to request technical assistance from the Public Safety Performance Project as part of the Justice Reinvestment Initiative, a collaboration between The Pew Charitable Trusts and the U.S. Department of Justice Bureau of Justice Assistance. Governor Bill Walker, former Chief Justice Dana Fabe, Senate President Kevin Meyer, House Speaker Mike Chenault, Attorney General Craig Richards, former Commissioner of the Alaska DOC Ron Taylor, and former Chair of the Commission Alexander O. Bryner tasked the Commission with "develop[ing] recommendations aimed at safely controlling prison and jail growth and recalibrating our correctional investments to ensure that we are achieving the best possible public safety return on our state dollars."

Beginning in the summer of 2015 and extending through the end of the calendar year, the full Commission met seven times as a part of the Justice Reinvestment Initiative. To provide the opportunity for further analysis and discussion of specific policy areas, Commissioners also split into three subgroups focused on pretrial, sentencing, and community supervision policies.

Each subgroup's goal was to craft recommendations within their criminal justice policy area that would meet the Commission's charge. Subgroups reported their policy recommendations to the larger Commission for consideration.

Throughout the Justice Reinvestment process, the Commission and its staff heard from a wide range of stakeholders. It held five public hearings across the state, conducted outreach in rural hub communities and remote villages, and held roundtable discussions with victims, survivors, and victim advocates to identify key priorities. Members of the Commission and staff also received input and advice from prosecutors, defense attorneys, behavioral health experts, and other criminal justice stakeholders, and presented at annual convenings for judges, magistrates, law enforcement, the Prisoner Reentry Coalition, and the Alaska Federation of Natives.

National Picture

Alaska's challenges with long-term prison growth are not unique. Across the country, state prison populations have expanded rapidly and state officials have spent an increasing share of taxpayer dollars to keep pace with soaring prison costs. From the mid-1980s to the mid-2000s, spending on corrections was the second fastest growing state budget category, behind only Medicaid.[3] In 2012, one in 14 state general fund dollars went to corrections.[4]

However, in recent years many states have taken steps to curb their prison population growth while holding public safety paramount. After 38 years of uninterrupted growth, the national prison population declined 3 percent between 2009 and 2014.[5]

Many of these states adopted policies to rein in the size and cost of their corrections systems through a "justice reinvestment" strategy. Georgia, Mississippi, North Carolina, Oregon, South Dakota, Texas, and Utah, among many others, have implemented reforms to protect public safety and control corrections costs. These states revised their sentencing and corrections policies to focus state prison beds on violent and habitual offenders and then reinvested a portion of the savings from averted prison growth into more cost-effective strategies to reduce recidivism.

In 2011, for example, policymakers in Georgia faced a projected eight percent increase in the prison population over the next five years, at a cost of $264 million. Rather than spend additional taxpayer dollars on prisons, Georgia leaders looked for more cost-effective solutions. The state legislature unanimously passed a set of reforms that controlled prison growth through changes to drug and property offense statutes, and improved public safety by investing in drug and mental health courts and treatment.[6] Between 2012 and 2014 (the most recent year with available crime data), the state crime rate has fallen three percent and the sentenced prison population has declined three percent, giving taxpayers better public safety at a lower cost.[7]

In these and other states, state working groups have focused on research that shows how to improve public safety and have integrated the perspectives of the three branches of government and key system stakeholders. This data-driven, inclusive process resulted in wide-ranging innovations to the laws and policies that govern who goes to prison, how long they stay, and whether they return.

Key Findings of the Alaska Criminal Justice Commission

To evaluate Alaska's criminal justice system, the Commission reviewed the research on what works to change criminal offending behavior and safely reduce prison populations and then assessed Alaska's practices and policies against these standards. The Commission studied the criminal justice system in three areas – pretrial detention, post-conviction imprisonment, and community corrections.

Pretrial Detention

The number of pretrial inmates in Alaska has grown by 81 percent over the past decade (up from 817 in 2005 to 1,479 in 2014), significantly outpacing the growth of the post-conviction population (up 14 percent from 2,303 in 2005 to 2,627 in 2014) and the growth in the supervision violation population (up 15 percent from 1,013 to 1,161). In 2005, pretrial inmates comprised 20 percent of the population; today they comprise 28 percent.

While criminologists have been studying post-conviction imprisonment and community corrections for many decades, publications on the pretrial phase of the criminal justice system were, until recently, focused almost exclusively on legal and constitutional questions rather than scientific ones. In the last decade, however, rigorous scientific research into the area of pretrial policy has expanded rapidly. Today, a growing body of literature supports the following three principles of pretrial policy.

Pretrial risks can be predicted and used to guide release decisions

In deciding whether to release a defendant pretrial, courts generally consider two factors: the likelihood that the defendant will miss their court hearings and the likelihood that the defendant will engage in new criminal activity if released.[8] Research has shown that risk assessment tools can accurately predict these risks by identifying and weighing factors that are associated with each type of pretrial failure.[9]

Research also supports the use of these assessments in guiding decisions about conditions of release. Targeted use of pretrial conditions is critical because restrictive release conditions such as electronic monitoring and drug and alcohol testing do not improve outcomes for all pretrial defendants. While select restrictive release conditions can decrease the likelihood of pretrial failure (measured as failure to appear or bail revocation due to new arrest) for higher risk defendants, when restrictive conditions are applied to lower risk defendants, they can actually do the opposite. Compared to similar defendants not assigned these restrictive release conditions,

lower risk defendants with restrictive release conditions are more likely to fail during their pretrial release period.[10]

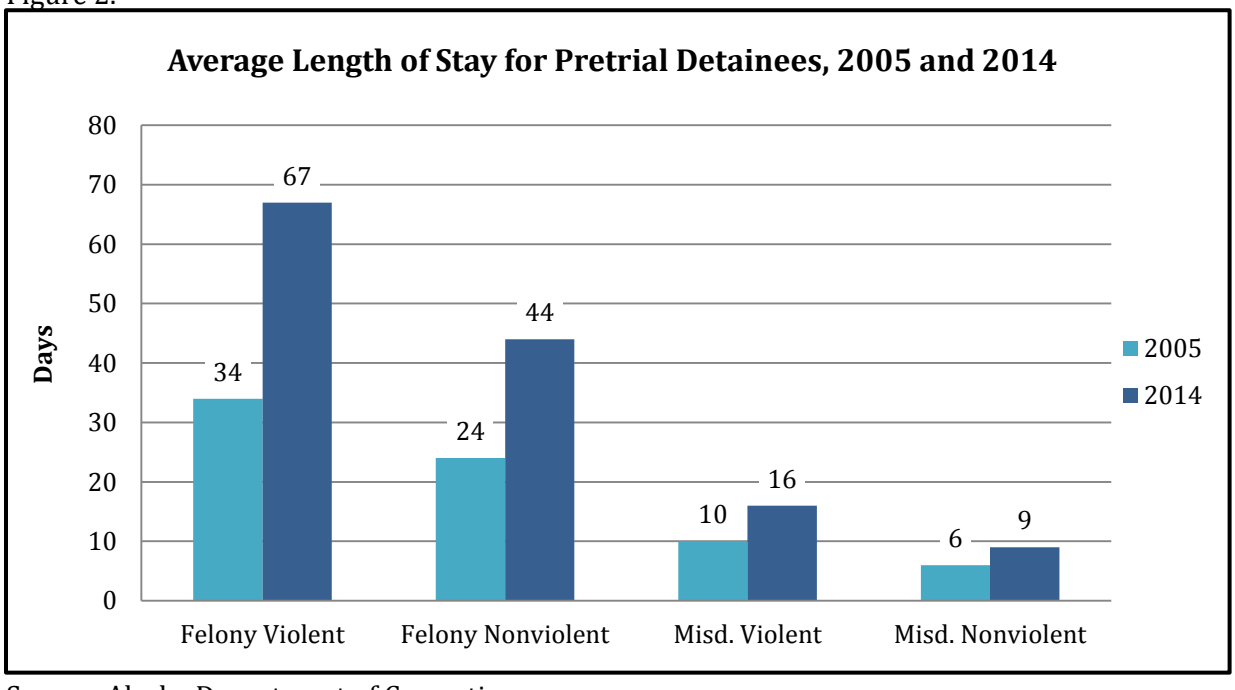
In Alaska, courts do not currently utilize pretrial risk assessments to guide their decisions about release or conditions of release, so, in the absence of data, it is not possible to determine whether those who are detained pretrial or released under restrictive conditions are in fact higher risk.

Pretrial detention longer than 24 hours can lead to worse outcomes, particularly for low risk defendants

Researchers have also examined the impacts of pretrial detention on defendants' outcomes. In a recent examination of this relationship, researchers matched defendants with similar criminal charges, risk levels, and demographic characteristics who were detained pretrial for different lengths of time. A key finding of this study was that, generally, low risk defendants who are detained for more than 24 hours experience an increased likelihood of failure to appear and new criminal activity during the pretrial period.[11] In addition, the study demonstrated that being detained for the entirety of the pretrial period is associated with an increased likelihood of new criminal activity post-disposition across all risk categories.[12]

In Alaska, pretrial inmates are staying behind bars longer before being released than they were 10 years ago – increases that have occurred across charge severity. (See figure 2.) For example, in 2014, detainees whose most serious charge was a nonviolent misdemeanor were staying an average of nine days during the pretrial period – three days longer than the average stay in 2005.

Figure 2.



Source: Alaska Department of Corrections

Unsecured bail is as effective as secured bail

Across the country, length of pretrial detention is often tied to whether a defendant can afford to pay monetary bail. While this is a common practice in the United States, it does not have a foundation in the growing body of research on pretrial risk. Ability to pay monetary bail does not make a person low risk.[13] There are defendants who cannot afford monetary bail who are unlikely to engage in new criminal activity during the pretrial period. Additionally, there are defendants who can afford to pay their monetary bail, but who are likely to engage in new criminal activity. For these reasons, monetary bail is not the most effective tool for protecting the public during the pretrial period.

Research supports the use of unsecured monetary bail and other release conditions in place of secured monetary bail to reduce length of pretrial detention. (Secured bail requires payment of money upfront to be released, while unsecured bail permits release without payment and only requires payment if the defendant does not comply with their release conditions). Research has shown that defendants are as likely to make their court appearances and refrain from new criminal activity whether their bail is secured or unsecured, compared to defendants with similar risk levels.[14] However, use of secured bail results in many more jail beds than use of unsecured bail, as defendants who are unable to post the monetary amount upfront remain detained.[15]

One of the likely contributors to pretrial length of stay in Alaska is the use of secured money bail. While there is a statutory presumption that defendants will be released on personal recognizance or unsecured bail, a court file review of bail conditions for a random sample of offenders found that courts departed from this presumption in the vast majority of cases.[16] Only 12 percent of defendants in the sample were released on personal recognizance, and an additional 10 percent had unsecured money bail. Fifty-two percent of sampled defendants were never released prior to their case being resolved.

The case file review also revealed a connection between higher dollar bail amounts and release. Fewer than half of the defendants sampled were released at all during the pretrial period, and those with higher amounts of secured money bail were less likely to be released. Of those who were released, those with higher money bail spent longer in jail prior to their first release. For offenders whose bail was set at $1,000 or more, for example, those who were eventually able to secure their release spent an average of seven weeks detained pretrial prior to release.

Post-Conviction Imprisonment

Alaska's sentenced prison population, defined as those offenders sentenced to a period of incarceration for a new criminal conviction, has grown by 14 percent in the last decade. Additionally, the number of offenders in prison for a violation of supervision (both pre-hearing and post-revocation) grew 15 percent over the same period.

The relationship between crime and incarceration has been studied for many years. While experts differ on precise figures, researchers have found that increased incarceration in the 1990s was responsible for between 10 and 30 percent of the nationwide crime decline in that decade.[17]

Beyond the crime control benefit, prison sentences can be used to express community condemnation or to isolate the offender.

However, there is general consensus among experts that, as states have incarcerated higher numbers of lower-level offenders, and held offenders for longer periods of time, the country has passed the point of diminishing returns, meaning that additional use of prison would have little if any crime reduction effect today.[18] On the individual offender level, the evidence suggests that, for many offenders, incarceration is not more effective at reducing recidivism than non-custodial sanctions. At the same time, for a substantial number of offenders, there is little or no evidence that longer prison stays reduce recidivism more than shorter prison stays.[19]

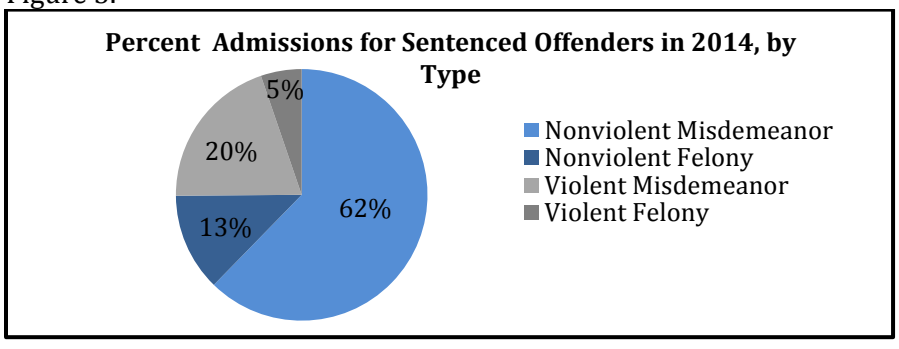
For many offenders, incarceration is not more effective at reducing recidivism than non-custodial sanctions

The Commission first considered the value of sending offenders to prison relative to non-custodial sanctions – such as drug court, probation, or electronic monitoring. Researchers have examined this question by matching samples of offenders sent to prison with those sent to non-custodial sanctions and have consistently found no differences in re-arrest or re-conviction rates, both in short-term and in long-term analyses, even when controlling for individuals' education, employment, drug abuse status, and current offense.[20]

Moreover, there is a growing body of research showing that for many low-level offenders, prison terms may increase rather than reduce recidivism.[21] Research around the "schools of crime" theory suggests that for many types of nonviolent offenders, the negative impacts of incarceration outweigh the positive: that is, sending offenders to prison can cause them to commit more crimes upon release.[22]

In examining the use of incarceration as a post-conviction sanction in Alaska, the Commission focused closely on the number of offenders entering prison for nonviolent offenses. Over the last 10 years, the number of nonviolent felony admissions has increased and, in 2014, nonviolent offenses (misdemeanors and felonies) comprised three-quarters of all post-conviction admissions to prison. (See figure 3.)

Figure 3.



Source: Alaska Department of Corrections

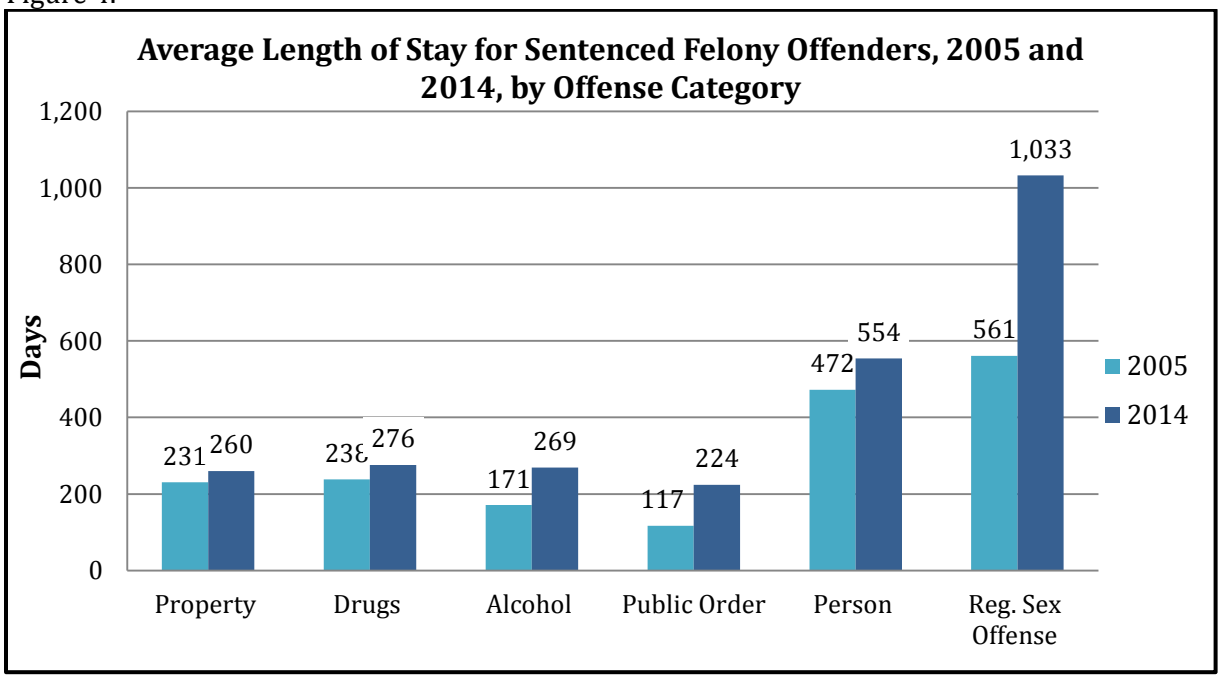
Additionally, the Commission examined the growing number of inmates in Alaska entering prison not for a new conviction but for a technical violation of their probation or parole conditions, defined as a violation of their supervision conditions that does not rise to the level of new criminal conduct. These offenders are admitted for failing to comply with the terms of their supervision, such as missing or failing a drug test or failing to report to their supervision officer. The number of offenders sentenced to prison after being revoked for a technical violation grew 32 percent in the past 10 years.

Longer prison stays do not reduce recidivism more than shorter prison stays

The Commission also considered the relationship between the length of prison terms and recidivism. The best measurement for whether longer lengths of stay provide for greater deterrence is whether similar offenders, when subjected to different terms of incarceration, recidivate at different levels. The rigorous research studies find no significant effect, positive or negative, of longer prison terms on recidivism rates.[23]

Examining length of stay in Alaska presents a mixed picture: while average misdemeanant length of stay is down slightly over the last 10 years, felony length of stay is up across all offense types and felony classes. For some offense types, including drug and property offenders, length of stay has increased by roughly 30 days over the last decade. For others, including felony public order and sex offenders, length of stay has nearly doubled, leading to an additional 3 ½ months in prison on average for public order convictions and an additional 16 months in prison on average for felony sex offenders.[24] (See figure 4.)

Figure 4.

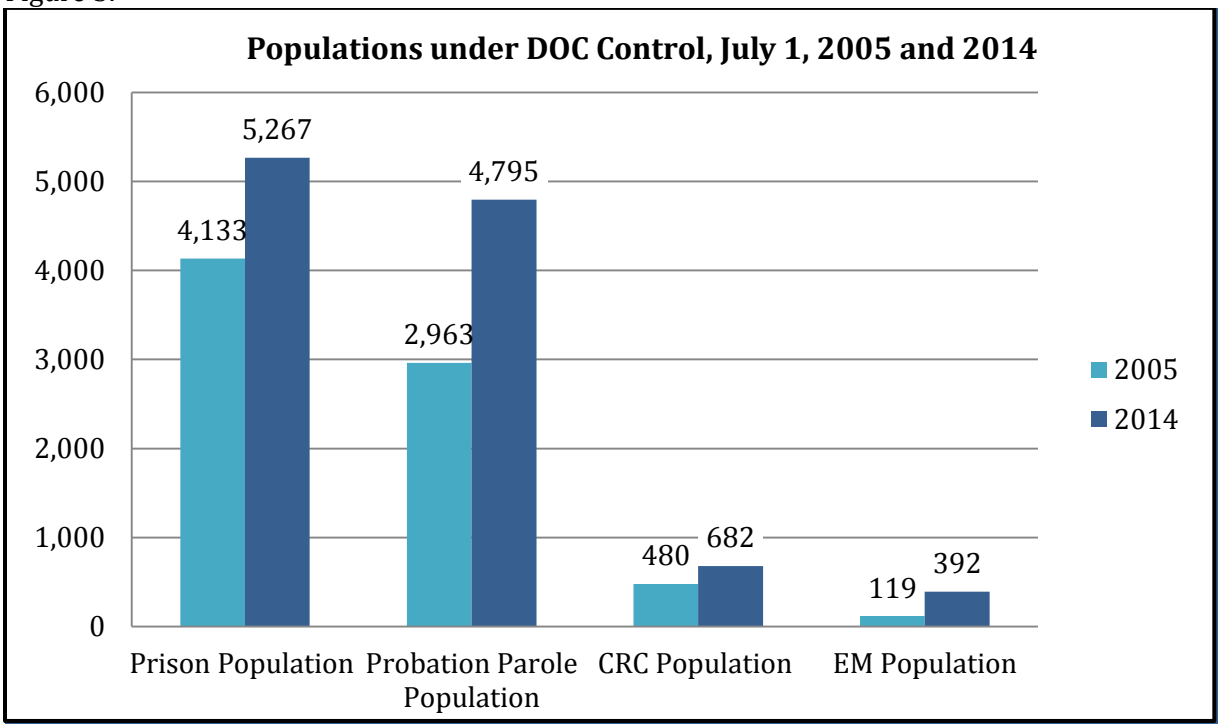


Source: Alaska Department of Corrections

Community Corrections

While Alaska's prison population has grown by 27 percent over the last decade, the state has experienced more growth among its community corrections populations, including probation and parole (up 62 percent), community residential centers or halfway houses ("CRCs") (up 42 percent), and electronic monitoring ("EM") (up 229 percent). (See figure 5.)

Figure 5.



Source: Alaska Department of Corrections

Research has identified a number of key strategies to increase success rates for those supervised in the community, including identifying and focusing resources on higher risk offenders, using swift, certain, and proportionate sanctions, incorporating rewards and incentives, frontloading resources in the first weeks and months following release from prison, and integrating treatment into supervision, rather than relying on surveillance alone.

Identify and focus supervision resources on high risk offenders

Research has consistently shown that offenders' likelihood to recidivate – that is, to commit new crimes upon release – can be accurately predicted with the use of validated risk assessment tools.[25] With these tools, supervision agents can focus their oversight and resources on those who pose the highest risk of reoffending, a practice that provides the biggest return on investment.

While Alaska currently utilizes a risk and needs assessment tool, the Level of Service Inventory-Revised ("LSI-R"), to inform supervision levels, a sizeable portion of the state's community

supervision resources remain focused on low risk offenders. On July 1, 2014, 39 percent of the state's probation and parole supervised population was classified as low risk. Even with reduced reporting requirements, these low risk offenders make up a large share of caseloads and require staff resources that could otherwise be dedicated to offenders with a higher likelihood to reoffend.

Use swift, certain, and proportionate sanctions

Research has also demonstrated that offenders are more responsive to sanctions that are swift, certain, and proportionate rather than those that are delayed, inconsistently applied, and severe.[26] Swift and proportionate sanctions work both because they help offenders see the sanction as a consequence of their behavior rather than a decision levied upon them, and because offenders heavily weigh the present over the future (consequences that come months and years later are steeply discounted). Certainty establishes a credible and consistent threat – thereby creating a clear deterrent for non-compliant behavior.[27]

In Alaska, with the implementation of the Probation Accountability with Certain Enforcement ("PACE") program in 2010, the state has begun utilizing evidence-based jail sanctions for a small portion of offenders on community supervision (offenders deemed high risk in five pilot communities). However, data across the entire supervision violator population – PACE and non-PACE – point to long delays between the problem behavior and the consequence – with an average of 33 days to resolve a revocation charge – and many offenders serving long sentences once convicted. In 2014, nearly half of revoked supervision violators stayed more than 30 days, and 28 percent stayed longer than 3 months behind bars.

Moreover, Alaska lacks a system-wide framework for the use of swift, certain, and proportionate sanctions that do not rise to the level of additional prison time. States across the country have successfully implemented graduated sanctioning, whereby supervision officers can respond to non-compliant behavior with a range of non-custodial responses – from less intensive sanctions like increased reporting requirements or community service hours, to more intensive sanctions like electronic monitoring.

Incorporate rewards and incentives

Historically, probation and parole supervision was focused on surveillance and sanctioning in order to catch or interrupt negative behavior. However, research shows that encouraging positive behavior with incentives and rewards can have an even greater effect on motivating and sustaining behavior change.[28]

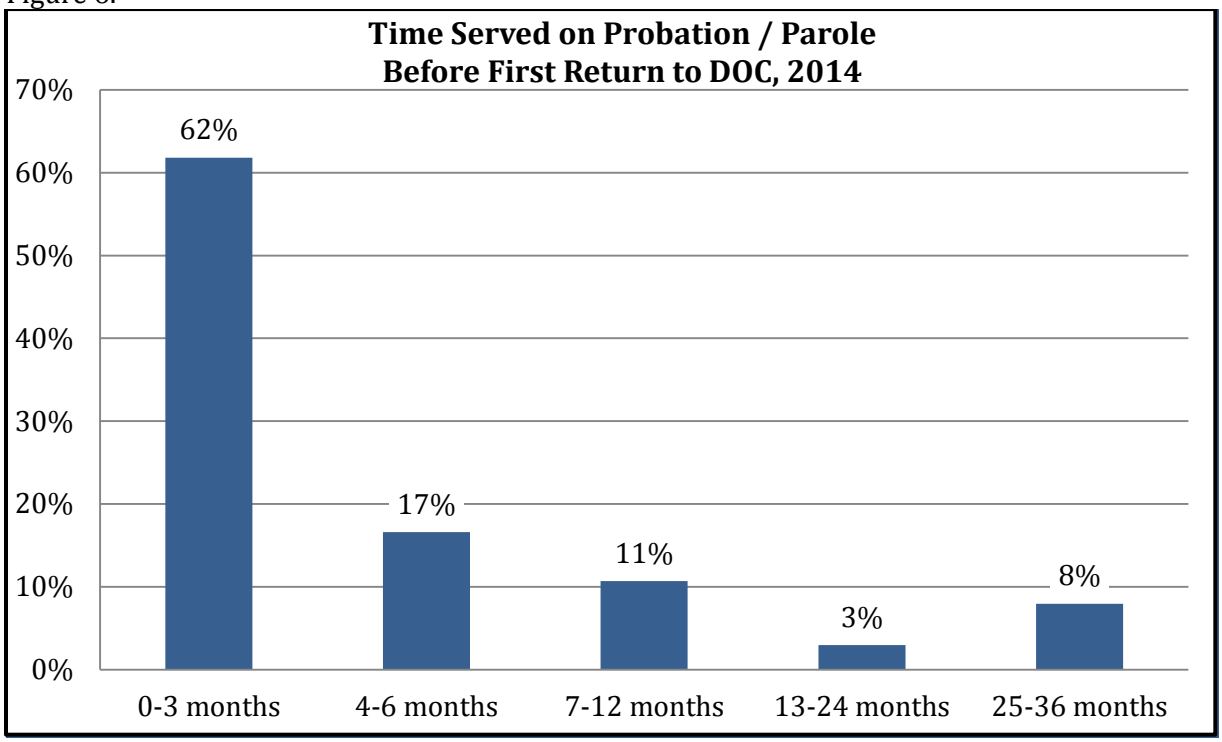
While incarcerated offenders in Alaska have the opportunity to receive good time and furlough incentives in acknowledgement of positive behavior and program participation, the state provides no similar incentives for offenders under supervision. Alaska has no earned discharge policy to allow supervisees to earn time off their supervision sentence for good behavior. Additionally, there is currently no standard practice for probation and parole officers to terminate supervision for offenders who have been consistently compliant. Rather, applications to terminate supervision must be made before a court and on an individual basis.

Frontload resources in the first weeks and months following release

Long-term success for offenders returning home from prison is closely tied to accountability and support in the time period immediately following release. Offenders in Alaska and elsewhere are most likely to reoffend or violate the terms of their community supervision in the initial days, weeks, and months after release from prison. (See figure 6.) The likelihood of violations and the value of ongoing supervision diminish as offenders gain stability and demonstrate longer-term success in the community.[29]

Research has shown that supervision resources have the highest impact when they target this critical period. By frontloading limited resources, states can better target offenders at the time when they are most likely to reoffend, thereby reducing future violations by addressing non-compliant offender behavior early in the process.[30]

Figure 6.



Source: Alaska Department of Corrections

While Alaska has taken significant strides in recent years to support offenders as they reenter the community, the state lacks policies to concentrate supervision resources on those first critical months. Moreover, while offenders are far more likely to fail in the first three months after release, the average length of time spent on community supervision prior to successful discharge has grown by 13 percent in the last decade, meaning that more parole and probation resources are dedicated to supervising offenders beyond the period when they pose the highest risk.

Integrate treatment into surveillance

Lastly, 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.[31]

In Alaska, probation and parole officers currently use risk assessments to both inform offenders' supervision levels (as outlined earlier), as well as to identify supervisees' criminogenic needs with top priority needs forming the basis of case management plans. However, the Commission heard a number of anecdotal reports regarding insufficient inpatient and outpatient treatment beds in DOC institutions and CRCs, as well as regional disparities in the availability of community-based treatment and programming, that render accessing evidence-based treatment difficult for many offenders.

Policy Recommendations

On September 8, 2015, Senate President Kevin Meyer and Speaker of the House Mike Chenault made an additional request of the Commission. Noting that the state's difficult budget situation rendered reinvestment in programs and treatment only possible with significant reforms, they charged the Commission with delivering policy options that met three benchmarks: (1) averting all future growth, (2) averting all future growth and reducing the prison population by 15 percent, and (3) averting all future growth and reducing the prison population by 25 percent. In a separate letter, Governor Walker applauded the legislative leadership for taking this initiative and pledged to use the benchmarks in developing reinvestment priorities in his budget.

Based on the Commission's review of evidence-based practices and an evaluation of the state's alignment with those practices in the areas of pretrial detention, post-conviction imprisonment, and community corrections, the Commission came to consensus on 21 policy recommendations that, taken together, are projected to reduce the average daily prison population by 21 percent by 2024, achieving an estimated net savings to the state of $424 million over the next decade.

These 21 consensus recommendations will:

- Implement evidence-based pretrial practices;
- Focus prison beds on serious and violent offenders;
- Strengthen supervision and interventions to reduce recidivism;
- Ensure oversight and accountability; and
- Advance crime victim priorities.

In an acknowledgement of the state's rapid prison growth over the last decade, and the importance of reinvesting savings into programs and policies that will reduce victimization and the state's recidivism rate, the Commission decided not to forward recommendations to the legislature that met the first two benchmarks: averting all future growth, and averting all future growth and reducing the prison population by 15 percent. Instead, the Commission strongly encourages the legislature to consider the 21 consensus recommendations forwarded and, where savings are achieved, to reinvest a portion into pretrial supervision services, victims' services in remote and

bush communities, violence prevention, reentry support services, and institutional and community-based treatment in both rural and urban areas.

Commission's Consensus Recommendations

Implement evidence-based pretrial practices

Recommendation 1: Expand the use of citations in place of arrest for lower-level nonviolent offenses

The majority of admissions to prison pretrial are for defendants with nonviolent misdemeanor charges. While law enforcement officers have discretion to issue citations for these offenses, the large number of admissions suggests that officers are not using that discretion as often as they could to ensure that expensive prison beds during the pretrial period are occupied those facing serious charges.

Specific Action Recommended: To reduce pretrial admissions for defendants with lower-level nonviolent charges, the Commission recommends:

a. Creating a presumption of citation for misdemeanors and class C felonies, excluding person offenses, domestic violence offenses, violations of release conditions, or offenses for which a warrant or summons has been ordered.

b. Allowing law enforcement officials to overcome the presumption of citation if the officer has reasonable grounds to believe the person presents a significant likelihood of flight, presents a significant danger to the victim or the public, or if the officer is unable to verify the person's identification without making an arrest.

Recommendation 2: Utilize risk-based release decision-making

A review of a sample of Alaska court files found that courts ordered some amount of secured monetary bond (as opposed to personal recognizance or unsecured bond) in a majority of cases. Additionally, 52 percent of sampled defendants were detained for the entirety of their pretrial period. Therefore, whether a defendant is released pretrial in Alaska is often tied to his or her ability to pay a certain amount of secured money bail rather than his or her likelihood of failing to appear for court hearings or engaging in new criminal activity.

Specific Action Recommended: To implement pretrial release decision-making based upon the offender's risk level, instead of ability to pay monetary bond, the Commission recommends:

a. Directing the DOC, in consultation with the Department of Law ("DOL"), Public Defender, Department of Public Safety ("DPS"), and Alaska Court System ("ACS"), to create an evidence-based pretrial release decision-making grid that strengthens the presumption of release on personal recognizance or unsecured bond for defendants with less serious charges and lower risk scores. The statutory parameters for this grid would include:
   i. Defining a category of defendants who, as a matter of law, should always be released on personal recognizance or unsecured bond with appropriate release conditions; and

ii. Defining categories of defendants for whom DOC should always or usually recommend release on personal recognizance or unsecured bond with appropriate release conditions, while providing a mechanism for the court to depart from that recommendation in limited circumstances.[32]

The following grid captures the release categories as recommended by the Commission:

Offense Type	Misd. non-person offense (non-DV/ non-DUI)	Class C felony non-person offense (non-DV/ non-DUI)	DUI	Failure to appear/ violation of release condition	Other
Low-risk	OR or UB release	OR or UB release	OR or UB recommended	OR or UB usually recommended	OR or UB usually recommended
Moderate-risk	OR or UB release	OR or UB recommended	OR or UB recommended	OR or UB usually recommended	OR or UB not usually recommended
High-risk	OR or UB recommended	OR or UB recommended	OR or UB usually recommended	OR or UB not usually recommended	OR or UB not usually recommended

OR: Own recognizance.
UB: Unsecured bond.

b. Mandating that DOC assess all pretrial defendants for risk using a validated pretrial risk assessment tool and make release recommendations to the court based on the grid prior to the defendant's first appearance. All releases on personal recognizance or unsecured bond would be accompanied by release conditions and, when appropriate, varying levels of pretrial supervision.
    i. Absent compelling circumstances, all defendants should be seen for their first appearance within 24 hours. If a first appearance happens within 24 hours, DOL is not required to be present. The court shall notify DOL if an additional probable cause hearing within 48 hours is required.

c. Authorizing courts to consider a defendant's inability to pay a previously set secured money bond in at least one bail review hearing.

d. Authorizing courts to issue unsecured and partially-secured performance bonds.[33]

e. Authorizing the DOL collections unit to garnish paychecks and Permanent Fund Dividend checks to collect on forfeited unsecured bonds and unpaid victim restitution.

f. Directing the ACS to eliminate misdemeanor bail schedules following DOC's implementation of the above evidence-based pretrial practices. Thereafter, any defendant arrested by law enforcement would remain detained until they have received a risk assessment and have made their first appearance before a judicial officer.

Recommendation 3: Implement meaningful pretrial supervision

Currently, judges have few options for pretrial supervision, and the options that are available are typically handled by non-state agencies and contingent upon the defendant's ability to pay monitoring fees, including the ordering of a private third-party custodian, the services of a private electronic-monitoring company, and the 24/7 sobriety program. The Commission heard from many judges and magistrates who said they would release more defendants from jail pretrial if there were more options for meaningful supervision in the community to reduce the defendants' risk of committing new crimes or failing to appear for court.

Specific Action Recommended: To reduce the risk that released defendants will fail to appear or engage in new criminal activity, the Commission recommends:

a. Directing the DOC to provide varying levels of supervision for moderate- and high-risk defendants who are released pretrial. The DOC would also be responsible for standardizing and recommending the use of pretrial diversion, conducting outreach to community programs and tribal courts to develop and expand diversion options, and providing referral services on a voluntary basis for substance abuse and behavioral health treatment services.

b. Directing the ACS to issue court date reminders to criminal defendants for each of their hearings, and to coordinate and share information about hearing dates and times with the DOC.

Recommendation 4: Focus supervision resources on high-risk defendants

Research shows that pretrial supervision resources should be focused on those defendants who are the most likely to fail. Certain restrictive release conditions can improve success rates for higher-risk defendants, but result in worse outcomes for lower-risk defendants.[34] Courts in Alaska currently do not utilize actuarial risk assessment tools or have guidance for assigning release conditions based in part on risk scores.

Specific Action Recommended: To ensure that supervision resources are focused on defendants at the highest risk to reoffend, the Commission recommends:

a. Ensuring that the DOC recommends evidence-based release conditions for each defendant who they have recommended for pretrial release, with more restrictive conditions reserved for higher-risk defendants.
    i. Additionally, entitling defendants to a subsequent bail hearing in cases where the release conditions prevented the defendant's release. At the bail hearing, the court would either revise the conditions or find on the record that there is clear and convincing evidence that no other release conditions can reasonably assure court appearance and public safety.

b. Restricting third-party custodian conditions to only those cases in which pretrial supervision provided by the DOC is not available; when no secured money bond is ordered; and when the court finds on the record that there is clear and convincing evidence that no less restrictive release conditions can reasonably assure court appearance and public safety.

c. Revising eligibility requirements for third-party custodians to limit disqualification from serving as a third-party custodian if there is a reasonable possibility that the prosecution will call them as a witness.[35]

Focus prison beds on serious and violent offenders

Recommendation 5: Limit the use of prison for lower-level misdemeanor offenders

In 2014, 6,569 offenders were admitted for a period of incarceration for a nonviolent misdemeanor offense, and an additional 2,093 offenders were admitted to prison for a violent misdemeanor – constituting 82 percent of all admissions to prison in that year.

Specific Action Recommended: In accordance with the research on the null or mildly criminogenic effect of prison stays for many lower-level offenders, and the Commission's desire to redirect a greater percentage of lower-level misdemeanor offenders to alternatives such as fines, probation, and electronic monitoring, the Commission recommends:

a. Reclassifying the following misdemeanors as violations, punishable by up to $1,000 fine:
   i. Misdemeanor B offenses, the lowest-level misdemeanor class in terms of severity, excluding theft and disorderly conduct violations;
   ii. Driving with a suspended license ("DWLS") offenses, when the underlying license suspension was not related to a conviction for driving under the influence ("DUI") or refusal to submit to a chemical test; and
   iii. Violations of conditions of release ("VCOR") and failure to appear ("FTA") offenses, with certain exclusions.[36] For these pretrial violations, law enforcement will be authorized to arrest the defendant, and the DOC will be authorized to detain the defendant until the court schedules a bail review hearing.

b. Reclassifying disorderly conduct offenses in such a way that allows for an arrest but limits jail holds or terms up to 24 hours.

c. Reclassifying first- and second-time theft offenses under $250 as non-jailable misdemeanors, and limiting the maximum sentence for a third or subsequent theft offense under $250 to five days suspended and a six-month probation term.

d. Eliminating the mandatory minimum for first-time DUI-related DWLS offenses.

e. Requiring that first-time misdemeanor DUI and refusal to submit to chemical test offenders serve their incarceration sentences on electronic monitoring in the community; in cases where electronic monitoring is not available, assigning the offenders to serve their incarceration sentence on supervised probation.

f. Presumptively setting a zero to thirty day sentencing range for misdemeanor A's.
   i. Permitting courts to depart from the presumptive sentencing range for DV-related assault 4s if the prosecution demonstrates that the conduct was among the most serious constituting the offense or if the offender has past similar and repeated criminal history (not limited to convictions).
   ii. Permitting courts to depart from the presumptive sentencing range for all other misdemeanor A's if the prosecution demonstrates that the conduct was among the most

serious constituting the offense or if the offender had past similar criminal convictions.

g. Restricting municipalities from incarcerating past these limits for similar municipal offenses.

Recommendation 6: Revise drug penalties to focus the most severe punishments on higher-level drug offenders

Over the past 10 years, post-conviction admissions to prison for drug offenses have grown by 35 percent. In addition, felony drug offenders are spending 16 percent longer behind bars than they were a decade ago.

In addition to reviewing meta-analyses demonstrating that longer prison stays do not reduce recidivism more than shorter prison stays for many offenders, the Commission also reviewed research pointing to the low deterrent value of long prison terms for drug offenders. Research shows that the chances of a typical street-level drug transaction being detected are about 1 in 15,000.[37] With such a low risk of detection, drug offenders are unlikely to be dissuaded by the remote possibility of a longer stay in prison.

Specific Action Recommended: In accordance with the research on the limited recidivism-reduction benefit of longer stays in prison, as well as the low deterrent value of long drug sentences in particular, the Commission recommends:

a. Reclassifying simple possession of heroin, methamphetamine, and cocaine as a misdemeanor offense, and limiting the maximum penalty for first-and second-time possession offenses to one month and six month suspended sentences, respectively.[38]

b. Aligning penalties for commercial heroin offenses with penalties for commercial methamphetamine and cocaine offenses.[39] This recommendation shall be forwarded to the Controlled Substances Advisory Committee ("CSAC") and CSAC shall be provided with the opportunity to comment and carry out their duties under AS 11.71.110.

c. Creating a tiered commercial drug statute whereby offenses related to more than 2.5g of heroin, methamphetamine, and cocaine is a more serious offense (Felony B) than offenses related to less than 2.5g of heroin, methamphetamine, and cocaine (Felony C).[40]

Recommendation 7: Utilize inflation-adjusted property thresholds

Alaska's felony property offense threshold, the dividing line at which the vast majority of property crimes are categorized as felonies as opposed to misdemeanors, was originally set at $500 in 1978. The equivalent value in today's dollars would be over $1800. However, the state's threshold today is set at $750, having been raised from $500 in 2014.

In a recent examination of felony cut-off points, findings showed that increasing a felony theft threshold does not lead to higher property crime rates. Between 2001 and 2011, 23 states raised their felony theft thresholds. The analysis found that the change in threshold had no statistically significant impact, up or down, in the states' overall property crime or larceny rates. Additionally,

the study found no correlation between the amount of a state's felony theft threshold – whether it is $500, $1,000, or $2,000 – and its property crime rates.[41]

Specific Action Recommended: To focus costly prison space on more serious offenders, and to ensure that value-based penalties take inflation into account, the Commission recommends:

a. Raising the felony property crime threshold to $2,000 for all property crimes with a required value amount.[42]

b. Requiring the Department of Labor to set in regulation an inflation-adjusted felony property threshold, as well as an inflation-adjusted threshold dividing Misdemeanor A and B property crimes (currently set at $250), every 5 years, rounded up to the nearest $50 increment.

Recommendation 8: Align non-sex felony presumptive ranges with prior presumptive terms

In 2005, following the Supreme Court Case *Blakely v. Washington,* Alaska moved from a statutory framework with presumptive prison terms to one utilizing presumptive ranges. In designing these ranges, lawmakers used the prior presumptive term as the bottom of the presumptive range. For example, in establishing the presumptive range for a non-sex, first-time Class A Felony, the prior presumptive term – 5 years – was used as the bottom of the new presumptive range – set at 5 to 8 years. (See chart below.)

Lawmakers had sought to maintain the status quo in regard to sentence lengths, noting in the legislation that, "it is not the intent […] to bring about an overall increase in the amount of active imprisonment time."[43] However, since the shift to presumptive ranges, length of stay has increased across all non-sex felony classes: including an 80 percent increase for Class A Felonies, an 8 percent increase for Class B Felonies, and a 17 percent increase for Class C Felonies.[44]

Specific Action Recommended: In accordance with the research demonstrating that for many offenders longer prison stays do not reduce recidivism more than shorter prison stays, and the original legislative intent to maintain lengths of prison stays at 2005 levels, the Commission recommends aligning presumptive ranges with the prior presumptive terms as outlined below.

(Numbers in brackets indicate presumptive terms/ranges.)

Felony Class[45]	Presumptive Term (2005)	Alaska Current	Recommendation
Class A			
First	[5] – 20 years	[5 – 8] – 20 years	[3 – 6] – 20 years
First/Enhanced[46]	[7] – 20 years	[7 – 11] – 20 years	[5 – 9] – 20 years
Second	[10] – 20 years	[10 – 14] – 20 years	[8 – 12] – 20 years
Third	[15] – 20 years	15 – 20 years	13 – 20 years
Class B			
First	[n/a] – 10 years	[1 –3] – 10 years	[0 – 2] – 10 years
First/Enhanced[47]	[n/a] – 10 years	[2 – 4] – 10 years	[1 – 3] – 10 years
Second	[4] – 10 years	[4 – 7] – 10 years	[2 – 5] – 10 years
Third	[6] – 10 years	6 – 10 years	4 – 10 years
Class C			
First	[n/a] – 5 years	[0 – 2] – 5 years	Presumptive probation;

			0 – 18 months[48]
Second	[2] – 5 years	[2 – 4] – 5 years	[1 - 3] – 5 years
Third	[3] – 5 years	3 – 5 years	2 – 5 years

Recommendation 9: Expand and streamline the use of discretionary parole

Current eligibility for discretionary parole is restricted to those non-sex offense felons convicted of the most serious crimes (Unclassified Felonies), and felonies towards the bottom of the severity scale (first- and second-time Class C Felonies, as well as first-time Class B Felonies). Offenders who fall between these two poles are ineligible for discretionary parole without the intervention of the three-judge panel. Additionally, no offenders convicted of a felony sex offense are able to apply for discretionary parole without the intervention of the three-judge panel.

Moreover, a review of DOC files found that, although a substantial number of offenders currently serving time in prison are eligible for discretionary parole, only a small percentage are applying and appearing before the Parole Board. Commissioners heard from numerous sources that this low percentage was attributable to a cumbersome application and review process.

Specific Action Recommended: To increase the number of offenders who are eligible to apply for parole, as well as to streamline the decision-making process, the Commission recommends:

a. Expanding eligibility for discretionary parole to all offenders except Class A or Unclassified sex offenders with prior felony convictions.

b. Streamlining parole decision-making for lower-level felonies (first time Felony C and B offenders) by restricting hearings to only those offenders who have failed to comply with their individual case plan or who have been disciplined for failure to obey institutional rules, or in cases where the victim has requested a parole hearing. Otherwise, inmates will be paroled at their earliest eligibility date.

c. Requiring that any other offender who is eligible for parole receives a hearing at least 90 days before his or her first eligibility date, with the presumption that the offender will be granted parole if he or she has complied with the Individual Case Plan and followed institutional rules. The presumption of parole could be overcome with a finding on the record that release would jeopardize public safety

Recommendation 10: Implement a specialty parole option for long-term, geriatric inmates

Geriatric prisoners are often much more expensive than younger inmates because of their higher medical costs. At the same time, research shows that older inmates are at a much lower risk of recidivism than younger inmates because they typically have "aged out" of their crime committing years. According to research by the Alaska Judicial Council, offenders released at age 55 and older were far less likely to be rearrested than the average for all offenders.[49]

Specific Action Recommended: To reduce the number of low risk, geriatric offenders in prison, the Commission recommends:

a. Providing for automatic parole hearings for offenders, including those incarcerated prior to the implementation of the legislation, who are over an age threshold set between 55 and 60 and have served at least 10 years of their sentence.

b. Ensuring that when evaluating inmates under this policy, the Parole Board considers the inmate's likelihood of re-offending in light of his or her age, as well as criminal history, behavior in prison, participation in treatment, and plans for reentering the community.

Recommendation 11: Incentivize completion of treatment for sex offenders with an earned time policy

The Commission also reviewed research relating to the efficacy of sex offender treatment. Over the last decade, a growing body of evidence has demonstrated that treatment interventions for sex offenders can be successful. A cost-benefit analysis conducted by the Washington State Institute for Public Policy found that in-prison sex offender treatment had a positive cost-benefit ratio of $1.87 (i.e. for every dollar spent on treatment, there was $1.87 returned in benefits to the state and state residents).[50]

Many states utilize earned time to motivate offenders to complete treatment rehabilitation activities – whereby inmate prison terms are reduced from the date on which they might have been released had they not completed the specified programs.[51] Earned time is distinguished from "good time" credits (often referred to in Alaska as "mandatory parole"), which are awarded to offenders exclusively for following prison rules.

Specific Action Recommended: To incentivize participation in and completion of sex offender treatment, the Commission recommends:

a. Implementing an earned time policy for sex offenders who are currently ineligible for mandatory parole, whereby offenders are able to earn up to one-third off their sentence if they complete in-prison treatment requirements set forth by the DOC.

b. Expanding the DOC's capacity to provide residential, long-term sex offender treatment that focuses on ensuring the offender is held responsible for harmful behavior and teaches cognitive behavioral strategies to end patterns of abuse.

Strengthen supervision and interventions to reduce recidivism

Recommendation 12: Implement graduated sanctions and incentives

Alaska law does not authorize community supervision field officers to respond to technical violations of community supervision, such as missing drug tests or treatment sessions, with intermediate sanctions. Although DOC policies do give field officers the authority to address minor violations administratively, there is no system-wide framework for the use of swift, certain, and proportionate sanctions. As a result, sanctioning practices vary widely across the state.

Specific Action Recommended: To reduce recidivism and increase success rates on probation and

parole through the use of swift, certain, and proportional sanctions and incentives, the Commission recommends:

a. Statutorily authorizing the DOC to create a graduated sanctions and incentives matrix using swift, certain, and proportional responses, and to follow the matrix both when rewarding pro-social behavior and when responding to technical violations of supervision.

b. Requiring field agents to be trained on principles of effective intervention, case management, and the use of sanctions and rewards.

Recommendation 13: Reduce pre-adjudication length of stay and cap overall incarceration time for technical violations of supervision

On July 1, 2014, 22 percent of Alaska's prison population was comprised of offenders who have violated the terms of their probation or parole supervision. Of those, most have violated the rules of supervision that do not constitute new criminal conduct, such as failing drug screenings or failing to report to their probation or parole officer.

After revocation, supervision violators are staying incarcerated, on average, for 106 days. Many of these supervision violators also spend a significant amount of time incarcerated before their case is resolved – on average, approximately one month. However, research shows – and Alaska's experiences with the PACE program have demonstrated – that more proportionate sanctions, administered in a swift and certain fashion have a stronger deterrent effect than these less swift and more severe sanctions.

Specific Action Recommended: To respond swiftly and proportionately to violations of supervision and to limit the use of prison as a sanction for technical violations, the Commission recommends:

a. For offenders not participating in the PACE program, limiting revocations to prison as a potential sanction for technical violations of probation or parole as follows:
   i. First revocation: Up to 3 days
   ii. Second revocation: Up to 5 days
   iii. Third revocation: Up to 10 days
   iv. Fourth and subsequent revocation: Up to 10 days and a referral to the PACE program; or, if the PACE program is not available in the jurisdiction, the sanction would be left to judicial or Board discretion.
   v. Revocation for absconding[52]: Up to 30 days.
   vi. These limits would not apply if the probationer or parolee is a sex offender who has failed to complete sex offender treatment.

b. Requiring that probationers and parolees who are detained awaiting a revocation hearing for a technical violation of their community supervision be released back to probation and/or parole supervision on personal recognizance after serving the maximum allowable time outlined above, unless new criminal charges have been filed.

c. Requiring that courts convert any unperformed Community Work Service directed in a judgment to a fine – and not to jail time - once the deadline set and announced at the time of

sentencing has elapsed.

d. Stipulating that jail time cannot be imposed because a person failed to complete treatment if, despite having made a good faith effort, they were unable to afford treatment.
   i. Additionally, including substance abuse treatment as a reinvestment priority for indigent offenders who are:
      1. Referred to ASAP by the court; and
      2. At a moderate to high risk of re-offending and in need of substance abuse treatment, as determined by a validated risk and needs assessment.

Recommendation 14: Establish a system of earned compliance credits

A robust body of research shows reduced recidivism when resources are focused on high risk offenders and front-loaded toward the first months following release. However, 39 percent of offenders on probation or parole are classified as low-risk, and supervising these offenders for long periods of time costs Alaska resources without improving public safety.

Earned compliance credits can provide a powerful incentive for offenders to participate in programs, obtain and retain employment, and remain drug- and alcohol-free.[53] As compliant and low risk offenders earn their way off supervision, earned compliance credits also work to focus limited supervision resources on the higher risk offenders who most require attention.

Specific Action Recommended: To focus resources on offenders at the highest risk to reoffend and to incentivize compliance with the offender's conditions of probation or parole, the Commission recommends:

a. Statutorily establishing an earned compliance policy that grants probationers and parolees one month credit towards their probation and/or parole term for each month they are in compliance with the conditions of supervision.

b. Establishing an automated time accounting system wherein probationers/parolees automatically earn the credit each month unless a violation report has been filed in that month.

Recommendation 15: Reduce maximum lengths for probation terms and standardize early discharge proceedings

Over the past decade, the average time that an offender spends on probation or parole prior to discharge has increased by 13 percent. However, a review of Alaska's data demonstrates that failure on supervision is most likely to happen in the first three months after an offender's release. Longer stays on probation and parole divert supervision resources that could be better focused on higher risk offenders at the time when they are most likely to fail on supervision.

Additionally, while the DOC currently has the option of recommending early termination of probation or parole to the court or Parole Board, there are no guidelines for when this option should be used, leading to differences in practice from region to region. Further, several statutory barriers restrict the usefulness of this option, including a restriction on terminating probation early

for Rule 11 (plea agreement) cases, and a requirement that offenders serve at least two years on parole before being discharged.

Specific Action Recommended: To more effectively focus scarce probation and parole resources on offenders at the time they are most likely to re-offend or fail, the Commission recommends:

a. Capping maximum probation terms at the following:
   i. A maximum of 5 years for felony sex offenders and Unclassified felony offenders;
   ii. A maximum of 3 years for all other felony offenders;
   iii. A maximum of 2 years for 2nd DUI and DV assault misdemeanor offenders; and
   iv. A maximum of 1 year for all other misdemeanor offenders.

b. Reducing the minimum time needed to serve on probation or parole prior to being eligible for early discharge to 1 year.

c. Requiring the DOC to recommend early termination of probation or parole to the court/Parole Board for any offender who has completed all treatment programs required as a condition of supervision and is currently in compliance with all supervision conditions.

d. Requiring the DOC to provide notification to the victim when recommending early discharge, with an opportunity for the victim to provide input at the court or Parole Board hearing.

e. Authorizing courts to terminate probation early in cases where the sentence was imposed in accordance with a plea agreement under Rule 11 and DOC is recommending early discharge for good behavior.

Recommendation 16: Extend good time eligibility to offenders serving sentences on electronic monitoring

Most offenders who are housed within an institution have the opportunity to earn "good time" up to one-third off their sentences in acknowledgement of positive behavior. However, offenders who are serving their sentence on electronic monitoring are currently banned by statute from earning this incentive.

Specific Action Recommended: To incentivize compliance with the conditions of electronic monitoring, the Commission recommends allowing offenders on electronic monitoring to qualify for good time credits under the same conditions set forth for offenders in DOC institutions.

Recommendation 17: Focus ASAP resources to improve program effectiveness

Alaska's Alcohol Safety Action Program ("ASAP") provides screening and treatment referral services for thousands of misdemeanor offenders who are referred by the court. Unfortunately, the Commission finds that under-funding of ASAP has limited the program's effectiveness.

This Commission believes that the best policy would be to increase funding for ASAP to allow the agency to provide more robust screening and treatment resources to all offenders struggling with substance abuse. The Commission also recognizes that, in the current fiscal climate, this is unlikely

– and in light of that, recommends focusing available ASAP resources on a smaller subset of high-risk misdemeanants to achieve better results.

Specific Action Recommended: To increase the effectiveness of the ASAP program, the Commission recommends:

a. Focusing ASAP resources on offenders at the highest risk of taking up future prison resources through one of the following means:[54]
   i. Limiting the offense categories that courts would be authorized to refer to ASAP to those currently mandated by statute (DUI, refusal to submit to a chemical test, and habitual minor consuming).
   ii. Alternatively, limiting the offense categories that courts would be authorized to refer to ASAP to second-time misdemeanor DUI and refusal to submit to a chemical test offenses, as well as alcohol-related assault 4 offenses.

b. Requiring ASAP to expand the services it provides to include:
   i. Using a validated assessment tool to screen for criminogenic risk;
   ii. Performing a brief behavioral health screening; and
   iii. Providing referrals to treatment programs designed to address offenders' individual high priority criminogenic needs including, but not limited to, substance abuse.

c. Requiring ASAP provide increased case supervision for moderate to high risk offenders as resources permit.

Recommendation 18: Improve treatment offerings in CRCs and focus use of CRC resources on high-need offenders

CRCs, otherwise known as halfway houses, have the potential to effectively support offenders who are transitioning back to the community from prison. However, the Commission found that CRCs are likely mixing low and high risk offenders, which research has shown can lead to increased recidivism for low risk offenders.[55] Additionally, the Commission found that CRCs would be more effective at reducing recidivism if the facilities offered treatment for offenders in addition to supervision.

Specific Action Recommended: To reduce recidivism and improve outcomes for offenders placed in CRCs, the Commission recommends:

a. Requiring CRCs to provide treatment (cognitive-behavioral, substance abuse, after care and/or support services) designed to address offenders' individual criminogenic needs.

b. Adopting quality assurance procedures to ensure CRCs are meeting contractual obligations with regard to safety and offender management.

c. Implementing admission criteria for CRCs that:
   i. Prioritize placement in CRCs for people who would benefit most from more intensive supervision and treatment, using the results of a validated risk and needs assessment; and

ii. Minimize the mixing of low and high risk offenders.

Ensure oversight and accountability

Recommendation 19: Require collection of key performance measures and establish an oversight council

The reforms to Alaska's corrections and criminal justice systems will require careful implementation and oversight. Moreover, additional legislative and administrative reforms may be needed after implementation to enable the state to realize the goals of justice reinvestment. Several states that have enacted similar comprehensive reform packages, including Georgia, South Carolina, and South Dakota, have mandated data collection on key performance measures and required oversight councils to track implementation, report on outcomes, and recommend additional reforms if necessary. Many of these states have also charged the oversight councils with helping to administer ongoing reinvestment dollars based upon the savings associated with the reforms.

Specific Action Recommended: To ensure that reforms are monitored for fidelity and efficacy, and to better prepare the state to meet the objectives of justice reinvestment, the Commission recommends:

a. Requiring the ACS, the DOC, the Department of Health and Social Services ("DHSS"), the DOL, the DPS, and the Parole Board to collect and report data annually on key performance measures.

b. Creating a Justice Reinvestment Oversight Task Force ("Task Force"), composed of legislative, executive, and judicial branch members, as well as members representing crime victims and Alaska Natives, charged with:
   i. Monitoring and reporting back to the Legislature and Governor on the implementation and outcomes of the Commission's recommendations;
   ii. If needed, making additional recommendations for legislative and administrative changes to achieve the state's justice reinvestment goals;
   iii. Helping to administer reinvestment dollars and develop plans on an annual basis for ongoing reinvestment of a portion of the state general fund savings achieved through pretrial, sentencing, and corrections reforms, based on observed outcomes and cost-benefit estimates; and
   iv. Assessing state government processes to ensure victim restitution and violent crimes compensation are working effectively to meet crime victim needs.

Recommendation 20: Ensure policymakers are aware of the impact of all future legislative proposals that could affect prison populations

Many sentencing and corrections reforms do not affect biennial budgets, but have significant impact on budgets four, six, and eight years out or longer. Fiscal impact statements that cover a longer period of time would give policymakers a more accurate account of the implications of proposed sentencing and corrections policies on the state prison population and budget.

Specific Action Recommended: To ensure that policymakers are informed of the long-term fiscal impact of proposed corrections policies, require 10-year fiscal impact statements to accompany future sentencing and corrections legislation.

Recommendation 21: Advance crime victim priorities

Crime victims, survivors, and victim advocates are important stakeholders in the work of the Commission. Two roundtable discussions were held in September 2015 to provide survivors and advocates with an overview of the Commission's work, and to seek their input in establishing priorities for crime victims and those who serve them in Alaska. These roundtables were supplemented with significant additional outreach to victim advocates in the state. The Commission did not make data- or fact-findings related to crime victims or victim services. Instead, the following recommendations reflect the shared concerns expressed by victims, survivors, and advocates in the state.

Proposed Administrative Reforms: To advance reforms addressing the needs of crime victims, the Commission recommends the following administrative reforms:

a. The DOL and District Attorneys' offices should make enhanced efforts to increase the number of crime victims signed up for court notifications through VINE.

b. The DOC should review and revise policies and procedures related to inmate phone calls and visitation to reduce the likelihood of offenders contacting victims.

c. The DOC should review and revise policies and procedures to include an increased focus on crime victim needs during offender transition and reentry planning.

d. The training standards for criminal justice professionals should contain more specific provisions related to the frequency and content of victim-focused training, with input as appropriate from victim advocacy organizations in the state.

e. The state should authorize the DHSS to provide similar trauma-informed services for child victims as the services that exist for adult victims.

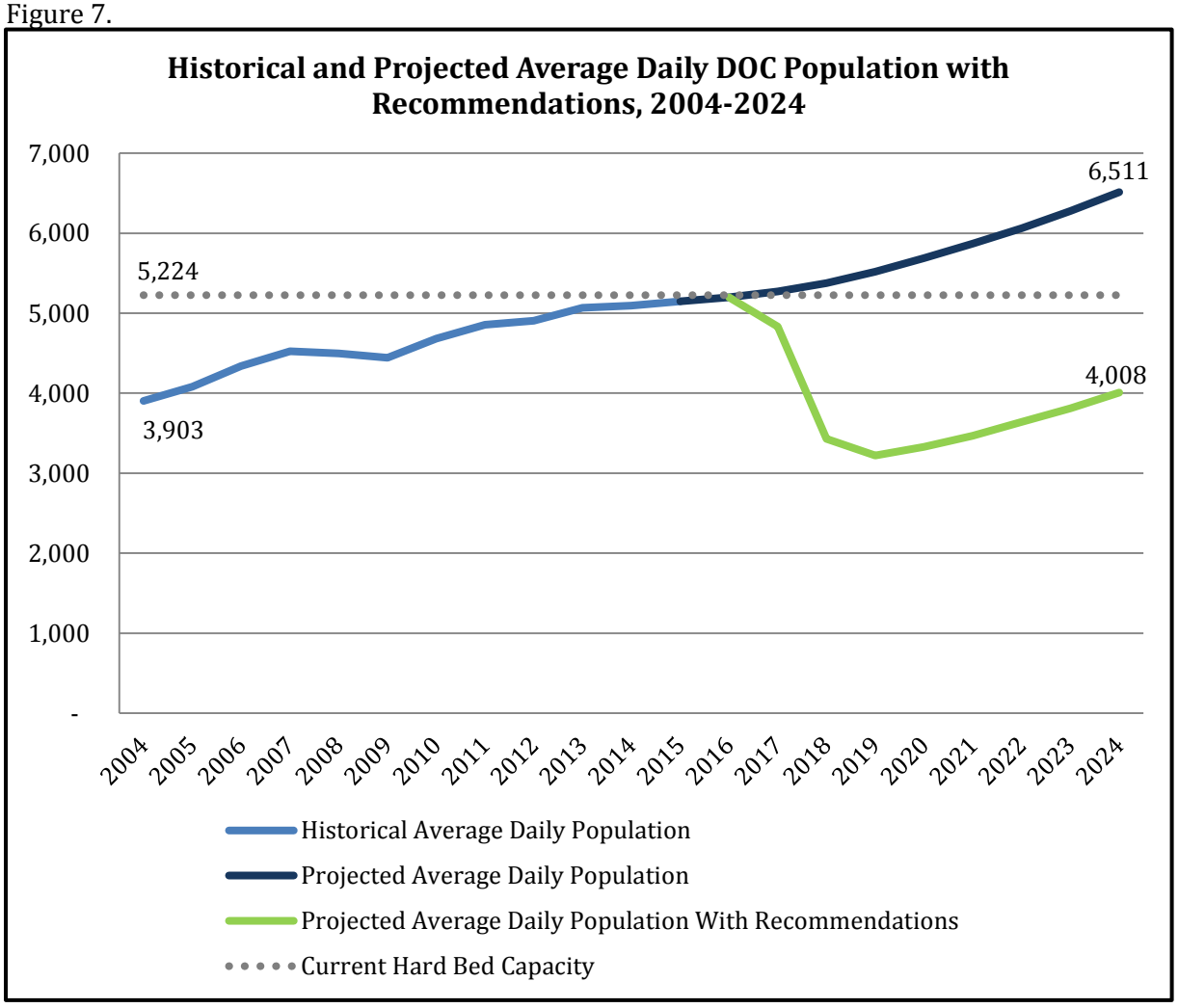
f. The courts and criminal justice agencies should take steps to make communications and documents more accessible for non-English speakers and people with low levels of literacy.

Impacts of Commission's Consensus Recommendations

Enacting all 21 of the Commission's consensus recommendations is projected to reduce the average daily prison population by 21 percent over the next 10 years, netting an estimated $424 million in prison costs through 2024. (See figure 7, next page.) This number includes both the savings associated with averting projected prison growth ($169 million) and the savings associated with reducing the population below current levels ($255 million).

These impacts are contingent upon successful implementation and funding of the above recommendations.

Figure 7.



Source: The Alaska Department of Corrections; the Pew Charitable Trusts.

Reinvestment Priorities

Recognizing that these recommendations will result in substantial state general fund savings over the next decade, the Commission strongly recommends reinvesting a portion of the savings into priority services designed to protect public safety, reduce victimization, and sustain reductions in the prison population.

With the understanding that prison population reductions and the associated savings will likely be achieved in the near future, the Commission recommends that the state provide an upfront

investment, and ongoing reinvestment based on guidance from the Justice Reinvestment Oversight Task Force, into the following priority services:

a. Pretrial services. Provide resources for the DOC to conduct pretrial risk assessments, make recommendations to the court regarding release and release conditions, and provide varying levels of supervision in the community.

b. Victims' services in remote and bush communities. Provide for emergency housing and travel, forensic exam training and equipment for health care providers, and community-driven programs that address cultural and geographic issues.

c. Violence prevention. Provide for community-based programming focused on prevention, education, bystander intervention, restorative justice, evidence-based offender intervention, and building healthy communities.

d. Treatment services. Fund treatment and programming in facilities and in the community to address criminogenic needs, behavioral health, substance abuse, and sexual offending behavior.

e. Reentry and support services. Expand transitional housing, employment, case management, and support for addiction recovery.

Additional Recommendations for Legislative Consideration

In addition to the consensus package of reforms above, the Commission also voted to forward the following six recommendations that received majority approval. Taken in concert with the consensus policy package, these policies are projected to reduce the average daily prison population by 26 percent and save the state an estimated $447 million dollars over the following decade.

Additional Recommendation 1: Require that all misdemeanor DUI and refusal to submit to a chemical test offenders serve their incarceration terms in proven prison alternatives
(variation on recommendation 5(e))

In 2014, over 2,500 offenders were admitted to prison post-conviction for a misdemeanor DUI, and an additional 105 offenders were admitted for refusal to submit to a chemical test – together, comprising a quarter of all post-conviction admissions in that year. The Commission reviewed a number of studies on the effective management of DUI offenders, including a 2014 study which found that jail sentences for DUI offenders were associated with higher recidivism rates than sentences to probation, even when controlling for differences between offender groups.[56] Additional studies have found that, no matter that number of past DUI convictions (1, 2, or 3 or more), sanctions involving jail time were associated with the highest recidivism rates.[57]

Specific Action Recommended: In recognition of the limited and potentially negative impacts of jail sanctions for DUI offenders, including repeat DUI offenders, a majority of Commission members recommend requiring all misdemeanor DUI and refusal to submit to a chemical test offenders (including those with a prior offense) to serve their incarceration terms in prison alternatives – specifically supervision under remote surveillance technologies or a CRC. In cases where electronic

monitoring is not available, the offenders can be assigned to serve their incarceration sentence on supervised probation.

Additional Recommendation 2: Set the weight threshold at which more serious commercial drug offenses are differentiated from less serious offenses at 5g (variation on recommendation 6(c))

While the Commission unanimously sought to differentiate more serious commercial drug offenses from less serious commercial drug offenses through the use of a weight-based system, a number of Commissioners sought to set the dividing weight at an amount higher than 2.5g, with the understanding that many drug addicts engage in low-level sale offenses primarily to support their habit, and therefore do not fall into the category of serious drug dealers.

Specific Action Recommended: A majority of Commission members recommend setting the weight at which more serious drug commercial drug offenses are differentiated from less serious offenses at 5g.

Additional Recommendation 3: Bring presumptive ranges under the ceiling of prior presumptive terms (variation on recommendation 8)

While the Commission unanimously sought to align non-sex presumptive sentencing ranges with prior presumptive terms, a number of Commissioners also sought to reduce average prison stays below 2005 levels – pointing to the robust body of research demonstrating that, even when controlling for offender characteristics, inmates who are sentenced to longer periods of incarceration are not less likely to commit a crime upon release than similarly situated offenders sentenced to shorter periods of incarceration.

Specific Action Recommended: In accordance with the research demonstrating that longer prison stays do not reduce recidivism more than shorter prison stays, a majority of Commission members recommend bringing presumptive ranges under the ceiling of the 2005 presumptive terms, and extending presumptive probation to both first- and second-time Class C Felony offenders.

Additional Recommendation 4: Return sentence lengths for Felony C and B sex offenders to pre-2006 levels

Over the last decade, the average length of stay behind bars for felony sex offenders has grown by 84 percent. Since 2005, Felony B sex offenders are staying an average of 120 percent longer and Felony C sex offenders are staying an average of 45 percent longer in prison. These longer prison stays were likely driven in part by significant increases in the lengths of sex offender sentences (both minimums and maximums) pursuant to legislative changes in 2006.

The Commission reviewed research demonstrating that sex offenders have a low risk of recidivism compared to other offense types. The most recent Alaska Judicial Council study of recidivism in the state found that sex offenders have substantially lower rates of rearrest within one year than other offense groups.[58] The same study found that sex offenders were reconvicted for a new sex offense

within two years at a rate of two percent.[59] Similar findings have also been borne out in national studies of recidivism rates.[60]

Specific Action Recommended: In accordance with the research demonstrating that sex offenders have a low risk of recidivism compared to other offense types, and that longer prison stays do not reduce recidivism more than shorter prison stays, a majority of Commission members recommend returning sentence lengths for Felony C and B sex offenders to 2005 levels.

Additional Recommendation 5: Expand Medicaid funding to provide substance abuse treatment for indigent offenders

Substance abuse and mental illness are associated with a substantial number of crimes committed in Alaska. A 2012 study found that Mental Health Trust beneficiaries, defined as individuals with mental illness, chronic alcoholism, traumatic brain injuries, and developmental disabilities, comprised 30 percent of individuals entering the prison system and 65 percent of the standing prison population.[61]

Yet stakeholders report that the need for substance abuse and mental health treatment far exceeds demand, both in institutions and in the community. In communities that do have some form of treatment available, waitlists are long, and free or subsidized options are limited; in much of rural Alaska, options are limited or non-existent.

Specific Action Recommended: To reduce the likelihood that high risk offenders in need of substance abuse and/or mental health treatment will re-offend, a majority of Commission members recommend expanding the availability of funding for treatment by both maximizing the enrollment of eligible offenders and better equipping private providers to bill Medicaid.

Additional Recommendation 6: Limit the use of multiple misdemeanor revocations for the same allegation of program noncompliance

Specific Action Recommended: To motivate probationers to participate in and complete treatment and programming, while also reducing the number of misdemeanants who are revoked and serve multiple jail terms for the same allegation of program noncompliance, a majority of Commission members recommend:

a. Requiring that the court process misdemeanor revocations for failure to comply with substance abuse or other programming in such a manner that one single petition is processed for that violation.
b. Ensuring that, after adjudication, the defendant is offered the opportunity to complete the required programming and a disposition hearing is continued for the purpose of assuring either successful completion of the program condition or a one-time suspended jail imposition and deletion of the program condition.

Endnotes

[1] Note: Unless otherwise cited, the analyses in this report were conducted for the Alaska Criminal Justice Commission by the Public Safety Performance Project of the Pew Charitable Trusts using annual cohort recidivism rates, prison and probation/parole admission, release, and stock population data 2005-2014 as well as aggregate community residential center and electronic monitoring counts provided by the Alaska Department of Corrections; criminal charge information 2005-2014 provided by the Alaska Court System; and national data from sources including the Federal Bureau of Investigation Uniform Crime Reports and the US Census Bureau population forecasts.
[2] Ben Anderson, (2012) "Opening Soon: Alaska's $240 million Goose Creek Prison," *Alaska Dispatch News*, http://www.adn.com/article/opening-soon-alaskas-240-million-goose-creek-prison.
[3] National Association of State Budget Officers (1987), "The State Expenditure Report", http://www.nasbo.org/sites/default/files/ER_1987.PDF; National Association of State Budget Officers (2007), State Expenditure Report Fiscal 2006", http://www.nasbo.org/sites/default/files/ER_2006.pdf. Note: Comparison excludes capital expenditures.
[4] National Association of State Budget Officers (2014) "Examining Fiscal State Spending 2011-2013", http://www.nasbo.org/sites/default/files/State%20Expenditure%20Report%20%28Fiscal%202011-2013%20Data%29.pdf.
[5] Bureau of Justice Statistics, Corrections Statistical Analysis Tool (CSAT), http://www.bjs.gov/index.cfm?ty=nps; Bureau of Justice Statistics (2015), "Prisoners in 2014", http://www.bjs.gov/content/pub/pdf/p14.pdf.
[6] Pew Public Safety Performance Project (2012), "2012 Georgia Public Safety Reform", http://www.pewtrusts.org/en/research-and-analysis/reports/0001/01/01/2012-georgia-public-safety-reform.
[7] Federal Bureau of Investigation, Uniform Crime Reports, UCR Data Tool http://www.ucrdatatool.gov/Search/Crime/State/StateCrime.cfm; Bureau of Justice Statistics, Corrections Statistical Analysis Tool (CSAT), http://www.bjs.gov/index.cfm?ty=nps.
[8] In Alaska, courts are legally required to consider the likelihood that the defendant will miss their court hearings and the likelihood that the defendant poses a danger to the victim, other persons, or the community (according to AS 12.30.006).
[9] Mamalian (2011), "State of the Science of Pretrial Risk Assessment", https://www.bja.gov/publications/pji_pretrialriskassessment.pdf ; Lowenkamp & Van Nostrand (2013), "Assessing Pretrial Risk Without a Defendant Interview", http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_no-interview_FNL.pdf.
[10] VanNostrand (2009), "Pretrial Risk Assessment in the Federal Court", http://www.pretrial.org/download/risk-assessment/Pretrial%20Risk%20Assessment%20in%20the%20Federal%20Court%20Final%20Report%20(2009).pdf.
[11] Lowenkamp, VanNostrand, & Holsinger (2013), "The Hidden Cost of Pretrial Detention", http://www.pretrial.org/download/research/The%20Hidden%20Costs%20of%20Pretrial%20Detention%20-%20LJAF%202013.pdf. Note: For this population, pretrial detention of 8-14 days and 31 or more days were not significantly associated with an increase in odds of failure to appear. Statistically significant differences were found for those who were detained for 2-3, 4-7, and 5-30 days as compared to 1 days or less.
[12] *Ibid*.
[13] Schnacke (2014), "Money As a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain a Defendant Pretrial", http://www.pretrial.org/download/research/Money%20as%20a%20Criminal%20Justice%20Stakeholder.pdf.
[14] Jones (2013), "Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option", http://www.pretrial.org/download/research/Unsecured+Bonds,+The+As+Effective+and+Most+Efficient+Pretrial+Release+Option+-+Jones+2013.pdf.
[15] *Ibid*.
[16] Note: A random sample of 400 case files (usable bail information N=310) from Anchorage, Juneau, Bethel, Fairbanks, and Nome Courts was selected and reviewed to examine pretrial releases conditions and sentence lengths. Data entry and analysis were conducted by Pew and the Alaska Judicial Council in July 2015. All findings related to bail conditions were derived from this analysis.
[17] National Research Council (2014), "The Growth of Incarceration in the United States", http://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes.
[18] *Ibid*.
[19] Campbell Collaboration (2015)," The Effects on Re-Offending of Custodial vs. Non-Custodial Sanctions: An Updated Systematic Review of the State of Knowledge", http://www.campbellcollaboration.org/lib/project/22/ ; Nagin &

Snodgrass (2013), "The Effect of Incarceration on Re-Offending: Evidence from a Natural Experiment in Pennsylvania", http://repository.cmu.edu/cgi/viewcontent.cgi?article=1407&context=heinzworks ; Nagin, Cullen, & Lero Jonson (2009), "Imprisonment and Reoffending", http://www.jstor.org/stable/10.1086/599202?seq=1#page_scan_tab_contents; Meade, Steiner, Makarios, & Travis (2012), "Estimating a Dose-Response Relationship Between Time Served in Prison and Recidivism", http://jrc.sagepub.com/content/50/4/525.abstract.

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[21] *Ibid.*

[22] Spohn & Holleran (2002), "The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders", http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9125.2002.tb00959.x/abstract; Nieuwbeerta, Nagin, & Blokland (2009), "Assessing the Impact of First Time Imprisonment on Offender's Subsequent Criminal Career Development: A Matched Samples Comparison", http://link.springer.com/article/10.1007%2Fs10940-009-9069-7,

[23] Nagin, Cullen, & Lero Jonson (2009), "Imprisonment and Reoffending".

[24] Note: It is possible the increase in in length of stay for felony sex offense convictions is an underestimate given the long sentences being served by many individuals convicted of sex offenses. The length of stay average is calculated based on the average time spent by offenders in their category released in a given year. As many sex offenders receive very long sentences, especially since sentencing ranges were broadened in 2006, the mean length of stay for offenders in this group might not reflect how long the average sex offender is likely to serve.

[25] Andrews (1999), "Recidivism Is Predictable and Can Be Influenced: Using Risk Assessments to Reduce Recidivism", http://www.csc-scc.gc.ca/research/forum/e012/12j_e.pdf.

[26] Grasmack & Bryjak (1980), "The Deterrent Effect of Perceived Severity in Punishment", http://www.jstor.org/stable/2578032?seq=1#page_scan_tab_contents; Farabee (2005), "Rethinking Rehabilitation: Why Can't We Reform Our Criminals?", http://www.aei.org/wp-content/uploads/2011/10/20050111_book806text.pdf .

[27] Nagin & Pogarsky (2000), "Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence", https://www.ssc.wisc.edu/econ/Durlauf/networkweb1/London/Criminology1-15-01.pdf.

[28] Wodahl, Garland, Culhane, & McCarty (2011), "Utilizing Behavioral Interventions to Improve Supervision Outcomes in Community-Based Corrections", http://cjb.sagepub.com/content/38/4/386.abstract,

[29] National Research Council (2007), "Parole, Desistance from Crime, and Community Integration", https://cdpsdocs.state.co.us/ccjj/Resources/Ref/NCR2007.pdf; Grattet, Petersilia, & Lin (2008), "Parole Violations and Revocations in California", https://www.ncjrs.gov/pdffiles1/nij/grants/224521.pdf.

[30] Ibid.

[31] Washington State Institute for Public Policy. Adult Criminal Justice "Benefit-Cost Results.". http://www.wsipp.wa.gov/BenefitCost?topicId=2.

[32] Note: For these categories of defendants, in order for the court to depart from a recommendation of personal recognizance or unsecured bond, and order secured money bond, it would have to find on the record that there is clear and convincing evidence that no other conditions of release can reasonably assure court appearance and public safety.

[33] Note: A performance bond is an agreement between the defendant and the court that if the defendant violates his or her conditions of release, he or she will forfeit a certain amount of money. A *secured* performance bond requires the defendant to pay upfront in order to be released, and the defendant would get that money back if they successfully completed the pretrial period. An *unsecured* performance bond does not require an upfront payment, but if the defendant violates conditions of release, the court can order the defendant to pay that amount of money. A *partially-secured* performance bond would require payment of 10 percent of the bond amount upfront in order to be released. That amount would be recoverable if the defendant successfully completes the pretrial period. Currently in Alaska, courts only have authority to issue *secured* performance bonds. As used in the policy description on the pretrial release decision-making grid, "unsecured bond" would refer to both appearance bonds and performance bonds, but statutes would have to change to permit courts to issue unsecured performance bonds.

[34] VanNostrand (2009), "Pretrial Risk Assessment in the Federal Court", http://www.pretrial.org/download/risk-assessment/Pretrial%20Risk%20Assessment%20in%20the%20Federal%20Court%20Final%20Report%20%282009%29.pdf.

[35] Note: Currently, the statute disqualifies a person from serving as a third-party custodian if they *may be called* as a witness.

[36] Note: FTA with intent to avoid prosecution and FTA for more than 30 days; and for violation of a protective order or no-contact order.

[37] Boyum & Reuter (2005), "An Analytic Assessment of Drug Policy, American Enterprise Institute for Public Policy Research", http://www.aei.org/wp-content/uploads/2014/07/-an-analytic-assessment-of-us-drug-policy_112041831996.pdf .
[38] Note: This policy would reclassify all unaggravated simple possession as a misdemeanor offense (currently set forth in AS 11.71.040(a)(3).
[39] Note: This policy extends to commercial offenses relating to IA controlled substances (currently set forth in AS 11.71.020(a)(1).
[40] Note: This policy extends to commercial offenses related to IA, IIA and IIIA controlled substances (currently set forth in AS 11.71.020(a)(1) and AS 11.71.030(a)(1).
[41] Pew Charitable Trusts (forthcoming), "The Effects of Changing State Theft Penalties".
[42] Note: Includes theft, concealing merchandise, issuing a bad check, vehicle theft, criminal mischief, unlawful possession, misapplication of property, criminal simulation, and removal of I.D. marks.
[43] Alaska State Legislature (2005), "Senate Bill 56".
[44] Note: Comparison years are 2006 and 2014.
[45] Note: Excludes Unclassified felonies.
[46] Note: The enhanced sentence applies to possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, or knowingly directed the conduct at a peace officer or first responder who was engaged in official duties and to manufacturing of methamphetamine offenses if knowing within presence of children.
[47] Note: The enhanced sentence applies to violations of AS 11.41.130 (CN Homicide) and the victim was a child under 16 and to manufacturing of methamphetamine offenses if reckless within presence of children.
[48] Note: Maximum allowable imprisonment term if probation is not imposed.
[49] Alaska Judicial Council (2011), "Criminal Recidivism in Alaska, 2008 and 2009", http://www.ajc.state.ak.us/reports/recid2011.pdf.
[50] Washington State Institute for Public Policy (2015),"What Works and What Does Not?: Cost-Benefit Findings from WSIPP", http://www.wsipp.wa.gov/ReportFile/1602/Wsipp_What-Works-and-What-Does-Not-Benefit-Cost-Findings-from-WSIPP_Report.pdf.
[51] National Conference of State Legislatures, (2009) "Cutting Corrections Costs: Earned Time Policies for State Prisoners," http://www.ncsl.org/documents/cj/earned_time_report.pdf.
[52] As used here, "absconding" is defined as failing to report within 5 working days after release or failing to report for 30 days.
[53] Petersilia (2007), "Employ Behavioral Contracting for "Earned Discharge" Parole", http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9133.2007.00472.x/pdf ; Wodahl, Garland, Culhane, & McCarty (2011), "Utilizing Behavioral Interventions to Improve Supervision Outcomes in Community-Based Corrections"; American Probation and Parole Association (2014), "Administrative Responses in Probation and Parole Supervision: A Research Memo", http://www.appa-net.org/eWeb/Resources/SPSP/Research-Memo.pdf.
[54] The Commission has chosen to forward two iterations of this policy to the legislature for its consideration.
[55] Lowenkamp & Latessa (2002), "Evaluation of Ohio's Community Based Correctional Facilities and Halfway House Programs", https://www.uc.edu/content/dam/uc/ccjr/docs/reports/project_reports/HH_CBCF_Report1.pdf.
[56] Bachmann & Dixon (2014), "DWI Sentencing in the United States: Toward Promising Punishment Alternatives in Texas", http://www.sascv.org/ijcjs/pdfs/bachmanndixsonijcjs2014vol9issue2.pdf ; Martin, Annan, & Forst(1993), "The Special Deterrent Effects of a Jail Sanction on First-Time Drunk Drivers: A Quasi-Experimental Study", http://www.researchgate.net/publication/14800968_The_special_deterrent_effects_of_a_jail_sanction_on_first-time_drunk_drivers_A_quasi-experimental_study ; Annan, Sampson, Martin, & Forst (1986), "Deterring the Drunk Driver: A Feasibility Study", http://www.worldcat.org/title/deterring-the-drunk-driver-a-feasibility-study-technical-report/oclc/18578880.
[57] DeYoung (1997), "An Evaluation of the Effectiveness of Alcohol Treatment , Driver License Actions and Jail Terms in Reducing Drunk Driving Recidivism in California", http://www.ncbi.nlm.nih.gov/pubmed/9376781.
[58] Alaska Judicial Council (2011),"Criminal Recidivism in Alaska, 2008 and 2009".
[59] *Ibid.*
[60] Bureau of Justice Statistics (2003), "Recidivism of Sex Offenders Released from Prison in 1994", http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1136.

[61] Hornby Zeller Associates, Inc. (2014), "Trust Beneficiaries in Alaska's Department of Corrections", http://mhtrust.org/mhtawp/wp-content/uploads/2014/10/ADOC-Trust-Beneficiaries-May-2014-FINAL-PRINT.pdf.

RECOMMENDATION TO THE ALASKA STATE LEGISLATURE BY

THE ALASKA CRIMINAL JUSTICE COMMISSION

No. 1-2016, Approved October 13, 2016

The Alaska Criminal Justice Commission recommends that the Legislature amend AS 12.55.155(d) (Factors in Aggravation and Mitigation) to include two statutory mitigators for "acceptance of responsibility." The proposed statutory language is below in bold font.

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. The Commission recommends adding two statutory mitigators that will be available for defendants who demonstrate an acceptance of responsibility for their conduct.[1] One mitigator would apply where defendants have entered into a plea agreement, and one would apply where defendants have not. Both of the recommended mitigators are expected to conserve prosecutorial, defense and court resources by promoting timely resolutions of criminal cases. Timely resolutions are also usually consistent with victims' interests.

1. <u>When there is a Timely Resolution By Plea Agreement</u>

This mitigator would only be applicable when a defendant enters into a plea agreement, and when both parties agree to it. Both the Department of Law and the Public Defender Agency believe this mitigator would incentivize timely resolution of cases by plea agreement. The proposed language is:

> **AS 12.55.155(d)(__) "the defendant clearly demonstrates acceptance of personal responsibility for the defendant's offense, as evidenced by entering into a timely plea agreement with the State of Alaska pursuant to Alaska Rule of Criminal Procedure 11(e).**

2. <u>In Cases Where There is No Plea Agreement</u>

This mitigator would be applicable in cases in which a negotiated outcome is not available, for whatever reason. It is hoped that this mitigator will encourage more defendants to voluntarily commence restitution and treatment in advance of sentencing. A mitigator which promotes more timely resolutions and more expressions of remorse was seen as highly beneficial by the victims' advocates who participated in the Workgroup.

The proposed language of the second mitigator is:

> **AS 12.55.155(d)(__) "the defendant, prior to sentencing, clearly demonstrates an affirmative and timely acceptance of responsibility for the defendant's criminal conduct.**

In vetting this proposal, the Commissioners debated many concerns. Some expressed skepticism as to how 'genuine" remorse could ever be discerned. Commissioner Alex Bryner (a retired Justice of the Alaska Supreme Court) was concerned that the proposal would allow for most sentences to be 'mitigated'

[1] These mitigators are somewhat similar to a federal sentencing provision with the same name. See USSG 3E1.1.

and would undermine the integrity of the presumptive sentencing structure. He was also concerned that judges could give widely varying discounts for this mitigator and this could lead to grave disparities among defendants.

Ultimately the Commission did not achieve complete consensus on either mitigator, but the majority of the Commission voted to forward both mitigators using the language above. Commissioner Bryner maintained his objection to the second mitigator. Commissioner Stephanie Rhoades (a sitting district court judge) opposed both mitigators, and expressed concern that as proposed, these mitigators did not offer enough guidance as to how they would operate.

RECOMMENDATION TO THE ALASKA STATE LEGISLATURE BY

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Nos. 2-2016, 3-2016, 4-2016, 5-2016, 6-2016, 7-2016

Approved August 28, 2016 and October 13, 2016

Recommendations concerning behavioral health from the Criminal Justice Commission. The following recommendations are all intended to address the behavioral health needs of justice-involved individuals in Alaska. These recommendations were created by the Commission's Behavioral Health Working Group and approved by a majority of Commission members.

2-2016: Pre-trial Diversion for the behavioral health population. The Commission recommends that the Department of Corrections (DOC) establish a voluntary pretrial diversion/intervention option for Alaskans with behavioral health disorders within DOC's new Pretrial Services Program. This option would provide an alternative criminal case processing for Alaskan defendants charged with a crime that, upon successful completion of an individualized program plan, results in a dismissal of the charge(s).

The Alaska Mental Health Trust conducted a study in 2014 which found that Trust beneficiaries account for more than 40% of Alaska incarcerations each year. The majority of those incarcerations are for misdemeanor offenses. On a snapshot day, 65% of Alaska's inmates were Trust beneficiaries. Thus, the purpose of this diversion/intervention option is to enhance justice and public safety through addressing the root cause of the criminal behaviors of the defendant, reducing the stigma which accompanies a record of conviction, restoring victims, and assisting with the conservation of jail, court and other criminal justice resources. This diversion/intervention option shall develop individual diversion plans using a comprehensive behavioral health and criminogenic risk/needs assessment of the defendant to identify and address specific need(s) related to reducing future criminal behavior.

The Pretrial Services Program pretrial diversion/intervention option should create collaborative partnerships with treatment and other types of services in the community which have demonstrated effectiveness and the ability to provide culturally competent and gender-specific programming to the identified needs of the participant.

It is further recommended that the DOC Pretrial Services Program shall oversee and/or administer diversion services using either the *Performance Standards and Goals for Pretrial Diversion/Intervention* of the National Association of Pretrial Services Agencies, or other recognized evidence based standards for pre-trial diversion interventions.

The Commission also recommends that the Department of Corrections convene representatives from the Department of Public Safety, the Department of Law, the Alaska Court System, the Department of Health and Social Services, the Alaska Mental Health Trust Authority, the public defense bar, victims' rights groups, and local law enforcement as well as representatives from tribal and non-tribal community health and behavioral health systems to assist in the development and implementation of the diversion program. DOC and the convened representative should ensure that some Pretrial Services officers and tribal and non-tribal community service providers are trained to work with the behavioral health population and to ensure individuals are 1) swiftly identified for participation, 2) assured service priority and/or timely linkage to appropriate treatment and other services and 3) effectively monitored.

The Commission approved this recommendation unanimously.

3-2016: Allow defendants to return to a group home on bail. The Commission recommends amending AS 12.30.027(b), which involves bail conditions for those charged with crimes involving domestic violence. The statute currently prohibits judicial officers from ordering or 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 would not be able to return home after committing the assault, and with nowhere to go, the individuals' behavioral health conditions will 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 recommends 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.

This recommendation did not receive unanimous approval; Commissioner Quinlan Steiner voted against it, concerned that the proposal did not extend to individuals with behavioral health disorders living in a family home.

4-2016: Information sharing. The Commission recommends that the legislature enact a statute creating a standardized Release of Information (ROI) form. Individuals with behavioral health needs (including those involved in the justice system) often experience delays or gaps in treatment when previous providers impose onerous requirements before releasing information.

The ROI should meet the requirements of Health Information and Portability Accountability Act (HIPAA), Title 42 CFR, and state of Alaska health confidentiality laws. The statute should require that the release be universally accepted by all state funded agencies providing health and behavioral health services within the state of Alaska. This will ensure a swift and confidential information exchange about a person's identified behavioral health needs and the supports required to ensure public safety and to ensure that the individual remains in the community, in the least restrictive living environment.

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5-2016: Add behavioral health information to felony presentence reports. The Commission recommends 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.

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6-2016: Include the Commissioner of DHSS on the Commission. Given the significant number of justice-involved individuals with behavioral health needs, the Commission recommends including the Commissioner of the Department of Health and Social Services as a member of this Commission. Commission members feel that this would allow for easier communication and interaction with DHSS as it implements significant reforms related to justice reinvestment.

This recommendation did not receive unanimous approval; Commissioners Williams, Steiner, and Stanfill voted against it. Some were concerned that there would need to be another seat added in addition to the DHSS Commissioner to keep an uneven number of Commissioners, and that this would generate an unwieldly body with state agencies being disproportionately represented.

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The UNLV study, funded by the Alaska Mental Health Trust, was commissioned by the Criminal Justice Working Group to review Alaska's statutes concerning competency to stand trial, guilty but mentally ill verdicts, not guilty by reason of insanity verdicts, and involuntary commitment. The UNLV team spoke to stakeholders in Alaska working in the field of behavioral health, studied national best practices and reviewed established and emerging research. The UNLV team then issued a report recommending amendment of key statutory provisions concerning behavioral health.

Since the UNLV report was issued in May 2015, several groups, including the Criminal Justice Working Group and the Alaska Criminal Justice Commission Behavioral Health Working Group, have reviewed the report and agree that at least some of the recommendations in the report should be enacted. However, implementing the recommendations would require a considerable effort on the part of the Department of Health and Social Services (DHSS), and neither working group wished to mandate these changes without DHSS's input. The Commission therefore recommends that DHSS work with the Commission to review the UNLV study.

The review shall include 1) an analysis of the proposed changes, 2) a statement of clear agreement on the language of the proposed amendments that enjoy major stakeholder support, 3) recommendations for how Title 12 and the Title 47 changes would fit into the proposed redesign of the State's behavioral health system and the Department's effort to propose an 1115 BH demonstration waiver to CMS by the middle of 2017. The report should be provided to the Commission no later than September 1, 2017.

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VICTIM RESTITUTION

A Report to the Alaska State Legislature

December 1, 2016

A primer on the law and practices surrounding restitution in Alaska, and proposals to improve restitution outcomes.

The Alaska Criminal Justice Commission
http://www.ajc.state.ak.us/alaska-criminal-justice-commission

Table of Contents

Executive Summary

The Alaska Legislature has asked the Alaska Criminal Justice Commission to provide a report on ways to improve the payment and collection of victim restitution. In preparing this report, the Commission found that Alaska's restitution recovery rates seem to be comparable to those in other states, though there is certainly room for improvement.

The Commission also notes the collection of restitution in Alaska will change significantly over the next year as the Department of Law's Restitution Collection Unit winds down operations and the Alaska Court System assumes that unit's responsibilities. Because of this change, there is some uncertainty in how effectively restitution collection will operate in the future, and the Commission has limited information on which to base recommendations for improvement. However, the Commission did identify several specific areas for improvement which may be addressed now. The following is a summary of the Commission's recommendations; the rest of the report explains the Commission's findings and recommendations in full. Two appendices provide the reader with additional research.

Proposal 1: Increase opportunities for victims to request restitution.

1.a. Modify the judgment form used by the court system to automatically include a provision that states that the matter of victim restitution will be left open for 90 days, with an "opt-out" box that the judge can check in cases where restitution does not apply.

1.b. Require prosecutors to contact victims and inform them of this 90-day deadline.

1.c. Ensure that the DAs send clear restitution instructions to all victims.

Proposal 2: Establish payment plans and a tracking and reminder system.

2.a. Encourage DOC and the court system to work with victims' advocates to find ways to monitor the restitution obligations of those not on felony parole.

Proposal 3: Amend AS 12.55.045 to remove the requirement that a defendant provide a financial statement.

Proposal 4: Amend the civil compromise statute for misdemeanors to allow the compromise of larceny offenses.

Proposal 5: Streamline Civil Execution.

Proposal 6: Expand opportunities for victims to receive "bridging" restitution funds.

6.a. Create an entity that will enable more victims to obtain bridging funds.

6.b. Increase funding or create a funding mechanism to provide more victims with bridging funds.

Proposal 7: Use technology to encourage defendants to make immediate in-person payments and online payments of restitution.

Proposal 8: Increase Defendants' Assets Available for Execution

8.a. Change the law to allow defendants who serve only short prison sentences to retain their PFD eligibility.

8.b. Require defendants to apply for the PFD each year they are eligible until restitution is paid in full.

Introduction

When the Alaska State Legislature initially created the Alaska Criminal Justice Commission, the legislature required the Commission to, among other things, "evaluate the effect of sentencing laws and criminal justice practices on the criminal justice system to evaluate whether those sentencing laws and criminal justice practices provide for ... restitution from the offender."

In 2016, the legislature further required the Commission to report on:

> ... the implementation of a financial recovery and victim's restitution program and [to] make recommendations for statutory changes to improve the payment and collection of victim's restitution. The report must include recommendations regarding restitution for crimes against a person and for property crimes against businesses and members of the public.[1]

This report contains background information about the current operation and effectiveness of the restitution process, identifies problems with the current process, and proposes potential cost-effective and evidence-based solutions to increase restitution recovery.

[1] 2016 SLA Ch. 36 ("SB 91"), sec. 183. This report is due on December 1, 2016.

The Alaska Criminal Justice Commission

The Alaska State Legislature created the Alaska Criminal Justice Commission in 2014.

The Commission consists of 13 members:

- Gregory P. Razo, Chair, representing the Alaska Native Community
- Alexander O. Bryner, designee of the Chief Justice
- John B. Coghill, Senate, Non-Voting
- Wes Keller, House, Non-Voting (until Jan. 2017)
- Jahna Lindemuth, Attorney General
- Jeff L. Jessee, Alaska Mental Health Trust Authority
- Walt Monegan, Department of Public Safety Commissioner
- Stephanie Rhoades, District Court Judge
- Kristie L. Sell, Municipal Law Enforcement
- Brenda Stanfill, Victims' Rights Advocate
- Quinlan G. Steiner, Public Defender
- Trevor N. Stephens, Superior Court Judge
- Dean Williams, Department of Corrections Commissioner

Methodology

For this report, the Alaska Criminal Justice Commission created a Restitution Work Group composed of experts from the courts, victims' advocates, executive branch agencies, and the Municipality of Anchorage. The Restitution Work Group met four times, each time discussing relevant research, legal and operational information from key stakeholders, and historical data on restitution payment patterns in Alaska and elsewhere. The Restitution Work Group developed recommendations and forwarded them to the Criminal Justice Commission; the Commission considered the Restitution Work Group's information and adopted the recommendations in this report at its meeting on November 29, 2016.

In formulating the recommendations, the Restitution Work Group relied on prior legislative research, studies and research from other states, legal and operational information from key stakeholders in Alaska, and data about restitution payments (primarily provided by the Department of Law's collections unit). Each of these sources is described in more detail below.

Research Review. A 2013 research brief authored by Susan Haymes, a legislative analyst, outlines victim restitution laws and policies in Alaska.[2] That report, available at

http://www.ajc.state.ak.us/sites/default/files/imported/acjc/restitution/statvctak.pdf,

provides important baseline information for understanding restitution in Alaska. Haymes concluded that there are "inherent challenges in collecting restitution from offenders who have limited or no financial resources because they may be incarcerated or have limited employment opportunities." She also noted that regardless of offenders' lack of financial resources, multiple individuals "cited the lack of communication and coordination among agencies that deal with victim restitution as the main problem in the [restitution recovery] process."

[2] The relevant state statutes and rules which may pertain to restitution are:
AS 12.45.120: Authority to compromise misdemeanors for which victim has civil action
AS 12.55.045: Restitution and Compensation
AS 12.55.015: Authorized sentences; forfeiture
AS 43.23.005: PFD Eligibility
Cr. Rule 32: Sentence and Judgment
Cr. Rule 32.6: Judgment for Restitution

Interviews with Stakeholders. For her 2013 report, Susan Haymes interviewed multiple key stakeholders, including representatives of the Department of Corrections (DOC), the Office of Victims' Rights (OVR), the Violent Crime Compensation Board (VCCB), and Department of Law (DOL) Collections Unit.

The Commission followed up with the same people, or those who have replaced them in their positions, to determine if the situation had changed over the last three years. Staff spoke with Stacey Steinberg, Assistant Attorney General, DOL; Taylor Winston, OVR Executive Director; Trina Sears and Katherine Hansen, OVR Victims' Advocate Attorneys; Carrie Belden, DOC Director of Parole and Probation; April Wilkerson, DOC Director of Administrative Services; Kate Hudson, VCCB Executive Director; Robyn Langlie, Victims for Justice Executive Director; Seneca Theno, Municipality of Anchorage (MOA) Municipal Prosecutor; Lori Brumfiel, MOA Collections Unit Senior Administrative Officer; Dorne Hawxhurst, Alaska Court System (ACS) Administrative Attorney; and Charlene Dolphin, ACS Special Project Coordinator.

Data Collection. Commission staff collected information from DOL about how much restitution it collected on behalf of victims, and from the VCCB about how much restitution it was awarded and collected annually for the past several years, and from the court system.

What is Restitution?

Alaska's governing statute on restitution, AS 12.22.045, directs judges to order defendants convicted of a crime to make restitution to the victim "when presented with credible evidence."[3] In determining the amount of restitution, judges are directed to consider the financial burden placed on the victim and others as a result of the defendant's criminal conduct.[4]

Historically, Alaska's courts have interpreted the restitution statute quite broadly.[5] The legislature's stated intent in enacting the restitution statute was "to make full restitution available to all persons who have been injured as a result of criminal behavior, to the greatest extent possible, by ... allowing courts to order that restitution be made to all persons who have

[3] AS 12.55.045(a).
[4] AS 12.55.045(a)(2).
[5] *See, e.g. Yanello v. State*, 2014 WL 1691542 (Alaska App. April 23, 2014).

suffered a loss as a result of a defendant's conduct."[6] Judges award restitution to victims without regard to the defendant's ability to pay.[7] Restitution, then, is a mechanism intended to fully compensate victims for the harm a crime has caused.

Restitution is a restorative justice principle

In January 2016, the Alaska Criminal Justice Commission identified restorative justice and restitution as two of its top priorities. Commission members felt that restitution can be a powerful mechanism for achieving the goals of restorative justice.

Restorative justice views crime as a violation of people and interpersonal relationships. These violations are viewed as creating obligations and liabilities – for the offender to make things right, and for the community to support victims and help rehabilitate offenders. The main goal of restorative justice is to repair the harm a crime has caused to the victim and to fabric of the community. Victim restitution serves as an important tool to accomplish these goals with respect to both victims and offenders (Ruback & Bergstrom, 2006). According to McGillis (1986) restitution serves three different purposes: 1) compensation for victims, 2) punishment for the offender, 3) rehabilitation.

For Victims: Restitution is intended to compensate victims for their loss and the harm caused by a crime. In addition, restitution also serves as a public acknowledgement of the harm and the loss the victim experienced. This is important because the conventional criminal justice system's primary focus is on punishing the offender. In this process victims are often neglected and excluded from the process. This can lead to dissatisfaction and reduce trust in the justice system. Therefore, ensuring victims' involvement in the criminal justice process is important to ensure victims feel treated fairly. Studies on victimization have shown that restitution serves an important role in reducing the long-term harm caused to victims (Haynes, Cares, & Ruback, 2015). In fact, research findings also indicate that restitution payments help foster victims' trust in the justice system and increase victims' willingness to report crimes in the future (Ruback, Cares, & Hoskins, 2008).

For Offenders: While restitution is intended to compensate victims for the harms and losses they experienced as a result of the crime committed by the offender, restitution may also have a rehabilitative influence on offenders. Making restitution payments holds offenders accountable for their actions and gives them a chance to make things right. However,

[6] *Lonis v. State,* 998 P.2d 441, 447 n. 18 (Alaska App. 2000) (quoting ch. 71, § 1, SLA 1992).
[7] AS 12.55.045(g).

research has shown that offenders often do not understand payment systems, what their payments are for, or how much they owe (Ruback, Hoskins, Cares, and Feldmeyer, 2006). To ensure the rehabilitative effect of restitution for offenders, it should be ensured that offenders make their restitution payments regularly.

Victims are entitled to restitution

In 1994, voters adopted an amendment to the state constitution to provide crime victims in Alaska with the right to restitution from an offender.[8] State law requires the court to order a defendant to make restitution, as long as credible evidence is presented.[9] The court makes the restitution award without regard to the defendant's ability to pay.[10]

Awarding and Enforcing Restitution Orders for Crime Victims

Procedures for establishing restitution awards

Under Criminal Rule 32.6, when a sentence includes a requirement for restitution, the sentencing judge either enters the order on a separate restitution judgment form (form CR-465), or directly on the criminal judgment form. Either method creates an enforceable judgment for restitution. The court may set a due date or set a schedule for installment payments; if no due date is set, the total amount becomes due immediately.

If the amount of restitution is known by the time of the sentencing hearing, the court enters the restitution order at sentencing.[11] If the amount is unknown at sentencing, the prosecutor can delay a request for restitution up to 90 days after sentencing; an additional 30 days is then allowed for the defendant to file an objection.[12] If the defendant does not object, the restitution decision will be issued in writing. If the defendant objects, the court will hold a hearing.[13]

Stakeholders identified two main sources of difficulty for victims in requesting restitution. First, victims are often unaware of the full extent of their losses for some time after the crime has

[8] Alaska Const., Art I, sec. 24.
[9] AS 12.55.045.
[10] AS 12.55.045(g).
[11] Cr. R. 32.6(c)(1).
[12] A judge may use Criminal Rule 53 to relax the 90-day deadline in cases of manifest injustice. *See O'Dell v. State*, 366 P.3d 555, 556 (Alaska App. 2016).
[13] Cr. R. 32.6(c)(2).

been committed. They may, for example, still be in treatment or not have been billed by their medical providers. Second, defendants charged with misdemeanor offenses may resolve their cases at the first appearance (defendants charged with felonies may not resolve their case until after the first appearance). Although the victim has the right to notice of any hearing at which the defendant has the right to be present, as a practical matter victims often do not attend these hearings. If the victim is not present, she or he cannot inform the court about the desire for restitution.

Where a defendant's sentence includes suspended time, the requirement to pay restitution is included as a condition of probation.[14] Probation conditions for convicted felons are actively monitored by a probation officer; convicted misdemeanants are not actively monitored.

Another means by which restitution can be addressed is through civil compromise. AS 12.45.120 allows a judge to dismiss a misdemeanor case (unless the crime was committed "larcenously") if the victim of a crime has been paid for his or her losses. Note that spouses, former spouses, relatives, and household members of the defendant are not allowed to use the civil compromise statute.[15]

A final means of addressing restitution is through pretrial diversion. For example, victims of property crimes might agree to have the prosecutor drop the charges if they can recover their property. The Municipality of Anchorage has had such a program for many years, and reports that it is a very useful tool that allows the Municipality to use its resources more effectively. Although no state pretrial diversion programs have existed in Alaska for a number of years, the Department of Law announced in 2015 that it was beginning an initiative to authorize local district attorneys to begin experimental pretrial diversion programs.

Procedures for enforcing a restitution award

Restitution ordered in a criminal case is enforceable as a civil judgment, as a condition of probation, and as a part of the defendant's sentence.

Civil Judgment A restitution judgment becomes due in full immediately upon disposition unless the judge orders installment payments. A restitution judgement that is due in full is

[14] AS 12.55.045(i).
[15] AS 12. 45.120(5).

thereafter collectable through any procedure authorized by law for the enforcement of a civil judgment.[16]

The simplest way to collect a restitution judgment through the civil judgment collection process is to levy against a defendant's right to receive a Permanent Fund Dividend. While the PFD often provides a ready source of recovery, several problems exist. Civil enforcement against the PFD is not always productive because the defendant may not be eligible to receive a PFD,[17] the defendant may owe child support which always takes priority over victim restitution,[18] and the amount available for recovery from the PFD may fall short of the amount owed.

A restitution judgment can also be collected through wage garnishments; however, the process is complicated. Seizure of assets also is possible, although again the procedure is complex. The court system has published booklets for judgment creditors on how to garnish both PFDs and non-PFD assets for civil execution, and these booklets also apply to victims who are owed restitution.[19]

Victims may also seek restitution in civil court proceedings.[20]

Condition of Probation The restitution judgment also is enforceable as a condition of probation. A failure to make restitution payments while on probation may be punished by the imposition of suspended jail time, though anecdotally this is rare.

Two goals of SB91's reduction of lengthy prison terms and offer of incentives for probation compliance were to emphasize the importance of fines and restitution as an alternative means of holding defendants accountable, and to improve the rate of voluntary and other restitution payments to crime victims.

Direct Sentence Because the order to pay restitution is a part of the defendant's sentence, it could be enforced by the court with its contempt powers. Under this procedure, the court

[16] AS 12.55.045(l).
[17] According to AS 43.23.005, people who have been sentenced or incarcerated as a result of either a felony conviction or a misdemeanor conviction with one prior felony conviction or two prior misdemeanor convictions during the qualifying year are not eligible for the PFD.
[18] PFD garnishments for restitution payment are second in line to garnishment for child support payments. *See* 43.23.065 and Criminal Rule 32.6(g)(2).
[19] *See Execution Procedure: Judgment Creditor Booklet* available at http://www.courtrecords.alaska.gov/webdocs/forms/civ-550.pdf and *Executing on the Permanent Fund Dividend: Creditor Instructions* available at http://www.courtrecords.alaska.gov/webdocs/forms/civ-503.pdf.
[20] AS 12.55.045(b).

would issue an order to show cause why the defendant should not be sentenced to imprisonment for nonpayment.[21] Under Alaska case law on contempt, however, this option would be available only if the court finds the failure to pay was intentional or the result of bad faith.[22] Because this is difficult to prove, this option is not often used.

Collection entities

Restitution judgments are collected on behalf of victims by the Department of Law's Collections Unit, by the Violent Crimes Compensation Board, indirectly through the probation monitoring process by the Department of Corrections' probation officers, or by the victim him/herself.

Department of Law The Department of Law is authorized to collect restitution on behalf of a victim in state cases.[23] Victims are automatically enrolled in the Department of Law's recovery services, and they can opt out within the first 30 days of the date the judgment was issued. However, budget cuts to the Department of Law enacted in 2016 have necessitated the closing of the DOL's victim restitution collection unit by the end of the fiscal year in 2017. The court system will take on this responsibility once the unit closes down.

Violent Crimes Compensation Board The Violent Crimes Compensation Board (VCCB) reimburses victims of violent crime for costs associated with the crime (medical bills, for example). A victim can claim compensation from the VCCB just after the crime is committed, and the VCCB will typically compensate victims within 90 days of their claim. Therefore the VCCB provides victims with funds earlier than if the victim had waited for the court to order the defendant to pay the victim restitution. (These funds are sometimes known as "bridging funds.") Eligibility restrictions apply to VCCB's services. For example, victims of property crimes are not eligible, and the maximum award is capped at $40K.

In cases where the VCCB has paid monies on behalf of victims, courts order the defendant to make restitution to the VCCB. The VCCB then seeks reimbursement from defendants.

Collection by Victim Victims in municipal cases collect restitution on their own. A victim in a state case may decline to use the Department of Law's collections services and execute on the civil judgment him or herself. Victims collecting on their own could use a private collection

[21] *See* AS 12.55.051(a).
[22] *See Lominac v. Municipality of Anchorage*, 658 P.2d 792 (Alaska App. 1983).
[23] AS 12.55.051(e). The DOL has not collected restitution in municipal cases.

agency, or could attempt on their own to complete the paperwork to levy on PFDs or garnish wages.

Court procedures AS 12.30.075(c) requires the court to apply any forfeited bail money to restitution. In other words, in cases where the defendant has forfeited bail money used to secure pre-trial release, that forfeited bail will be applied to the defendant's restitution obligation. (In cases where there is no restitution obligation, forfeited bail money is transferred to the state's general fund.)

It is also possible for a defendant to assign their PFD to a victim ahead of time. There is a court form that the defendant can fill out at sentencing to assign their PFD rights as a restitution payment. This form is only accepted by the PFD Division between April 1st and August 31st of the current PFD year.

Effectiveness of Alaska's Restitution Collection Efforts

Collection by Department of Law

For many years, the State of Alaska provided funds to the Department of Law to run a Collections Unit to recover restitution from defendants in state cases. The Unit was funded to garnish PFDs rather than to pursue active recovery; therefore, it did not have resources for an active recovery program.[24] Although it is not possible to know exactly how many victims used the Department of Law's restitution recovery services, information from DOL suggests that most victims in state cases (around 95%) relied on DOL rather than attempting to collect restitution themselves.

Because the processes for wage garnishment is time consuming, the Department of Law generally did not pursue wage garnishments unless the defendant was known to have a steady and sizeable income. It did not pursue asset seizure due to the complicated and resource-intensive process to seize and sell the asset. The Department of Law's standard procedure is to record liens for any restitution judgments over $10,000.

[24] In certain cases, the DOL did pursue active recovery, for example when it learned of a readily available liquid asset subject to execution.

Recovery Rates The Department of Law's records show that it has collected millions of dollars of restitution annually on behalf of victims.[25] Since 2002, the Department of Law's overall recovery rate for both adult and juvenile restitution awards is 24%; this includes an overall adult restitution recovery rate of 19% and an overall juvenile restitution recovery rate of 80%. Please note the adult restitution recovery rate is skewed by a $17.3 million restitution amount owed to Alyeska Pipeline (the defendant shot a hole in the pipeline). If $17.3 million outlier is removed, the adult restitution recovery amount is approximately 23%.[26] A review of literature shows Alaska's recovery rate is comparable to rates reported by other states, with the majority of other states reporting recovery rates ranging from 20-30%, and a few reporting rates upwards of 40-50%.[27]

Average Award Amounts For all current and pending DOL accounts, the average amount of restitution awarded was $7,085.71. However, this amount is skewed by several large awards. The median (midpoint) amount was $782.20, and the mode (most common) amount was $500. Over half (56.9%) of the restitution ordered was small - $1000 and below. For defendants ordered to pay restitution who had a balance of $0.00 as of September 2016, 82.9% had an initial restitution amount owed of $1,000 and below, 13.6% had an initial amount of $1,001 to $9,999 and 3.4% had an initial amount owed of $10,000 and over.

In 2017, the Department of Law's restitution recovery unit will be closed due to lack of funding. The court system has agreed to take over restitution collection from DOL. The court system and DOL are conferring to work out the details of how new and existing restitution accounts will be serviced going forward.[28]

Collection by Violent Crime Compensation Board

The VCCB is funded through state appropriations (an RSA from the Permanent Fund Criminal Fund), and a federal grant. VCCB historically has used the services of the Department of Law's Collections Unit to pursue defendants. VCCB reports that it recovers significantly less from defendants than it awards to victims. VCCB has been exploring the idea of creating its

[25] For example, the Department of Law collected over $2 million in victim restitution payments in FY2015. See Appendix A, table 5. These figures do not include amounts that individual victims collected on their own without the assistance of the DOL.
[26] See Appendix A for recovery rates and PFD garnishment amounts. Interestingly, only about half of the total collected by DOL in FY15 was garnished from PFDs.
[27] For example, Vermont reported a 24% recovery rate and Minnesota reported 25%, while Colorado reported 43% between 2009-2013. See Appendix B for more detailed information on restitution recovery processes in other states.
[28] Note that fines and fees from state criminal cases will continue to be collected by DOL.

own active recovery program; however, that will require a significant increase in capabilities and staffing to be successful.

Role of Office of Victims' Rights

OVR was created in 2001 as an independent agency within the legislative branch to help crime victims enforce their constitutional and statutory rights. OVR does not collect restitution for victims, but it does advise crime victims of their right to restitution and can provide technical assistance in obtaining restitution.

Enforcement by DOC

Currently, probation officers rely on the Department of Law's Collections Unit to inform them about fines, fees, and restitution owed by their supervisees. Anecdotally, petitions to revoke probation for failure to pay restitution have been relatively infrequent.

Starting in 2017, DOC probation officers will be required to "create a restitution payment schedule based on the probationer's income and ability to pay if the court has not already set a restitution payment schedule."[29] This requirement will apply to felony probationers, who are actively supervised by officers at the Department of Corrections.

Also beginning in 2017, felony probationers who are in compliance with their probation requirements for a month at a time will be able to earn a month off their total probationary term.[30] Although the details are still being worked out, it seems likely that this provision will incentivize probationers to keep up with restitution payments. Further, probation officers will have available to them a series of administrative sanctions and incentives short of petitioning the court, to help ensure compliance.[31] Giving probation officers these additional tools may increase their ability to promote compliance with restitution payments.

On the other hand, starting in July of 2016, maximum probation terms will be shorter for many offenses.[32] Shorter probation terms will mean less time during which restitution requirements can be enforced as conditions of probation.

[29] SB 91, Section 115, effective January of 2017.
[30] SB 91, Section 114, effective January of 2017.
[31] SB 91, Section 114, effective January of 2017.
[32] SB 91, Section 79, effective July of 2016. Probation is limited to one year for a misdemeanor offense, except the limit is 2 years for a second DUI/Refusal, and 3 years for assault, domestic violence, or sex offenses.

Misdemeanant probationers, who are not actively supervised, do not receive assistance from DOC in setting up a restitution payment schedule. Judges have the authority to set up a schedule at sentencing; it is not known how often this occurs.

The court system will assume restitution collection responsibilities in 2017

The Department of Law's restitution recovery unit was de-funded in 2016. Starting in 2017, the court system has agreed to take on restitution collection from the DOL, and has been working with the DOL and the DOC to plan for this transition. The court system also plans to assume responsibility for collecting restitution payments from misdemeanor offenders (who will not be actively monitored by the DOC) and from municipal offenders.

What Works to Increase Payment of Restitution Awards

A study conducted by Ruback, Gladfelter, and Lantz (2014), showed that merely sending monthly reminder letters to probationers over a period of six months stating how much they were ordered to pay, how much they had payed, and how much they still owed significantly increased the number of voluntary payments and the restitution amounts collected.

Another action that can increase victim recovery is to establish a payment plan. Alaska Criminal Rule 32.6 authorizes a judge to establish a schedule for installment payments of restitution, but it is unknown how often judges do so. As a practical matter, judges with busy dockets may not have time to craft individual payment plans at each sentencing hearing. Beginning in 2017, felony probationers who owe restitution will be required to have a restitution payment schedule based on the probationer's income and ability to pay; however, no such assistance will be given to misdemeanant probationers.

Proposals for Improving the Effectiveness of Alaska's Victim Restitution Process

Based on the research, data, and analysis set forth above, the Criminal Justice Commission formulated eight proposals to improve victim restitution in Alaska.

Proposal 1: Increase opportunities for victims to request restitution.

Under current law and procedure, a victim must alert the judge or prosecutor that restitution is requested either before or at the defendant's sentencing hearing. Victims sometimes miss

this window of opportunity because they are not aware that they can request restitution, or because the defendant is sentenced before they are ready or able to pursue their claim.

1.a. Modify the judgment form used by the court system to automatically include a provision that states that the matter of victim restitution will be left open for 90 days. Underneath this language, include a check box, which the judge can check in cases where restitution does not apply. Next to the check box, include a line so that the judge can explain the reason restitution does not apply.

1.b. Require prosecutors to contact victims and inform them of this 90-day deadline by which to seek restitution.

1.c. Ensure that the prosecutors send clear restitution instructions to victims, so victims know that they can request restitution for any expenses caused by the crime, and ensure that all victims receive these instructions. The following language is proposed to modify the Department of Law's existing forms:

> Restitution will be ordered only for expenses caused by the crime. These may include medical expenses, counseling, lost wages, temporary housing, replacement of clothing or bedding taken for evidence, stolen or damaged property, relocation costs, and any other type of expense incurred as a result of the crime. It is important to make your claim and supporting documents/explanation as easy to understand as possible, and to remember that the court may not necessarily order restitution for all expenses if they do not appear to be sufficiently related to the crime.

Proposal 2: Establish payment plans and a tracking and reminder system for misdemeanants.

Research suggests that payment plans and reminder letters can increase defendants' restitution payments. Currently, judges may set payment schedules at sentencing, but is not known how often judges do this. In the past, the DOL Collections Unit has been able to negotiate installment agreements on behalf of victims in state cases, but this service will end when the Collections Unit stops administering restitution in 2017.

Probation officers will soon be required to set up installment payments;[33] however, that tool is not available to misdemeanants and flat-timed (i.e. non-probation) felony offenders. District

[33] See SB91 Section 114.

courts may soon see a higher proportion of misdemeanor property offenders caused by the increase in the felony property threshold, and misdemeanor probation terms are relatively short. While these shorter jail terms should improve offenders' abilities to make restitution payments (because they will be able to return to work sooner), the shorter probation terms could limit the time within which missed restitution payments would be enforced by a petition to revoke probation and imposition of suspended time.

Starting in 2017, the court system will take over payment schedules for offenders not supervised by the probation system. The court system is currently in the planning process for this and has consulted with the DOC and the DOL regarding this transition.

2.a. Encourage DOC and the court system to work with victims' advocates to find ways to monitor the restitution obligations of misdemeanants and non-probation felony offenders and explore whether using an electronic tracking and reminder system might be feasible.

Proposal 3: Amend AS 12.55.045 to remove the requirement that a defendant provide a financial statement.

The restitution statute, AS 12.55.045, currently requires defendants to submit financial statements to the court in cases where restitution may be ordered. The statute requires those convicted of a felony to submit the statement 30 days after conviction (in advance of the preparation of the presentence report) and requires those convicted of a misdemeanor to submit the form when opposing a prosecutor's motion for a restitution order.

In practice, stakeholders report that the financial statements are rarely required by judges. Requiring defendants to submit financial statements directly after conviction and before the restitution order has little real purpose, because AS 12.55.045 prohibits the court from considering the defendant's ability to pay in ordering the amount of restitution, and the defendant's financial situation will likely be in flux after incarceration.

3.a Amend AS 12.55.045 to omit the bracketed text:

> *AS 12.55.045. Restitution and compensation*.
>
> ****
>
> (j) A defendant who is convicted of an offense for which restitution may be ordered shall submit financial information as ordered by the court. The Alaska Court System shall prepare a form, in consultation with the Department of Law, for the submission of the information; the form must include a warning that submission of incomplete or inaccurate information

> is punishable as unsworn falsification in the second degree under AS 11.56.210. [A DEFENDANT WHO IS CONVICTED OF (1) A FELONY SHALL SUBMIT THE FORM TO THE PROBATION OFFICE WITHIN 30 DAYS AFTER CONVICTION, AND THE PROBATION OFFICER SHALL ATTACH THE FORM TO THE PRESENTENCE REPORT, OR (2) A MISDEMEANOR SHALL FILE THE FORM WITH THE DEFENDANT'S RESPONSE OR OPPOSITION TO THE RESTITUTION AMOUNT. THE DEFENDANT SHALL PROVIDE A COPY OF THE COMPLETED FORM TO THE PROSECUTING ATTORNEY.]
>
> (k) The court, on its own motion or at the request of the prosecuting authority or probation officer, may order a defendant on probation who has been ordered to pay restitution to submit financial information to the court using the form specified in (j) of this section. The defendant shall file the completed form with the court within five days after the court's order. The defendant shall provide a copy of the completed form to the prosecuting authority and the person's probation officer, if any.

Proposal 4: Amend the civil compromise statute for misdemeanors to allow the compromise of larceny offenses.

AS 12.45.120 allows a judge to dismiss a misdemeanor case if the victim of a crime has gotten paid for his losses. The victim must submit a signed statement to the court saying that "satisfaction has been received for the injury."[34] The current version of Alaska's civil compromise statute excludes the compromise of larceny offenses.

4.a. Recommend that the legislature amend AS 12.45.120 to allow civil compromise in misdemeanor larceny cases.

Proposal 5: Streamline Civil Execution.

Research whether the civil execution statutes could be simplified to be easier for victims to use.

Proposal 6: Expand opportunities for victims to receive "bridging" restitution funds

> *In 1964, the Alaska Constitution was amended to require restitution to Alaska victims. The enabling statues made the restitution of victims the highest priority of the use of available funds second only to child support. The "Criminal Fund" monies should go annually to the restitution of victims before any monies flow to State agencies. The use of this fund as "bridging funds"*

[34] AS 12.45.130. Note that spouses, former spouses, relatives, and household members of the defendant are not allowed to use the civil compromise statute. AS 12. 45.120(5).

> *should not relieve the perpetrator of any obligation to pay restitution to the victim or reimburse the Criminal fund.*
>
> -Sen. Fred Dyson

Typically, victims must wait months or years to be paid restitution in full, because restitution is ordered at sentencing (which for serious offenses takes place many months after the crime occurs), and because offenders often need to pay restitution in installments. The Violent Crimes Compensation Board provides certain victims with an opportunity to recover costs sooner. Victims become eligible for compensation as soon as they report the crime to the police, and will typically receive compensation within 90 days of making a claim to the VCCB (with limited funds available sooner on an emergency basis). The VCCB then claims restitution from the offender directly at sentencing.

However, the VCCB provides compensation only to victims of violent crimes, and will compensate only certain costs and expenses. Victims of property crimes are not covered by VCCB's statute. The VCCB has a small staff and currently operates at capacity. The VCCB is also limited by its meeting schedule; the all-volunteer Board meets only 5-6 times per year to approve claims.

6.a. Create an entity that will enable more victims to obtain bridging funds. Either:

- Change the mandate of the VCCB also to compensate victims of property crimes, including small business owners. This will also require changing the composition of the Board and increasing the VCCB's staff and capacity, or
- Create a Property Crime Compensation Board [*or other name/entity*] to compensate victims of property crime who are not covered by the VCCB.

If the legislature chooses to expand the VCCB/ create a PCCB, additional funding would be required. One option would be to increase the capacity of the VCCB to collect restitution it is owed. Currently the VCCB does not pursue restitution from defendants on its own, although has been looking into creating an active recovery program. This would likely require a change to VCCB's enabling statute.

The VCCB is funded through an RSA from the Permanent Fund Criminal Fund (which is funded by tabulating the PFDs that would have gone to incarcerated individuals had they not been incarcerated), in combination with a federal grant. Most of the Permanent Fund Criminal Fund money goes toward the Department of Corrections.

The court system accepts prepayment of restitution from defendants (restitution paid in advance of judgment) but this money is not always claimed, because the victims to be paid have not come forward and/or have not been identified. The court system pays for search services to find victims, but despite this, there is around $280,000 in unclaimed prepaid restitution sitting in the court system. Eventually these unclaimed funds escheat to the state. A victim can still recover his or her restitution even after it's escheated.

6.b. Increase funding or create a funding mechanism to provide more victims with bridging funds. Either:

- Increase funding and capacity for the VCCB (or PCCB) to create its own active recovery program, or
- End the current practice appropriating money from the Permanent Fund Criminal Fund to the Department of Corrections, and instead authorize that funding to go to the VCCB (or PCCB), or
- Transfer unclaimed restitution to the violent crimes compensation fund instead of letting it escheat to the state.

Proposal 7: Use technology to encourage defendants to make immediate in-person payments and online payments of restitution.

7.a. Equip in-court clerks with Foursquare or similar technology to take credit and debit card payments immediately after the sentencing hearing (this could help with fines and surcharges as well).

7.b. Use Courtview to generate a form to hand to the defendant at the close of the sentencing hearing showing the restitution amount, installment payments, and how and where to pay.

7.c. Review the court system website to make it clear that restitution payments are among those that can be paid online with credit and debit cards. Compare, e.g., Florida DOC page about Court Ordered Payments.

Proposal 8: Increase Defendants' Assets Available for Execution

The Department of Law's records show that half or more of restitution awards are satisfied by execution on the defendant's permanent fund dividend. Satisfaction of restitution judgments could thus be improved by decreasing the number of defendants who become ineligible for a PFD based on incarceration.

8.a. Change the law to allow defendants who serve only short prison sentences to retain their PFD eligibility.

8.b. Require defendants to apply for the PFD each year they are eligible until restitution is paid in full.

Conclusion

This report examines the restitution process in Alaska and identifies statutory, procedural, and recovery problems. The report identifies possible solutions and evidence-based ways to improve restitution recovery. In addition, Appendix A provides a current picture of Alaska's restitution recovery rates, and programs which have shown to be successful in other states are highlighted in Appendix B. We hope this report is helpful to policy makers and will enable an informed discussion about restitution related issues in Alaska and facilitate the Commission's task to improve restitution recovery.

Appendix A

Restitution Recovery Rates

Restitution Recovery Rates and Amounts for the Department of Law Collections Unit

The following information and data were provided by Stacey Steinberg at the Department of Law Collections Unit. This data applies only to state cases; restitution recovery rates for municipal cases are not tracked and unknown.

Since 2002, the overall recovery rate to date for both adult and juvenile restitution recovery is 24%; this includes an overall adult restitution recovery rate of 19% and an overall juvenile restitution recovery rate of 80%. Please note the adult restitution recovery rate is skewed by a $17.4 million restitution amount owed to Alyeska Pipeline (defendant shot a hole in the pipeline). If this outlier is removed, the adult restitution recovery amount is approximately 23%.

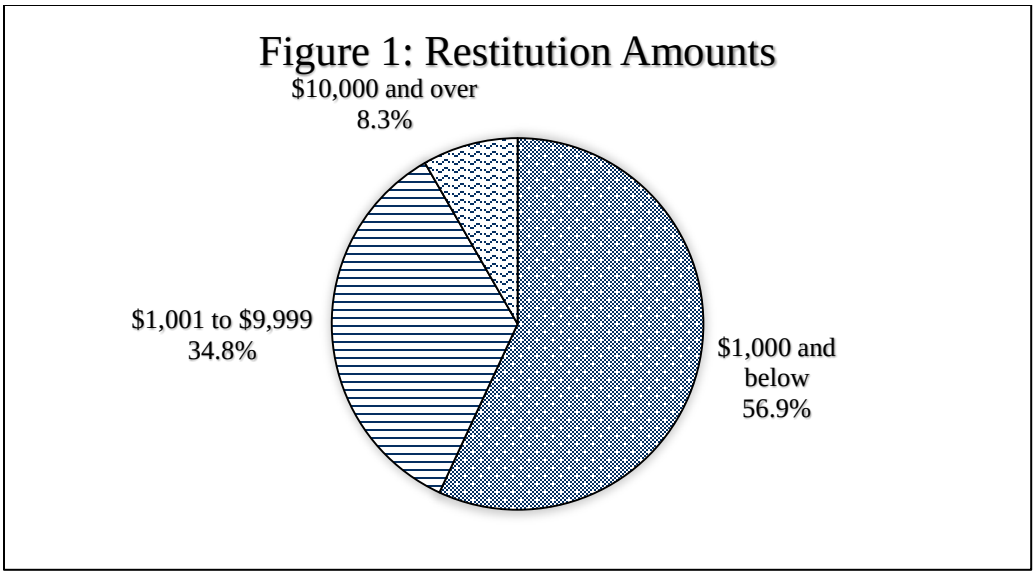
See Table 1 for restitution recovery rates and amounts to date for both adult and juvenile cases since 2002.

Table 1: Restitution Recovery Rates and Amounts Since 2002

Account Type	Total to Date (Since 2002)			
	# of accounts	Amount owed	Amount paid	%
Restitution - Adult	17443	$106,115,288.29[1]	$20,422,815.47	19%
Restitution - Juvenile	2417	$8,268,891.54	$6,614,259.08	80%
Total	19860	$114,384,179.83	$27,037,074.55	24%

The juvenile recovery rate is higher because juvenile cases are generally joint cases with other juveniles and the parents can also be held liable. Therefore, this increases the amount of PFDs that can be garnished and incomes available from parents. Juveniles typically also have no other garnishments, whereas adult PFDs may have other garnishments, such as money owed to the IRS or child support. (See Figure 4 and Tables 4 and 5, below.)

For all current and pending accounts, the average amount of restitution awarded to victims was $7,085.71. However, this amount is skewed by several large amounts of restitution ordered to victims. The median (midpoint) amount was $782.20 and the mode (most common) amount was $500. Over half (56.9%) of the restitution ordered was $1,000 and below, 34.8% was between $1,001 to $9,999, and 8.3% of the restitution orders were over $10,000 (see Figure 1).

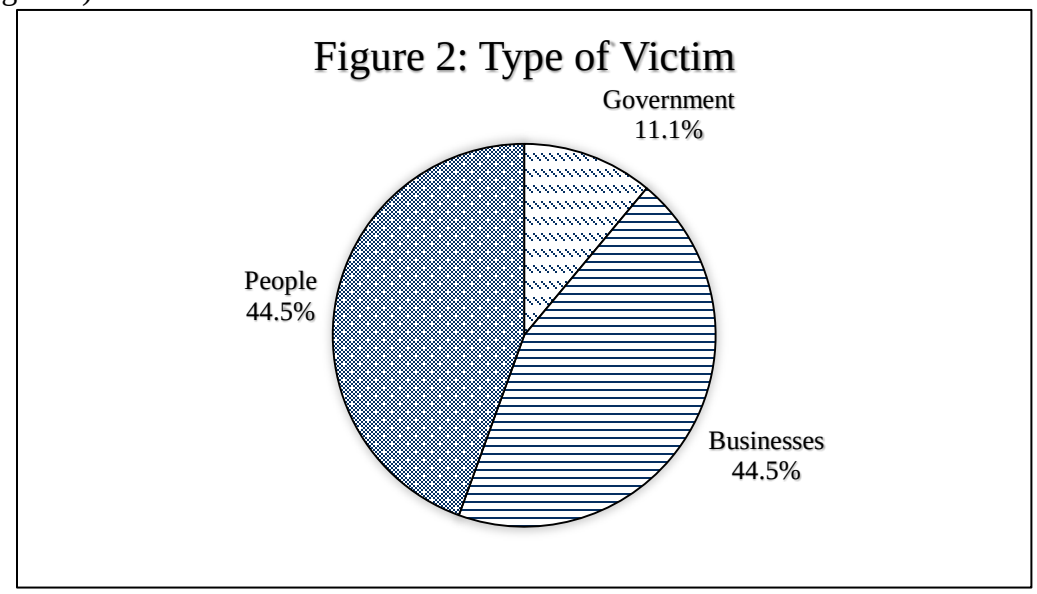


Source: Data from Alaska Department of Law, August 9, 2016

For individuals who, at the time the report was generated, had a balance of $0.00: 82.9% had an initial restitution amount owed of $1,000 and below, 13.6% had an initial amount of $1,001 to $9,999 and 3.4% had an initial amount owed of $10,000 and over.

Victim Types

The victim types were coded into three categories: government, business, and people. The government category included city, state, and federal agencies. The business category included large and small businesses, corporations, and insurance companies. The people category included one or more individuals. Government agencies accounted for 11.1% of the victims, businesses accounted for 44.5% of the victims, and people accounted for 44.5% of the victims (see Figure 2).



Source: Data from Alaska Department of Law, August 9, 2016

Government agencies were owed an average restitution amount of $11,488.78 (with a maximum amount of $1,628,023.33); 46.7% of the government agencies were owed $1,000 or less, 38.2% were owed $1,001 to $9,999, and 15.2% were owed $10,000 or more. The median (midpoint) amount was $1,200.00 and the most common (mode) amount was $1,000.00. Businesses were owed an average restitution amount of $9,078.83 (with a maximum amount of $17,371,386.63); 59.6% were owed $1,000 or less, 31.6% were owed $1,001 to $9,999, and 8.8% were owed $10,000 or more. The median (midpoint) amount was $639.82 and the most common (mode) amount was $100.00. People were owed an average restitution amount of $3,996.82 (with a maximum amount of $1,000,000); 56.8% were owed $1,000 or less, 37.1% were owed $1,001 to $9,999, and 6.1% were owed $10,000 or more. The median (midpoint) amount was $800.00 and the most common (mode) amount was $500.00. See Table 3 for this information in tabular form.

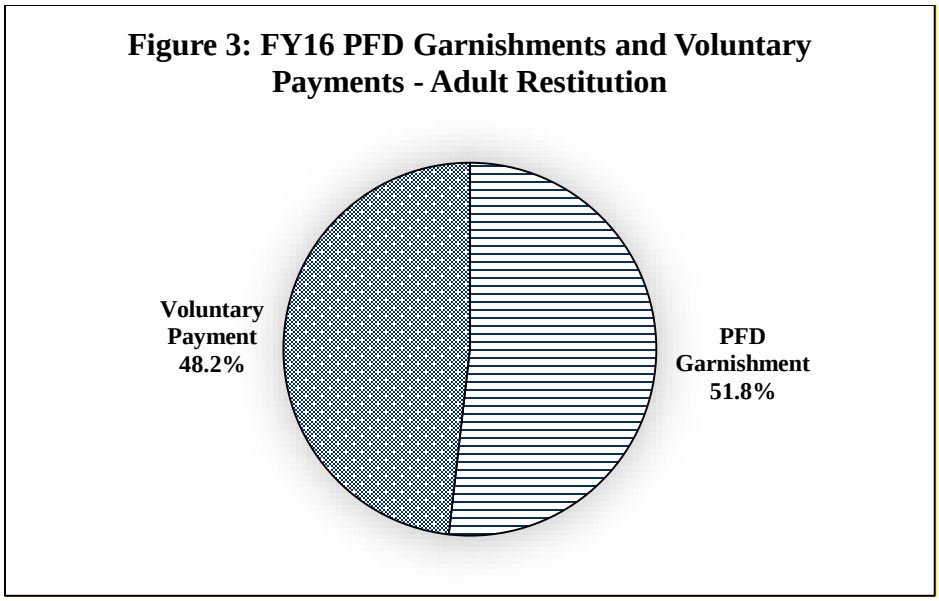
Table 3: Restitution by Victim Type (rounded to the nearest dollar)

Victim Type	*M*	Median	Mode	Maximum	$1,000 or less	$1,001-$9,999	$10,000 or more
Government	$11,489	$1,200	$1,000	$1,628,023	46.7%	38.2%	15.2%
Businesses	$9,079	$640	$100	$17,371,387	59.6%	31.6%	8.8%
People	$3,997	$800	$500	$1,000,000	56.8%	37.1%	6.1%

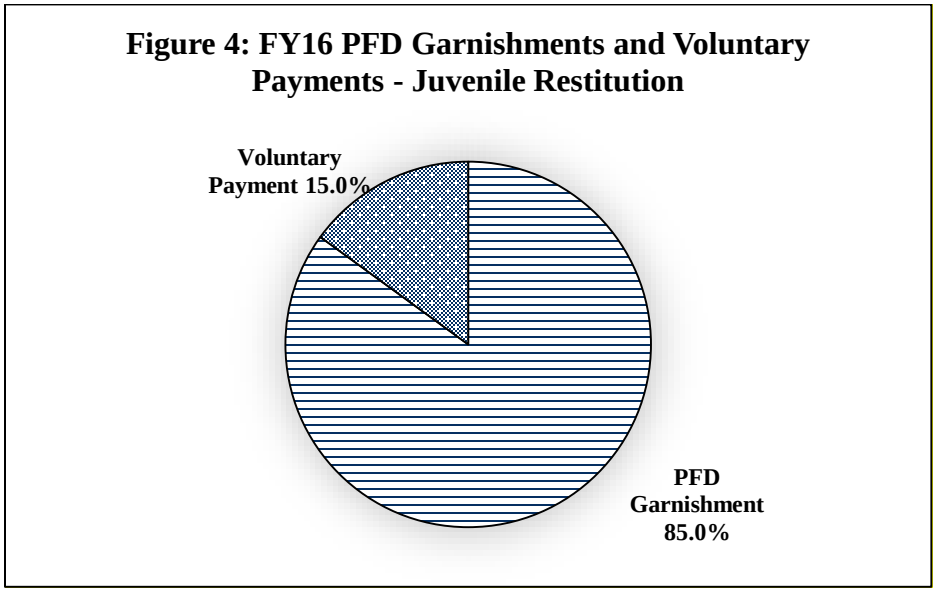
Source: Data from Alaska Department of Law, August 9, 2016

PFD Garnishments and Voluntary Payments for Restitution

For FY 2016, $1.31 million was garnished from PFDs for adult restitution and $25,839 was the estimated amount refunded due to overages, which resulted in a net estimate of $1.29 million in PFD garnishments (51.8%). The total amount of estimated voluntary payments was $1.2 million (48.2%). The total amount of PFDs garnished from juveniles was $387,770 and $76,126 was the estimated amount refunded, which resulted in a net PFD estimate of $311,644 (85.0%). The total amount of estimated voluntary payments was $55,005 (15.0%). See Figures 3 and 4 below. See Table 4 and Table 5 for detailed information on FY15 and FY16 PFD garnishment and voluntary payment amounts.



Source: Based on estimated amounts, Alaska Department of Law, September 7, 2016



Source: Based on estimated amounts, Alaska Department of Law, September 7, 2016

Please note the amount garnished from PFDs is considered a "gross" amount; this applies more to juvenile cases where multiple juveniles' and parents' PFDs will be garnished and then refunds are issued for the overages, as the DOL does not know when they initially garnish the PFDs whose they will eventually get.

The juvenile PFD garnishment percentage is higher because juvenile cases are generally joint cases with other juveniles and the parents can also be held liable. Therefore, this increases the amount of PFDs that can be garnished. Juveniles typically also have no other garnishments, whereas adult PFDs may have other garnishments, such as money owed to the IRS or child support.

Table 4: PFD Garnishments for Restitution FY16 and FY15

	Total Garnishment Counts	Gross PFD Garnishments	Refunds Estimate	Net PFD Estimates
FY16				
Adult	1,036	$1,311,434	$25,839	$1,285,595
Juvenile	283	$387,770	$76,126	$311,644
FY15				
Adult	1,096	$1,258,858	$31,639	$1,227,219
Juvenile	299	$405,016	$79,279	$325,737

Source: Alaska Department of Law, August 9, 2016 & September 7, 2016

Table 5: Total Restitution Collected, Voluntary Payments, and PFDs Garnished FY16 and FY15

	Total Payments	Net PFD Estimate	Voluntary Payment Estimate	PFD Garnishment % Estimate	Voluntary Payment % Estimate
FY16					
Adult	$2,481,623	$1,285,595	$1,196,028	51.8%	48.2%
Juvenile	$366,649	$311,644	$55,005	85.0%	15.0%
FY15					
Adult	$2,373,475	$1,227,219	$1,146,256	51.7%	48.3%
Juvenile	$413,359	$325,737	$87,622	78.8%	21.2%

Source: Alaska Department of Law, September 7, 2016

Violent Crimes Compensation Board Recovery Rates

The VCCB tracks how much restitution was awarded to the VCCB in restitution judgments and how much restitution it has collected from defendants per fiscal year (see Table 6). Note: 1) The VCCB provides assistance only to certain crimes, some of which are federal crimes (e.g., trafficking); 2) the VCCB is not able to determine how much of the amount awarded in a certain fiscal year was collected in the following fiscal years. For example, in FY12 the VCCB was awarded $637,154; it is unclear how much of this sum was collected in FY12, FY13, FY14, etc.

Table 6: VCCB Restitution Amounts Awarded and Amounts Received

Year	Total Compensation Paid	Awarded	Received
FY12	$2,246,603	$637,154	$47,652
FY13	$2,239,442	$316,600	$71,707
FY14	$2,072,247	$279,378	$125,606
FY15	$1,805,926	$322,858	$96,381
FY16	$1,698,576 (estimated)	$319,028	$71,510

Note: Not everything of the total amount paid is recoverable through restitution via statute.

Appendix B

Evidence-Based Ways to Improve Restitution Recovery

Research has shown that offenders often do not understand how the criminal justice system works, know how much they owe, or know what their payments are for (Ruback, Hoskins, Cares, and Feldmeyer, 2006). It is thus important to ensure that offenders are informed and encouraged to make payments, preferably before they fall behind in their payments. A study conducted by Ruback, Gladfelter, and Lantz (2014), showed that merely sending monthly reminder letters to probationers over a period of six months stating how much they were ordered to pay, how much they had payed, and how much they still owed significantly increased the number of voluntary payments and the restitution amounts collected. In fact, a cost-benefit analysis concluded that for every dollar spent, around $6.44 in restitution was received (Ruback et al., 2014). The authors concluded that presenting offenders merely with information about the status of their payments increased their internal motivation. Offenders were more likely to take accountability and make voluntary payments. It is important to note that the letters did not threaten offenders with any form of punishment.

The American Probation and Parole Association (2013) lists strategies to increase the payment of restitution that can be implemented without additional resources: (1) treat court-ordered debts the same as any other condition of supervision, (2) discuss restitution at every contact with the offender, (3) problem solve with the offender about assets and disposable income that can be tapped for payment of restitution, (4) use a system a graduated sanctions for nonpayment, (5) provide incentives and support for payment, and (6) document all steps taken to increase compliance of payment.

Restitution Collection in Other States

A review of literature shows a broad range of restitution recovery rates, with the majority ranging from 20-30%, and some states reporting upwards of over 40% recovery rates. One county in Arizona reports a restitution collection rate of 80%.

Vermont. The overall collection rate of the Restitution Unit in Vermont is 24% (National Victims of Crime, 2011). The restitution collection rate increases with time; the FY 09 collection rate is 14% and the FY 05 collection rate is 35%. Restitution is collected in two main ways; through the use of a Restitution Fund and a Restitution Unit. The Restitution Fund is funded by a 15% surcharge on all criminal and traffic fines. Crime victims can be paid from the Restitution Fund up to a $10,000 cap. The Fund allows victims to be paid at the time restitution is ordered and not have to wait until the offender is no longer incarcerated. In FY 09, only 3% of restitution orders were

over $10,000, so the majority of individual crime victims receive all of the restitution owed to them. Business victims and victims who are owed more than $10,000 get paid as the Unit collects restitution from the offender. Collection analysts in the Unit maintain a caseload of offenders and make regular contact with them to encourage restitution payments. In Vermont, the restitution order can also become a civil judgment and be sent to Superior or Small Claims Court. If the court finds the offender has not complied with the restitution order, the court can change the payment schedule, place liens on property, order the sale of assets, or order the withholding of wages. The Unit's two most useful collection tools from offenders are intercepting lottery winnings and state tax returns. A strategy that had worked in the past, but was removed, was coupling restitution collection with probation.

Oregon. The overall collection rate of restitution and fines is 24% in Oregon (Oregon Judicial Department, 2014). The District Attorney's office works with the victim to determine the nature and amount of the damages. The defendant can pay in full or establish a payment plan. A payment plan can be set up with the court clerk at sentencing or it can also be set up during the probation period. Most restitution balances are referred to the Department of Revenue's Tax Offset Program which intercepts any tax refunds a defendant may receive to apply that refund to the restitution owed. After 30 days, a letter is mailed to the defendant and/or a court hearing is held. After 45 days, a referral is made to collections, a warrant can be issued, their license can be suspended, their wages can be garnished, or a more aggressive payment plan can be set up. The driver's license can be reinstated once the defendant makes consistent payments.

Clackamas County, Oregon set up an active recovery program, referred to as a restitution court, in 2004. The program's overall collection rate of restitution and fines is 32%. The court clerk investigates the defendant's ability to pay and works closely with probation to set up a payment plan. If the defendant becomes delinquent, the court is notified, and the court clerk notifies the defendant to discuss payment options (e.g., liquidate assets, pay on a credit card, take out a second mortgage, etc.) and what will happen if a payment is not made. The court may also order the defendant to appear at restitution court if the clerk determines the defendant continues to be delinquent in making payments. The judge reviews the defendant's assets and debts and recommends ways the defendant can cut expenses and make payments. The judge can also order certain conditions the defendant must fulfill, such as getting a job. The clerk continues to monitor the defendant's payments and probation; the judge can extend probation to require the defendant to pay restitution. The DA's office continues to advocate on behalf of the victim.

Minnesota. In Minnesota, the restitution payment collection rate is 25% (Minnesota Office of Justice Programs, 2015). If an offender fails to pay the restitution amount in full, at the time it is ordered, or misses a payment, the case is sent to the Minnesota Department of Revenue for collections. If the restitution is a condition of probation, a prosecutor, probation officer, or victim

can request a hearing to review the restitution payment. Probation can be changed or revoked if a payment is missed and the court determines the failure is purposeful. The Minnesota Department of Corrections has procedures for inmates to make payments towards restitution, including deductions from prison wages and surcharges on commissary purchases.

Texas. Texas' active recovery restitution program has achieved an estimated restitution collection rate of 41%, according to Matthew Chambers, Program Supervisor III in the Restitution Program within the Texas Department of Criminal Justice (TDCJ). He noted that if unemployed offenders were removed, the collection rate is 80-95%. The TDCJ recently focused its restitution collection efforts on evidenced-based practices. One of the main successful practices has been a flat 10% rate that is garnished from the offender's income. If the offender has a higher income, a larger percentage can be garnished. A crime victim can also place a lien on the offender's property until the restitution is paid. Another successful practice the TDCJ has implemented is a stronger focus on restitution as part of probation/parole visits. If an offender does not make restitution payments, then the officer will increase the amount contacts made with the offender through office or home visits. The officers will also speak with family members to encourage the offender to make payments. Mr. Chambers noted TDCJ does not revoke probation/parole for non-payment. He stated the goal is not to threaten the offender, but to make the process more inconvenient for them.

Colorado. Between 2009 and 2013, the State of Colorado collected the full amount of restitution in 43% of the cases using an active recovery program (State of Colorado Office of State Auditor, 2014). The Colorado Judicial Branch is responsible for collecting restitution from offenders who are on supervised or unsupervised probation. The Judicial Branch works with the offender to set up a payment plan and monitor payments. If the offender is unable to pay the full amount on the day it is ordered, the case is sent to a collections investigator who investigates the offender's finances and obligations. State tax refunds, gaming winnings, and lottery winnings are also intercepted. If the offender does not pay according to the payment plan, the Judicial Branch charges late fees or garnishes the offenders wages or bank deposits. If the offender is delinquent in making payments, the collections investigators can place a lien on the offender's property, send the balance to a private debt collector, or request the court to revoke or extend probation. The Judicial Branch and the probation officers coordinate and monitor payments together. For example, if an offender becomes employed the probation officer would communicate with the collections investigator to revise the payment plan.

The Colorado Department of Corrections is responsible for collecting restitution from offenders who are incarcerated or on parole. The Department of Corrections automatically garnishes 20% of all income for incarcerated offenders, which includes any earnings and bank deposits from outside sources, such as family members. Parole officers investigate the offenders' finances and obligations and set up a payment schedule. Parole officers require offenders to pay 20% of all

deposits. Restitution is monitored as a condition of parole and if the parolee is not in compliance with the payments, parole may be revoked and the offender returned to the correctional facility.

Maricopa County, Arizona. A specialized unit in Maricopa County, Arizona called the Financial Compliance Unit (FINCOM) is responsible for the collection of court-ordered payments (American Probation and Parole Association, 2012). A representative from FICOM reported their average recovery rate for restitution is currently 63%. The unit uses a business model for collections and is staffed by specially trained probation officers and collections officers. The FICOM representative reported there is a staff of 14 collectors on the unit who focus strictly on collections. He reported some specific collection efforts that are particularly effective in restitution collection are frequent contacts through emails, phone calls, letters, and face-to-face meetings in conjunction with the probation officer. He reported these types of frequent communications keep the payment of restitution a priority and at the forefront of the probationers' mind. There is a range of incentives and services to support offenders in court-ordered payments, along with a system of graduated sanctions for those who are delinquent with their payments. Personal finance courses, employment readiness and placement services are available to help offenders meet their financial obligations. Incentives to offenders who are current on their payments are travel permits, less frequent reporting to probation, and early termination of probation. Sanctions placed on offenders are mandatory personal finance courses, referral to a collection agency, interception of tax refunds, and revocation of probation. The FICOM representative reported helping probationers with a budget or payment plan is also effective. A specialized restitution court was also developed to focus on restitution collection. Probationers who are delinquent in their payments are referred to the court by FINCOM staff. If judge determines if the defendant has willfully failed to pay restitution, the defendant can be incarcerated if the full amount is not paid. The FINCOM representative reported that probationers are infrequently taken into custody for non-payment, but the "threat" is effective in payment compliance.

Idaho. In Idaho, the Crime Victims Compensation (ICVC) program was established in 1998 and collects restitution through its website. In 2012, the program implemented a monthly billing system which notifies offenders when they have an outstanding restitution payment and directs them to make payments to their district's Clerk of Court. Through this system Idaho was able to collect large amounts of money from offenders who sometimes were unaware of their outstanding payments. In addition, the probation/parole officers receive notice of any missed payments, so they can assist the offender in establishing a payment plan. Idaho reports that as a result of its program the overall restitution recovery rate has increased. The program now regularly assists and mentors other states that want to build their internal capacity to collect restitution.

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ALCOHOL-RELATED OFFENSES IN TITLE 28 OF THE ALASKA STATUTES

A Report to the Alaska State Legislature

December 1, 2016

A guide to Alaska's alcohol-related driving and motor-vehicle offenses, and recommendations for improvement.

The Alaska Criminal Justice Commission

http://www.ajc.state.ak.us/alaska-criminal-justice-commission

Table of Contents

Executive Summary

The Alaska Legislature asked the Alaska Criminal Justice Commission (Commission) to evaluate the alcohol-related offenses in the motor vehicle statutes (Title 28). In this report, the Commission has provided an extensive overview of these offenses and made recommendations for improvement. Three appendices are also attached which explain some of the Commission's research in more depth.

In brief, the Commission's recommendations are:

A. Revision of the alcohol-related offenses in AS 28 is necessary.

B. License Revocation

- **B1.** Administrative license revocation (ALR) should be maintained.
- **B2.** Judicial license revocation, which often serves a distinct function from administrative license revocation, should also be maintained.

C. Ignition interlock devices (IIDs)

- **C1.** The DMV should not require IID use as a predicate for license reinstatement, unless it is so ordered by a court.
- **C2.** Retain installation of IID (or comparable device) as a prerequisite for approval of limited licenses during the pendency of a revocation period.
- **C3.** Add an option to permit approval of limited licenses for drivers who are using remote continuous alcohol monitoring technologies (such as a Secure Continuous Remote Alcohol Monitor (SCRAM) device).

D. Sanctions

- **D1.** Refusal offenders should also be eligible for limited licenses, just as DUI offenders are.
- **D2.** Current IID restrictions should still apply for any limited license approved during a revocation period, but IID requirements could alternatively be satisfied by remote transdermal monitoring or a 24/7 program.

The Alaska Criminal Justice Commission

The Alaska State Legislature created the Alaska Criminal Justice Commission in 2014.

The Commission consists of 13 members:

- Gregory P. Razo, Chair, representing the Alaska Native Community
- Alexander O. Bryner, designee of the Chief Justice
- John B. Coghill, Senate, Non-Voting
- Wes Keller, House, Non-Voting (until Jan. 2017)
- Jahna Lindemuth, Attorney General
- Jeff L. Jessee, Alaska Mental Health Trust Authority
- Walt Monegan, Department of Public Safety Commissioner
- Stephanie Rhoades, District Court Judge
- Kristie L. Sell, Municipal Law Enforcement
- Brenda Stanfill, Victims' Rights Advocate
- Quinlan G. Steiner, Public Defender
- Trevor N. Stephens, Superior Court Judge
- Dean Williams, Department of Corrections Commissioner

I. Introduction & Background

The Alaska Legislature created the Alaska Criminal Justice Commission (Commission) in 2014 to evaluate state criminal laws and practices and recommend changes to reduce recidivism and improve public safety.[1] The bill creating the Commission was known as SB 64. Since its creation, the Commission has forwarded a number of recommendations for changes to state law and policy. Many of these recommendations were included in SB 91, the omnibus criminal law bill that was enacted in July 2016.

A. Legislative questions related to Title 28

In SB 64, the Alaska Legislature posed six specific questions for the Commission about alcohol-related offenses in Title 28 of the Alaska Statutes.[2] These questions are listed below. The Commission was to report on these questions by July 1, 2017.

SB 64 Questions Regarding AS 28

- Is a revision of the alcohol-related offenses in AS 28 necessary?
- Should both administrative law revocation and judicial revocation processes be maintained?
- What is the effectiveness of ignition interlock devices in reducing the offenses of driving while under the influence of an alcoholic beverage, inhalant or controlled substance and refusal to submit to a chemical test and reducing recidivism?
- Should the punishments, fines, and associated driver's license revocation periods be decreased or increased?
- Are there effective programs that promote offender accountability, emphasize swift and certain, yet measured punishment, reduce recidivism, and maximize the offender's ability to remain productive in society?
- Should limited licenses be available for persons charged with or convicted of DWI or Refusal while providing for public safety?

See SB 64, Section 37

In SB 91, the Legislature posed additional questions, directing the Commission to prepare a report regarding the effectiveness of the penalties, fines, and reformative and rehabilitative measures under state law for the offenses of driving while intoxicated, refusal to submit to a chemical test, and driving without a valid driver's license. The Legislature asked that the report include "an opinion on whether the penalties, fines, and reformative and rehabilitative measures

[1] See AS 44.19.645.

[2] Title 28 contains Alaska's motor vehicle laws. Motor vehicle means a vehicle which is self-propelled except a vehicle moved by human or animal power, thus including snowmachines and all-terrain vehicles which may not be subject to registration. AS §28.90.990(17) ("Definitions").

under state law for the offenses of driving while under the influence, refusal to submit to a chemical test, and driving without a valid driver's license reduce recidivism, promote rehabilitation and protect the public."[3] Because both sets of questions posed by the legislature are related and encompass similar issues, this report addresses all of the legislative queries.

B. Offenses Discussed in this Report

In addition to its specific questions about the crimes listed above, the Legislature asked the commission to report on "whether a revision of the *alcohol-related offenses* in AS 28 is necessary." The word "offense" is not used or defined in Title 28.[4] However, the criminal code (Title 11) defines "offense" to include both crimes and non-jailable acts (infractions or violations). To be consistent with the Title 11 definition, this report discusses both crimes and infractions.[5] Further, this report covers all DUI offenses, not merely those which are alcohol-related. Finally, driving without a valid operator's license (DVOL) language and penalties[6] also are evaluated to determine consistency with SB 91's recent changes to the driving with a suspended, revoked, or limited license statute.[7]

This report uses acronyms to describe the various alcohol-related offenses in Title 28:

Definition of Offense	**Shorthand**
Operating a vehicle, aircraft or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance	DUI
Refusal to submit to a chemical test	Refusal
Driving while license canceled, suspended, revoked, or in violation of a limitation	DWLS
Operating a commercial motor vehicle while under the influence of an alcoholic beverage, inhalant, or controlled substance	OUI
Driving without a valid operator's license	DVOL

[3] SB 91, Section 182. This second report is due not later than December 1, 2016.
[4] AS 28.90.010 ("Penalties for violations of law, regulations, and municipal ordinances"). Non-jailable acts in Title 28 are called "infractions."
[5] AS 28.90.010(d).
[6] See AS 28.15.011(b), together with 28.15.291(a)(2) and 28.90.010(b).
[7] Before passage of SB 91, both DUI and non-DUI related DWLS penalties were more serious than DVOL penalties. Although both were misdemeanors, DWLS carried minimum-mandatory terms of imprisonment and community work hours (see former AS 28.15.29) but DVOL did not. DWLS sentences (both DUI- and non-DUI-related varieties) came under scrutiny last year during the Commission's Justice Reinvestment process. The Commission learned that DWLS sentences were significant drivers of Alaska's incarceration numbers and costs, and reforms were proposed. The result was that minimum-mandatory jail terms for DUI-related DWLS were reduced, and for the non-DUI DWLS, the misdemeanor classification was reduced to an infraction. Yet, DVOL remains a misdemeanor.

The alcohol-related ***infractions*** in Title 28 include:

- Refusal of preliminary breath test, AS 28.35.031;
- Minor operating a vehicle after consuming alcohol, AS 28.35.280 ;
- Minor's refusal to submit to chemical test, AS 28.35.285; and
- Minor driving within 24 hours after being cited for alcohol/PBT offense, AS 28.35.290.

The alcohol-related ***crimes*** in Title 28 are:

- DUI, AS 28.35.030;
- OUI (commercial), AS 28.33.030;
- Refusal, AS 28.35.032 ;
- Refusal of a preliminary breath test by operator of commercial motor vehicles (if lawfully arrested and if the officer has probable cause for DUI), AS 28.33.031;
- Circumventing or tampering with an IID device, AS 28.15.201(d)3)(B)(ii) and 11.76.140; and
- DWLS if the license status was due to a DUI or Refusal conviction, AS 28.15.291(a)(1) and (b)(1).[8]

C. The Process of Creating this Report

In the summer of 2015 the Commission created a working group to study Title 28. The Title 28 working group met nine times between the summer of 2015 and the spring of 2016. Meeting summaries can be accessed here: http://www.ajc.state.ak.us/alaska-criminal-justice-commission/workgroup-meeting-summaries . The working group was comprised of Commissioners and subject-matter experts. Participating commissioners included Alex Bryner, Stephanie Rhoades, Trevor Stephens, Kris Sell, Greg Razo, and former Commissioner Gary Folger. The following individuals provided important information, analysis, and data for this report: Division of Motor Vehicles staff Jayson Whiteside, Kirsten Jedlicka, Lauren Edades, Amy Erickson, Audrey O'Brian, and Nicole Tham; attorney Fred Slone; Assistant Public Defender Matt Widmer; Municipality of Anchorage prosecutor Seneca Theno; Department of Law representatives Christina Sherman and Kaci Schroeder; Partners for Progress representatives Billy Houser and Doreen Schenkenberger; Department of Public Safety Lt. David Hanson; Department of Health and Social Services/ASAP staff Susan Gravely and Alysa Wooden; Ralph Andrews, Bristol Bay Native Association; Alaska Court System General Counsel Nancy Meade and ACS Therapeutic Courts Coordinator Michelle Bartley. (Not all participants attended every meeting.)

The work group researched the issues and formulated recommendations for the Commission's consideration. The Commission considered the work group's ideas at its meeting in October of 2016.

[8] DWLS is an infraction if it was not related to a DUI or Refusal conviction. AS 28.15.291(a)(2) and (3), (b)(2).

D. Drinking and Driving in Alaska

Alaska has a high incidence of alcohol use in its population relative to the United States as a whole. In 2014, 20.2% of Alaskan adults reported binge drinking, meaning that they had five or more drinks (men) or four or more drinks (women) on one or more occasions in the past 30 days. 9.1% engaged in heavy drinking, meaning consuming more than two alcoholic drinks (men) or more than one drink (women) each day during the past 30 days.[9]

Unintentional injuries, such as those caused by motor vehicle accidents, are highly associated with alcohol use. In Alaska, accidents are the third leading cause of death after cancer and heart disease. In 2014, 31.5% of motor vehicle fatalities in Alaska involved a driver with a BAC (Breath Alcohol Content or Concentration) of .08 grams per deciliter (g/dL) or higher.[10] The average BAC for alcohol-impaired Alaska drivers involved in fatal accidents was 0.214 in 2015, compared to 0.194 nationally.[11] Preliminary data from 2016 shows that traffic fatalities in Alaska increased 34% in 2016 as compared with 2015, though the reasons for this are as yet unknown.[12] The national increase during the same period was 10.4%.[13]

Data from the Alaska Department of Public Safety shows that DUI/OUI arrests have been declining in Alaska since 2008. The average year-over-year drop between 2008 and 2014 was 15 percent. At the peak in 2008, 5,396 individuals were arrested for a DUI/OUI; in 2014, 2,395 adults were arrested for DUI (not including arrests for Refusals). Nationally, arrest rates have also declined but at a slower rate: in 2008, 1,483,396 individuals were arrested for driving under the influence, while in 2014, 1,117,852 individuals were arrested for driving under the influence.[14,15]

In FY15, the Alaska Court System reported a total of 3,594 DUI cases disposed statewide. Felony DUI convictions accounted for 223 of the cases, most of them (N=166) in the Third Judicial District. The court system also reported 3,371 misdemeanor DUI convictions in FY15 (1,101 of which were Municipality of Anchorage cases).

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[9] Alaska Department of Health and Social Services and Alaska Mental Health Trust Authority. *Alaska Scorecard: Key Issues Impacting Alaska Mental Health Trust Beneficiaries* (December 2015).
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II. Responses to Legislative Questions

A. Is a revision of the alcohol-related offenses in AS 28 necessary?

Yes; the Commission has identified a number of areas in need of revision.

B. Should both administrative law revocation (ALR) and judicial revocation processes be maintained?

The Commission found that both the administrative and judicial revocation processes do overlap in many regards, but ultimately concluded that each serves an important and distinct function. It further concluded that the benefits of keeping both processes outweigh the drawbacks of eliminating one or the other. A summary of the Commission's findings and analysis supporting this recommendation is set out below; detailed information and analysis is set out in Appendix B.

1. Findings & Analysis

In Alaska, as in many states, the statutory authority for pre-conviction administrative license revocation (ALR) by the Division of Motor Vehicles (DMV) is limited to a short list of so-called *per se* offenses.[16] Most of the administrative license revocations are the result of a DUI with an unlawful BAC (often referred to as a "*per se* DUI") or Refusal. Administrative revocation in Alaska occurs around seven days after a person is arrested, unless the person requests an administrative review before a DMV hearing officer.[17]

National research shows that pre-conviction administrative license revocation (ALR) for *per se* offenses is effective in reducing DUI recidivism. One major study comparing pre-conviction with post-conviction license revocation found that pre-conviction license revocation was significantly more effective.[18] This is presumed to be because court proceedings are protracted compared to administrative license revocation; court revocation can only follow conviction whereas ALR is imposed soon after the arrest; and conviction by a court requires a higher standard

[16] AS 28.15.165, 28.15.176, and 28.15.187.
[17] See AS 28.15.165(c). If the person timely requests an administrative review, he is given a limited license to use until the hearing. At the hearing, the inquiry is limited to the issue of whether the law enforcement officer had probable cause to believe the person was DUI or committed the crime of Refusal. AS 28.16.166(g).
[18] DeYoung, David. (2011). Traffic Safety Impact of Judicial and Administrative Driver License Suspension. *Countermeasures to Address Impaired Driving Offenders – Toward an Integrated Model, August 2011*. Retrieved from www.ajc.state.ak.us/acjc/dui/trbimpair.pdf#page=47

of proof than ALR. Court-ordered revocations imposed long after the offending conduct would have a relatively diluted correctional effect. Thus, the Commission concluded that ALR serves a beneficial function.

Having concluded that ALR serves a beneficial function, the Commission considered what drawbacks are presented by pre-conviction ALR. One criticism is that ALR insufficiently protects drivers' rights. Previously under Alaska law, drivers who were acquitted or otherwise not convicted were not well served, because DMV lacked the explicit authority to reinstate a license upon acquittal or dismissal. However, in July of 2016, SB 91 amended Title 28 to require DMV to rescind any ALR if the parallel criminal case is dismissed for any reason or the defendant is acquitted.[19] Moreover, the Alaska Supreme Court has affirmed that the ALR process is lawful and constitutional, though the burden of proof for administrative revocation is not as high as in criminal cases.[20]

The Commission next considered whether judicial license revocation could be discarded if ALR were maintained. Although the Commission found instances in which licenses can be revoked by both the courts and DMV, there are a number of cases in which only courts have the authority to revoke a license.[21] For example: only courts may revoke licenses for reckless driving or for DUI offenses that are not *per se* DUI. Also, current law allows courts the option of ordering a period of license revocation *consecutive* to the mandatory term imposed by DMV for a DUI or Refusal.[22] A court-imposed mandatory IID requirement must be met as a condition of license reinstatement, while an administrative licensing revocation order does not include an IID requirement for relicensing.[23] Finally, a therapeutic court (but not the DMV) can reduce a fine or the term of a license revocation based on the defendant's compliance with a treatment program.[24]

With or without ALR, criminal court proceedings still will be necessary because license revocation is but one of a number of penalties that the court must impose. Furthermore, the use of two processes is not much of an additional burden on state resources. A court's license revocation orders are actually effectuated by DMV. In most cases, DMV will have its revocation

[19] See SB 91, Section 101, effective July 2016.
[20] ALR determinations based on a preponderance of evidence have universally survived constitutional challenges because: a license is considered a privilege and not a right, administrative proceedings do provide procedural and constitutional protections to the driver, especially in Alaska, and revocation can be constitutionally justified by the impacts of drunk driving on public safety. In Alaska the same procedural safeguards apply in civil driver's license revocation proceedings for driving while intoxicated as apply in criminal prosecutions for that offense. *Hartman v. State of Alaska*, 152 P.3d 1118 (Alaska 2007).
[21] See AS 28.15.181.
[22] *Id*.
[23] Both court and DMV-approved limited licenses do require IID installation.
[24] See SB 91, Section 101, effective July 2016.

already in effect. The court system does expend resources notifying the DMV of a revocation order, but electronic transmissions could minimize that burden.

For these reasons, the Commission concluded that there are good reasons to maintain both judicial license revocation and ALR. Keeping both procedures may in some cases be redundant, but on the whole it is not wasteful, and eliminating one or the other would have significant drawbacks.

The Commission also considered extending ALR to all offenses under Title 28 for which mandatory judicial license revocation is required.[25] One identified benefit of doing so is that it would create an immediate consequence for all vehicular offenders, some of whom may have engaged in dangerous activity with a vehicle and may have access to a vehicle pre-trial. Ultimately, however, some members of the Commission were concerned that this could have the unintended consequence of creating more administrative review hearings that would essentially turn into mini-trials on the underlying charge. The Commission may revisit this topic in the future.

2. Recommendations

- **B1.** ALR should be maintained.
  - Reasoning: Maintaining both the ALR and judicial revocation systems is effective and comprehensive.
- **B2.** Elimination of courts' authority to impose mandatory license revocation is *not* recommended.
  - Reasoning: There are situations in which judicial authority extends beyond that of ALR and therefore serves a separate purpose.

Note: The above section discusses the Commission's findings and recommendations on the revocation process in general. Section D below discusses the Commission's findings regarding the length of license revocation periods.

[25] See AS 28.15.181; the offenses listed in this statute are: 1)manslaughter or negligent homicide resulting from driving a motor vehicle; 2) a felony in the commission of which a motor vehicle is used; 3) failure to stop and give aid as required by law when a motor vehicle accident results in the death or personal injury of another; 4) perjury or making a false affidavit or statement under oath to the department under a law relating to motor vehicles; 5) operating a motor vehicle or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance; 6) reckless driving; 7) using a motor vehicle in unlawful flight to avoid arrest by a peace officer; 8) refusal to submit to a chemical test authorized under AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle, commercial motor vehicle, or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, or authorized under AS 28.35.031(g); 9) driving while license, privilege to drive, or privilege to obtain a license, canceled, suspended, or revoked, or in violation of a limitation; 10) vehicle theft in the first degree in violation of AS 11.46.360 or vehicle theft in the second degree in violation of AS 11.46.365.

C. What is the effectiveness of ignition interlock devices (IIDs) in reducing the offenses of driving while under the influence of an alcoholic beverage, inhalant or controlled substance (DUI) and refusal to submit to a chemical test and reducing recidivism?

The Commission found evidence that IIDs effectively reduce recidivism during times that they are being actively and properly used; however, this effect does not continue after the IID is removed. Based on this and other information, the Commission recommends that the Legislature amend the IID requirement.

What is an ignition interlock device?

- An IID disables a car from operation by an intoxicated person by analyzing the alcohol content of the driver's breath.
- In Alaska, drivers required to use an IID pay a private vendor to install, calibrate and service the device.
- The Alaska Department of Corrections determines which interlock devices are certified for use in Alaska, and approved vendors are listed on the DOC web site.

The Commission has compiled extensive information about ignition interlocks, the research concerning their effectiveness, and law and practice in Alaska. This information is attached as Appendix C. The following findings, analysis, and recommendations are based on that information.

1. IID Findings and Analysis

Use of IIDs in Alaska. Since 2008, any person convicted of DUI or Refusal whose offense involved the use of alcohol is ordered to use an ignition interlock device for a period of time after he or she regains the privilege to drive.[26] A person regains the privilege to drive after a statutory revocation period ends *and* the person satisfies various other re-licensing requirements.[27]

The amount of time a convicted offender is required to use the IID varies from six months to 60 months, depending on whether the conviction was a misdemeanor or a felony, and in some cases on the timing of the person's prior convictions. The IID requirement never expires, meaning a person's license cannot be reinstated until he or she shows proof of IID installation to the DMV.

[26] AS 28.35.030(b)(1); AS 28.35.030(n)(1); AS 28.35.032(g)(1); AS 28.35.032(p)(1). The court may not suspend the IID requirement. AS 28.35.030(b)(2); AS 28.35.030(n)(2); AS 28.35.032(g)(2); AS 28.35.032(p)(2). Between 1989 and 2008, courts had discretion to require IID use in DUI/Refusal cases.

[27] For example, completion of treatment requirements; passing written, vision and road tests; payment of DMV fees.

IIDs also are required when a person whose license has been revoked requests a limited license. A limited license enables a person to "earn a livelihood" while not unduly endangering the public. Limited licenses are only available for offenders who are employed and enrolled in a treatment program.[28] Limited licenses can be requested during the period of a license revocation by certain DUI (but not Refusal) offenders.[29] First-time offenders may apply for a limited license to drive following 30 days of license revocation.[30] Second-time or higher (non-felony) offenders may apply for a limited license to drive following 90 days of license revocation.[31] Any limited license request must be approved by a court or the DMV. If the request for the limited license is approved, the driver will be required to install an IID and show proof of installation (among other things).

Alaska law contains exemptions from the mandatory IID requirement. These include exemptions for driving an employer's vehicle if approved in advance by a court, and for offenders in certain rural communities (due to the State's large land area and dispersed population, offenders are not required to use an ignition interlock device if they operate a motor vehicle in certain communities, namely, communities in which car registration/insurance is not required.[32,33]) Additionally, courts do not have to order an IID for an offender whose DUI impairment was drug-related.[34]

The Commission examined the cost of IIDs. For a first-DUI offender, basic interlock fees are about $700 for the period of six months. All interlock-related costs – which include installation, removal, monthly servicing, optional insurance to cover the unit, and any vendor charges for IID re-start after an alcohol lock-out – also are paid by the offender to the third-party vendor. A first-time offender also would incur additional costs (fines, surcharges, DMV fees, electronic monitoring, public counsel fee) between $2,000-2,680, and possibly impoundment fees, forfeiture-related losses, and ASAP costs. At the point the person regains the privilege to drive, there also would be costs for SR-22 insurance (estimated at $300/month). Thus, the direct and indirect costs of the DUI conviction, even for a first offender, are significant.

[28] Limitation of driver's license, Alaska Stat. § 28.15.201
[29] Limited licenses cannot be issued until a "no-drive period" is first observed. The length of the no-drive period (often called the 'hard' revocation) depends on the number of prior DUI/Refusal convictions.
[30] Limitation of driver's license, Alaska Stat. § 28.15.201
[31] Limitation of driver's license, Alaska Stat. § 28.15.201
[32] Motor vehicle liability insurance required; exemptions, Alaska Stat. § 28.22.011
[33] Alaska Court System. (2015). *Ignition Interlock Device Information Sheet* (CR-483). Retrieved from www.courtrecords.alaska.gov/webdocs/forms/cr-483.pdf
[34] A court *may* impose an IID requirement as a condition of probation when the impairment was not alcohol-related.

A sentencing court can "include" IID costs as part of the fine.[35] If the court allows that option, the defendant submits receipts for the IID payments to the court by a deadline specified in the judgment, and the court applies the credit to the amount of the fine.

Unfortunately, it is unknown how many Alaskans have been ordered to install an IID.[36] Information from the DMV suggests that over 12,000 Alaskans currently have an IID restriction on their licenses (see discussion below). One researcher who estimates interlock installation rates for all states has estimated that there are 1,922 presently installed devices in Alaska.[37] That number could be compared to 3,594 convictions for DUI or Refusal in Alaska in FY2015 alone.

Strengths and Weaknesses of IIDs. The Commission examined the effects of IIDs in the following areas: effects on recidivism, effects on public safety, offenders' compliance with IID orders, and effects on re-licensing. Each of these areas is discussed briefly below.

Effects on recidivism. Interlocks are an effective method for preventing alcohol-impaired driving *while they are installed*.[38] A systematic review of fifteen scientific studies conducted by the Centers for Disease Control and Prevention found that, while interlocks were installed, the re-arrest rate of offenders decreased by 67%, compared to groups that did not have the device installed.[39] Thus, the benefit of the IID requirement in Alaska may be reduced recidivism for offenders who install and drive with the devices, during the period that they are installed.

There is insufficient evidence to show that interlock devices deter future behavior when they are no longer in use. With one notable exception, studies have generally shown that after ignition interlocks were removed, any recidivism reduction effect disappeared, and interlock and comparison drivers had similar recidivism rates thereafter.[40]

Effects on public safety. IID use does not seem to have a positive effect on the rate of motor vehicle accidents. Evidence from other states suggests that offenders with installed ignition interlock devices tend to have more vehicle accidents than persons with suspended licenses, but

[35] AS 12.55.102(d).
[36] The court system does not track the number of individuals convicted of alcohol-involved offenses who were ordered to have an interlock installed.
[37] Roth, Richard. (2013). *2013 Survey of Currently-Installed Interlocks in the U.S.* Retrieved from www.rothinterlock.org/2013_survey_of_currently_installed_interlocks_in_the_us_revised-12_17_13.pdf
[38] See discussion in Appendix C at page 3.
[39] See discussion in Appendix C at page 3.
[40] See discussion in Appendix C at page 3. There is promising evidence elsewhere that recidivism may be reduced when IID use is coupled with treatment and consistently and closely monitored with immediate feedback and consequence for non-compliance; however, Alaska's IID requirement is not coupled with treatment and offenders who do not comply are not monitored.

about the same number of vehicle accidents as the general public.[41,42] It is unknown if this situation exists in Alaska.

Compliance with IID orders. The Commission has concluded that relatively few offenders who are ordered to install an IID actually do so. In Alaska, no one entity tracks the number of persons who have failed to install or comply with interlock requirements,[43] but according to a 2012 study of the Alaska ignition interlock program, a 'majority' of eligible offenders either "fail to have the interlock ordered by the courts or fail to install the device even if they receive a judicial order to do so."[44] This estimate is consistent with information from the Alaska DMV that there are 12,784 living drivers with an unsatisfied interlock restriction on their license. (A license would be flagged with an unsatisfied interlock restriction when the driver's license was revoked and put under an IID restriction.) In other words, 12,784 living Alaskans are currently foreclosed from license reinstatement due to an outstanding interlock requirement. While some of these 12,784 drivers may be driving on a DMV-issued interlock-restricted license, many (if not most) are not.

The Commission also learned that there is no formal oversight of those who do have IIDs installed. IID program participants are required to submit their device for inspection and recalibration every 90 days to the third-party IID vender, but there is no system in place to monitor this data or to track "lockouts." Additionally, offenders who do install the devices may tamper with them or evade using them. Commission members heard anecdotal stories of offenders who install a device on a car which they then park while they drive a different car.

Effects on re-licensing. The mandatory IID requirement as it is used in Alaska may have discouraged many offenders from re-licensing. Because the IID predicate for license reinstatement never expires, an offender cannot re-license without showing proof of IID installation to the DMV. Offenders who do not re-license remain outside of the driver-control system, making corrective action difficult if their driving continues to be a problem.[45]

[41] See discussion in Appendix C at page 4.
[42] See discussion in Appendix C at page 4.
[43] The courts do not track what number of individuals convicted of alcohol-involved offenses were ordered to have an interlock installed, and DMV does not know how many records once had an interlock-restriction, since it did not keep track of those records once the requirement was fully satisfied.
[44] Traffic Injury Research Foundation. (2012). Alcohol Interlock Program Technical Assistance and Training: Alaska. Ottawa, Ontario: Traffic Injury Research Foundation.
[45] The Traffic Injury Research Foundation has noted "Between 25% and 75% of offenders who have a driver's license that is suspended or revoked continue to drive, making it likely that they will continue to drink and drive and be a danger on the roadways." McCartt et al., 2003; Ross and Gonzales, 1988; Griffing III and De La Zerda, 2000.

The Commission estimates that as many as 60% of Alaska offenders may not be reinstating their driving privileges.[46] Based on the large number of Alaska driver records (12,784 living persons) showing unsatisfied interlock restrictions, researchers' estimates of installed interlocks, estimates of the percentage of Alaskan drivers who failed to reinstate licenses after revocation,[47] and the experience of other states,[48] the Commission assumes that the mandatory predicate of an IID for license reinstatement discourages many individuals from license reinstatement even after the end of a revocation period.[49]

Based on the above information, the Commission concludes:

- The existing statutory scheme of mandated IID use does not effectively protect public safety because:
    - Attempts to operate a vehicle that results in a "lock-out" are not remotely monitored, promptly documented or actively reported to an oversight agency by an IID vendor;
    - The IID does not monitor a driver when he or she is not driving the vehicle on which the device is installed. This contrasts with other remote monitoring technologies which continuously monitor in real-time, or allow for a near-immediate response.
- The penalty and license reinstatement criteria are applied inconsistently:
    - IID participation is not required in some rural Alaskan communities; also, IID participation is not required for drivers whose DUI occurred on certain federal lands and federal reservations;
    - IID use cannot be ordered as a re-licensing requirement when the license revocation for DUI/Refusal was only administrative (ALR) and not judicial;

[46] Alaska DMV: 1312 (the number of drivers who reinstated their licenses following an ignition interlock device requirement in 2014) divided by 3276 (the number of DMV administrative revocations resulting from a DUI in 2013).

[47] See discussion in Appendix A at pages 8-9.

[48] Nationally, the proportion of convicted offenders who do install interlocks is low. Across the 28 states whose ignition interlock program were surveyed by NHTSA, the ratio of interlocks in use to DWI arrests in 2010 ranged from 3 percent to 73 percent with the median State at 17 percent. Casanova-Powell, T., Hedlund, J., Leaf, W., & Tison, J. (2015, May). *Evaluation of State ignition interlock programs: Interlock use analyses from 28 States, 2006–2011*. (Report No. DOT HS 812 145). Washington, DC: National Highway Traffic Safety Administration, & Atlanta: Centers for Disease Control and Prevention. Retrieved from www.nhtsa.gov/staticfiles/nti/pdf/812145-EvalStateIgnitionInterlockProg.pdf

[49] There is no financial assistance program in Alaska for indigent drivers to regain their license. Although court fines may be offset by documented costs for IID installation and service, there is no assistance for the costs of court-ordered treatment, also another predicate for license reinstatement.

- DMV lacks statutory authority to require IID use for reinstatement after an ALR for DUI (except as a condition for a limited license during the term of revocation);
- IID is not mandatory for drug-involved DUIs (as the device has no capacity to register drug use or impairment), and the number of drug-involved DUIs is increasing.

- The IID requirement burdens the way back to lawful licensed and insured driving for some Alaskans:
  - Drivers who do not own a car still must show that an IID has been installed on some car in order to be re-licensed.
  - IIDs are expensive (for a first DUI offender the cost is between $675-950, and for a second DUI the cost is $1275-1550), and no financial aid is available for indigent offenders.

For all these reasons, the Commission has concluded that the existing IID process is flawed. The Commission considered a recommendation to eliminate IID installation as a mandatory sentence component or condition of probation, leaving it up to the discretion of judges. Ultimately, however, the Commission was not comfortable making this change; there was interest in reforming the process to ensure that it would "police the person, not the car." The Commission may revisit this topic and make further recommendations in the future.

The Commission also considered recommending that judges be given the discretion to set IID installation as a condition of bail in DUI cases, but some expressed concern that this may lead to "overprogramming" for low-level offenders. The Commission may revisit this topic as well.

2. IID Recommendations

Based on the above findings and analysis, the Commission makes the following recommendations regarding interlock ignition devices:

- **C1.** Provided the full term of license revocation has been completed and the person is otherwise fully eligible for reinstatement, DMV should not require IID use as a predicate for license reinstatement unless it has been ordered by the court.
  - Reasoning: Some offenders may choose not to apply for a limited license during the revocation period; once they have completed that period they are not required to apply for a limited license and therefore should not be required to have an IID installed—unless a court so orders.

- **C2.** Retain installation of an IID (or a comparable device) as a prerequisite for approval of limited licenses during the pendency of a revocation period.
    - Reasoning: IIDs are effective in reducing recidivism while properly installed and in use, and the subset of drivers who apply for limited licenses during the period of revocation may be more likely to comply than other convicted offenders.
- **C3.** Add an option to permit approval of limited licenses for drivers who are using remote continuous alcohol monitoring technologies (such as a Secure Continuous Remote Alcohol Monitor (SCRAM) device).[50]
    - Reasoning: Because SCRAM devices monitor the person's alcohol consumption at all times, the person will be less able to evade detection than drivers ordered to use IIDs (who may be able to drive a different car without an IID installed).

D. Sanctions

The Legislature asked the Commission to answer the following questions regarding sanctions in Title 28:

- Should the punishments, fines and associated driver's license revocation periods (for all Title 28 offenses) be maintained?
- What is the effectiveness of the penalties, fines, and reformative and rehabilitative measures under state law for the offenses of driving while intoxicated, refusal to submit to a chemical test, and driving without a valid driver's license?
- Do the penalties, fines, and reformative and rehabilitative measures under state law for the offenses of driving while under the influence, refusal to submit to a chemical test, and driving without a valid driver's license reduce recidivism, promote rehabilitation and protect the public?

Generally speaking, Title 28 offenses are punishable by imprisonment, probation, fines and license revocations.[51] The next sections will discuss each type of sanction in turn, with recommendations following each discussion. For historical reference, Appendix A contains a summary of changes to Title 28 enacted in SB 91.

[50] A SCRAM device is an ankle bracelet that provides continuous alcohol monitoring via transdermal alcohol testing.

[51] Infractions are punishable only by a fine or other low-level sanctions that do not suggest criminality or involve loss of a valuable license because infractions do not give rise to constitutional protections of jury trial or indigent representation. Title 28 infractions include DWLS not arising from a DUI conviction, the refusal of a preliminary breath test; minor operating a vehicle after consuming alcohol; a minor's refusal to submit to a chemical test; and a minor's driving within 24 hours after being cited for an alcohol/PBT offense.

1. Imprisonment and Probation

The following is an overview of imprisonment and probationary terms for Title 28 offenses—including recent changes to the law in this area following the enactment of SB 91.

A first conviction for either DUI or Refusal is a Class A misdemeanor. Generally, first-time convictions for Class A misdemeanors carry a sentence of up to 30 days, with no mandatory minimum, and the maximum fine is $25,000 (with no minimum).[52] However, DUI and Refusal have more specific provisions, requiring a mandatory minimum term of imprisonment of 72 hours for the first conviction. (Though this is the same minimum term as before SB 91, offenders will now serve this term on electronic monitoring.[53]) A first-time DUI or Refusal conviction also carries a mandatory minimum license revocation of 90 days, and a mandatory minimum fine of $1,500.[54]

The second offense, also a Class A misdemeanor, carries a mandatory minimum term of imprisonment of 20 days, a mandatory minimum license revocation of 12 months, and a mandatory minimum fine of $3,000.[55] A third conviction for either offense generally qualifies as a felony.[56]

For a first-time DUI offender, 27 states require no minimum mandatory sentence. Of the remainder, 14 states have sentences of 1-2 days, 3 states (including Alaska) have 3-day sentences, Nebraska has a 7-day minimum and Arizona has 10. (Many states do require higher minimum sentences than Alaska's if a first offender has a high BAC.) For a second DUI offender, minimum-mandatory sentences among the states range from 0-180 days. The median is 7 days. Alaska's minimum mandatory sentence for a second offender is 20 days.

In addition to terms of imprisonment, most sentences will also carry terms of probation. Under SB 91, maximum probation terms were reduced from 10 years to 1 year for a first misdemeanor offense.[57] In cases of DUI or Refusal, a second or subsequent misdemeanor will carry a maximum 2 years of probation.[58]

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[52] See SB 91, Sections 72 & 91.
[53] See SB 91, Sections 107 & 110. In communities where EM is not available, sentences may be served in private residences by any other means approved by the commissioner of corrections.
[54] AS 28.35.030(b)(1); AS 28.35.032(g)(1); AS 28.15.181(c)(1).
[55] See AS 28.35.030(b)(1); AS 28.35.032(g)(1); AS 28.15.181(c)(2).
[56] See AS 28.35.030(n); AS 28.35.032(p).
[57] See SB 91, Section 79.
[58] *Id*.

Minimum mandatory applicable terms for misdemeanor DUI/OUI/Refusal			
# DUI/OUI/ Refusal	Minimum Jail Term	Maximum Jail Term	Maximum Probation term
1st	72 hours	1 year	1 year
2nd	20 days	1 year	2 years
3rd within 15 years	60 days	1 year	2 years
4rd within 15 years	120 days	1 year	2 years
5th within 15 years	240 days	1 year	2 years
6th within 15 years	360 days	1 year	2 years

DUI and Refusal are also felony offenses, if the offense is the third such offense for the driver within the past 10 years. [59,60] Felony DUI and Felony Refusal are Class C felonies with sentence ranges that increase for each subsequent offense (see table below).[61] As Class C felonies, these offenses are subject to a maximum jail term of 5 years, and a maximum probation term of 5 years.[62]

Applicable terms for Felony DUI/OUI/Refusal			
# DUI/OUI/Refusal	Sentencing Range	Maximum Jail Term	Maximum Probation Term
3rd within 10 years	120-239 days	5 years	5 years
4th within 10 years	240-359 days	5 years	5 years
5th within 10 years	360 days – 2 years	5 years	5 years

DWLS (driving with a canceled, suspended, revoked or limited license) is also a class A misdemeanor but only if the license action related to a DUI/Refusal conviction.[63] Under SB 91, a first offense now warrants a mandatory ten-day suspended sentence, and a second offense requires a ten-day minimum sentence. As with other misdemeanor offenses, the maximum probation term (previously ten years) is now one year. Prior to SB 91's enactment, this offense required a minimum 20 day/10 day suspended sentence for the first offense and 30 days for a second offense.[64]

[59] AS 28.35.030(n)
[60] AS 28.35.032(p)
[61] SB 91, Section 90.
[62] AS 12.55.125(e); SB 91 Section 79.
[63] AS 12.55.135(a); SB 91 Sections 104 & 105.
[64] Former AS 28.15.291.

A maximum sentence of one year is available for the class A misdemeanor of circumventing or tampering with an IID device, see AS 28.15.201(d)3)(B)(ii). No mandatory minimum applies. As with other misdemeanor offenses, the maximum probation term is one year.

A maximum jail term of 90 days applies to the class B misdemeanor crimes of (Commercial Operator's) Refusal to Submit to a Preliminary Breath Test. The 90-day maximum term also applies to DVOL[65] (driving without a valid operator's license).[66] These maximum terms are in contrast to the 10-day maximum jail term for most other class B misdemeanors.[67] No mandatory minimums apply to these offenses. As with other misdemeanor offenses, the maximum probation term is one year.

Though the classification and maximum term for a non-DUI-related DVOL remains the same, non-DUI-related DWLS has been reduced to an infraction punishable by a maximum fine of $300.[68]

In summary, SB 91 made the following changes to Title 28 offenses and associated jail and probationary terms:

- DWLS offenses *not* based on DUI or Refusal are now non-jailable infractions.
- First-time DWLS based on DUI or Refusal now carries a 10-day suspended term; second-time DWLS based on DUI or Refusal now carries a 10-day minimum.
- First-time DUI or Refusal misdemeanors carry the same sentence, but the sentence will be served on electronic monitoring.
- Probation for a first-time DUI or Refusal misdemeanor is 1 year; probation for a second or subsequent DUI or Refusal misdemeanor is 2 years; probation for a felony is 5 years.

Otherwise, the jail terms that apply only to Title 28 offenses have been left unchanged. The Commission's past research on the recidivism effects of jail on DUI offenders shows that jail sentences for first offenders were associated with higher recidivism rates than both probation and community work service,[69] even when controlling for socio-economic differences between

[65] A maximum jail term of 90 days applies to DVOL (driving without a valid operator's license). AS 28.15.011(b) is read together with 28.15.291(a)(2) and 28.90.010(b) to establish this violation and its penalties. DVOL is a misdemeanor, punishable by a maximum 90 days in jail, a $500 fine and a potential license revocation

[66] AS 28.33.031.

[67] See AS 28.90.010(b).

[68] SB 91 Sections 104 & 105.

[69] Michael Bachmann and Ashford L. Dixon. 2014. "DWI Sentencing in the United States: Toward Promising Punishment Alternatives in Texas." *International Journal of Criminal Justice Sciences* 9.

offender groups. This finding is also consistent for offenders with multiple prior DUI convictions.[70] No matter how many past convictions, sanctions involving jail were associated with the highest recidivism rates. The available evidence is that as a specific deterrent, jail terms are extremely costly and no more effective in reducing DUI recidivism among either first time or repeat offenders than are other sanctions.[71]

Though the research would support reducing jail terms for DUI and related offenses, the changes listed above already represent a sizable shift in approaching Title 28 sanctions. Therefore, the Commission is of the opinion that no additional changes should be recommended at this time for the offenses of DUI/OUI/Refusal, DWLS based on a DUI revocation, circumventing or tampering with an IID device, or refusal of a PBT by a commercial operator. Rather, the Commission will first evaluate the impact of the changes resulting from SB 91's enactment and recommend further changes in the future if necessary.

2. Fines

The Commission has compiled data on all applicable fees as a result of a Title 28 conviction in the table below. The table does not include any losses due to possible forfeiture actions or municipal impoundment fees, nor the separate, additional costs for license reinstatement.

<table>
<tr><th colspan="7">Misdemeanor DUI/OUI/Refusal</th></tr>
<tr><th></th><th>1st</th><th>2nd</th><th>3rd</th><th>4th</th><th>5th</th><th>6th</th></tr>
<tr><td>Minimum mandatory fine</td><td>$1,500</td><td>$3,000</td><td>$4,000</td><td>$5,000</td><td>$6,000</td><td>$7,000</td></tr>
<tr><td>General fund surcharge based on conviction[72]</td><td colspan="6">$75 or $50 if municipal</td></tr>
<tr><td>Correctional facility surcharge if brought to a jail for arrest or service of sentence[73]</td><td colspan="6">$75</td></tr>
<tr><td rowspan="2">Cost of imprisonment[74] or EM for sentence</td><td>Jail $330</td><td rowspan="2">$1,467</td><td colspan="3" rowspan="2">$2,000</td></tr>
<tr><td>EM $36/$78</td></tr>
<tr><td>Cost of appointed counsel[75]</td><td colspan="6">Plea $200; trial $500; post-conviction $250</td></tr>
<tr><td>ASAP cost</td><td colspan="6">$200</td></tr>
</table>

[70] David J. DeYoung. 1997. "An evaluation of the effectiveness of alcohol treatment, driver license actions and jail terms in reducing drunk driving recidivism in California." *Addiction* 92.
[71] A Guide to Sentencing DWI Offenders (2005), NHTSA Guide to Sentencing DWI Offenders 2005 HS 810 555, citing multiple studies.
[72] AS 12.55.039(a)-(d)("Surcharge").
[73] AS 12.55.041("Correctional Facility Surcharge") Applies if person was (1) was arrested and taken to a correctional facility, regardless of whether the defendant was released or admitted to the facility; or (2) is sentenced to serve a term of imprisonment.
[74] AS 28.35.030(l) and 22 AAC 05.615 (e).
[75] Rules of Criminal Procedure, Rule 39(d) Schedule of Costs.

Felony DUI/Refusal	
Minimum mandatory fine	$10,000
General fund surcharge based on conviction[76]	$100
Correctional facility surcharge if brought to a jail for arrest or service of sentence[77]	$100
Cost of imprisonment[78] or EM for sentence	$2000
Cost of appointed counsel	Plea $250-$1000, Trial $1,500 Post-conviction $250

As noted above, the maximum fine for any A misdemeanor is $25,000, while the maximum fine for any C felony is $50,000.[79] DVOL also carries a fine of $500. DWLS, as revised by SB 91, carries no minimum fine, though the misdemeanor-level DWLS carries a maximum fine of $25,000.

At $1500, Alaska has the single highest minimum mandatory fine for a first DUI offense, 4.7 times the national average. A survey of all 50 states and the District of Columbia by WalletHub provides a median of $250 and a mean of $317 for states' minimum-mandatory fines for a first-time DUI. Thirteen states require no minimum fine.[80]

At $3000, Alaska also has the highest mandatory fine among all states and D.C. for a second-DUI offense, 4.5 times the national average. Among all fifty states and D.C., there is a $500 median and a mean of $667.

WalletHub also states that, after a DUI in Alaska, there is an average 80% increase in car insurance rates, which is the fourth-highest reported increase in the country.

[76] AS 12.55.039(a)-(d)("Surcharge").
[77] AS 12.55.041("Correctional Facility Surcharge") Applies if person was (1) was arrested and taken to a correctional facility, regardless of whether the defendant was released or admitted to the facility; or (2) is sentenced to serve a term of imprisonment.
[78] AS 28.35.030(l) and 22 AAC 05.615 (e).
[79] SB 91, Section 72.
[80] There are also sharp contrasts within our own state borders. For DUI cases prosecuted in federal court under the Assimilative Crimes Act (in the National Parks), no minimum fine is required. There is a maximum $5000 fine, but it is more typical for a fine of $150 to be imposed.

DUI Penalties Among Western States[81]			
State	Min. fine 1st DUI	Min. fine 2nd DUI	Reported percentage increase in auto insurance after DUI
Alaska	1500	3000	80%
Arizona	250	500	37%
California	390	390	103%
Colorado	600	600	34%
Montana	300	600	39%
Nevada	400	750	29%
Oregon	1000	1500	26%
Utah	1370	1560	39%
Washington	940.50	1195	28%

One study from Australia in 1981 supports the recidivism-reduction effect of higher fines ($300 plus) versus lower fines[82]; however, the literature is largely silent on thresholds at which sanctions become effective, are most effective, and cease to be effective (or become counter-productive).

Moreover, a comprehensive study of 26 states between 1976 and 2002 concluded that mandatory fine penalties do not have clearly demonstrable general deterrent or preventive effects, especially in contrast to two other DUI countermeasures: (1) administrative drivers' license suspension for DUI and (2) reductions in the legally allowable BAC limit for driving – which show fairly consistent effects in reducing alcohol-related crash involvement. [83]

Because Alaska's fines are generally higher than those in other states, the evidence is silent on how much of a fine has a positive and not counter-productive impact, the fines and other conviction costs are heavy burdens to an Alaska DUI offender, and the fines may discourage license reinstatement, the Commission considered recommending a reduction in fines. The Commission also considered that outstanding fines may be suspended in whole or in part for first and second DUI's on condition of license reinstatement. But it was noted that the DUI arrest rate

[81] https://wallethub.com/edu/strictest-states-on-dui/13549/#adam-gershowitz
[82] Homel, R 1981, 'Penalties and the drinkdriver: a study of one thousand offenders', Australian and New Zealand Journal of Criminology, vol. 14, pp 225-241.
[83] Wagenaar, A., M. Maldonado-Molina, D. Erickson, L. Ma, A. Tobler, and K. Komroa, "General deterrence effects of U.S. statutory DUI fine and jail penalties: Long-term follow-up in 32 states." Accident Analysis and Prevention 39 (2007) 982–994.

had been declining under the current fine structure, so the Commission decided not to recommend any changes to fines at this time.

The Commission also considered allowing defendants to offset their out-of-pocket substance abuse treatment costs against their court-ordered fines. (This practice is already allowed by the Municipality of Anchorage.) Defendants may already offset the cost of their IIDs against their fines. But it was noted that this may actually place more of a burden on some low-income offenders whose treatment may be paid for by the Indian Health Service or Medicaid.

The Commission may return to the topic for further discussion in the future.

3. License revocation periods for DUI/Refusal offenders

As discussed in Section B above, license revocation may be imposed as an administrative sanction (ALR) or as a criminal sanction (judicial revocation). While research shows that license revocation is an effective mechanism for reducing recidivism, the research is less conclusive on the optimal length of time for a revocation.

Research indicates that the penalties of license suspension or revocation can be effective in deterring a DUI offender from re-offending. Studies of license suspension have demonstrated its effectiveness in reducing recidivism and the risk of crash involvement among drinking drivers.[84] More recent surveys also indicate that license suspension works to control the overall traffic safety risk of first and repeat DUI offenders.[85] Evidence has shown that "license suspension can lead to reform beyond the period of suspension, especially when combined with some form of education or treatment."[86]

(One caveat on national research: researchers often uses the terms "suspension" and "revocation" interchangeably, but suspension suggests fewer requirements for the reinstatement of unrestricted driving privileges. States' laws requiring "revocation" and "suspension" may not

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[84] Mann, R. E.; Vingilis, E. R.; Gavin, D.; Adlaf, E.; and Anglin, L. "Sentence severity and the drinking driver: Relationships with traffic safety outcome." Accident Analysis and Prevention, 23(6):483-491, 1991; McKnight, J, and R. Voas, "The effect of license suspension upon DWI recidivism." Alcohol, Drugs & Driving, Vol 7(1), Jan-Mar 1991, 43-54; Ross, H. L. "License deprivation as a drunk-driver sanction." Alcohol, Drugs and Driving, 7(1):63-70, 1991; Sadler, D. D.; Perrine, M. W.; and Peck, R. C. "The long-term traffic safety impact of a pilot alcohol abuse treatment as an alternative to license suspension." Accident Analysis and Prevention, 23(4):203-224, 1991; Rodgers, A. "Effect of Minnesota's license plate impoundment law on recidivism of multiple DWI violators." Alcohol, Drugs and Driving, 10(2):127-134, 1994; Williams, A. F. "The effectiveness of legal countermeasures against alcohol-impaired driving." In A. B. Bergman (Ed.), Political approaches to injury control at the state level (pp. 17-26). Seattle, Washington: University of Washington Press, 1992.

[85] DeYoung, D. "Traffic Safety Impact of Judicial and Administrative Driver's License Suspension." Countermeasures to Address Impaired Driving Offenders: Toward an Integrated Model. Transportation Research Board. August 2013.

[86] Ross, H. L. "License deprivation as a drunk-driver sanction." Alcohol, Drugs and Driving, 7(1):63-70, 1991; NHTSA. (January 2006). *A Guide to Sentencing DWI Offenders, 2nd Edition 2005*. Washington, DC: NHTSA (DOT HS 810 555). Retrieved from http://www.nhtsa.gov/people/injury/alcohol/DWIOffenders/

necessarily foreclose all lawful driving; limited, hardship, employment-related, or interlock-restricted licenses are often made available during a revocation or suspension period on a conditional basis. Thus multi-state research may not consider uniform policies, and the policies considered may not be identical to Alaska's.)

Critically, the optimal length of revocation periods is yet to be conclusively established by research. An Australian study from 1981 suggests that suspension periods between 12 and 18 months may be optimal for reducing DWI recidivism[87], but there is limited utility in comparing this to Alaska in 2016. A more recent study suggests that shorter license revocation periods may be more effective because longer periods can 'teach' a person that it is relatively easy to drive, unlicensed, without being apprehended. [88] More research is needed on minimum periods necessary to obtain and maintain the benefits obtained from license revocation.

Indeed, driving with a suspended or revoked license is problematic, although for unknown reasons. Comparing offenders with a suspended license to fully licensed drivers, "suspended offenders have 3.7 times the risk being at fault in a fatal crash."[89] Furthermore, Griffin III and DeLaZerda (2000) "found that 20 percent of all fatal crashes between 1993 and 1997 involved at least one improperly licensed driver or a driver with a suspended or revoked license."[90]

Alaska's revocation periods range from a minimum of 90 days to a lifetime revocation. (See table below.) Courts may impose a revocation period greater than the mandatory minimum. The Court of Appeals has interpreted AS 28.15.181(c) as allowing courts the discretion to order up to a lifetime revocation of a driver's license in a misdemeanor case.[91] Mandatory minimum periods cannot be reduced by DMV nor by the courts with limited exceptions for license reinstatement after three years in certain circumstances.[92]

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[87] Homel, R 1981, 'Penalties and the drinkdriver: a study of one thousand offenders', Australian and New Zealand Journal of Criminology, vol. 14, pp 225-241.

[88] DeYoung, D. "Traffic Safety Impact of Judicial and Administrative Driver's License Suspension." Countermeasures to Address Impaired Driving Offenders: Toward an Integrated Model. Transportation Research Board. August 2013.

[89] McKnight, A.S., Watson, D.E., Voas, R.B., & Fell, J.C. (2008). *Update of Vehicle Sanction Laws and Their Application: Volume II – Vehicle Sanctions Status by State* (DOT HS 811 028B). Washington, DC: National Highway Traffic Safety Administration. Retrieved from http://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/811028b.pdf

[90] Griffin III, L. I., and DeLaZerda, S. "Unlicensed to kill." Washington, DC: AAA Foundation for Traffic Safety, 2000, June; NHTSA. (January 2006). *A Guide to Sentencing DWI Offenders, 2nd Edition 2005*. Washington, DC: NHTSA (DOT HS 810 555). Retrieved from http://www.nhtsa.gov/people/injury/alcohol/DWIOffenders/

[91] *Dodge v. Anchorage*, 877 P.2d 270 (Alaska App. 1994).

[92] SB 91, Section 109.

For DUI misdemeanors, the revocation period is actually broken into two periods: a "hard" revocation period where the offender may not have any license to drive, and a subsequent "soft" period where the offender may be granted a limited license after meeting certain requirements.[93]

The following table illustrates the post- SB 91 minimum-mandatory terms of license revocation for misdemeanor DUI/Refusal offenders.

Minimum-Mandatory Revocation Periods, Limited License and IID Use			
# Misdemeanor DUI/ Refusal	Overall Revocation Period (Mandatory)	"Hard" revocation period, after which most DUI (but not Refusal) offenders may seek a Limited License	Accompanying Minimum Period of IID Use Required if Limited License is approved
1st	90 days	30 days	6 months
2nd	1 year	90 days	12 months
3rd	3 years	90 days	18 months
4th	5 years	90 days	24 months
5th	5 years	90 days	30 months
6th	5 years	90 days	35 months

For felony DUI offenses, the revocation is permanent. However, an exception is available for felony offenders to obtain limited licenses if they participate in therapeutic court. Current law allows for a license to be fully reinstated after a three year period of limited licensure, or after a 10-year period without any additional driving-related offenses.[94]

The Commission considered recommending reductions in the overall revocation period for first-time offenders and reductions in the "hard" revocation period for repeat offenders. The intent of such a change was to help offenders stay employed in jobs that required the offender to drive. However, the Commission has decided to wait to see what the effects of the changes enacted by SB 91 will have before making recommendations in this area.

There is a discrepancy in the law's treatment of DUI and Refusal offenders in the revocation process. Currently, for Refusal offenders, there can be no limited license at any time during the period of revocation. Prior law allowed for limited licenses for misdemeanor DUI offenders, but not refusal offenders (and SB 91 left this unchanged). SB 91 extended limited license eligibility to

[93] Under 28.15.201(d) limited license privileges are available for DUI offenders if the person is in compliance with ignition interlock requirements, is enrolled in and is in compliance with or has successfully completed the ASAP requirements, provides proof of insurance, and has not previously been convicted of violating the limitations of an ignition interlock limited license or been convicted of violating the provisions of AS 28.35.030 or 28.35.032 while on probation for a violation of those sections.
[94] SB 91, Sections 103 & 109.

certain DUI felony offenders, but not to Refusal felony offenders.[95] The Commission is unaware of any reason for this discrepancy.

Recommendations

With respect to the mandatory minimum revocation terms, the Commission recommends:

- **D1.** Refusal offenders should also be approved for limited licenses.
    - Reasoning: The Commission is unaware of evidence that Refusal offenders are any more likely to recidivate than any other class of DUI offender.
- **D2**. Current ignition interlock restrictions should still apply for any limited license approved during a revocation period, except that interlock requirements could be alternatively satisfied by remote transdermal monitoring or a 24/7 program.
    - Reasoning: Limited licensees require greater supervision and, as noted in Section C above, SCRAM or other monitoring may be more effective than IID.

E. Are there effective programs that promote offender accountability, emphasize swift and certain, yet measured punishment, reduce recidivism, and maximize the offender's ability to remain productive in society?

There are a number of national models for programs that promote accountability and rehabilitation by combining sanctions with monitoring and treatment. Treatment approaches that work best use multiple strategies, such as education in conjunction with therapy and aftercare.[96] The more severe the problem the more intensive the needed treatment.[97]

Many of these national models have been replicated in Alaska. Initial studies of the effectiveness of these Alaska programs have concluded that they are promising, though these programs have yet to be rigorously studied. Currently, Alaska's Results First Initiative[98] is undertaking an evaluation of a wide range of programs in Alaska that serve individuals involved in the criminal

[95] *Id*.
[96] NHTSA. (January 2006). *A Guide to Sentencing DWI Offenders, 2nd Edition 2005*. Washington, DC: NHTSA (DOT HS 810 555). Retrieved from http://www.nhtsa.gov/people/injury/alcohol/DWIOffenders/
[97] NHTSA. (January 2006). *A Guide to Sentencing DWI Offenders, 2nd Edition 2005*. Washington, DC: NHTSA (DOT HS 810 555). Retrieved from http://www.nhtsa.gov/people/injury/alcohol/DWIOffenders/
[98] A project of the national Pew-MacArthur Results First Initiative (http://www.pewtrusts.org/en/projects/pew-macarthur-results-first-initiative).

justice system.[99] The Results First Initiative is in the process of analyzing the data it has gathered concerning program costs and recidivism rates; once that analysis is complete it will run a cost-benefit analysis to help Alaska's policy makers further evaluate the effectiveness of these programs.[100]

The programs discussed in this section are organized into three broad categories: probation programs, monitoring programs, and therapeutic courts.

1. Probation programs

a. Intensive supervision programs

In intensive supervision programs (ISP), offenders have more contact with probation officers compared with standard (nonintensive) probation programs and participate in various educational and therapeutic programs in the community.[101] One NHTSA-sponsored evaluation examined the Milwaukee County Pretrial Intoxicated Driver Intervention Project (of which ISP was a component) and found that "significantly fewer offenders who received ISP recidivated compared to those who did not receive the program (5.9 % versus 12.5%)."[102]

All three ISPs evaluated in another study indicated "significant reductions in medium-term recidivism for ISP offenders up to 4 years (although one of the findings may have been due to an artifact in the comparison offender group,[103] and the effect has disappeared by 15 years)."[104] The reductions in recidivism ranged from 18.1% to 54.1%. The study concluded that "the evidence appears to be strong that ISPs with the following common features can be very effective:

1. Screening and assessment of offenders for the extent of their alcohol/substance abuse problem.

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[99] Valle, A., and B. Myrstol, "Alaska Results First Initiative: Progress Report & Initial Findings." July 15, 2016. Alaska Justice Information Center. Retrieved from: https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/alaska-justice-information-center/_documents/2016-07-15.results_first_progress_report.pdf

[100] *Id*.

[101] Harding, W. M. "User's guide to new approaches and sanctions for multiple DWI offenders." DOT HS 807 571. Springfield, VA: National Highway Safety Administration/National Technical Information Service, 1989; Transportation Research Board (TRB). "Strategies for dealing with the persistent drinking driver," Transportation Research Circular 437. Washington, DC: National Research Council, 1995.

[102] Jones, R. K.; Wiliszowski, C. H.; and Lacey, J. H. "Evaluation of alternative programs for repeat DWI offenders." DOT HS 808 493. Washington, DC: National Highway Traffic Safety Administration, Office of Program Development and Evaluation, 1996; NHTSA. (January 2006). *A Guide to Sentencing DWI Offenders, 2nd Edition 2005*. Washington, DC: NHTSA (DOT HS 810 555). Retrieved from http://www.nhtsa.gov/people/injury/alcohol/DWIOffenders/

[103] A study or measurement error may have excluded potential ISP cohort members who recidivated quickly, resulting in a survival curve shifted six months relative to the comparison group – and, as a result, statistically significant.

[104] Wiliszowski, C. H., Fell, J. C., McKnight, A. S., Tippetts, A. S., & Ciccel, J. D. (2010). *An Evaluation of Three Intensive Supervision Programs for Serious DWI Offenders. Annals Of Advances In Automotive Medicine*. Accessed from www.nhtsa.gov/staticfiles/nti/pdf/811446.pdf.

2. Relatively long-term, close monitoring and supervision of the offenders, especially for alcohol and other drug use or abuse.

3. Encouragement by officials to successfully complete the program requirements.

4. The threat of jail for noncompliance."[105]

b. HOPE/PACE

Hawaii's Opportunity Probation with Enforcement (HOPE) program is a judicial "hands-on" swift accountability court for felony probationers with drug problems, offering monitoring, drug testing, and swift, certain, and fair sanctions. Initial studies of HOPE showed very promising results, but a recent study using randomized control trials found that the program's benefits were not as great as initially thought; the study concluded that more research is required.[106]

The Alaska equivalent to HOPE is the Alaska Probation Accountability with Certain Enforcement (PACE) program. PACE participants are felony offenders who have been given probation conditions that require either drug or alcohol testing; the majority of participants are required to submit to drug testing. In 2011, the Alaska Judicial Council and the Institute of Social and Economic Research conducted a preliminary evaluation of the PACE Program in Anchorage.[107] The results were consistent with the initial findings regarding HOPE. The findings showed that during the first three months on the program drug use dropped significantly compared to the three months prior to the start of the program.[108] Whereas 25% of all drug tests were positive during the three months prior to the program, only 9% of drug tests were positive during the initial three months on the program. 64% of probationers did not fail a drug test during the first three months on the program. As expected, the number of probation violations was relatively high during the first month for PACE participants but then dropped sharply over the next two months. The decreasing number of probation violations can be seen as an initial success while people were on the program.

Besides these very promising initial findings, no follow-up evaluation has been conducted since. It is also important to point out that the PACE program focuses on drug use and not on alcohol consumption.

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[105] Wiliszowski, C. H., Fell, J. C., McKnight, A. S., Tippetts, A. S., & Ciccel, J. D. (2010). An Evaluation of Three Intensive Supervision Programs for Serious DWI Offenders. Annals Of Advances In Automotive Medicine. Accessed from www.nhtsa.gov/staticfiles/nti/pdf/811446.pdf. This study confirms prior research showing that ISPs are effective.

[106] Lattimore, P. K., MacKenzie, D. L., Zajac, G., Dawes, D., Arsenault, E. and Tueller, S. (2016), Outcome Findings from the HOPE Demonstration Field Experiment. Criminology & Public Policy, 15: 1103–1141.

[107] Carns, T. and S. Martin, "Anchorage PACE: Probation Accountability With Certain Enforcement—A Preliminary Evaluation of the Anchorage Pilot PACE Project, Alaska Judicial Council, September 2011.

[108] *Id*.

2. Monitoring

a. ASAP

The Alaska Alcohol Safety Action Program (ASAP) provides substance abuse screening, case management and accountability for DWI and other alcohol/drug related misdemeanor cases. This involves screening cases referred from the district court into drinker classification categories, as well as monitoring cases to ensure that participants comply with their education and/or treatment requirements.

In its 2015 "Justice Reinvestment Report," this Commission found that ASAP was being over-utilized and under-funded, and thus the program's effectiveness was limited. The Commission recommended to the legislature that ASAP resources be limited to focus only on DUI/Refusal and minor consuming offenders. The legislature accepted this recommendation, and in SB 91, limited the program to those offenders. The bill also mandated that ASAP conduct risk assessment screenings and provide more intensive supervision of higher risk offenders.[109]

b. The 24/7 program

The 24/7 program is a pre-trial alcohol monitoring program that began in South Dakota. Program participants are monitored via regular alcohol testing. Findings regarding initial studies of the South Dakota 24/7 program were highly promising and, since then, comparable programs have been implemented in other jurisdictions across the country, including Alaska.

In 2013, Kilmer et al., evaluated the program in South Dakota empirically.[110] Kilmer examined whether the re-arrest rates for alcohol-related offenses decreased since the implementation of the program in different countries. In their study, the authors compared arrest rates between counties that had implemented the programs to counties that had not. Overall, the authors found that the implementation of the 24/7 program reduced repeat DUI arrests by 12% and domestic violence arrests by 9%. The study did not find a significant effect of the 24/7 program on traffic crashes. Despite the study's promising findings, they are preliminary. At the moment, the effectiveness of 24/7 has not been established in the peer-reviewed literature, as many programs are still in their infancy and no long-term studies have examined whether participation in these programs leads to lasting behavioral changes.

The Alaska equivalent to the South Dakota program is the Alaska 24/7 Sobriety Monitoring program, created by legislation in 2014. Alaska's model relies on private vendors to perform the

[109] See SB 91, Sections 170-173.
[110] Kilmer, B., N. Nicosia, P. Heaton, G. Midgette, "Efficacy of frequent monitoring with swift, certain, and modest sanctions for violations: insights from South Dakota's 24/7 Sobriety Project." American Journal of Public Health, 2013 January.

monitoring function, in contrast to the South Dakota program, which relied on law enforcement agencies. Alaska's program also utilizes drug testing in some cases, in addition to alcohol testing. The Alaska Judicial Council has conducted an analysis on how the program is being implemented.[111] The Council found that 73% of program participants failed a test for the first time within 15 days of starting the program, and 53% "no-showed" to a test for the first time within 15 days of starting the program. It is not yet possible to draw definite conclusions about the effectiveness of this program, but the preliminary data suggests that the participants in this program are being correctly identified as needing pretrial monitoring.

Notably, 24/7 is not a treatment program. Offenders who fail to maintain sobriety in the 24/7 program due to their inability to control substance use should be required to complete mandatory substance abuse treatment with sobriety monitoring.

3. Wellness/Therapeutic Courts

DUI, drug and other therapeutic courts address addiction and, often times, co-occurring addiction and mental health disorders. These have shown positive results. These courts are not appropriate for all offenders, only substance-dependent offenders who benefit from a lengthy court involvement and the support of a multidisciplinary legal and treatment team. Therapeutic courts provide case management and require participation in an array of programs to address substance abuse issues, criminal thinking errors, employment barriers, and more to help achieve and maintain sobriety.

The Alaska Court System operates a number of therapeutic courts appropriate for DUI offenders. These include a felony DUI Wellness Court in Anchorage, the Anchorage Municipal Wellness Court (for non-felony offenders) and a DUI court in Fairbanks for defendants who want to overcome serious problems with (or addiction to) alcohol and who want to achieve lifetime sobriety. These DUI courts are jail diversion programs offering intensive substance abuse treatment and community supervision to support participants' abstinence and recovery. Entry into the programs is not automatic. Each request to participate is reviewed on a case by case basis, and a limited number of slots are available at any given time.

The Bethel Therapeutic Court (BTC) also handles repeat Driving Under the Influence (DUI) offenses. The court generally targets defendants charged with a misdemeanor or felony directly related to substance abuse. This therapeutic court is a post-adjudication or pre-sentence program designed to supervise defendants who are substance-abusing adults (over 18 years of age), as well as probationers and parolees placed in the program as a condition of probation or due to a

[111] This analysis is available upon request from the Judicial Council.

violation of probation/parole. In this 18-month treatment program, defendants are helped to overcome their chemical addictions, become crime-free, and contribute to their families and community. Program components are: (1) a three-phase treatment program for substance abuse; (2) intensive supervision by a specially-assigned ASAP probation officer; (3) frequent appearances before a specially-assigned superior court judge; (4) regular attendance at 12-Step meetings and sobriety support groups; and (5) frequent, random alcohol and drug testing.

The Juneau Therapeutic Court (JTC) is a jail diversion program for those charged with felony alcohol and/or drug related offenses. The program offers substance abuse treatment and community supervision to support abstinence and recovery. Entry into the program is not automatic. Each request to participate in JTC is reviewed on a case by case basis.

The Ketchikan Therapeutic Court (KTC) is a post-adjudication or pre-sentence program designed to supervise multiple misdemeanor and felony defendants who are substance-abusing adults (over 18 years of age) charged with non-violent offenses. DUI offenders who meet the eligibility standards are helped to overcome their addiction, maintain sobriety and contribute to the community in an 18-month, three-phase treatment program through: intensive supervision by a Probation Officer, frequent appearances before the judge, regular attendance at recovery support groups, and random drug and alcohol testing.

DUI therapeutic courts have been shown to hold offenders accountable for their actions, change offenders' behavior to decrease recidivism, stop alcohol abuse, treat the victims fairly, and protect the public.[112] One report found that DWI courts significantly reduce recidivism among alcoholic DWI offenders.[113] Another report on a DWI court in New Mexico indicated that "recidivism was reduced by over 50 percent for offenders completing the DWI court compared to similar offenders not assigned to the DWI court."[114] Those results, however, were preliminary. An evaluation of the Maricopa County (Phoenix), Arizona, DWI court found that DUI felony offenders who were randomly assigned to the DWI court program achieved a lower rate of recidivism as measured by the time before a subsequent alcohol-related traffic offense.[115]

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[112] Tauber, J., and Huddleston, C. W. "DUI/drug courts: Defining a national strategy." Alexandria, VA: National Drug Court Institute, 1999; Freeman-Wilson, K., and Wilkosz, M. P. "Drug court publications resource guide" (Fourth ed.). Alexandria, VA: National Drug Court Institute, 2002.

[113] Breckenridge, J. F.; Winfree, L. T.; Maupin, J. R.; and Clason, D. L. "Drunk drivers, DWI "Drug Court" treatment, and recidivism: Who fails?" Justice Research and Policy, 2(1):87-105, 2000.

[114] Guerin, P., and Pitts, W. J. "Evaluation of the Bernalillo County Metropolitan DWI/Drug Court: Final report." Albuquerque, NM: University of New Mexico, Center for Applied Research and Analysis, 2002; Fell, J & Tippetts, A. (October 2011). An Evaluation of Three Driving-Under-the-Influence Courts in Georgia. *Ann Adv Automot Med*. 2011 Oct; 55: 301–312. Retrieved from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3256828/

[115] Jones, R. K., "Evaluation of the DUI Court Program in Maricopa County, Arizona." DOT HS 811 302. NHTSA, July 2011.

The Alaska Judicial Council has evaluated Alaska's therapeutic courts as a whole, though these evaluations were not specific to Title 28 offenders. The evaluations concluded that the courts showed promising results; participants who successfully completed their program tended to have lower rearrest and reconviction rates.[116] More comparison studies are needed, however, to draw definitive conclusions about the effectiveness of these programs.[117]

In summary, there are several programs available to Title 28 offenders in Alaska that promote accountability as well as rehabilitation. There are potential gaps in the system. Intensive supervision programs have been evaluated as effective, but there is no specific ISP for felony DUI/Refusal probationers. It should be noted, however, that provisions in SB 91 require the Department of Corrections to take a new approach to felony probation supervision.[118] These provisions will take effect January 1, 2017, and may provide many of the benefits of ISP for felony DUI/Refusal offenders.

Misdemeanor offenders are not supervised by the Department of Corrections, but DUI/Refusal misdemeanor offenders are eligible for the ASAP program. As explained above, SB 91 required the ASAP program to restructure to focus on these offenders, and to expand its services. As restructured, ASAP may also provide many of the benefits of ISP for misdemeanor DUI/Refusal offenders.

Therefore the Commission does not have recommendations on programming at this time, but may have recommendations in the future if the identified gaps in programming for DUI/Refusal offenders have not been addressed by the changes to probation and to ASAP enacted by SB 91.

F. Should limited licenses be available for persons charged with or convicted of DWI or Refusal while providing for public safety?

This question (like the questions in sections A-E) was posed to the Commission in 2014. At that time, the DMV could not issue a limited license in the following cases:

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[116] Alaska Judicial Council, "Recidivism in Alaska's Therapeutic Courts for Addiction and Department of Corrections Institutional Substance Abuse Programs," March 2012. Retrieved from: http://www.ajc.state.ak.us/sites/default/files/imported/reports/2012programrecid.pdf. Alaska Judicial Council, "Recidivism in Alaska's Felony Therapeutic Courts," February 2007. Retrieved from: http://www.ajc.state.ak.us/sites/default/files/imported/reports/recidtherct07.pdf.

[117] *Id*. Both reports identified gaps in information and data collection among involved agencies.

[118] SB 91 Sections 114-115 & 151.

- For administrative revocations or court misdemeanor convictions for Refusal. [AS 28.15.201(d)(1)]
- For DUI or Refusal felony convictions. [AS 28.15.201(d)(1)]
- For operating commercial motor vehicles. [AS 28.33.140(f)] CFR 383.51 (except A CDL holder can obtain a limited license for the base privilege (D) to drive as the vehicle being driven is a non-commercial vehicle).
- If the applicant has been convicted of DUI or Refusal while on probation for a prior DUI or Refusal conviction.
- If the applicant has been convicted of driving in violation of a limitation under AS 28.15.291(a)(2).
- If the applicant is currently revoked, suspended, denied, or cancelled in another state.
- For any other criminal offense following a court conviction. For example, the DMV has no authority to issue a limited license for a Reckless Driving conviction.

Given these limitations, limited licenses were essentially only available for misdemeanor DUI offenders. SB 91 expanded this eligibility to certain felony DUI offenders. With the passage of the new law:

- Limited licenses during a permanent license revocation are allowed if the person has successfully participated for at least 6 months, or completed court-ordered treatment (therapeutic court), has proof of insurance, and has never had a limited license revoked. A person who receives a limited license must use an Ignition Interlock Device.
- If an offender lives in a community where there is no therapeutic court, she or he may qualify for a limited license if she or he completed a treatment program with certain specified elements and can prove sobriety for 1.5 years.

As stated in Section D above, the Commission recommends extending limited licensure eligibility to Refusal offenders to the same extent as DUI offenders. Other than that, the Commission does not have any new proposals in this area. If the new limited licensure law is successful, the Commission may recommend expanding it beyond therapeutic programs in the future.

Conclusion

This report has provided an extensive review of the alcohol- and drug-related motor vehicle offenses found in Title 28. It has identified gaps in certain areas and has made a number of recommendations in this report that should promote offender rehabilitation and reduce recidivism. The appendices to this report explain the following in greater depth: the changes to

the law in this area following SB 91 (Appendix A), license revocation (Appendix B), and ignition interlock device (Appendix C). The Commission hopes this report is helpful to policy makers and will enable an informed discussion on revisions to the law in Title 28.

Appendix A

Changes to Title 28 Made by SB 91

The enactment of SB 91 in July of 2016 changed Alaska law in the areas of revocation and issuance of drivers' licenses, DWLS, and sentences for DUI and Refusal. These changes are summarized below.

a. DUI- and Refusal-related Administrative Driver's License Revocation[1]

- Any administrative license revocation for refusing a chemical or breath test after arrest for DUI or for refusing a breath or blood test after a serious injury or death accident shall be rescinded if person is acquitted, or if all criminal charges for DUI/ Refusal have been dismissed without prejudice.

b. Alcohol Safety Action Program (ASAP)[2]

- The Alcohol Safety Action Program (ASAP) is now statutorily limited to DUI/Refusal referrals from courts or DMV. DHSS must develop regulations for ASAP programs to ensure that its screenings are conducted with validated risk tools and participants are monitored as appropriate to their risk.

c. DWLS Penalties[3]

The group of offenses generally referred to as "DWLS" includes driving while license canceled, suspended, revoked, or in violation of a limitation. A person's license can be canceled, suspended, revoked, or limited for a variety of reasons, including conviction of DUI, conviction of DWLS, or conviction of other offenses.

- Under SB 91, the offense of DWLS – when not emanating from a DUI or Refusal conviction – is reduced from a crime to an infraction, meaning that a fine of $300 or less, but no jail time, is now the penalty for this offense.
- Minimum-mandatory sentences for DUI- or Refusal-related DWLS were reduced.

d. DUI/Refusal Penalties

- The first-time minimum DUI or Refusal sentence of three days must now be served on Electronic Monitoring (EM). When and where EM is not available, the offender shall serve the term in a private residence under conditions determined by the DOC Commissioner.[4]
- Maximum probation terms are reduced.[5] For 1st DUI, from 10 years to 1 year; for 2nd DUI and higher, from 10 years to 2 years; and for any felony DUI, from 10 years to 5 years.

[1] SB 91, Section 101.
[2] SB 91, Sections 171, 172.
[3] SB 91, Sections 104, 105
[4] SB 91, Section 107.
[5] SB 91, Section 79.

- Felony DUI minimum mandatory sentences are changed to presumptive ranges with the prior mandatory-minimums constituting the low end of the presumptive sentencing range.[6]
- The new Suspended Entry of Judgment (SEJ) mechanism may be available for DUI/Refusal offenses because no specific exclusion was provided in Title 28.[7] Compare AS 28.35.030(b)(2)(b)(which excluded SIS for DUI/Refusal offenses).

e. Expanded therapeutic court discretion in sentencing*[8]*

- In addition to reducing a term of imprisonment, a therapeutic court now can reduce a fine or the term of a license revocation based on the defendant's compliance with a treatment program.

f. Limited licenses during felony DUI revocation period*[9]*

- Limited licenses during a permanent license revocation are allowed if the person has successfully participated for at least 6 months, or completed court-ordered treatment (therapeutic court), has proof of insurance, and has never had a limited license revoked. A person who receives a limited license must use an Ignition Interlock Device.
- If an offender lives in community where there is no therapeutic court, s/he may qualify for a limited license if s/he completed a treatment program with certain specified elements and can prove sobriety for 1.5 years.

g. Restoration of Driver's License*[10]*

- The DMV may now restore a person's license after permanent revocation if there have been no driving-related offenses during the ten years since revocation.
- The DMV shall restore a person's license if the person had obtained a limited license for therapeutic court or satisfied rehabilitative treatment program and has now driven for three years without revocation.

[6] SB 91, Section 90.
[7] SB 91, Section 77. This inconsistency is presumed to be a drafting error, since the Commission recommended that offenses excluded from eligibility for an SIS would be similarly excluded from eligibility for an SEJ disposition.
[8] SB 91, Section 106.
[9] SB 91, Section 103.
[10] SB 91, Section 109.

Appendix B

Background of Administration and Judicial License Revocation Processes in Alaska

Administrative license revocation (ALR) differs from judicial or court-ordered license revocation in several ways.

ALR laws allow an administrative agency to take action against the driver's license at the time of citation or arrest. Typically the arresting officer confiscates the license and issues a notice. The notice serves as a temporary license for a short period during which the driver may request an administrative hearing. Regardless of the outcome of such an administrative hearing, the arrestee is still subject to a separate criminal charge that may lead to additional penalties, including judicial license actions.[1]

Like 41 other states and the District of Columbia,[2] both the Division of Motor Vehicles (DMV) and the courts in Alaska have some statutory authority to revoke drivers' licenses. The DMV administrative process and related court criminal case can be staggered (one before the other), but any revocation subsequently imposed by a court will be made concurrent with the DMV action.

1. Administrative License Revocation

In Alaska, the DMV's administrative authority to revoke licenses is statutorily limited under AS 28.15.165, 28.15.176, and 28.15.187 to cases involving:

- 'Per se' DUI (based on an illegal BAC of .08 or higher, or .04 or higher for commercial vehicles)
- Refusal of a chemical or breath test after lawful arrest for DUI;
- Refusal of a chemical test or test of breath and blood after motor vehicle accident that causes death or serious physical injury;
- Minor under 21 driving after consuming alcohol (aka "zero tolerance" and established by .02 BAC); and
- Fraudulent use of a driver's license for identification.

Most of the administrative revocations involve DUIs.[3]

When a police officer has probable cause with respect to any of these previously-listed offenses, she or he shall seize the driver's license, notify the driver that DMV intends to revoke the license, and issue a temporary license good for seven days. The revocation order will take effect in seven days unless

[1] Williams, A. F.; Weinberg, K.; and Fields, M. "The effectiveness of administrative license suspension laws." Alcohol, Drugs and Driving, 7(1):55-62, 1991.
[2] NHTSA DOT HS 810 878, Traffic Safety Facts, Administrative License Revocation, January 2008.
[3] In 2014, for example, in Alaska there were 3718 alcohol-related ALR orders issued: 3563 resulted from a per se DUI or Refusal, 154 revocations were for "zero tolerance" and 1 was from an Under 21 fraudulent use of an ID to obtain alcohol. The total does not include the administrative license *suspensions* which were also ordered in 2014 for both driving related and non-driving conduct.

the driver requests an administrative review. (The officer must also notify the driver of this right to review upon seizing the driver's license.)

If the person makes the request for a hearing, then there is no license revocation, and the person may continue to drive on the temporary license until the time of the DMV hearing or until they withdraw their request, if that first occurs. A hearing is typically scheduled 30 days out for self-represented drivers and 45 days for represented drivers. Hearings may be continued only for 'good cause' or because there has been a delay in obtaining discovery from the prosecutors. (Good cause does not include the pendency of the criminal case). About 1100 administrative hearings are scheduled every year,[4] with an 11-15% cancellation rate.[5]

At an administrative hearing, the DMV hearing officer will determine, based on the evidence presented, whether it was more probable than not that the person was operating a motor vehicle while intoxicated.[6] An ALR may be ordered only if there was a lawful arrest.

While hearing officers are not judges, a judicial review of the hearing officer's decision is available if an appeal is filed within 30 days in superior court. The hearing officer does have discretion to stay pending appeal of the ALR order.

Neither a hearing officer's decision approving an ALR nor a driver's waiver of an administrative review is admissible evidence in the related criminal case.

Mandatory revocation periods imposed for an ALR are the same as those imposed for a judicial revocation. Administrative revocation periods must be made concurrent with judicial revocation periods if based on the same incident.[7] And, just like the courts do, DMV has the authority to approve limited licenses after a DUI (but not a Refusal) revocation, provided that various statutory requirements have been met.[8]

Notably, the DMV estimates that ALR notice-and-order process "captures" many but not all DUI/Refusal cases ultimately filed in the courts.[9] Drivers whose DUI charges are based on evidence other than an illegal BAC are not subject to an ALR under current law.

Most (70-75%) Alaska drivers who are served with an ALR notice do not request a hearing; for them the period of license revocation begins 7 days after the notice**.**

2. Judicial Revocation

Judicial (court) revocation authority is found at AS 28.15.181. Court revocations differ from administrative revocations in the following ways.

[4] DMV hearing officers block off 1 hour for each hearing. The average time of a contested hearing is about 20-40 minutes. The police officer who issued the notice typically testifies by phone. DMV currently has two dedicated hearing officer positions to conduct these hearings.

[5] Hearings are cancelled because the case may have been first resolved in court, the driver has decided not to contest the revocation, or the police officer is no longer employed and the citation must be dismissed.

[6] AS 28.15.166(j). See also AS 28.35.031(a) and AS 28.15.166(g).

[7] See AS 28.15.183(f), citing 28.15.185.

[8] Refusal offenders are not eligible for limited licenses.

[9] Cases not "captured" by the ALR process are those in which the evidence of impairment may be wholly circumstantial, or may involve controlled substances alone or in tandem with alcohol.

Most significantly:

- Courts are statutorily authorized (post-conviction) to revoke licenses for a larger number of offenses. Courts can revoke licenses for DUI offenses if the driver was under the influence of only drugs or inhalants or a mix of drugs and alcohol when the BAC is below .02, or for other driving offenses designated by the Legislature, such as reckless driving.[10]
- The Court of Appeals has interpreted current statutes to allow even district courts to impose a revocation term as long as a lifetime,[11] and make its revocation term consecutive to a DMV revocation. In contrast, DMV can impose only concurrent terms.
- At sentencing, courts impose a mandatory IID requirement which operates as a bar to license reinstatement, even post-revocation.[12] An administrative licensing revocation order does not include an IID requirement for relicensing.[13]

Also:

- In a criminal case, decisions are made by a judge and/or a jury. However, the same procedural safeguards apply in civil driver's license revocation proceedings for driving while intoxicated as apply in criminal prosecutions for that offense.[14]
- A criminal court will hear all legal challenges; in contrast, the administrative license revocation process is typically limited to the legality of the stop and probable cause.
- A license can only be revoked in a criminal case after a conviction. A conviction requires a much higher standard of proof (i.e. proof beyond a reasonable doubt) for the imposition of any penalty including the license revocation and the delays discussed below.
- State court proceedings typically involve greater delays. According to the Alaska Court System, the average (mean) time from start to finish in all misdemeanor criminal cases is 78 days for a guilty or no contest plea, and 244 days for a jury trial. The average time for felony cases is 195 days for a guilty or no contest plea, and 538 days for a jury trial.
- A judicially-ordered license revocation is only one of a number of sanctions (including imprisonment and probation) which can be imposed in a criminal case.
- In criminal cases, DMV's statutory role is peripheral, i.e. to simply implement a court's revocation order. With ALR, DMV has its own process, beginning with its notice.
- As a practical matter, license revocation is typically construed as a condition of probation not to drive. A court has some ability to supervise the driver during the period of probation. For misdemeanors,

[10] See 28.15.281.
[11] *Dodge v. Anchorage*, 877 P.2d 270 (Alaska App. 1994).
[12] Traffic Injury Research Foundation. (2012). *Alcohol Interlock Program Technical Assistance and Training: Alaska*. Ottawa, Ontario: Traffic Injury Research Foundation. Retrieved from http://www.ajc.state.ak.us/sites/default/files/imported/acjc/dui/nhtsa_tech_assistance_ak_4_ignition_interlock.pdf
[13] Both court and DMV-approved limited licenses do require IID installation.
[14] *Hartman v. State of Alaska*, 152 P.3d 1118 (Alaska 2007).

ongoing court supervision is informal but the court may direct the Alaska Safety Action Program to supervise referrals to treatment.[15] For felonies, supervision is provided by DOC probation officers.

- Pursuant to changes recently enacted by SB 91, most drivers whose criminal DUI/Refusal cases are dismissed should be eligible to have any ALR rescinded. It's unclear how this change might impact the number of administrative revocation notices, reviews, or the number of DUI trials.

3. Research shows that administrative license (ALR) revocations are effective

Effective correction is provided by "swift, certain and fair" or proportionate sanctions.[16] Sanctions which can be swiftly put into effect are more effective in deterring reoffending. Therefore, administrative license revocation (ALR) – which can take effect much more quickly (7-45 days) than judicial license revocation (78-538 days) - should better reduce DUI recidivism. ALR is also consistent with the 'certainty principle' for effective correction. Administrative actions that utilize a lower standard of proof provide a more certain outcome than in a criminal court process. Finally, ALR is a fair sanction in that license revocation is a logical consequence for illegal driving conduct. Also, it is also seems fair to those who experience it if all similarly-situated drivers receive the same punishment.

ALR's effectiveness has been substantiated by various studies. Not only is ALR effective in reducing recidivism among all levels of offenders but it appears to be more effective than post-conviction (judicial) license revocation processes.

- Studies of pre-conviction administrative license revocation/suspension laws passed in various states showed consistent effects across the different group of DUI offenders studied; although the results depended heavily on how quickly the sanction was effective. In general, the research evidence shows that administrative driver license suspension is effective "in reducing not only crashes overall, but also crashes where alcohol was a factor. The evidence shows that administrative license action for per se offenses exerts both specific deterrent (or incapacitative) effects ranging from 15% to 35% and general deterrent effects of 5% to 40%."[17]
- Rogers (1997) found that the passage of an ALR law was associated with significant reductions in subsequent alcohol-related crashes and DUI convictions among both first and repeat offenders, with effect sizes ranging from 27% to 33% for alcohol-related crashes and 19% to 27% for subsequent DUI convictions.[18]
- ALR laws have been shown in a recent nationwide study to reduce fatal crashes involving drinking drivers by 13 to 19 percent.[19]
- One study comparing both pre-conviction (administrative) and post-conviction mandatory license suspension in 46 states evaluated the impact of sanctions on monthly alcohol-involved fatal

[15] From 7/1/15 to 3/14/16, ASAP opened 4060 cases; 2491 (61%) 2491 or 61% of these referrals were OUI/DUI/Refusal related.
[16] See the Commission's "Justice Reinvestment Report," December 2015, at 12. Available at http://www.ajc.state.ak.us/sites/default/files/imported/acjc/AJRI/ak_jri_report_final12-15.pdf.
[17] Blomberg, R. D., D. F. Preusser, and R. G. Ulmer. "Deterrent Effects of Mandatory License Suspension for DWI Conviction." Technical Report No. DOT-HS-807-138. National Highway Traffic Safety Administration, Washington, D.C., 1987.
[18] Rogers, P. N. "The Specific Deterrent Impact of California's 0.08% Blood Alcohol Concentration Limit and Adm Per Se" License Suspension Laws: Vol. 2. Department of Motor Vehicles, Sacramento, Calif., 1997.
[19] Voas, R. B.; Tippetts, A. S.; and Fell, J. C. "The relationship of alcohol safety laws to drinking drivers in fatal crashes." Accident Analysis and Prevention, 32:483-492, 2000.

crashes occurring between 1976 and 2002. The researchers found that administrative pre-conviction license suspension was associated with a significant 5% reduction in alcohol-involved fatal crashes, but that post-conviction suspension appeared to have little effect, a finding they hypothesize may be due to the speed of punishment associated with the administrative application of this sanction.[20]

As we have discussed, relative to judicial revocation processes, administrative license revocations are effective, efficient, expeditious and economical. The evidence is that administrative license revocations are effective in reducing recidivism in large part because they provide an immediate consequence for the offending conduct. They are efficient because they concern only the licensing status, there is a lower burden of proof for the offending conduct, and there is a non-discretionary mandatory outcome if sufficient evidence is provided by the police officer. They are expeditious because most of the revocations go into effect within seven days, with even contested hearings being held within 45 days. They are economical because the presence of prosecutors, public defenders and juries are not required and all witnesses can attend by phone. Thus, administrative license revocation (ALR) should be maintained.

Furthermore, as long as the legislature requires DMV to rescind an ALR whenever a related criminal case is dismissed, there is no longer any reason to limit the use of ALR to *per se* offenses. As ALRs are effective, efficient et cetera, their use should be expanded to at least all other offenses for which mandatory court revocation is currently required. This will lessen the reliance on protracted criminal process for appropriate license actions, and expands the advantages of ALR to other offenses.

Are courts' license revocation orders and DMV license revocation authority entirely congruent such that statutory judicial authority is superfluous and may be eliminated, at least in mandatory license revocation cases? No.

- First, the therapeutic courts have newly created authority to alter the length of otherwise-mandatory terms of license revocation as a means of providing an incentive for the completion of a comprehensive program of rehabilitation. DMV cannot alter mandatory terms.
- Second, since SB 91 now requires DMV rescission of an ALR even when there is a dismissal without prejudice, there may be some cases in which an individual is ultimately convicted in a re-filed case and after an ALR is rescinded. In such cases, judicial revocation authority is the only authority for imposing a post-conviction revocation.
- Third, DMV reports that there are some instances in which it is not notified of citations or arrests by law enforcement for *per se* offenses. In those instances only a post-conviction judicial revocation order would occasion a license revocation.
- Fourth, existing statutes allow a court to impose longer license revocation terms than the minimum-mandatory terms imposed by DMV, e.g. up to a lifetime revocation for a misdemeanor DUI offender, and to make court-ordered revocation terms consecutive to administrative revocation terms. See AS 28.15.181(c). Anecdotally, courts rarely impose additional time or make

[20] Wagenaar, A., M. Maldonado-Molina, D. Erickson, L. Ma, A. Tobler, and K. Komroa, "General deterrence effects of U.S. statutory DUI fine and jail penalties: Long-term follow-up in 32 states." Accident Analysis and Prevention 39 (2007) 982–994.

terms consecutive. However, consecutive revocation terms may be appropriate if an individual is facing a lengthy jail sentence, say for a combination of a misdemeanor DUI and a non-vehicular felony offense.

Because they are not entirely congruent, both authorities should be maintained.

Appendix C

Ignition Interlock Devices – Alaska

April 5, 2016

Contents

Highlights

Alaska Ignition Interlock Program	- Program type: Judicial[149] - Year interlock legislation first passed: 1989[150] - Type of ignition interlock law: Mandatory[151] - Offenders subject to ignition interlock device: All DUI/OUI offenders[152] - Interlocks required for first-time offenders: 6 months[153] - Number of interlocks currently installed (2013): 1,922[154] - Number of interlocks per ten-thousand residents (2013): 26.3[155]
Ignition Interlock Devices in the literature	- Ignition interlock devices reduce recidivism among first-time and repeat offenders while installed.[156] - Ignition interlock devices have little to no residual benefit: once removed from an offender's vehicle, ignition interlock users reoffend at a rate similar to those who never had an ignition interlock device installed.[157] - Research provides strong evidence that offenders who install an ignition interlock device are sufficiently similar to those who do not, i.e., selection bias is likely not an issue.[158]

Ignition Interlock Device Estimates – 2013[159]					
	Installed Ignition Interlock Devices	Population	Ignition Inter-lock Devices per 10,000	Fatal Alcohol-Impaired-Driving Crash (FAIDC)	Ignition Inter-lock Devices Per FAIDC
U.S.	304,600	313 million	9.7	7,356	41
Alaska	1,922	731,449	26.3	11[160]	175

[149] NHTSA. (2013). *Digest of Impaired Driving and Selected Beverage Control Laws, 28th Edition* (DOT HS 812 119). Washington, DC: National Highway Traffic Safety Administration. Retrieved from http://www.nhtsa.gov/staticfiles/nti/pdf/812119-2013ImpairedDrivingDigest.pdf

[150] Schmitz, R. (2009). *Ignition Interlock Devices in Alaska* [PowerPoint slides]. Retrieved from http://www.correct.state.ak.us/commish_corner/powerpoint/040409_ignition_interlock.ppt

[151] NHTSA. (2013). *Digest of Impaired Driving and Selected Beverage Control Laws, 28th Edition* (DOT HS 812 119). Washington, DC: National Highway Traffic Safety Administration. Retrieved from http://www.nhtsa.gov/staticfiles/nti/pdf/812119-2013ImpairedDrivingDigest.pdf

[152] *Id*.

[153] Operating a vehicle, aircraft or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, Alaska Stat. § 28.35.030

[154] Roth, R. (2013). *2013 Survey of Currently-Installed Interlocks in the U.S.* Retrieved from http://www.rothinterlock.org/2013_survey_of_currently_installed_interlocks_in_the_us_revised-12_17_13.pdf

[155] *Id*.

[156] Mayer, R. (2014). *Ignition interlocks – A toolkit for program administrators, policymakers, and stakeholders. 2nd Edition* (Report No. DOT HS 811 883). Washington, DC: National Highway Traffic Safety Administration. Retrieved from http://www.nhtsa.gov/staticfiles/nti/pdf/IgnitionInterlocks_811883.pdf

[157] *Id*.

[158] Elder, R., et al. (2011). Effectiveness of Ignition Interlocks for Preventing Alcohol-Impaired Driving and Alcohol-Related Crashes. *American Journal of Preventive Medicine*, 40(3):362–376. Retrieved from http://www.thecommunityguide.org/mvoi/PIIS0749379710007105.pdf

[159] Roth, R. (2013). *2013 Survey of Currently-Installed Interlocks in the U.S.* Retrieved from http://www.rothinterlock.org/2013_survey_of_currently_installed_interlocks_in_the_us_revised-12_17_13.pdf

[160] Alaska Department of Transportation. (n.d.). *Alcohol Impaired (Confirmed BAC >.08) Driving Fatalities and Fatal Crashes 1994-2014*. Retrieved from http://dot.alaska.gov/stwdplng/hwysafety/assets/pdf/Alcohol_Impaired_Driving_Fatalities_and_Fatal_Crashes_1994_2014.pdf

The Evidence Base

Effects of Ignition Interlock Devices on Recidivism

Research over the last 20 years has consistently found that ignition interlock devices reduce recidivism while installed on DUI/OUI offenders' vehicles (by approximately 67 percent relative to comparison groups[161]).[162] Strong evidence suggests that this is true whether the offender is a first-time offender, a repeat offender or a high-risk offender[163].[164] However, research has also consistently found that once ignition interlock devices are removed, DUI/OUI recidivism rates between those who had an ignition interlock device installed and those who did not (whether because they declined to install one or because they were deemed ineligible), quickly resemble one another.[165,166]

Research has also found that ignition interlock devices can be dependable predictors of future DUI/OUI recidivism: higher rates of failed breath tests, including, failed morning-breath tests, which suggests heavy drinking the night before, predict higher rates of post-ignition interlock recidivism.[167]

Finally, as jurisdictions differ as to eligibility criteria and whether ignition interlock devices are mandatory or optional, a concern is that the observed differences in recidivism is a result of statistical bias. However, research suggests that offenders who participate in ignition interlock programs and offenders who do not (irrespective of the reason) are sufficiently similar.[168]

Effects of Ignition Interlock Devices on Public Safety

A study of the Quebec ignition interlock program showed significantly higher rates of vehicle accidents among offenders with an installed ignition interlock device compared to offenders with a suspended license – true of both first-time and repeat offenders.[169] A study of the California ignition interlock program showed similar results: offenders with an installed ignition interlock device had an 84% higher chance of being involved in an accident than the comparison group; repeat offenders had a 130% higher chance of being involved in an accident than the

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[161] Guide to Community Preventive Services. (n.d.). *Reducing alcohol-impaired driving: ignition interlocks*. Retrieved December 9, 2015, from http//www.thecommunityguide.org/mvoi/AID/ignitioninterlocks.html. Last updated: 9/24/2013

[162] Mayer, R. (2014). *Ignition interlocks – A toolkit for program administrators, policymakers, and stakeholders. 2nd Edition* (Report No. DOT HS 811 883). Washington, DC: National Highway Traffic Safety Administration. Retrieved from http://www.nhtsa.gov/staticfiles/nti/pdf/IgnitionInterlocks_811883.pdf

[163] A high risk offender is an individual who repeatedly drives while intoxicated and/or drives with high breath-alcohol concentrations.

[164] Mayer, R. (2014). *Ignition interlocks – A toolkit for program administrators, policymakers, and stakeholders. 2nd Edition* (Report No. DOT HS 811 883). Washington, DC: National Highway Traffic Safety Administration. Retrieved from http://www.nhtsa.gov/staticfiles/nti/pdf/IgnitionInterlocks_811883.pdf

[165] *Id*.

[166] Elder, R., et al. (2011). Effectiveness of Ignition Interlocks for Preventing Alcohol-Impaired Driving and Alcohol-Related Crashes. *American Journal of Preventive Medicine*, 40(3):362–376. Retrieved from http://www.thecommunityguide.org/mvoi/PIIS0749379710007105.pdf

[167] Mayer, R. (2014). *Ignition interlocks – A toolkit for program administrators, policymakers, and stakeholders. 2nd Edition* (Report No. DOT HS 811 883). Washington, DC: National Highway Traffic Safety Administration. Retrieved from http://www.nhtsa.gov/staticfiles/nti/pdf/IgnitionInterlocks_811883.pdf

[168] Elder, R., et al. (2011). Effectiveness of Ignition Interlocks for Preventing Alcohol-Impaired Driving and Alcohol-Related Crashes. *American Journal of Preventive Medicine*, 40(3):362–376. Retrieved from http://www.thecommunityguide.org/mvoi/PIIS0749379710007105.pdf

[169] *Id*.

comparison group.[170] Importantly, the absolute accident rate for program participants was not significantly different than that of the general population in California.[171]

In summary, while offenders with installed ignition interlock devices tend to have more vehicle accidents than offenders with suspended licenses, offenders with installed ignition interlock devices tend to have about the same number of vehicle accidents as the general public. Accordingly, the safety hazard, rather than ignition interlock devices, may be time spent on the roadways -- while it is well documented that offenders with suspended licenses continue to drive, research has shown that offenders with installed ignition interlock devices drive more frequently and further afield.[172]

Finally, one study found that offenders with installed ignition interlock devices have fewer alcohol-related vehicle accidents than offenders with suspended licenses.[173]

Benefits of an Ignition Interlock Program

The following is verbatim from NHTSA's 2014*, Ignition Interlocks – A toolkit for program administrators, policymakers, and stakeholders*[174]:

Ignition interlocks, when appropriately used, prevent alcohol-impaired driving by DWI offenders, resulting in increased safety for all roadway users. There are other benefits to ignition interlocks, however, that enhance their value.

- **Reduction in Recidivism**. Research has shown that, while installed on an offender's vehicle, ignition interlocks reduce recidivism among both first-time and repeat DWI offenders.

- **Legal Driving Status**. Ignition interlocks permit offenders to retain or regain legal driving status, thus enabling them to maintain employment and manage familial and court-ordered responsibilities that require driving. This is a particularly relevant benefit, as many offenders without interlocks drive illegally on a suspended/revoked license, often after drinking. The installation of an interlock on the offender's vehicle reduces the probability of this occurring, thereby improving public safety.

- **Offenders and Families Approve**. A majority of offenders surveyed believe ignition interlock sanctions to be fair and reduce driving after drinking. Family members believed that ignition interlocks provided a level of reassurance that an offender was not driving while impaired and reported a generally positive experience and impact on the offender's drinking habits.

- **Predictor of Future DWI Behavior**. The record of breath tests logged into an ignition interlock has been found to be an excellent predictor of future DWI recidivism risk. Offenders with higher rates of failed BAC tests have higher rates of post-ignition interlock recidivism, information that could be critical regarding whether to restore an offender's license, and any conditions under which such action may occur.

- **Cost Effectiveness**. As with any sanction, there are costs. Most administrative costs (i.e., those costs associated with managing the interlock program) are absorbed by the State. Costs associated with the devices themselves, including installation, maintenance, monitoring, estimated at approximately $3 to $4 per day, are borne by the offender. Research has estimated a cost/benefit of an ignition interlock sanction at $3 for a first time offender, and $4 to $7 for other offenders accruing for each dollar spent on an interlock program. The cost of an interlock sanction is less

[170] *Id*.
[171] *Id*.
[172] *Id.*
[173] Guide to Community Preventive Services. (n.d.). *Reducing alcohol-impaired driving: ignition interlocks*. Retrieved December 9, 2015, from http//www.thecommunityguide.org/mvoi/AID/ignitioninterlocks.html. Last updated: 9/24/2013
[174] Mayer, R. (2014). *Ignition interlocks – A toolkit for program administrators, policymakers, and stakeholders. 2nd Edition* (Report No. DOT HS 811 883). Washington, DC: National Highway Traffic Safety Administration. Retrieved from http://www.nhtsa.gov/staticfiles/nti/pdf/IgnitionInterlocks_811883.pdf

than incarceration, vehicle impoundment, or other monitoring devices such as alcohol monitoring bracelets, with the costs accruing to the offender through a series of fees rather than the State. As interlock programs mature and more offenders are added into the program, the cost/benefit ratio should improve.

- **Substance Abuse Treatment**. A number of States require the installation of an ignition interlock as a final step toward an unrestricted driving privilege after DWI conviction, sometimes combined with substance abuse treatment. In these instances, the data collected by the interlock can provide treatment providers with current, objective information regarding the offender's behavior, which should result in a better treatment outcome. The combination of an interlock and treatment provides a benefit for the public, in that counseling based on objective data from the interlock's records rather than subjective information provided by the offender should have a more positive effect on the offender, resulting in an increased probability of a reduction in recidivism.

Alaska

Ignition Interlock Program

Depending on the state, the authority to impose an ignition interlock sanction may sit with the judiciary, the agency responsible for driver's licenses (typically, the Department of Motor Vehicles) or a combination of the two. The authority to impose an ignition interlock sanction in Alaska sits with the judiciary.[175]

A DUI/OUI conviction results in a mandatory ignition interlock sanction in Alaska.[176] The length of the sanction depends on the number of prior, misdemeanor DUI/OUI convictions: beginning with a minimum of 6 months for the first offense and ending with a minimum of 36 months for the sixth (or greater) offense.[177]

Additionally, following a mandatory license revocation, a DUI/OUI offender must use a motor vehicle equipped with an ignition interlock device to drive during his or her period of probation – a 'limited license' is not available to offenders who refused to submit to a breath test.[178,179] First-time offenders may apply for a limited license to drive following 30 days of license revocation; probationary period lasts ten years.[180] Second-time or higher (non-felony) offenders may apply for a limited license to drive following 90 days of license revocation; probationary period lasts ten years.[181] See Appendix A for an explanatory chart.

Exceptions to the sanction exist. Due to the State's large land area and dispersed population, offenders are not required to use an ignition interlock device if they operate a motor vehicle in certain communities, namely, communities in which car registration/insurance is not required.[182,183] Additionally, the court may allow an offender limited driving privileges without an ignition interlock device if the offender is required as a condition of employment to drive his/her employer's motor vehicle and if the offender's driving will not create substantial danger.[184]

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[175] NHTSA. (2013). *Digest of Impaired Driving and Selected Beverage Control Laws, 28th Edition* (DOT HS 812 119). Washington, DC: National Highway Traffic Safety Administration. Retrieved from http://www.nhtsa.gov/staticfiles/nti/pdf/812119-2013ImpairedDrivingDigest.pdf

[176] Operating a vehicle, aircraft or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, Alaska Stat. § 28.35.030

[177] *Id.*

[178] Alcohol-related offenses, Alaska Stat. § 12.55.102

[179] Limitation of driver's license, Alaska Stat. § 28.15.201

[180] Limitation of driver's license, Alaska Stat. § 28.15.201

[181] Limitation of driver's license, Alaska Stat. § 28.15.201

[182] Motor vehicle liability insurance required; exemptions, Alaska Stat. § 28.22.011

[183] Alaska Court System. (2015). *Ignition Interlock Device Information Sheet* (CR-483). Retrieved from http://www.courtrecords.alaska.gov/webdocs/forms/cr-483.pdf

[184] Alcohol-related offenses, Alaska Stat. § 12.55.102

In 2013, there were approximately 1,922 ignition interlock devices installed in Alaska, which made the State fifth in the nation in per capita installed ignition interlock devices: 26.3 devices per 10,000 residents.[185] Additionally, in 2013, Alaska had the sixth highest number of installed ignition interlock devices per fatal alcohol-impaired-driving crash in the nation at 175 (an estimated 11 fatal alcohol-impaired-driving crashes occurred in Alaska in 2013).[186,187]

Ignition Interlock Device Estimates – Alaska[188]									DPS[189]
Year	Installed Ignition Interlock Devices	Rank on Installed IIDs	Popula-tion	IIDs per 10,000	Rank on IIDs per 10,000	Fatal Alcohol-Impaired-Driving Crash[190]	IIDs Per FAIDC	Rank on IIDs Per FAIDC	DUI/OUI Arrests
2014	--	--	735,132	--	--	23	--	--	2,395
2013	1,922	32	731,449	26.3	5	11	175	6	2,658
2012	2,175	31	735,231	29.6	4	11	198	4	3,101
2011	3,646	25	710,231	51.3	2	18	203	1	4,388
2010	1,245	--	698,473	17.8	--	15	83	--	4,934
2009	317	--	668,931	4.7	--	16	20	--	5,384
2008	--	--	--	--	--	16	--	--	5,396
2007	90	--	670,053	1.3	--	13	7	--	5,167

Based on data from the Alaska Department of Public Safety, DUI/OUI arrests have been declining in Alaska since 2008. The average year-over-year drop between 2008 and 2014 was 15 percent. At its peak in 2008, 5,396 individuals were arrested for a DUI/OUI; in 2014, 2,395 individuals were arrested.

Having peaked in 2011, installed ignition interlock devices in Alaska are declining as well. However, there is insufficient evidence to draw a correlation between declining DUI/OUI arrests and declining installed ignition interlock devices.

[185] Roth, R. (2013). *2013 Survey of Currently-Installed Interlocks in the U.S.* Retrieved from http://www.rothinterlock.org/2013_survey_of_currently_installed_interlocks_in_the_us_revised-12_17_13.pdf

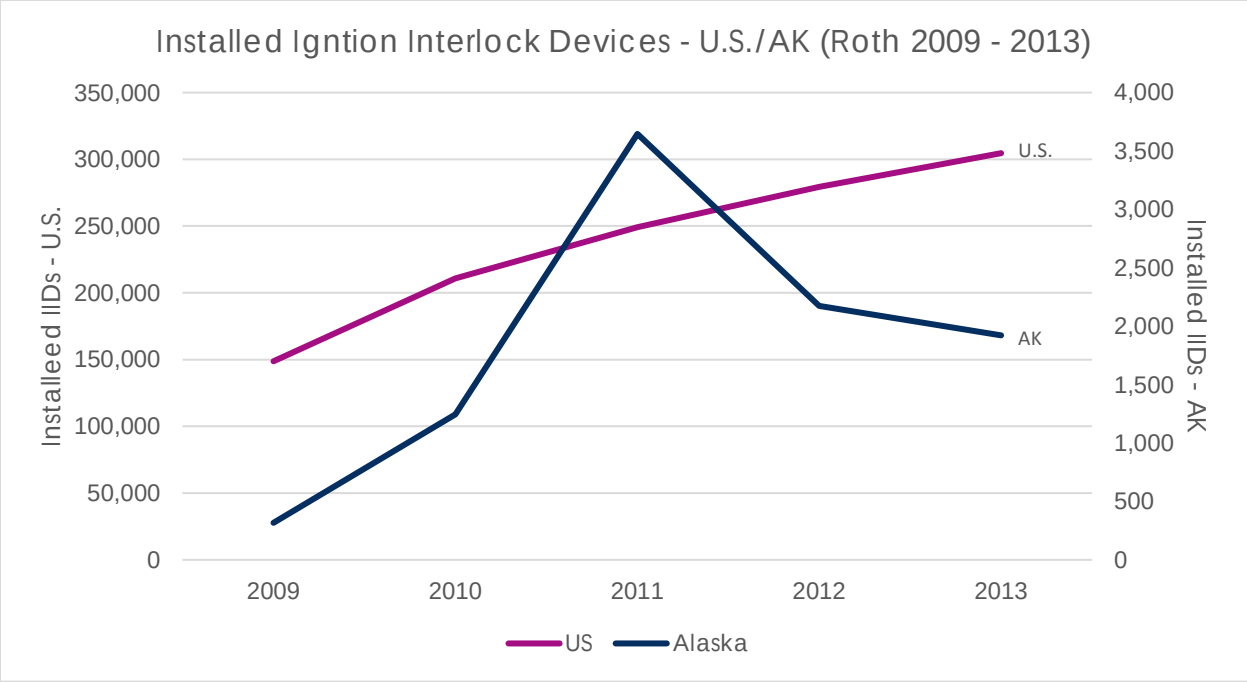
[186] *Id*.

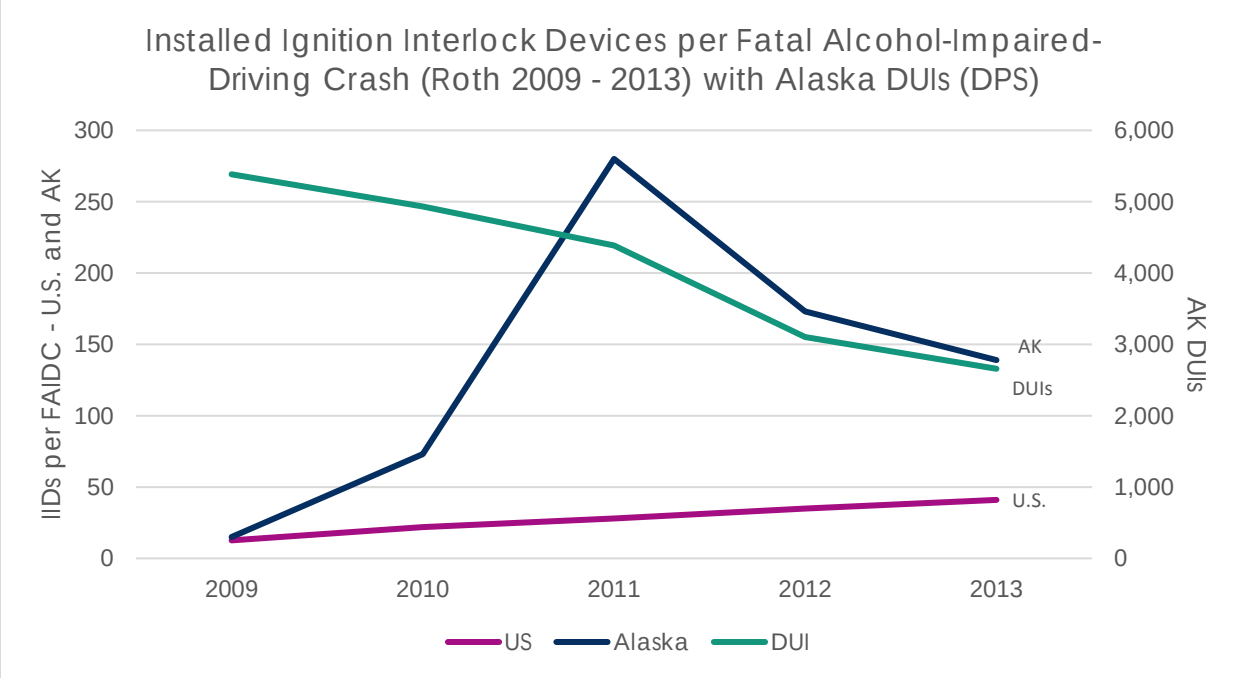
[187] Alaska Department of Transportation. (n.d.). *Alcohol Impaired (Confirmed BAC >.08) Driving Fatalities and Fatal Crashes 1994-2014*. Retrieved from http://dot.alaska.gov/stwdplng/hwysafety/assets/pdf/Alcohol_Impaired_Driving_Fatalities_and_Fatal_Crashes_1994_2014.pdf

[188] Compiled from data at *Roth Interlock Research Data*, http://www.rothinterlock.org/

[189] Alaska Department of Public Safety, Criminal Records & Identification Bureau (2007-2014). *Crime in Alaska*. Juneau, AK, Retrieved from http://www.dps.alaska.gov/statewide/ucr.aspx

[190] Alaska Department of Transportation. (n.d.). *Alcohol Impaired (Confirmed BAC >.08) Driving Fatalities and Fatal Crashes 1994-2014*. Retrieved from http://dot.alaska.gov/stwdplng/hwysafety/assets/pdf/Alcohol_Impaired_Driving_Fatalities_and_Fatal_Crashes_1994_2014.pdf





Evidenced suggests that some DUI/OUI offenders routinely delay reinstating their driving privileges following the period of license revocation.[191] Depending upon what assumptions are made, 38 percent to 44 percent of offenders in Alaska during 2013 and 2014 did not reinstate their driving privileges following the period of license revocation -- some portion of this may be attributable to offenders who did not comply with the ignition interlock order, as

[191] Rogers, P. (2012). *Identifying Barriers to Driving Privilege Reinstatement among California DUI Offenders* (Cal-DMV-RSS-12-237). Elk Grove, CA: California Office of Traffic Safety. Retrieved from http://apps.dmv.ca.gov/about/profile/rd/r_d_report/Section_3/S3-237.pdf

compliance is required for license reinstatement. However, based on the available data, it is difficult to draw definitive conclusions concerning DUI/OUI convictions, license revocations and license reinstatements.

	License Reinstated following IID (DMV)[192]	Installed Ignition Interlock Devices[193]	DUI/OUI Arrests (DPS)[194]	Estimated DUI/OUI Convictions[195]
2015	1,450[196]	N/A	N/A	N/A
2014	1,312	N/A	2,395	2,108
2013	N/A	1,922	2,658	2,339

Program Strengths

The Alaska ignition interlock program has multiple strengths.

- Being imposed by the court, the ignition interlock program naturally assumes the strengths inherent to that system. For example, where an administrative program might struggle with non-compliance, the court is able to bring meaningful sanctions to bear.
- All DUI/OUI offenders are subject to the ignition interlock sanction, which means that, in order to drive, all offenders must use an ignition interlock device during the sanction period; only one exception to this exists: an offender who drives an employer's vehicle may drive that vehicle without an ignition interlock device installed.
- Installation of an ignition interlock device is a condition of license reinstatement, a condition that cannot be circumvented or 'waited out', i.e., the requirement does not expire at the end of the probation.[197]
- Some financial offsetting is available to offenders. Court fees/fines may be reduced by the amount of the costs associated with the ignition interlock device.
- Hard-suspension periods are kept short in Alaska – for most offenders, 30 or 90 days. Long suspension periods may provide offenders the opportunity to 'learn' that they can drive unlicensed, further eroding the percentage of offenders who install ignition interlock devices.[198]
- Efforts are coordinated with the DMV. DUI/OUI offenders, following the hard-suspension period, are issued a limited license with a 'C' restriction and the words "IID REQUIRED" printed on the back.[199] This provides law enforcement an additional opportunity to identify an offender driving a vehicle without an ignition interlock device; additionally, it dissuades car rental companies from abetting an offender.[200]
- Non-compliance and failed-breath tests are not grounds for dismissal from the program. Arguably, those who struggle the most are the most likely to recidivate and, as such, are most likely to benefit from a program that attempts to separate drinking and driving.[201]
- There is device oversight. The Department of Corrections sets standards for the calibration, certification, maintenance and monitoring of ignition interlock devices.[202]

[192] DMV, email, January 8, 2016.
[193] Compiled from data at *Roth Interlock Research Data*, http://www.rothinterlock.org/
[194] Alaska Department of Public Safety, Criminal Records & Identification Bureau (2007-2014). *Crime in Alaska*. Juneau, AK, Retrieved from http://www.dps.alaska.gov/statewide/ucr.aspx
[195] Based on work done by R. Jones et al. (1999), 88 percent of DUI/OUI arrests are assumed to result in convictions.
[196] Data from January – November 2015 only.
[197] Traffic Injury Research Foundation. (2012). *Alcohol Interlock Program Technical Assistance and Training: Alaska.* Ottawa, Ontario: Traffic Injury Research Foundation.
[198] *Id.*
[199] *Id.*
[200] *Id.*
[201] *Id.*
[202] *Id.*

Program Challenges

The Alaska ignition interlock program has multiple challenges.

- Low participation rate. According to a study of the Alaska ignition interlock program done in 2012, a 'majority' of eligible offenders either "fail to have the interlock ordered by the courts or fail to install the device even if they receive a judicial order to do so."[203]
- There is no mechanism to track whether an offender complies with the court order and installs an ignition interlock device.[204]
- There is very little in the way of monitoring of offenders once an ignition interlock device is installed -- the device must be inspected (calibrated, maintained and checked for tampering) every 90 days by an authorized installer but the results of the inspection are merely 'made available' to relevant state agencies.[205]
- Data from ignition interlock devise are not proactively collected or analyzed; for example, based on the result of failed-breath tests, tightening or adding sanctions.
- There is a lack of cellular or otherwise wirelessly-enabled ignition interlock devices, which would allow the imposition of timely sanctions.
- There are no graduated sanctions or performance-based exist criteria, e.g., must not blow positive during the final six weeks of sanction period.[206]
- There is a lack of vender oversight. To ensure consistent practices, oversight of vender protocols is important particularly in states with multiple vendors.[207]
- The ignition interlock sanction is not applied to remote areas of the state. While economies of scale are lacking in remote areas and an unconnected road system make it difficult for offenders to travel to venders, there are individuals exempt from the sanction.[208]
- While most offenders in Alaska are evaluated for alcohol-abuse treatment, using the information collected from an ignition interlock device to inform and tailor treatment is a missed opportunity.

Statutory Authority

Driving Under the Influence

Implied Consent (AS 28.35.031)

A person who drives a motor vehicle in Alaska is considered to have given consent to a preliminary breath test to determine the alcohol content of his or her blood or breath. A law enforcement officer may administer such a test if he or she has probable cause to believe that a person was operating a motor vehicle and was impaired as a result of alcohol.

Refusal to submit to a preliminary breath test is an infraction.

The DMV: Administrative Revocations (AS 28.15.165)

If a person driving a motor vehicle refuses to submit to a breath test or has a blood-alcohol content of 0.08 or more as determined by a breath test,[209] the person's driver's license is seized by the law enforcement officer and he/she

[203] *Id.*
[204] *Id.*
[205] *Id.*
[206] *Id.*
[207] *Id.*
[208] *Id.*
[209] 0.08 grams or more of alcohol per 210 liters of breath

is provided with a notice that acts as a temporary driver's license. The notice states that the Department of Motor Vehicles[210] intends to revoke the person's driver's license in seven days. The driver may request an administrative review of their license revocation but must do so prior to the end of the seven days.

The length of administrative license revocation follows the minimums as set out in AS 28.15.181 for court revocation (see *The Court: License Revocation* below).

The Court: Imprisonment and Fines (AS 28.35.030)

Upon conviction of driving while under the influence the court shall impose a minimum sentence of imprisonment of:

- not less than 72 consecutive hours and a fine of not less than $1,500 if the person has **not been previously convicted**;
- not less than 20 days and a fine of not less than $3,000 if the person has been previously convicted **once**;
- not less than 60 days and a fine of not less than $4,000 if the person has been previously convicted **twice** and is not convicted of a felony;
- not less than 120 days and a fine of not less than $5,000 if the person has been previously convicted **three** times and is not convicted of a felony;
- not less than 240 days and a fine of not less than $6,000 if the person has been previously convicted **four** times and is not convicted of a felony;
- not less than 360 days and a fine of not less than $7,000 if the person has been previously convicted **more than four** times and is not convicted of a felony.

Notwithstanding the fines listed above, if the court imposes probation under AS 12.55.102 (see *The Court: Ignition Interlock Device as Component of Probation* below) the court may reduce fines by the cost of the ignition interlock device.

A person is convicted of a class C felony if the person has been convicted two or more times since January 1, 1996, and within the 10 years of the current offense. In such cases, the court shall impose a minimum fine of $10,000 and shall impose a minimum sentence of imprisonment of:

- not less than 120 days if the person has been previously convicted twice;
- not less than 240 days if the person has been previously convicted three times;
- not less than 360 days if the person has been previously convicted four or more times.

The Court: License Revocation (AS 28.15.181)

If the court convicts a person of driving under the influence or refusal to provide a breath test, the court will revoke that person's driver's license concurrent with or consecutive to an administrative revocation; the minimum periods of revocation are as follows:

- not less than 90 days if the person has **not been previously convicted**;
- not less than one year if the person has been previously convicted **once**;
- not less than 3 years if the person has been previously convicted **twice**;
- not less than 5 years if the person has been previously convicted **more than twice**.

The court may terminate a revocation for a DUI/OUI or refusal once the appropriate minimum period has elapsed and the driver meets certain conditions.[211]

[210] Definitions for title, Alaska Stat. § 28.90.990

[211] Periods of limitation, suspension, revocation, or disqualification; opportunity for hearing and surrender of license, Alaska Stat. § 28.15.211(d)(e): "A person whose driver's license has been revoked may apply to the department for the issuance of a new license, but shall submit to reexamination, pay all required fees including a

Where a person is convicted of a class C felony, the court shall permanently revoke the person's driver's license.[212]

Ignition Interlock Devices

The Court: Ignition Interlock Device as Component of Sentence (AS 28.35.030)

Upon conviction of driving while under the influence the court shall require the offender to use an ignition interlock device after the offender regains the privilege to drive, including any limited privilege to drive, for a minimum of:

- six months if the person has **not been previously convicted**;
- 12 months if the person has been previously convicted **once**;
- 18 months if the person has been previously convicted **twice** and is not convicted of a felony;
- 24 months if the person has been previously convicted **three** times and is not convicted of a felony;
- 30 months if the person has been previously convicted **four** times and is not convicted of a felony;
- 36 months if the person has been previously convicted **more than four** times and is not convicted of a felony.

Where a person is convicted of a class C felony, the court shall require the offender to use an ignition interlock device after the offender regains the privilege to drive for a minimum of 60 months.

The Court: Ignition Interlock Device as Component of Probation (AS 12.55.102)

Following any administrative and/or court-ordered license revocation(s), the court may require a person convicted of an offense involving the use, consumption, or possession of an alcoholic beverage to drive only motor vehicles with ignition interlock devices installed throughout his or her period of probation, or, generally as part of the imposed sentence.

Furthermore, the defendant must surrender his or her driver's license whereupon he or she will be issued a certificate valid for the duration of the probation or a copy of the defendant's judgment of conviction.

Additionally, the defendant must certify that he or she understands the following provisions of the law:[213]

- He or she is subject to the penalties for driving with a revoked license under AS 28.15.291 if the vehicle being driven is not equipped with an ignition interlock device outside of an exempt area.
- Circumventing or tampering with the IID is a class A misdemeanor under AS 11.76.140.
- AS 28.15.201(d) requires that up-to-date service and calibration records for the ignition interlock device must be maintained and carried in the vehicle throughout the period of the limited license.

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reinstatement fee, and, if the license was revoked under AS 28.15.181 (a)(5) or (8) (operating a motor vehicle or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, or, refusal to submit to a chemical test […] while under arrest for operating a motor vehicle […] while under the influence), submit proof to the court or the department that the person has met the alcoholism screening, evaluation, referral, and program requirements of the Department of Health and Social Services under AS 28.35.030 (h). [Also,] At the end of a period of limitation, suspension, or revocation under this chapter, the department may not issue a driver's license or a duplicate driver's license to the licensee until the licensee has complied with AS 28.20 relating to proof of financial responsibility."

[212] A process exists to reinstate a driver's license following a felony DUI/OUI; that process is outside the scope of this document.

[213] Alaska Department of Administration. (n.d.). *General Information - Ignition Interlock Limited Licenses (AS 28.15.201)*. Retrieved from http://doa.alaska.gov/dmv/reinst/PDFS/Limited_IID.pdf

Finally, the defendant is required to pay all costs associated with fulfilling the condition of probation, including installation, repair, and monitoring of an ignition interlock device. As mentioned above (*The Court: Imprisonment and Fines*), the cost of the ignition interlock device may be deducted from the fine imposed at sentencing.

Ignition Interlock Device Oversight

The Alaska Department of Corrections Commissioner (AS 33.05.020)

The Alaska Department of Corrections Commissioner is responsible for ignition interlock device certification. The Commissioner shall by regulation:

- Establish standards for calibration, certification, maintenance, and monitoring of ignition interlock devices required as a condition of probation under AS 12.55.102; and
- Establish a fee to be paid by the manufacturer for the cost of certifying an ignition interlock device.

Limited Licenses

The Court/DMV: Limitation of Driver's License (AS 28.15.201)

The court or the DMV may grant limited license privileges during the period of license revocation under certain conditions.

- The offender must have been convicted of driving under the influence; an offender who refused to submit to a breath test may not be granted a limited license.
- If
    - It is the first offense, the limited license may not be granted during the first 30 days of revocation.
    - It is not the first offense, the limited license may not be granted during the first 90 days of revocation.
- The offenders uses an ignition interlock device and adheres to all conditions.
- The offender has successfully completed or is in compliance with alcohol screening and treatment.
- The offender provides adequate proof of insurance as required by AS 28.20.230.

Additionally,

- The person may not be currently revoked, suspended, denied or cancelled in another state.[214]
- The person may not have been convicted of DUI/OUI or refusal while on probation for a prior DUI/OUI or refusal conviction.[215]

At the end of the revocation period, the person can reinstate his/her driving privileges by successfully passing the required tests, paying the reinstatement and licensing fees and providing proof of the following: SR-22 insurance filing (or posting a $125,000 bond), ignition interlock device compliance, and ASAP satisfaction.[216]

Ignition Interlock Device Certification

Ignition Interlock Devices certified in Alaska

As of December 2015, five vendors are certified to provide ignition interlock devices in Alaska; they are:[217]

- Draeger Safety Diagnostics (Updated 3/4/15)
- Guardian Interlock Systems (Updated 11/2/15)

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[214] *Id*.

[215] *Id*.

[216] Alaska Department of Administration. (n.d.). *FAQ - Restrictions Due to Drinking and Driving*. Retrieved from http://doa.alaska.gov/dmv/reinst/PDFS/FAQ_Alcohol.pdf

[217] Alaska Department of Corrections. (n.d.). *Ignition Interlock Device Certification*. Retrieved December 2, 2015, from http://www.correct.state.ak.us/administrative-services/ignition-interlock-device-certification

- LifeSafer Interlock (Updated 12/7/15)
- Alcohol Detection Services (Updated 10/12/15)
- Smart Start (Updated 12/2/15)

Ignition Interlock Device Models Certified by Judicial Districts[218]					
	Judicial Districts				
Vender/model of IID	1st	2nd	3rd	4th	Locations within districts serviced
Draeger XT	X				All
Guardian Model #AMS 2000	X		X	X	All
LifeSafer Interlock, Inc. Model #Fc100	X				All
Alcohol Detection Services Determinator DM-904	X				Some
Alcohol Detection Services Determinator DM-909	X				Some
Smart Start, Inc. Model #SSI-20/20	X				All
Smart Start, Inc. Model #SSI-20/30	X				All

Device Certification

The Ignition Interlock Device Certification Application must be submitted to the Alaska Department of Corrections; the application requires a fee of $1,000 for each initial certification and $500 for each renewal.[219]

Applicants submitting an ignition interlock device for certification must provide the following information:

- The State of Alaska Judicial District(s) for which the device is to be certified.[220]
- Provide proof from a testing laboratory that the vendor's device meets or exceeds standards set by Alaska statute and regulation.[221]
- Provide a list of authorized installers (who are qualified to install, calibrate, maintain and remove the devices) and their addresses.[222]
- A copy of the label that will be displayed on the device, as required by 22 AAC 15.030, which articulates the following:
    - The warning as set out in AS 33.05.020 (e): 'a person circumventing or tampering with the device in violation of AS 11.76.140 may be imprisoned up to 30 days and fined up to $500'.
    - The temperature range within which the device is operable without the need for pre-warming or other special steps being taken.
    - Instructions for pre-warming the device or otherwise making the device functional in temperatures below the temperature range specified above.
    - The warning that the failure to follow pre-warming instructions for the device in extreme cold weather conditions may make the vehicle inoperable and that the vehicle with such a device should not be relied upon as a survival tool in such conditions.[223]

[218] *Id*.
[219] Alaska Department of Corrections. (n.d.). *Ignition Interlock Device Certification Application*. Retrieved from http://www.correct.state.ak.us/commish/docs/Application for Device Certification.pdf
[220] *Id*.
[221] *Id*.
[222] *Id*.
[223] *Id*.

Certification standards:

- The device must meet or exceed standards set by the National Highway Traffic Safety Administration's model specifications as found in the Federal Register, Vol. 57, No. 67, April 7 1992, docket No. 91-07, Notice 2.[224]
- The device must also be capable of being preset by the manufacturer's authorized installer to prevent ignition when the breath alcohol in the breath sample is above .025 percent concentration; additionally, the device must be designed to prevent an adjustment not authorized by the manufacturer's installation or maintenance standards.[225]

Required reporting

- The device must be inspected (re. calibration, maintenance and tampering) every 90 days by the authorized installer.[226]
    - Calibration, maintenance and tampering evidence must be kept by the authorized installer for at least three years and provided, upon request, to authorized agencies.[227]
    - If there is evidence of tampering or an attempt to circumvent the device, the authorized installer must report to appropriate agencies within 72 hours.[228]

Ignition Interlock Device History

The following is verbatim from R. Schmitz's 2009 presentation*, Ignition Interlock Devices in Alaska*[229]*:*

Year	Legislative Change
1989	- AS 09.50.250 - Can't sue the state for an action arising from use of ignition interlock - AS 12.55.102 – New sentencing statute ▪ IID may be condition of probation - AS 11.76.140 – Avoidance of IID a misdemeanor
1989	- AS 28.35.030(DUI) and AS 28.35.032 (Refusal) are amended to provide that probation may include IID - AS 33.05.020(c) is added to require DOC Commissioner establish IID standards (33.05.020(c) has not been amended since)
1995	- Legislature enacts Felony DUI and Refusal statutes ▪ Both still potentially eligible for IID as probation condition. ▪ AS 28.15.201 (Limited licenses) does not yet address IIDs
2004	- IID now may be part of a sentence for alcohol related crime - AS 28.15.201(d) Changes when a limited license may be issued by court or DMV – includes use of IIDs, but still provides that no Limited License for felony, repeat offender, or refusal - AS 28.35.030(s) added to require IID for six months when breath test is .16 or over ***after*** privilege to drive is restored (one year of .24 or over) Not dependent on probation
2008	- New Ignition Interlock law passed ▪ **All** DUI and Refusal sentences include, "the court shall . . . require the person to use an ignition interlock device after the person regains the privilege . . . to operate a motor vehicle for a minimum of ___ months/years *during the period of probation* . . . ."

[224] *Id*.
[225] *Id*.
[226] *Id*.
[227] *Id*.
[228] *Id*.
[229] Schmitz, R. (2009). *Ignition Interlock Devices in Alaska* [PowerPoint slides]. Retrieved from http://www.correct.state.ak.us/commish_corner/powerpoint/040409_ignition_interlock.ppt

Appendix A: DUI/Refusal Chart

DUI/Refusal – Consequence Chart

Implied Consent	Offense number (misdemeanors)	Administrative revocations (DMV)	The court shall impose a minimum sentence of imprisonment/fine of:[1]	The court shall revoke driver's license for:	The court shall require an IID for a minimum of:[2]	Probation length	IID during probation[3]	Limited License
AS 28.35.031	--	*AS 28.15.165*	*AS 28.35.030*	*AS 28.15.181*	*AS 28.35.030*	--	*AS 12.55.102*	*AS 28.15.201*
Drivers are considered to have given consent to a preliminary breath test to measure alcohol content of their blood or breath. Drivers may refuse breath test but refusal is an infraction.	First offense	Revocation of the person's driver's license (for a DUI or refusal) takes effect seven days after delivery of the notice to the person – for length of revocation, see AS 28.15.181	not less than 72 consecutive hours and a fine of not less than $1,500	not less than 90 days	6 months	10 years	The court may order as a condition of probation or generally as part of a sentence that a defendant convicted of a DUI may not operate a motor vehicle during the period of probation unless the vehicle is equipped with an IID.[4] Also, surrender DL; issue certificate[5]	Limited license may be granted after 30 days of revocation for a DUI (not refusal)
	Second offense		not less than 20 days and a fine of not less than $3,000	not less than one year	12 months	"		Limited license may be granted after 90 days of revocation for a DUI (not refusal)
	Third offense		not less than 60 days and a fine of not less than $4,000 (if not felony)	not less than 3 years	18 months	"		"
	Fourth offense		not less than 120 days and a fine of not less than $5,000 (if not felony)	not less than 5 years	24 months	"		"
	Fifth offense		not less than 240 days and a fine of not less than $6,000 (if not felony)	"	30 months	"		"
	Sixth or greater		not less than 360 days and a fine of not less than $7,000 (if not felony)	"	36 months	"		"

[1] Notwithstanding the fines listed in this section, if the court imposes probation under AS 12.55.102 the court may reduce fines by the cost of the ignition interlock device.

[2] The period during which an ignition interlock device is required begins after the offender regains the privilege to drive (and is subsequent to the period an offender may have a limited privilege to drive).

[3] Exception: Due to the State's large land area and dispersed population, offenders are not required to use an ignition interlock device if they operate a motor vehicle in certain communities, namely, communities in which car registration/insurance is not required (AS 28.22.011).

[4] Exception: The court, in imposing probation or a condition of a sentence under (a) of this section, may allow the defendant limited privileges to drive a motor vehicle without an ignition interlock device if the court determines that the defendant is required as a condition of employment to drive a motor vehicle owned or leased by the defendant's employer and that the defendant's driving will not create substantial danger. If the court imposes probation described by this subsection, the court shall require the defendant to notify the defendant's employer of the probation, and shall require that the defendant, while driving the employer's vehicle, carry a letter from the employer authorizing the defendant to drive that vehicle. (AS 12.55.102).

[5] A court imposing a condition of probation under this section shall require the surrender of the driver's license and shall issue to the defendant a certificate valid for the duration of the probation or a copy of the defendant's judgment of conviction. The defendant shall pay all costs associated with fulfilling the condition of probation, including installation, repair, and monitoring of an ignition interlock device.

Appendix B: Cost-Benefit Analysis

The Centers for Disease Control and Prevention host a cost/benefit tool called the *Motor Vehicle Prioritizing Interventions and Cost Calculator for States (MV PICCS)*. As the name implies, it offers state-specific estimates of various motor-vehicle-related interventions.

Per *MV PICCS*, the annual cost/benefit of the Alaska ignition interlock program is as follows.

Alaska Ignition Interlock Device Program - Estimated Annual Cost/Benefit[230]		
Costs		
Cost to State	$149,000	
Offender-Borne Cost	$939,072	
Benefits		
	Count	Monetized Benefit
Fatalities Averted	0.24	$557,000
Injuries Averted	8.66	

As with any cost-benefit analysis, not all costs or benefits are included in this analysis. An ignition interlock sanction may impact an offender's employment, which would increase the offender-borne cost. Alternatively, an offender who does not continue to drink and drive is less likely to have medical expenses (both large and small), which may increase monetized benefits. In sum, a cost-benefit analysis is only one of many factors that may be used to judge the relative value of an intervention.

c. Costs

The cost to implement the ignition interlock program in Alaska is $149,000 per year, according to *MV PICCS*; specifically, 2.5 state employees to 'market, contract and manage the program'.[231] No other program costs are included in the model.

It is unknown whether this reflects the true costs of the ignition interlock program in Alaska. Based on information publicly available, there is one employee in the Alaska Department of Corrections who handles the contracting with ignition interlock vendors; additionally, the Department of Corrections Commissioner is statutorily required to establish ignition interlock 'standards and certification fees'.[232,233]

In order to comply with an ignition interlock order, an offender must have an ignition interlock device installed on his/her vehicle; the cost of the device installation, rental, maintenance and removal is paid to a private, third-party vender.[234] *MV PICCS* estimates that the cost borne per offender per year is $402 nationally (Alaska-specific cost is not provided); however, per *MV PICCS*, this cost may or may not include the costs associated with installation and removal of the ignition interlock device.[235]

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[230] Centers for Disease Control and Prevention. (2015). *Motor Vehicle Prioritizing Interventions and Cost Calculator for States (MV PICCS) 2.0*. Retrieved from http://www.cdc.gov/motorvehiclesafety/calculator/index.html

[231] Centers for Disease Control and Prevention. (2015). *Motor Vehicle Prioritizing Interventions and Cost Calculator for States (MV PICCS) 2.0, Project Report and User Guide*. Retrieved from http://www.cdc.gov/motorvehiclesafety/calculator/doc/index.html

[232] Alaska Department of Corrections. (n.d.). *Ignition Interlock Device Certification*. Retrieved December 2, 2015, from http://www.correct.state.ak.us/administrative-services/ignition-interlock-device-certification

[233] Limitation of driver's license, Alaska Stat. § 28.15.201

[234] *Id.*

[235] Centers for Disease Control and Prevention. (2015). *Motor Vehicle Prioritizing Interventions and Cost Calculator for States (MV PICCS) 2.0, Project Report and User Guide*. Retrieved from http://www.cdc.gov/motorvehiclesafety/calculator/doc/index.html

$$\frac{\$939{,}072\ (total\ offender - born\ costs\ per\ year)}{\$402\ (cost\ per\ offender\ per\ year)} = 2{,}336\ offenders$$[236]

According to *MV PICCS*, as no fines are associated with the Alaska ignition interlock program, and, as all fees associated with ignition interlock compliance are paid to private, third-party venders, the Alaska ignition interlock program does not generate revenue or off-set its operational expenses.

	Program Expenditures	Fines/Fees Collected	Total Cost
Alaska Ignition Interlock Device Program	$149,000[237]	$0	$149,000

d. Benefits

The effectiveness or benefit of the intervention is defined as the total annual monetized value of lives saved and injuries prevented, specifically $557,000.[238] As with the other values, this is calculated using state-dependent information.[239]

- State-adjusted cost per fatality is $1,530,008[240]
- State-adjusted cost per injury is $21,911.[241]

The fatalities/injuries averted and the monetized benefit of each are listed below:

	Unit Cost	Count	Sub-Total	Total
State-adjusted cost per fatality	$1,530,008[242]	0.24	$367,222	$557,000
State-adjusted cost per injury	$21,911[243]	8.66	$189,778	

[236] The *Motor Vehicle Prioritizing Interventions and Cost Calculator for States* model uses FBI data from 2011 to calculate this statistic, specifically, 4,420 offenders per year; however, to calculate the number used in this document, 2014 FBI data was substituted. As an aside, it's unclear why FBI data and DPS data (page 6 of this document) differ, as it seems that the DPS data feeds directly into the data that becomes the FBI data (Uniform Crime Reports).

[237] Centers for Disease Control and Prevention. (2015). *Motor Vehicle Prioritizing Interventions and Cost Calculator for States (MV PICCS) 2.0*. Retrieved from http://www.cdc.gov/motorvehiclesafety/calculator/index.html

[238] Centers for Disease Control and Prevention. (2015). *Motor Vehicle Prioritizing Interventions and Cost Calculator for States (MV PICCS) 2.0, Project Report and User Guide*. Retrieved from http://www.cdc.gov/motorvehiclesafety/calculator/doc/index.html

[239] *Id.*

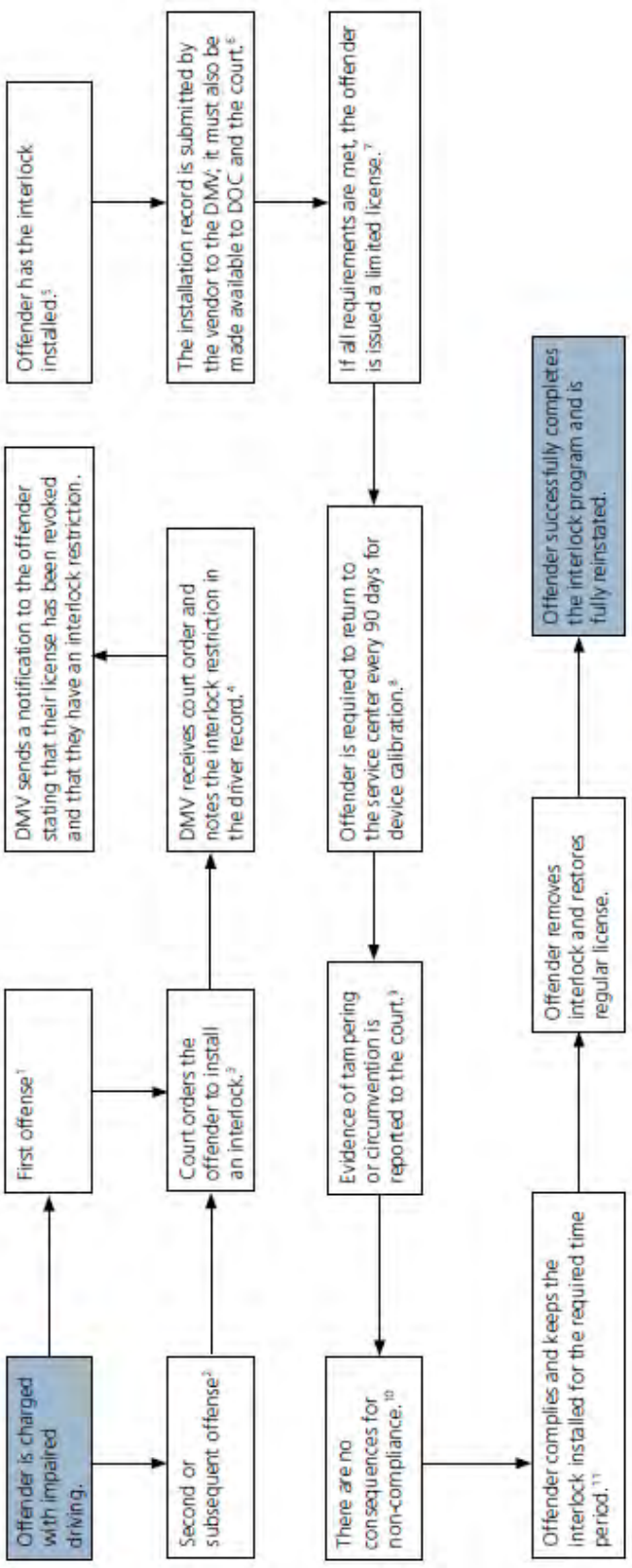
[240] Centers for Disease Control and Prevention. (2015). *Motor Vehicle Prioritizing Interventions and Cost Calculator for States (MV PICCS) 2.0*. Retrieved from http://www.cdc.gov/motorvehiclesafety/calculator/index.html

[241] *Id.*

[242] *Id.*

[243] *Id.*

Appendix C: Alaska Workflow Chart



Traffic Injury Research Foundation (2012)

1. First offenders are required to participate in the interlock program. The average length of suspension for a first DUI is 90 days; however, first offenders are eligible to apply for the limited interlock license after serving a 30 day hard suspension. The average length of suspension for a first DUI is 90 days. The interlock must remain installed on a first offender's vehicle for a minimum of six months.
2. Repeat offenders are also mandated to participate in the interlock program. Repeat offenders receive suspension periods of one year (2nd offense), three years (3rd offense), five years (4th and subsequent offense), or a lifetime driving prohibition. Repeat offenders must serve a 90 day hard suspension before being eligible to apply for the limited interlock license. The interlock must remain installed on a repeat offender's vehicle for a period of 12-24 months: 2nd offense (in 15 years) – 12 months; 3rd offense (in 15 years) – 18 months; 4th offense (in 15 years) – 24 months.
3. Offenders can offset court fines by the costs associated with participating in the interlock program; this gives them an incentive to install the device.
4. The offender will be notified at the time of judgment that they are required to install an interlock device. Once the DMV (under the umbrella of the Department of Administration) receives the court order, they will annotate the driver record and not the interlock requirement in the driver records system. It takes approximately 7-10 days for court orders to be received by the DMV.
5. An offender must install the interlock device before being eligible to receive the limited interlock license. The average cost for installation is $75-250 and the average cost for servicing is $100/ month. The preset BAC level of the interlock device is .025. Employer exemptions are available in Alaska. The offender must provide proof to the court that driving is required as a condition of employment in a vehicle owned/leased by the employer, that such driving will not create a substantial danger, and that the vehicle is not a commercial vehicle.
6. An installation record must be maintained that includes: The name, address, and telephone number of the person requesting the installation; The name and address of the vehicle's registered owner; The year, make, model, vehicle ID number, and license plate number; The manufacturer, model name, and number of the interlock device installed; The name of the manufacturer's authorized installer performing the installation; and, The date of installation.
7. In order to obtain an interlock license, an offender must: Complete an application; Pass any required test; Pay a $100 processing fee; Show proof of IID installation; Satisfy the Alcohol Safety Action Program (ASAP) requirements; and, Provide proof of financial responsibility.
   The DMV cannot issue a limited license for refusal convictions, felony DUI convictions, drugged driving, for operating commercial vehicles, or if the offender is currently revoked/suspended in another state.
   There are certain rural areas of the state where offenders are not required to have the interlock and are exempt from the limited license because servicing is not available; however, their license remains restricted in the event that they enter an urban area and attempt to drive.
   The DMV is required to place a 'C' restriction on the limited license; the back of the license will state "IID REQUIRED" under the heading "Restrictions."
8. A calibration, maintenance, and monitoring record must be maintained which includes: Results of examination; Any calibration adjustments; Documentation of any evidence of tampering/circumvention; Other information required by a court order; and, Name of the technician.
9. Tampering/circumvention of the interlock is considered a separate misdemeanor and can be punishable by up to a year in jail.
10. There are no consequences for interlock program non-compliance unless the court considers it to be a probation violation. Offenders are not removed from the program if they have failed breath tests however, four violations within a month will lead to a lockout.
11. An interlock device must not be removed before the date authorized by the court. It is the offender's responsibility to know when they are eligible to remove the device (the DMV does not provide notification to the offender)

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

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

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

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

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

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

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

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

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

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[1] *See* AS 44.19.646. This statute was enacted in 2014 as part of SB 64.
[2] *Id*.

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

Recommendation 1-2017: Return VCOR to Misdemeanor Status

In 2015, the Commission recommended that the crime of Violation of Conditions of Release (VCOR) be downgraded to a non-criminal violation, punishable by a fine. This recommendation was enacted in SB 91.[3] Implementation of this provision did not immediately occur as the Commission intended. The Commission's recommendation was that those who violate conditions of their release would be arrested and held in jail until the judge in their underlying case could review bail. While SB 91 included an arrest provision so that defendants who violated conditions of their release could be arrested,[4] some of those arrested were not being held in jail—they were being released as soon as they were brought to jail.

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

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

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

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

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

[3] 2016 SLA Ch. 36 ("SB 91") §§ 29-30.
[4] SB 91 § 51.

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

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

This recommendation did not receive unanimous approval from the Commission. Those who voted against the recommendation believed it did not go far enough and would have preferred a recommendation to re-enact a statute (which was repealed by SB 91[7]) that made an offender's third Theft 4 within five years a Class A misdemeanor rather than a Class B misdemeanor.

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

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

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

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

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

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

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

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

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

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

Recommendation 4-2017: Revise the sex trafficking statute.

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

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

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

[9] SB 91 §113.
[10] SB 91 §§ 39 and 40.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[12] SB 91 § 91.

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

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

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

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

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

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

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

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

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

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

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

[13] SB 91 §§ 170-173.
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given a mandatory minimum, not a presumptive range. Essentially there are two punishment provisions for the same offenses in two different statutes, which creates confusion. **The Commission therefore recommends that the Legislature place the penalty provision for Felony DUI and Refusal sentences in one statute only.**

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

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

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

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

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

SB 91 currently contains the following provisions:

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

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

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

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

- For the crimes of issuing a bad check, fraudulent use of an access device, and defrauding creditors, SB 91 pegged the threshold amount for a B-level felony ($25,000) to inflation.[17] **The Commission recommends removing this inflation adjustment for the B-felony amounts.** This change would mean that the B-level amount would remain at $25,000 absent further legislative action.

- SB 91 changed driving on a suspended license to an infraction in most cases. However, driving without a valid license (arguably, less serious conduct than driving on a suspended license) continues to be a misdemeanor. **The Commission recommends that the crime of driving without a valid license also be reduced to an infraction** to be consistent with the changes made for driving with a suspended/revoked license.

- SB 91 Section 47; page 25; line 13: **The Commission recommends deleting the reference to "(B)" in "11.71.060(a)(2)(B)."** This change limits charging MICS 4 for possession of a compound containing a schedule VIA drug (similar to marijuana) to an ounce or more.

- **The Commission recommends enacting the following changes regarding Suspended Entry of Judgment (SEJ)**, which will clarify that the crimes for which SEJ may not be used are the current crimes charged, and will add SEJ to the list of authorized sentences.
    - SB 91 Sec. 77; page 44; line 19: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 44; line 23: Delete "is convicted" and insert "is charged"
    - SB 91 Sec. 77; page 44; line 29: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 8: Delete "has been convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 11: Delete second "of" and after "original probation," and insert "was imposed,"
    - AS 12.55.015(a)(8): Insert "suspend entry of judgement under AS 12.55.078;"

- Sending an explicit image of a minor to another person (a B misdemeanor AS 11.61.116(c)(1)) has an enhanced penalty under SB 91 of up to 90 days.[18] However, posting an explicit image of a minor to a publically available website is limited to 30 days (an A misdemeanor pursuant to AS 11.61.116(c)(2)). **The Commission therefore recommends adding AS 11.61.116(c)(2) to AS 12.55.135(a)(1)(F) to align penalties for posting and sending explicit images of a minor**.

- **The Commission recommends adding the following language to SB 91 Sec. 79; page 45; line 17**: After "AS 11" insert "not listed in (1) of this subsection;". This will clarify that the maximum probation term for felony sex offenses is 15 years, while all other unclassified felonies have a maximum probation term of 10 years.

[17] SB91 §§ 12, 13, 23.
[18] SB 91 § 91.

- **The Commission recommends adding the following language to Sec. 164; page 105; line 7**: After "AS 33.05.020(h)" insert "or 33.16.270". SB 91 requires DOC to provide the Commission with data on earned compliance credits for probationers; this change would extend that requirement to parolees as well.

- **The Commission recommends amending sections 148 and 151 of SB 91 for clarity as to their applicability**. Section 185 of SB 91 states that sections 148 and 151 apply to parole granted before, on, or after the effective date of those sections. Section 190 states that the effective date of sections 148 and 151 is January 1, 2017.

    - Section 148 adds a new tolling provision for parolees who abscond. It also provides that the board may not extend the period of supervision beyond the maximum release date calculated by the department on the parolee's original sentence. It therefore creates a different scheme for calculating an offender's parole, and it would be difficult to apply this section to parole calculated under the previous scheme.

        - The Department of Corrections would like this language added to section 148: "The provisions of this section shall not be construed as invalidating any decision of the Board, issued prior to 1/1/17, which extended the period of supervision beyond the maximum release date on the original sentence."

    - The Department also would like similar language added to section 151, which provides for earned compliance credits for parolees. This also requires a new time accounting system that would not apply to parole calculated under the previous scheme.

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

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

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

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

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

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

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

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

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

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[1] *See* AS 44.19.646. This statute was enacted in 2014 as part of SB 64.
[2] *Id*.

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

Recommendation 1-2017: Return VCOR to Misdemeanor Status

In 2015, the Commission recommended that the crime of Violation of Conditions of Release (VCOR) be downgraded to a non-criminal violation, punishable by a fine. This recommendation was enacted in SB 91.[3] Implementation of this provision did not immediately occur as the Commission intended. The Commission's recommendation was that those who violate conditions of their release would be arrested and held in jail until the judge in their underlying case could review bail. While SB 91 included an arrest provision so that defendants who violated conditions of their release could be arrested,[4] some of those arrested were not being held in jail—they were being released as soon as they were brought to jail.

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

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

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

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

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

[3] 2016 SLA Ch. 36 ("SB 91") §§ 29-30.
[4] SB 91 § 51.

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

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

This recommendation did not receive unanimous approval from the Commission. Those who voted against the recommendation believed it did not go far enough and would have preferred a recommendation to re-enact a statute (which was repealed by SB 91[7]) that made an offender's third Theft 4 within five years a Class A misdemeanor rather than a Class B misdemeanor.

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

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

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

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

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

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

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

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

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

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

Recommendation 4-2017: Revise the sex trafficking statute.

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

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

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

[9] SB 91 §113.
[10] SB 91 §§ 39 and 40.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- The need to rehabilitate the offender;
- The sufficiency of state resources to administer the criminal justice system;
- The effect of state laws and practices on the rate of recidivism; and
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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 grown and reduce the current prison population by 15%, or (3) avert all future prison grown and reduce the current prison population by 25%.

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

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

Recommendation 1-2017: Return VCOR to Misdemeanor Status

In 2015, the Commission recommended that the crime of Violation of Conditions of Release (VCOR) be downgraded to a non-criminal violation, punishable by a fine. This recommendation was enacted in SB 91.[3] Implementation of this provision did not immediately occur as the Commission intended. The Commission's recommendation was that those who violate conditions of their release would be arrested and held in jail until the judge in their underlying case could review bail. While SB 91 included an arrest provision so that defendants who violated conditions of their release could be arrested,[4] some of those arrested were not being held in jail—they were being released as soon as they were brought to jail.

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

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

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

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

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

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

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

This recommendation did not receive unanimous approval from the Commission. Those who voted against the recommendation believed it did not go far enough and would have preferred a recommendation to re-enact a statute (which was repealed by SB 91[7]) that made an offender's third Theft 4 within five years a Class A misdemeanor rather than a Class B misdemeanor.

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

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

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

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

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

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

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

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

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

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

Recommendation 4-2017: Revise the sex trafficking statute.

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

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

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

[9] SB 91 §113.
[10] SB 91 §§ 39 and 40.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[12] SB 91 § 91.

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

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

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

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

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

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

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

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

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

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

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

[13] SB 91 §§ 170-173.
[14] SB 91 § 93.
[15] SB 91 § 79.
[16] SB 91 § 65.

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

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

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

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

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

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

SB 91 currently contains the following provisions:

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

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

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

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

- For the crimes of issuing a bad check, fraudulent use of an access device, and defrauding creditors, SB 91 pegged the threshold amount for a B-level felony ($25,000) to inflation.[17] **The Commission recommends removing this inflation adjustment for the B-felony amounts.** This change would mean that the B-level amount would remain at $25,000 absent further legislative action.

- SB 91 changed driving on a suspended license to an infraction in most cases. However, driving without a valid license (arguably, less serious conduct than driving on a suspended license) continues to be a misdemeanor. **The Commission recommends that the crime of driving without a valid license also be reduced to an infraction** to be consistent with the changes made for driving with a suspended/revoked license.

- SB 91 Section 47; page 25; line 13: **The Commission recommends deleting the reference to "(B)" in "11.71.060(a)(2)(B)."** This change limits charging MICS 4 for possession of a compound containing a schedule VIA drug (similar to marijuana) to an ounce or more.

- **The Commission recommends enacting the following changes regarding Suspended Entry of Judgment (SEJ)**, which will clarify that the crimes for which SEJ may not be used are the current crimes charged, and will add SEJ to the list of authorized sentences.
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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**.

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

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

This recommendation did not receive unanimous approval from the Commission. Those who voted against the recommendation believed it did not go far enough and would have preferred a recommendation to re-enact a statute (which was repealed by SB 91[7]) that made an offender's third Theft 4 within five years a Class A misdemeanor rather than a Class B misdemeanor.

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

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

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

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

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

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

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

Recommendation 4-2017: Revise the sex trafficking statute.

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

- **AS 11.66.130(a): After "a person" insert "receiving compensation for prostitution services rendered by another"**
- **AS 11.66.130(a)(3): Delete "as other than a prostitute receiving compensation for personally rendered prostitution services,"**
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The Commission also recommends that the Legislature define the term "compensation" as used in these statutes. "Compensation" should be defined so that it applies only to compensation for services performed and does not include things like shared rent, shared gas money, or shared hotel fees in instances where sex workers are working together to split costs.

[9] SB 91 §113.
[10] SB 91 §§ 39 and 40.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[12] SB 91 § 91.

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

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

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

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

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

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

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

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

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

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

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

[13] SB 91 §§ 170-173.
[14] SB 91 § 93.
[15] SB 91 § 79.
[16] SB 91 § 65.

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

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

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

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

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

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

SB 91 currently contains the following provisions:

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

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

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

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

- For the crimes of issuing a bad check, fraudulent use of an access device, and defrauding creditors, SB 91 pegged the threshold amount for a B-level felony ($25,000) to inflation.[17] **The Commission recommends removing this inflation adjustment for the B-felony amounts.** This change would mean that the B-level amount would remain at $25,000 absent further legislative action.

- SB 91 changed driving on a suspended license to an infraction in most cases. However, driving without a valid license (arguably, less serious conduct than driving on a suspended license) continues to be a misdemeanor. **The Commission recommends that the crime of driving without a valid license also be reduced to an infraction** to be consistent with the changes made for driving with a suspended/revoked license.

- SB 91 Section 47; page 25; line 13: **The Commission recommends deleting the reference to "(B)" in "11.71.060(a)(2)(B)."** This change limits charging MICS 4 for possession of a compound containing a schedule VIA drug (similar to marijuana) to an ounce or more.

- **The Commission recommends enacting the following changes regarding Suspended Entry of Judgment (SEJ)**, which will clarify that the crimes for which SEJ may not be used are the current crimes charged, and will add SEJ to the list of authorized sentences.
    - SB 91 Sec. 77; page 44; line 19: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 44; line 23: Delete "is convicted" and insert "is charged"
    - SB 91 Sec. 77; page 44; line 29: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 8: Delete "has been convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 11: Delete second "of" and after "original probation," and insert "was imposed,"
    - AS 12.55.015(a)(8): Insert "suspend entry of judgement under AS 12.55.078;"

- Sending an explicit image of a minor to another person (a B misdemeanor AS 11.61.116(c)(1)) has an enhanced penalty under SB 91 of up to 90 days.[18] However, posting an explicit image of a minor to a publically available website is limited to 30 days (an A misdemeanor pursuant to AS 11.61.116(c)(2)). **The Commission therefore recommends adding AS 11.61.116(c)(2) to AS 12.55.135(a)(1)(F) to align penalties for posting and sending explicit images of a minor**.

- **The Commission recommends adding the following language to SB 91 Sec. 79; page 45; line 17**: After "AS 11" insert "not listed in (1) of this subsection;". This will clarify that the maximum probation term for felony sex offenses is 15 years, while all other unclassified felonies have a maximum probation term of 10 years.

[17] SB91 §§ 12, 13, 23.
[18] SB 91 § 91.

- **The Commission recommends adding the following language to Sec. 164; page 105; line 7**: After "AS 33.05.020(h)" insert "or 33.16.270". SB 91 requires DOC to provide the Commission with data on earned compliance credits for probationers; this change would extend that requirement to parolees as well.

- **The Commission recommends amending sections 148 and 151 of SB 91 for clarity as to their applicability**. Section 185 of SB 91 states that sections 148 and 151 apply to parole granted before, on, or after the effective date of those sections. Section 190 states that the effective date of sections 148 and 151 is January 1, 2017.

    - Section 148 adds a new tolling provision for parolees who abscond. It also provides that the board may not extend the period of supervision beyond the maximum release date calculated by the department on the parolee's original sentence. It therefore creates a different scheme for calculating an offender's parole, and it would be difficult to apply this section to parole calculated under the previous scheme.

        - The Department of Corrections would like this language added to section 148: "The provisions of this section shall not be construed as invalidating any decision of the Board, issued prior to 1/1/17, which extended the period of supervision beyond the maximum release date on the original sentence."

    - The Department also would like similar language added to section 151, which provides for earned compliance credits for parolees. This also requires a new time accounting system that would not apply to parole calculated under the previous scheme.

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

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

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

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

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

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

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

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

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

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[1] *See* AS 44.19.646. This statute was enacted in 2014 as part of SB 64.
[2] *Id*.

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

Recommendation 1-2017: Return VCOR to Misdemeanor Status

In 2015, the Commission recommended that the crime of Violation of Conditions of Release (VCOR) be downgraded to a non-criminal violation, punishable by a fine. This recommendation was enacted in SB 91.[3] Implementation of this provision did not immediately occur as the Commission intended. The Commission's recommendation was that those who violate conditions of their release would be arrested and held in jail until the judge in their underlying case could review bail. While SB 91 included an arrest provision so that defendants who violated conditions of their release could be arrested,[4] some of those arrested were not being held in jail—they were being released as soon as they were brought to jail.

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

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

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

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

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

[3] 2016 SLA Ch. 36 ("SB 91") §§ 29-30.
[4] SB 91 § 51.

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

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

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

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

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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.

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

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

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

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

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

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

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

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

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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

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

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

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

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

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

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

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

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

[13] SB 91 §§ 170-173.
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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.**

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

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

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

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

SB 91 currently contains the following provisions:

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

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

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

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

- For the crimes of issuing a bad check, fraudulent use of an access device, and defrauding creditors, SB 91 pegged the threshold amount for a B-level felony ($25,000) to inflation.[17] **The Commission recommends removing this inflation adjustment for the B-felony amounts.** This change would mean that the B-level amount would remain at $25,000 absent further legislative action.

- SB 91 changed driving on a suspended license to an infraction in most cases. However, driving without a valid license (arguably, less serious conduct than driving on a suspended license) continues to be a misdemeanor. **The Commission recommends that the crime of driving without a valid license also be reduced to an infraction** to be consistent with the changes made for driving with a suspended/revoked license.

- SB 91 Section 47; page 25; line 13: **The Commission recommends deleting the reference to "(B)" in "11.71.060(a)(2)(B)."** This change limits charging MICS 4 for possession of a compound containing a schedule VIA drug (similar to marijuana) to an ounce or more.

- **The Commission recommends enacting the following changes regarding Suspended Entry of Judgment (SEJ)**, which will clarify that the crimes for which SEJ may not be used are the current crimes charged, and will add SEJ to the list of authorized sentences.
    - SB 91 Sec. 77; page 44; line 19: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 44; line 23: Delete "is convicted" and insert "is charged"
    - SB 91 Sec. 77; page 44; line 29: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 8: Delete "has been convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 11: Delete second "of" and after "original probation," and insert "was imposed,"
    - AS 12.55.015(a)(8): Insert "suspend entry of judgement under AS 12.55.078;"

- Sending an explicit image of a minor to another person (a B misdemeanor AS 11.61.116(c)(1)) has an enhanced penalty under SB 91 of up to 90 days.[18] However, posting an explicit image of a minor to a publically available website is limited to 30 days (an A misdemeanor pursuant to AS 11.61.116(c)(2)). **The Commission therefore recommends adding AS 11.61.116(c)(2) to AS 12.55.135(a)(1)(F) to align penalties for posting and sending explicit images of a minor**.

- **The Commission recommends adding the following language to SB 91 Sec. 79; page 45; line 17**: After "AS 11" insert "not listed in (1) of this subsection;". This will clarify that the maximum probation term for felony sex offenses is 15 years, while all other unclassified felonies have a maximum probation term of 10 years.

[17] SB91 §§ 12, 13, 23.
[18] SB 91 § 91.

- **The Commission recommends adding the following language to Sec. 164; page 105; line 7**: After "AS 33.05.020(h)" insert "or 33.16.270". SB 91 requires DOC to provide the Commission with data on earned compliance credits for probationers; this change would extend that requirement to parolees as well.

- **The Commission recommends amending sections 148 and 151 of SB 91 for clarity as to their applicability**. Section 185 of SB 91 states that sections 148 and 151 apply to parole granted before, on, or after the effective date of those sections. Section 190 states that the effective date of sections 148 and 151 is January 1, 2017.

    - Section 148 adds a new tolling provision for parolees who abscond. It also provides that the board may not extend the period of supervision beyond the maximum release date calculated by the department on the parolee's original sentence. It therefore creates a different scheme for calculating an offender's parole, and it would be difficult to apply this section to parole calculated under the previous scheme.

        - The Department of Corrections would like this language added to section 148: "The provisions of this section shall not be construed as invalidating any decision of the Board, issued prior to 1/1/17, which extended the period of supervision beyond the maximum release date on the original sentence."

    - The Department also would like similar language added to section 151, which provides for earned compliance credits for parolees. This also requires a new time accounting system that would not apply to parole calculated under the previous scheme.

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

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

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

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

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

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

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

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

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

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[1] *See* AS 44.19.646. This statute was enacted in 2014 as part of SB 64.
[2] *Id*.

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

Recommendation 1-2017: Return VCOR to Misdemeanor Status

In 2015, the Commission recommended that the crime of Violation of Conditions of Release (VCOR) be downgraded to a non-criminal violation, punishable by a fine. This recommendation was enacted in SB 91.[3] Implementation of this provision did not immediately occur as the Commission intended. The Commission's recommendation was that those who violate conditions of their release would be arrested and held in jail until the judge in their underlying case could review bail. While SB 91 included an arrest provision so that defendants who violated conditions of their release could be arrested,[4] some of those arrested were not being held in jail—they were being released as soon as they were brought to jail.

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

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

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

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

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

[3] 2016 SLA Ch. 36 ("SB 91") §§ 29-30.
[4] SB 91 § 51.

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

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

This recommendation did not receive unanimous approval from the Commission. Those who voted against the recommendation believed it did not go far enough and would have preferred a recommendation to re-enact a statute (which was repealed by SB 91[7]) that made an offender's third Theft 4 within five years a Class A misdemeanor rather than a Class B misdemeanor.

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

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

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

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

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

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

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

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

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

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

Recommendation 4-2017: Revise the sex trafficking statute.

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

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

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

[9] SB 91 §113.
[10] SB 91 §§ 39 and 40.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- The need to rehabilitate the offender;
- The sufficiency of state resources to administer the criminal justice system;
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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 grown and reduce the current prison population by 15%, or (3) avert all future prison grown and reduce the current prison population by 25%.

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- The need to confine offenders to prevent harm to the public;
- The effect of sentencing in deterring offenders; and
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The Commission recognizes that the factors it has been instructed to consider in formulating its recommendations often work in tension. Not all of the recommendations below received unanimous support from the Commission. If a recommendation did not receive unanimous support from the Commission, the recommendation includes an explanation of the concerns of the Commissioners who did not support that recommendation.

Recommendation 1-2017: Return VCOR to Misdemeanor Status

In 2015, the Commission recommended that the crime of Violation of Conditions of Release (VCOR) be downgraded to a non-criminal violation, punishable by a fine. This recommendation was enacted in SB 91.[3] Implementation of this provision did not immediately occur as the Commission intended. The Commission's recommendation was that those who violate conditions of their release would be arrested and held in jail until the judge in their underlying case could review bail. While SB 91 included an arrest provision so that defendants who violated conditions of their release could be arrested,[4] some of those arrested were not being held in jail—they were being released as soon as they were brought to jail.

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

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

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

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

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

[3] 2016 SLA Ch. 36 ("SB 91") §§ 29-30.
[4] SB 91 § 51.

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

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

This recommendation did not receive unanimous approval from the Commission. Those who voted against the recommendation believed it did not go far enough and would have preferred a recommendation to re-enact a statute (which was repealed by SB 91[7]) that made an offender's third Theft 4 within five years a Class A misdemeanor rather than a Class B misdemeanor.

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

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

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

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

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

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

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

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

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

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

Recommendation 4-2017: Revise the sex trafficking statute.

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

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

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

[9] SB 91 §113.
[10] SB 91 §§ 39 and 40.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[12] SB 91 § 91.

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

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

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

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

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

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

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

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

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

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

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

[13] SB 91 §§ 170-173.
[14] SB 91 § 93.
[15] SB 91 § 79.
[16] SB 91 § 65.

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

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

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

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

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

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

SB 91 currently contains the following provisions:

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

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

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

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

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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**.

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

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

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

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

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

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

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

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

Recommendation 4-2017: Revise the sex trafficking statute.

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

- **AS 11.66.130(a): After "a person" insert "receiving compensation for prostitution services rendered by another"**
- **AS 11.66.130(a)(3): Delete "as other than a prostitute receiving compensation for personally rendered prostitution services,"**
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The Commission also recommends that the Legislature define the term "compensation" as used in these statutes. "Compensation" should be defined so that it applies only to compensation for services performed and does not include things like shared rent, shared gas money, or shared hotel fees in instances where sex workers are working together to split costs.

[9] SB 91 §113.
[10] SB 91 §§ 39 and 40.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[12] SB 91 § 91.

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

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

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

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

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

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

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

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

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

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

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

[13] SB 91 §§ 170-173.
[14] SB 91 § 93.
[15] SB 91 § 79.
[16] SB 91 § 65.

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

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

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

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

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

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

SB 91 currently contains the following provisions:

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

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

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

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

- For the crimes of issuing a bad check, fraudulent use of an access device, and defrauding creditors, SB 91 pegged the threshold amount for a B-level felony ($25,000) to inflation.[17] **The Commission recommends removing this inflation adjustment for the B-felony amounts.** This change would mean that the B-level amount would remain at $25,000 absent further legislative action.

- SB 91 changed driving on a suspended license to an infraction in most cases. However, driving without a valid license (arguably, less serious conduct than driving on a suspended license) continues to be a misdemeanor. **The Commission recommends that the crime of driving without a valid license also be reduced to an infraction** to be consistent with the changes made for driving with a suspended/revoked license.

- SB 91 Section 47; page 25; line 13: **The Commission recommends deleting the reference to "(B)" in "11.71.060(a)(2)(B)."** This change limits charging MICS 4 for possession of a compound containing a schedule VIA drug (similar to marijuana) to an ounce or more.

- **The Commission recommends enacting the following changes regarding Suspended Entry of Judgment (SEJ)**, which will clarify that the crimes for which SEJ may not be used are the current crimes charged, and will add SEJ to the list of authorized sentences.
    - SB 91 Sec. 77; page 44; line 19: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 44; line 23: Delete "is convicted" and insert "is charged"
    - SB 91 Sec. 77; page 44; line 29: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 8: Delete "has been convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 11: Delete second "of" and after "original probation," and insert "was imposed,"
    - AS 12.55.015(a)(8): Insert "suspend entry of judgement under AS 12.55.078;"

- Sending an explicit image of a minor to another person (a B misdemeanor AS 11.61.116(c)(1)) has an enhanced penalty under SB 91 of up to 90 days.[18] However, posting an explicit image of a minor to a publically available website is limited to 30 days (an A misdemeanor pursuant to AS 11.61.116(c)(2)). **The Commission therefore recommends adding AS 11.61.116(c)(2) to AS 12.55.135(a)(1)(F) to align penalties for posting and sending explicit images of a minor**.

- **The Commission recommends adding the following language to SB 91 Sec. 79; page 45; line 17**: After "AS 11" insert "not listed in (1) of this subsection;". This will clarify that the maximum probation term for felony sex offenses is 15 years, while all other unclassified felonies have a maximum probation term of 10 years.

[17] SB91 §§ 12, 13, 23.
[18] SB 91 § 91.

- **The Commission recommends adding the following language to Sec. 164; page 105; line 7**: After "AS 33.05.020(h)" insert "or 33.16.270". SB 91 requires DOC to provide the Commission with data on earned compliance credits for probationers; this change would extend that requirement to parolees as well.

- **The Commission recommends amending sections 148 and 151 of SB 91 for clarity as to their applicability**. Section 185 of SB 91 states that sections 148 and 151 apply to parole granted before, on, or after the effective date of those sections. Section 190 states that the effective date of sections 148 and 151 is January 1, 2017.

    - Section 148 adds a new tolling provision for parolees who abscond. It also provides that the board may not extend the period of supervision beyond the maximum release date calculated by the department on the parolee's original sentence. It therefore creates a different scheme for calculating an offender's parole, and it would be difficult to apply this section to parole calculated under the previous scheme.

        - The Department of Corrections would like this language added to section 148: "The provisions of this section shall not be construed as invalidating any decision of the Board, issued prior to 1/1/17, which extended the period of supervision beyond the maximum release date on the original sentence."

    - The Department also would like similar language added to section 151, which provides for earned compliance credits for parolees. This also requires a new time accounting system that would not apply to parole calculated under the previous scheme.

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

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

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

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

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

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

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

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

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

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[1] *See* AS 44.19.646. This statute was enacted in 2014 as part of SB 64.
[2] *Id*.

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

Recommendation 1-2017: Return VCOR to Misdemeanor Status

In 2015, the Commission recommended that the crime of Violation of Conditions of Release (VCOR) be downgraded to a non-criminal violation, punishable by a fine. This recommendation was enacted in SB 91.[3] Implementation of this provision did not immediately occur as the Commission intended. The Commission's recommendation was that those who violate conditions of their release would be arrested and held in jail until the judge in their underlying case could review bail. While SB 91 included an arrest provision so that defendants who violated conditions of their release could be arrested,[4] some of those arrested were not being held in jail—they were being released as soon as they were brought to jail.

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

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

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

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

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

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

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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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[13] SB 91 §§ 170-173.
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given a mandatory minimum, not a presumptive range. Essentially there are two punishment provisions for the same offenses in two different statutes, which creates confusion. **The Commission therefore recommends that the Legislature place the penalty provision for Felony DUI and Refusal sentences in one statute only.**

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

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

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

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

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

SB 91 currently contains the following provisions:

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

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

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

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

- For the crimes of issuing a bad check, fraudulent use of an access device, and defrauding creditors, SB 91 pegged the threshold amount for a B-level felony ($25,000) to inflation.[17] **The Commission recommends removing this inflation adjustment for the B-felony amounts.** This change would mean that the B-level amount would remain at $25,000 absent further legislative action.

- SB 91 changed driving on a suspended license to an infraction in most cases. However, driving without a valid license (arguably, less serious conduct than driving on a suspended license) continues to be a misdemeanor. **The Commission recommends that the crime of driving without a valid license also be reduced to an infraction** to be consistent with the changes made for driving with a suspended/revoked license.

- SB 91 Section 47; page 25; line 13: **The Commission recommends deleting the reference to "(B)" in "11.71.060(a)(2)(B)."** This change limits charging MICS 4 for possession of a compound containing a schedule VIA drug (similar to marijuana) to an ounce or more.

- **The Commission recommends enacting the following changes regarding Suspended Entry of Judgment (SEJ)**, which will clarify that the crimes for which SEJ may not be used are the current crimes charged, and will add SEJ to the list of authorized sentences.
    - SB 91 Sec. 77; page 44; line 19: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 44; line 23: Delete "is convicted" and insert "is charged"
    - SB 91 Sec. 77; page 44; line 29: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 8: Delete "has been convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 11: Delete second "of" and after "original probation," and insert "was imposed,"
    - AS 12.55.015(a)(8): Insert "suspend entry of judgement under AS 12.55.078;"

- Sending an explicit image of a minor to another person (a B misdemeanor AS 11.61.116(c)(1)) has an enhanced penalty under SB 91 of up to 90 days.[18] However, posting an explicit image of a minor to a publically available website is limited to 30 days (an A misdemeanor pursuant to AS 11.61.116(c)(2)). **The Commission therefore recommends adding AS 11.61.116(c)(2) to AS 12.55.135(a)(1)(F) to align penalties for posting and sending explicit images of a minor**.

- **The Commission recommends adding the following language to SB 91 Sec. 79; page 45; line 17**: After "AS 11" insert "not listed in (1) of this subsection;". This will clarify that the maximum probation term for felony sex offenses is 15 years, while all other unclassified felonies have a maximum probation term of 10 years.

[17] SB91 §§ 12, 13, 23.
[18] SB 91 § 91.

- **The Commission recommends adding the following language to Sec. 164; page 105; line 7**: After "AS 33.05.020(h)" insert "or 33.16.270". SB 91 requires DOC to provide the Commission with data on earned compliance credits for probationers; this change would extend that requirement to parolees as well.

- **The Commission recommends amending sections 148 and 151 of SB 91 for clarity as to their applicability**. Section 185 of SB 91 states that sections 148 and 151 apply to parole granted before, on, or after the effective date of those sections. Section 190 states that the effective date of sections 148 and 151 is January 1, 2017.

    - Section 148 adds a new tolling provision for parolees who abscond. It also provides that the board may not extend the period of supervision beyond the maximum release date calculated by the department on the parolee's original sentence. It therefore creates a different scheme for calculating an offender's parole, and it would be difficult to apply this section to parole calculated under the previous scheme.

        - The Department of Corrections would like this language added to section 148: "The provisions of this section shall not be construed as invalidating any decision of the Board, issued prior to 1/1/17, which extended the period of supervision beyond the maximum release date on the original sentence."

    - The Department also would like similar language added to section 151, which provides for earned compliance credits for parolees. This also requires a new time accounting system that would not apply to parole calculated under the previous scheme.

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

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

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

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

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

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

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

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

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

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[1] *See* AS 44.19.646. This statute was enacted in 2014 as part of SB 64.
[2] *Id*.

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

Recommendation 1-2017: Return VCOR to Misdemeanor Status

In 2015, the Commission recommended that the crime of Violation of Conditions of Release (VCOR) be downgraded to a non-criminal violation, punishable by a fine. This recommendation was enacted in SB 91.[3] Implementation of this provision did not immediately occur as the Commission intended. The Commission's recommendation was that those who violate conditions of their release would be arrested and held in jail until the judge in their underlying case could review bail. While SB 91 included an arrest provision so that defendants who violated conditions of their release could be arrested,[4] some of those arrested were not being held in jail—they were being released as soon as they were brought to jail.

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

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

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

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

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

[3] 2016 SLA Ch. 36 ("SB 91") §§ 29-30.
[4] SB 91 § 51.

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

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

This recommendation did not receive unanimous approval from the Commission. Those who voted against the recommendation believed it did not go far enough and would have preferred a recommendation to re-enact a statute (which was repealed by SB 91[7]) that made an offender's third Theft 4 within five years a Class A misdemeanor rather than a Class B misdemeanor.

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

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

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

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

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

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

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

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

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

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

Recommendation 4-2017: Revise the sex trafficking statute.

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

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

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

[9] SB 91 §113.
[10] SB 91 §§ 39 and 40.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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

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

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

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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.**

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

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

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

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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."
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- 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.

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

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

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

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

- The need to rehabilitate the offender;
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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 grown and reduce the current prison population by 15%, or (3) avert all future prison grown and reduce the current prison population by 25%.

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

Recommendation 1-2017: Return VCOR to Misdemeanor Status

In 2015, the Commission recommended that the crime of Violation of Conditions of Release (VCOR) be downgraded to a non-criminal violation, punishable by a fine. This recommendation was enacted in SB 91.[3] Implementation of this provision did not immediately occur as the Commission intended. The Commission's recommendation was that those who violate conditions of their release would be arrested and held in jail until the judge in their underlying case could review bail. While SB 91 included an arrest provision so that defendants who violated conditions of their release could be arrested,[4] some of those arrested were not being held in jail—they were being released as soon as they were brought to jail.

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

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

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

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

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

[3] 2016 SLA Ch. 36 ("SB 91") §§ 29-30.
[4] SB 91 § 51.

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

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

This recommendation did not receive unanimous approval from the Commission. Those who voted against the recommendation believed it did not go far enough and would have preferred a recommendation to re-enact a statute (which was repealed by SB 91[7]) that made an offender's third Theft 4 within five years a Class A misdemeanor rather than a Class B misdemeanor.

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

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

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

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

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

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

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

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

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

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

Recommendation 4-2017: Revise the sex trafficking statute.

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

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

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

[9] SB 91 §113.
[10] SB 91 §§ 39 and 40.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[12] SB 91 § 91.

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

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

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

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

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

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

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

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

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

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

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

[13] SB 91 §§ 170-173.
[14] SB 91 § 93.
[15] SB 91 § 79.
[16] SB 91 § 65.

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

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

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

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

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

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Recommendation 1-2017: Return VCOR to Misdemeanor Status

In 2015, the Commission recommended that the crime of Violation of Conditions of Release (VCOR) be downgraded to a non-criminal violation, punishable by a fine. This recommendation was enacted in SB 91.[3] Implementation of this provision did not immediately occur as the Commission intended. The Commission's recommendation was that those who violate conditions of their release would be arrested and held in jail until the judge in their underlying case could review bail. While SB 91 included an arrest provision so that defendants who violated conditions of their release could be arrested,[4] some of those arrested were not being held in jail—they were being released as soon as they were brought to jail.

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

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

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

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

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

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

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

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

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

Recommendation 4-2017: Revise the sex trafficking statute.

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

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

[9] SB 91 §113.
[10] SB 91 §§ 39 and 40.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[12] SB 91 § 91.

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

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

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

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

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

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

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

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

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

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

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

[13] SB 91 §§ 170-173.
[14] SB 91 § 93.
[15] SB 91 § 79.
[16] SB 91 § 65.

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

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

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

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

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

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

SB 91 currently contains the following provisions:

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

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

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

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

- For the crimes of issuing a bad check, fraudulent use of an access device, and defrauding creditors, SB 91 pegged the threshold amount for a B-level felony ($25,000) to inflation.[17] **The Commission recommends removing this inflation adjustment for the B-felony amounts.** This change would mean that the B-level amount would remain at $25,000 absent further legislative action.

- SB 91 changed driving on a suspended license to an infraction in most cases. However, driving without a valid license (arguably, less serious conduct than driving on a suspended license) continues to be a misdemeanor. **The Commission recommends that the crime of driving without a valid license also be reduced to an infraction** to be consistent with the changes made for driving with a suspended/revoked license.

- SB 91 Section 47; page 25; line 13: **The Commission recommends deleting the reference to "(B)" in "11.71.060(a)(2)(B)."** This change limits charging MICS 4 for possession of a compound containing a schedule VIA drug (similar to marijuana) to an ounce or more.

- **The Commission recommends enacting the following changes regarding Suspended Entry of Judgment (SEJ)**, which will clarify that the crimes for which SEJ may not be used are the current crimes charged, and will add SEJ to the list of authorized sentences.
    - SB 91 Sec. 77; page 44; line 19: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 44; line 23: Delete "is convicted" and insert "is charged"
    - SB 91 Sec. 77; page 44; line 29: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 8: Delete "has been convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 11: Delete second "of" and after "original probation," and insert "was imposed,"
    - AS 12.55.015(a)(8): Insert "suspend entry of judgement under AS 12.55.078;"

- Sending an explicit image of a minor to another person (a B misdemeanor AS 11.61.116(c)(1)) has an enhanced penalty under SB 91 of up to 90 days.[18] However, posting an explicit image of a minor to a publically available website is limited to 30 days (an A misdemeanor pursuant to AS 11.61.116(c)(2)). **The Commission therefore recommends adding AS 11.61.116(c)(2) to AS 12.55.135(a)(1)(F) to align penalties for posting and sending explicit images of a minor**.

- **The Commission recommends adding the following language to SB 91 Sec. 79; page 45; line 17**: After "AS 11" insert "not listed in (1) of this subsection;". This will clarify that the maximum probation term for felony sex offenses is 15 years, while all other unclassified felonies have a maximum probation term of 10 years.

[17] SB91 §§ 12, 13, 23.
[18] SB 91 § 91.

- **The Commission recommends adding the following language to Sec. 164; page 105; line 7**: After "AS 33.05.020(h)" insert "or 33.16.270". SB 91 requires DOC to provide the Commission with data on earned compliance credits for probationers; this change would extend that requirement to parolees as well.

- **The Commission recommends amending sections 148 and 151 of SB 91 for clarity as to their applicability**. Section 185 of SB 91 states that sections 148 and 151 apply to parole granted before, on, or after the effective date of those sections. Section 190 states that the effective date of sections 148 and 151 is January 1, 2017.

    - Section 148 adds a new tolling provision for parolees who abscond. It also provides that the board may not extend the period of supervision beyond the maximum release date calculated by the department on the parolee's original sentence. It therefore creates a different scheme for calculating an offender's parole, and it would be difficult to apply this section to parole calculated under the previous scheme.

        - The Department of Corrections would like this language added to section 148: "The provisions of this section shall not be construed as invalidating any decision of the Board, issued prior to 1/1/17, which extended the period of supervision beyond the maximum release date on the original sentence."

    - The Department also would like similar language added to section 151, which provides for earned compliance credits for parolees. This also requires a new time accounting system that would not apply to parole calculated under the previous scheme.

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

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

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

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

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

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

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

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

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

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[1] *See* AS 44.19.646. This statute was enacted in 2014 as part of SB 64.
[2] *Id*.

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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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[13] SB 91 §§ 170-173.
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given a mandatory minimum, not a presumptive range. Essentially there are two punishment provisions for the same offenses in two different statutes, which creates confusion. **The Commission therefore recommends that the Legislature place the penalty provision for Felony DUI and Refusal sentences in one statute only.**

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

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

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

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

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

SB 91 currently contains the following provisions:

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

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

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

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

- For the crimes of issuing a bad check, fraudulent use of an access device, and defrauding creditors, SB 91 pegged the threshold amount for a B-level felony ($25,000) to inflation.[17] **The Commission recommends removing this inflation adjustment for the B-felony amounts.** This change would mean that the B-level amount would remain at $25,000 absent further legislative action.

- SB 91 changed driving on a suspended license to an infraction in most cases. However, driving without a valid license (arguably, less serious conduct than driving on a suspended license) continues to be a misdemeanor. **The Commission recommends that the crime of driving without a valid license also be reduced to an infraction** to be consistent with the changes made for driving with a suspended/revoked license.

- SB 91 Section 47; page 25; line 13: **The Commission recommends deleting the reference to "(B)" in "11.71.060(a)(2)(B)."** This change limits charging MICS 4 for possession of a compound containing a schedule VIA drug (similar to marijuana) to an ounce or more.

- **The Commission recommends enacting the following changes regarding Suspended Entry of Judgment (SEJ)**, which will clarify that the crimes for which SEJ may not be used are the current crimes charged, and will add SEJ to the list of authorized sentences.
    - SB 91 Sec. 77; page 44; line 19: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 44; line 23: Delete "is convicted" and insert "is charged"
    - SB 91 Sec. 77; page 44; line 29: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 8: Delete "has been convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 11: Delete second "of" and after "original probation," and insert "was imposed,"
    - AS 12.55.015(a)(8): Insert "suspend entry of judgement under AS 12.55.078;"

- Sending an explicit image of a minor to another person (a B misdemeanor AS 11.61.116(c)(1)) has an enhanced penalty under SB 91 of up to 90 days.[18] However, posting an explicit image of a minor to a publically available website is limited to 30 days (an A misdemeanor pursuant to AS 11.61.116(c)(2)). **The Commission therefore recommends adding AS 11.61.116(c)(2) to AS 12.55.135(a)(1)(F) to align penalties for posting and sending explicit images of a minor**.

- **The Commission recommends adding the following language to SB 91 Sec. 79; page 45; line 17**: After "AS 11" insert "not listed in (1) of this subsection;". This will clarify that the maximum probation term for felony sex offenses is 15 years, while all other unclassified felonies have a maximum probation term of 10 years.

[17] SB91 §§ 12, 13, 23.
[18] SB 91 § 91.

- **The Commission recommends adding the following language to Sec. 164; page 105; line 7**: After "AS 33.05.020(h)" insert "or 33.16.270". SB 91 requires DOC to provide the Commission with data on earned compliance credits for probationers; this change would extend that requirement to parolees as well.

- **The Commission recommends amending sections 148 and 151 of SB 91 for clarity as to their applicability**. Section 185 of SB 91 states that sections 148 and 151 apply to parole granted before, on, or after the effective date of those sections. Section 190 states that the effective date of sections 148 and 151 is January 1, 2017.

    - Section 148 adds a new tolling provision for parolees who abscond. It also provides that the board may not extend the period of supervision beyond the maximum release date calculated by the department on the parolee's original sentence. It therefore creates a different scheme for calculating an offender's parole, and it would be difficult to apply this section to parole calculated under the previous scheme.

        - The Department of Corrections would like this language added to section 148: "The provisions of this section shall not be construed as invalidating any decision of the Board, issued prior to 1/1/17, which extended the period of supervision beyond the maximum release date on the original sentence."

    - The Department also would like similar language added to section 151, which provides for earned compliance credits for parolees. This also requires a new time accounting system that would not apply to parole calculated under the previous scheme.

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

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

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

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

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

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

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

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

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

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[1] *See* AS 44.19.646. This statute was enacted in 2014 as part of SB 64.
[2] *Id*.

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

Recommendation 1-2017: Return VCOR to Misdemeanor Status

In 2015, the Commission recommended that the crime of Violation of Conditions of Release (VCOR) be downgraded to a non-criminal violation, punishable by a fine. This recommendation was enacted in SB 91.[3] Implementation of this provision did not immediately occur as the Commission intended. The Commission's recommendation was that those who violate conditions of their release would be arrested and held in jail until the judge in their underlying case could review bail. While SB 91 included an arrest provision so that defendants who violated conditions of their release could be arrested,[4] some of those arrested were not being held in jail—they were being released as soon as they were brought to jail.

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

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

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

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

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

[3] 2016 SLA Ch. 36 ("SB 91") §§ 29-30.
[4] SB 91 § 51.

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

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

This recommendation did not receive unanimous approval from the Commission. Those who voted against the recommendation believed it did not go far enough and would have preferred a recommendation to re-enact a statute (which was repealed by SB 91[7]) that made an offender's third Theft 4 within five years a Class A misdemeanor rather than a Class B misdemeanor.

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

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

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

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

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

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

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

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

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

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

Recommendation 4-2017: Revise the sex trafficking statute.

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

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

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

[9] SB 91 §113.
[10] SB 91 §§ 39 and 40.

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

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

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

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

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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.

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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.

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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.

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

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

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

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

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

SB 91 currently contains the following provisions:

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

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

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

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

- For the crimes of issuing a bad check, fraudulent use of an access device, and defrauding creditors, SB 91 pegged the threshold amount for a B-level felony ($25,000) to inflation.[17] **The Commission recommends removing this inflation adjustment for the B-felony amounts.** This change would mean that the B-level amount would remain at $25,000 absent further legislative action.

- SB 91 changed driving on a suspended license to an infraction in most cases. However, driving without a valid license (arguably, less serious conduct than driving on a suspended license) continues to be a misdemeanor. **The Commission recommends that the crime of driving without a valid license also be reduced to an infraction** to be consistent with the changes made for driving with a suspended/revoked license.

- SB 91 Section 47; page 25; line 13: **The Commission recommends deleting the reference to "(B)" in "11.71.060(a)(2)(B)."** This change limits charging MICS 4 for possession of a compound containing a schedule VIA drug (similar to marijuana) to an ounce or more.

- **The Commission recommends enacting the following changes regarding Suspended Entry of Judgment (SEJ)**, which will clarify that the crimes for which SEJ may not be used are the current crimes charged, and will add SEJ to the list of authorized sentences.
    - SB 91 Sec. 77; page 44; line 19: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 44; line 23: Delete "is convicted" and insert "is charged"
    - SB 91 Sec. 77; page 44; line 29: Delete "is convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 8: Delete "has been convicted of" and insert "is charged with"
    - SB 91 Sec. 77; page 45; line 11: Delete second "of" and after "original probation," and insert "was imposed,"
    - AS 12.55.015(a)(8): Insert "suspend entry of judgement under AS 12.55.078;"

- Sending an explicit image of a minor to another person (a B misdemeanor AS 11.61.116(c)(1)) has an enhanced penalty under SB 91 of up to 90 days.[18] However, posting an explicit image of a minor to a publically available website is limited to 30 days (an A misdemeanor pursuant to AS 11.61.116(c)(2)). **The Commission therefore recommends adding AS 11.61.116(c)(2) to AS 12.55.135(a)(1)(F) to align penalties for posting and sending explicit images of a minor**.

- **The Commission recommends adding the following language to SB 91 Sec. 79; page 45; line 17**: After "AS 11" insert "not listed in (1) of this subsection;". This will clarify that the maximum probation term for felony sex offenses is 15 years, while all other unclassified felonies have a maximum probation term of 10 years.

[17] SB91 §§ 12, 13, 23.
[18] SB 91 § 91.

- **The Commission recommends adding the following language to Sec. 164; page 105; line 7**: After "AS 33.05.020(h)" insert "or 33.16.270". SB 91 requires DOC to provide the Commission with data on earned compliance credits for probationers; this change would extend that requirement to parolees as well.

- **The Commission recommends amending sections 148 and 151 of SB 91 for clarity as to their applicability**. Section 185 of SB 91 states that sections 148 and 151 apply to parole granted before, on, or after the effective date of those sections. Section 190 states that the effective date of sections 148 and 151 is January 1, 2017.

    - Section 148 adds a new tolling provision for parolees who abscond. It also provides that the board may not extend the period of supervision beyond the maximum release date calculated by the department on the parolee's original sentence. It therefore creates a different scheme for calculating an offender's parole, and it would be difficult to apply this section to parole calculated under the previous scheme.

        - The Department of Corrections would like this language added to section 148: "The provisions of this section shall not be construed as invalidating any decision of the Board, issued prior to 1/1/17, which extended the period of supervision beyond the maximum release date on the original sentence."

    - The Department also would like similar language added to section 151, which provides for earned compliance credits for parolees. This also requires a new time accounting system that would not apply to parole calculated under the previous scheme.

RECOMMENDATION TO THE ALASKA STATE LEGISLATURE BY

THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 15-2017, Approved February 23, 2017: Shock incarceration is not an appropriate condition of probation for defendants who have been granted suspended entry of judgment.

In December 2015, the Alaska Criminal Justice Commission forwarded a number of recommendations to the Alaska Legislature; among them was a recommendation to implement a new form of suspended sentence, called Suspended Entry of Judgment. A Suspended Entry of Judgment (SEJ) was intended to operate differently from the already-existing Suspended Imposition of Sentence (SIS) in that a defendant who was granted SEJ would not have a conviction entered in that case and would therefore be able to avoid some of the immediate consequences of having a conviction.

One thing the Commission did not clarify was whether brief prison stays ("shock incarceration") could be imposed as a condition of probation with SEJs. Shock incarceration had been available as a condition of probation with SIS prior to SB 91.

The Commission now takes this opportunity to affirm that shock incarceration is not an appropriate condition of probation for defendants who have been granted an SEJ. The Commission's research has shown that even brief periods of time in prison can increase a defendant's risk of recidivism once released, especially for defendants who are considered to be low-risk—i.e., defendants who do not have a significant criminal history and who have not committed serious crimes. Defendants who are granted an SEJ will almost always be low-risk defendants and are therefore the most likely to be destabilized by incarceration. Therefore, the Commission recommends that the legislature clarify that shock incarceration may not be imposed as a condition of probation as part of a Suspended Entry of Judgment.

March 6, 2017

Memorandum

To: The Alaska Criminal Justice Commission

From: Barbara Dunham, Project Attorney

Date: August 18, 2017

RE: Pre-trial Risk Assessment Tool Implementation Fix

Introduction

The Commission held a telephonic meeting on July 5, 2017, to discuss a process for reconciling the newly-developed pre-trial risk assessment tool with the statutes governing release decisions. The tool has two scales with four or five possible outcomes. The statutes were written with the assumption that the tool would have only one scale with three possible outcomes. At the July 5 meeting, the Commission agreed to form an ad-hoc working group to come up with a solution to reconcile the tool with the statutes. Since then, the ad-hoc group has met several times and has developed a solution.

"Clumping" the Scale Outcomes

The scales in the risk assessment tool measure two different things: failure to appear (FTA) and new criminal arrests (NCA). The Crime and Justice Institute (CJI), which developed the tool, found that the FTA scale produced four distinct risk level categories, which they labelled Very Low, Low, Moderate, and High. Similarly, the NCA scale produced five distinct risk level categories, which they labelled Very Low, Low, Moderate, Moderate High, and High.

The statutes that govern judges' decisions on bail, however, contain just three categories: Low, Moderate, and High. To reconcile the statutory categories with the tool, the ad-hoc group decided to "clump" the scale outcomes together. The following is a summary:

FTA Tool Outcome	Designation
Very Low	Low
Low	Low
Moderate	Moderate
High	High

NCA Tool Outcome	Designation
Very Low	Low
Low	Low
Moderate	Moderate
Moderate High	Moderate
High	High

Using the Two Scales

As noted above, the tool will yield two scores for every defendant: one for risk of NCA and one for risk of FTA. But the statutes contemplate release decisions being made based on one score that combines risk of FTA with risk of NCA. CJI attempted to find a way to combine the scales, but could not do so without severely compromising the tool's predictive ability. The ad-hoc group therefore had to agree upon which scale would guide both the pre-trial services officer making recommendations for release and the judicial officer making the release decision.

The group decided that the best solution is to use whichever score is higher. That is, the pre-trial services officer will run the calculations for a given defendant for both risk of FTA and NCA. If the result shows that the risk of FTA is higher than the risk of NCA, the FTA score will be used to guide the release decision. If the risk of NCA is higher than the risk of FTA, the NCA score will be used to guide the release decision.

For example, imagine a defendant is assessed as moderate risk for FTA and low risk for NCA. The defendant will be assessed as "moderate" and the pre-trial services officer will, per statute, make a release recommendation based on the "moderate" designation and the crime for which the defendant was charged. Likewise, at arraignment or first appearance, the judicial officer will also make a release decision based on the "moderate" designation and the crime for which the defendant was charged.

Although the ad-hoc group is comfortable with this solution, it also feels that judges and parties should know the defendant's scores for both FTA and NCA. Thus, the group has asked the Department of Corrections to design a report that shows both scores for each defendant.

Further Considerations

The ad-hoc group believes the solutions above adequately reflect the intent of the statute such that they can be enacted via regulation and new legislation is not necessary. However, the group also feels that the Commission may wish to consider whether amending the statute might be a better or more permanent solution in the long run.

RECOMMENDATION TO THE LEGISLATURE OF ALASKA
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 17-2017, adopted August 23, 2017:

Revise the Three-Judge Panel Statutes

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 the following statutory amendments:

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;

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]

RECOMMENDATION TO THE SUPREME COURT OF ALASKA
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 18-2017, adopted October 12, 2017:

Remove Minor Consuming Alcohol and Successful Suspended Imposition of Sentence cases from CourtView

The Criminal Justice Commission has researched various ways to provide relief from the collateral consequences of a conviction. The Commission recognizes that having a public record of a conviction for even a minor offense, or a conviction that was set aside, can have negative consequences long after the conviction or date of set-aside. In these cases, the Commission recommends that the Alaska Supreme Court issue an order that past Suspended Imposition of Sentence (SIS) cases and past Minor Consuming Alcohol (MCA) and similar cases be removed from CourtView.

This order would only affect the publicly accessible version of CourtView; the cases would remain on the internal CourtView used by the Court System. The paper files would remain accessible to the public. This recommendation is not intended to be a form of expungement or serve as a proxy for expungement.

The Commission recognizes that this order will not offer full relief from the stigma of these convictions; this order will not affect Department of Public Safety records, for example. However, many people access CourtView with little understanding of the records they view. Employers and landlords may check CourtView to vet prospective employees or tenants and assume any record of conviction denotes serious conduct. Removing SIS cases and cases involving minor defendants from the public CourtView will lessen the burden on people who have these convictions on their record.

Past convictions for MCA and other convictions involving minor defendants should be removed from 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, SB 165 reduced all MCA offenses to a violation.[1] 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.

The Commission recommends that all past records of convictions for MCA should also be removed from the publicly accessible version of CourtView. This recommendation applies to all cases where MCA was charged as a standalone offense.

Likewise, the Commission also recommends that other offenses involving minor defendants be removed from CourtView. These offenses are: Minor Operating After Consuming,

[1] Ch. 32 SLA 2016

Minor Refusal, Minor on Unlicensed Premises, and Minor Operating After an Arrest for a Title 28 Offense.

Past successful SIS cases should be removed from CourtView.

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.[2] 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 and appears in background checks.

The Commission therefore recommends that the records of all past SIS cases in which the conviction has been set aside be removed from the publicly accessible version of CourtView. The Commission also recommends providing this relief to any defendant who has a conviction set aside in the future.

[2] See AS 12.55.085.

RECOMMENDATION TO THE LEGISLATURE OF ALASKA
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 19-2017, adopted October 12, 2017:
Enact Vehicular Homicide and Related Statutes

The Alaska Criminal Justice Commission recommends adding or amending the following statutes in order to create the offenses of aggravated vehicular homicide, vehicular homicide, and negligent vehicular homicide.

*** 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).

RECOMMENDATION TO THE GOVERNOR OF ALASKA
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 20-2017, adopted December 7, 2017:

Reinstate the Clemency Process and Clear the Backlog of Clemency Applications

The Commission has researched various ways to provide relief from the collateral consequences of a conviction. In some cases, expungement of a criminal conviction after a certain period of time may be appropriate. In other cases, where the particular circumstances warrant relief, the Commission recommends clemency.

Clemency can refer to either a pardon (where the whole conviction is pardoned) or a commutation (where the sentence is reduced). In Alaska, this power rests exclusively with the Governor. The current process starts when an offender petitions either the Parole Board or the Governor for clemency, or both. The Governor's office has the final say on whether to proceed on an application. Once the Governor has authorized review of an applicant (and the application is not facially deficient), the Parole Board investigates the case, which is then sent to the Executive Clemency Advisory Committee (ECAC). The ECAC then makes a recommendation on clemency to the Governor. The Governor must then wait to make the final decision until at least 120 days have passed.

Since statehood, the governor has made a final determination in 651 clemency cases; clemency was granted around 62 times. The clemency process has been put on hold, pending revisions, since 2009. The Parole Board is still accepting applications, keeping them on file in the event the process resumes.

The Commission therefore recommends that the governor's office activate the Executive Clemency process and address the backlog of clemency applications.

RECOMMENDATION TO THE ALASKA LEGISLATURE
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 1-2018, adopted January 12, 2018:

Create a Class A Felony for Misconduct Involving a Controlled Substance

The Alaska Criminal Justice Commission's Justice Reinvestment Report, submitted to the legislature in December 2015, included several recommendations relating to drug crimes. One recommendation was to differentiate the quantities involved in drug-related crimes; the purpose of this was to distinguish between "user-dealers," who deal drugs only in small quantities to support their addiction, and commercial dealers, who deal drugs in larger quantities to turn a profit.

The recommendations did not, however, distinguish between higher-volume or lower-volume commercial dealers. Under the Misconduct Involving a Controlled Substance (MICS) statutes, as amended by SB 91, the highest level of offense at which a commercial dealer could be charged is a Class B felony (MICS 2).[1] This offense applies to manufacturing, delivering, or possessing with intent to manufacture or deliver more than 1 gram of a Schedule IA substance (such as heroin) or more than 2.5 grams of a Schedule IIA or IIIA substance (such as methamphetamine or cocaine).

The Commission therefore recommends enacting a Class A felony offense for Misconduct Involving a Controlled Substance. The offense should criminalize the following conduct:

- Manufacturing or delivering 25 grams or more of a schedule IA substance, or possessing 25 grams or more of a schedule IA substance with intent to manufacture or deliver, or
- Manufacturing or delivering 50 grams or more of a schedule IIA or IIIA substance, or possessing 50 grams or more of a schedule IIA or IIIA substance with intent to manufacture or deliver.

The Commission approved this recommendation on a vote of five to two with three abstentions. Proponents of the recommendation believe that enacting a Class A offense will help prosecute higher-level drug trafficking cases that federal prosecutors can't or won't take; that a higher-level offense will provide a tool to encourage dealers to cooperate with law enforcement in identifying other dealers; and will express community condemnation of an activity which has caused a great deal of harm to Alaskans.

Those who did not agree with the recommendation cited concerns that creating a higher-level offense would warehouse dealers in prison at great cost, but would not serve a public safety purpose because any dealer who is convicted under this statute would be replaced by another dealer. They were reluctant to make a recommendation without evidence that it would help decrease the amount of drugs in Alaska's communities. They were also concerned that it would diminish focus on treatment for addicts.

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[1] See AS 11.71.030. Drug dealing could be charged as an unclassified felony (MICS 1) if the drugs were sold to a person under age 19 or if the offense was part of a continuing criminal enterprise (See AS. 11.71.010).

RECOMMENDATION TO THE ALASKA LEGISLATURE
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 2-2018, adopted February 6, 2018:

The Commissioner of Health and Social Services should be a voting member of the Alaska Criminal Justice Commission

In August 2016, the Alaska Criminal Justice Commission ("the Commission") voted to add the Commissioner of the Department of Health and Social Services (DHSS) as a member of the Commission. That recommendation did not explicitly state whether the Commission intended the Commissioner of DHSS to be a voting member.

On February 6, 2018, the Commission voted to clarify that the original intent of the 2016 recommendation was that the Commissioner of DHSS be added to the Commission as a voting member.

RECOMMENDATION TO THE LEGISLATURE OF ALASKA
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 3-2018, adopted April 23, 2018:

Enact Redaction Statutes for Most Offenses

Alaskans with past criminal records often have difficulty in obtaining employment, housing, financial loans, and financial aid. Employers, landlords, and loan officers may see that a person has a criminal record and dismiss an application from a qualified individual without first looking at how old the record is or what conduct occurred—and without checking to see if that conduct has any bearing on the applicant's suitability.

Many people with past criminal records have been productive citizens for years, if not decades, since their crime. In some cases, these records relate to conduct that is no longer criminalized in the State of Alaska, or to convictions that have been set aside by a judge. There are many Alaskans who have been fully rehabilitated and do not pose a threat to public safety, but continue to be subject to the stigma that comes from having a criminal conviction on one's record.

The Alaska Criminal Justice Commission has researched various ways to provide relief from these harsh collateral consequences of a conviction. In some cases, automatic redaction[1] of a criminal conviction after a certain period of time may be appropriate. In other cases, a judge should make a determination based on a petition submitted by the person who wishes to redact their criminal history. It is the Commission's hope that redaction will ease the reentry process for deserving individuals who have fully satisfied their debt to society.

The Commission thoroughly researched this issue, and took into account any available data as well as how other states approach this topic. The Commission's deliberations included consideration of the following issues:

Restitution. The Commission wishes to highlight the importance of restitution and the need to make the victim whole. The Commission recognizes that some restitution payments are considerable and petitioners may not have the means to pay the entire amount of their restitution before they become eligible for redaction. In these cases, it is important for the court to consider the input of the victim.

Recidivism. The Commission looked at research on recidivism and re-offense rates. People who have been incarcerated are most likely to recidivate within three years of being released from custody. Those convicted of domestic violence crimes have much higher rates of recidivism.

Time to redemption. The Commission also looked at research on "time to redemption" – that is, the time it takes for someone who has been convicted to reach the same risk of future arrest

[1] The word "expungement" is often used in this context. However, many people assume that "expungement" signifies the complete destruction of information. The Commission does not propose destroying information, but rather limiting access to information, as explained in the sections below.

as that of the general population. The research found that the younger a person was at the time of arrest, the longer it takes for that person's risk of being arrested to reach that of the general population.[2] Additionally, the more prior convictions the person had at arrest, the longer it took for that person's risk of a future arrest to reach that of the general population.

The Commission's research on recidivism and time to redemption informed the recommendations regarding waiting periods for redaction, as outlined in sections (3)(b) and (3)(c) below.

In light of the Commission's research on barriers to reentry, recidivism, and time to redemption, the Commission recommends that the Alaska Legislature enact statutes pursuant to the following recommendations.

1.) Convictions for simple possession of marijuana and minor consumption of alcohol should be redacted automatically and immediately.

The Commission recommends automatic redaction of records relating to conduct that is no longer criminalized. Simple possession of marijuana[3] was decriminalized following the voter referendum in 2014.[4] In 2016, SB 165 reduced all Minor Consuming Alcohol (MCA)[5] offenses to violations, and directed the Court System not to publicly publish the record of any such violation.[6]

The Commission recommends that all convictions for these two offenses should be redacted automatically and immediately.[7] This recommendation applies to all cases where these offenses have been charged as standalone offenses, and applies to convictions as well as cases where the charge was dismissed or never prosecuted

See section 4 below for the Commission's recommendations for the proposed effect of redaction.

2.) Successful Suspended Imposition of Sentence cases should be redacted automatically 1 year or 5 years after the date of set-aside.

Suspended Imposition of Sentence (SIS) is a form of sentencing wherein a judge may suspend the defendant's sentence and order the defendant to a term of probation. If the defendant successfully completes the term of probation, the court may then set aside the defendant's

[2] This may seem counterintuitive, because criminal activity among young people can often be attributed to their youth; one might think that a person who was arrested at a young age would be more likely to be rehabilitated. This may be true, but it is also true that the younger a person begins, the longer it takes for that person to "age out" of crime.

[3] AS 11.71.060(a)(1)-(2).

[4] 2014 Ballot Measure No. 2, § 1, eff. Feb. 24, 2015; enacted in AS 17.38.020.

[5] AS 04.16.050.

[6] Ch. 32 SLA 2016.

[7] The Commission recognizes that this provision will have a fiscal impact because of the analysis required by the agencies that will be redacting these records. The Commission intends for these agencies to redact these records as soon as they are practically able to do so.

conviction.[8] In determining whether to set a conviction aside, judges typically look at whether the defendant has accrued any new criminal history or any serious probation violations, and also consider any objections from the prosecutor or probation officer.

If a conviction is set aside, it will be designated as such in CourtView and in APSIN (the criminal history database maintained by the Department of Public Safety). The record of this set aside conviction, however, will still be accessible on CourtView and will appear in background checks.

The Commission therefore recommends that the records of all SIS cases be redacted automatically 1 year after the date of set-aside in misdemeanor cases and 5 years after the date of set-aside in felony cases.

Recognizing that restitution may still be owed in some cases when they become eligible for set-aside, the Commission also recommends that the court consider any outstanding restitution obligations when a conviction in an SIS case is eligible to be set aside.[9]

See section 4 below for the Commission's recommendations on what effect redaction should have.

3.) Most offenses should be eligible for redaction by petition, with some exclusions.

For offenses other than MCA and simple marijuana possession, and offenses resolved through an SIS, the Commission recommends that redaction generally be available upon petition, subject to an individualized determination by a judge. Redaction in these cases should only be available to those who have not had a new conviction since being convicted of the offense or offenses sought to be redacted.

a.) Process

The Commission recommends a petition process that would start when a person with a criminal history submits a petition to the court. The petition should be submitted using the original case number of the conviction sought to be redacted, and should include an affidavit from the petitioner stating that the conviction is eligible for redaction and the petitioner has not had any new convictions.

The petitioner would also be required to serve the prosecutor's office with a copy of the petition. If the prosecutor's office chooses to file an opposition to the petition, it must do so within 30 days.

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[8] See AS 12.55.085.

[9] The obligation to pay restitution still stands after a conviction is set aside. However, if a set aside case is redacted, it may be more logistically difficult for a victim to enforce the restitution obligation. If a judge is notified of an outstanding restitution obligation at the time when an SIS case is eligible to be set aside, the judge may then consider whether the person seeking a set aside is making regular payments and whether the outstanding amount is substantial.

The prosecutor must attempt to notify any victim in the case, if any identifiable victim exists. If a victim exists and the prosecutor's office is not able to locate the victim within 30 days of receiving a copy of the petition, the prosecutor must notify the court of this fact. If the victim is notified and the victim opposes the petition, the prosecutor must notify the court.

If the prosecutor opposes the petition, the prosecutor may consent to a determination on the pleadings. If the prosecutor does not consent to a determination on the pleadings, the court shall issue a scheduling order within 90 days of receiving the prosecutor's response.

Whether though a written order or on the record at a hearing, the court shall make a determination using the factors and standards as outlined in section (d) below.

b.) Convictions for misdemeanor offenses.

The Commission recommends that most misdemeanor convictions should be eligible for redaction except sex offenses for which there is a registration requirement.[10] For misdemeanor convictions for misconduct involving a controlled substance, the conviction should be eligible for redaction 4 years after the petitioner has been unconditionally discharged from custody, probation or parole for that offense. For misdemeanor convictions for violent offenses and sex offenses without a registration requirement, the conviction should be eligible for redaction 7 years after unconditional discharge. All other misdemeanor convictions should be eligible for redaction 3 years after unconditional discharge. Whether the waiting period is 3, 4, or 7 years, the petitioner must not have any new convictions in that period of time.

c.) Convictions for felonies.

The Commission recommends that felonies should also generally be eligible for redaction. The following felony offenses should not be eligible for redaction: sex offenses, unclassified offenses, and attempt, solicitation, or conspiracy of those offenses. For all other felony offenses, eligibility for redaction should begin 10 years after the date of unconditional discharge. The petitioner must not have any new convictions in that period of time.

d.) Redacting multiple offenses, subsequent petitions

The Commission intends that this recommendation will apply to people who have made a lasting change and turned away from a life of crime. The Commission does not intend redaction to be used as a serial option to clean one's slate if the petitioner has not truly turned over a new leaf.

As such, a petitioner may elect to redact multiple offenses in one petition, so long as each offense is eligible as outlined above. However, if a petition for redaction is granted, the petitioner may not seek redaction again if the petitioner commits a subsequent offense.

[10] The Commission intends that registrable sex offenses would remain ineligible for redaction even after the registration period has expired.

If a petition for redaction is denied, the petitioner may not seek redaction again until one year after the date the court denies the petition.

4.) Effect of redaction.

If a petitioner successfully obtains redaction of a conviction, the record of conviction should be retained in APSIN and available for law enforcement and prosecution purposes. The redacted record may still be used as a predicate or enhancement for purposes of charging and sentencing in future criminal cases. It may be used in assessing a defendant for pre-trial release. It may also be used for impeachment purposes when the person whose record was redacted is testifying under oath.[11]

The Court System should treat the record of the conviction as confidential, meaning access to the record would be restricted to: (1) the parties to the case; (2) counsel of record; (3) the prosecuting attorney; (4) individuals with a written order from the court authorizing access; and (5) court personnel for case processing purposes only.[12]

The Department of Public Safety (DPS) should also withhold disclosure of a redacted conviction in a standard background check. Standard background checks are those that are available to any person who has authorization from the subject.

If a record of conviction is redacted, the petitioner:

- May choose not to disclose the conviction,
- May not be held guilty of perjury for failing to disclose the conviction, and
- May not be fired or discharged from employment for not disclosing the conviction.

Redaction does not relieve a petitioner of any restitution obligation. The Commission recommends that if an offense is redacted with restitution still outstanding, the victim be given information on the outstanding restitution and how to collect on a restitution judgement, and that the restitution judgment be made accessible and identifiable to the victim and subject to the victim's review.

There are additional considerations regarding the criminal history information retained at DPS that that the legislature may wish to take into account in enacting any redaction legislation.

- In addition to standard background checks, DPS also releases a different kind of background check to "interested persons." This type of background check is available for purposes of employing someone with supervisory or disciplinary power over a minor or dependent adult. It releases more information than the standard background check.

[11] In child custody cases, there is a presumption of custody if a parent has two DV events on their record; the Legislature may wish to add a provision retaining records for these purposes.

[12] The Court System may also send information about the redacted records to the Department of Public Safety, and make restitution judgments available to any victim owed restitution.

- DPS is required to send criminal history information to the FBI, which is retained in national databases. It is possible for DPS to tell the FBI that an existing record has been redacted, and the FBI may make a notation of that in their database.
- Some employers, and certain state agencies, are required by law to enquire about certain convictions. The legislature may wish to make an exception so that those employers and agencies may fulfil their legal obligation.
- The Legislature may also wish to create provisions that protect employers from liability if they hire a person with a redacted record.

5.) Certificates of Rehabilitation

Using the same petition process as described in section 3 above, a petitioner may also elect to petition for a certificate of rehabilitation.[13] As with redaction, the petitioner must not have had any new offenses. The same notice procedures also apply. The petitioner may apply any time after unconditional discharge from custody, probation or parole.

In cases involving sex offenses, unclassified offenses, and attempt, solicitation, or conspiracy of those offenses, the court may grant the petition in its discretion, taking into account the factors listed in section (3)(e) above.

In all other cases, if the prosecutor does not oppose the petition, the court shall grant the petition with a written order. If the prosecutor does oppose the petition, the court shall grant the petition unless it finds by clear and convincing evidence that the petitioner has not been rehabilitated, accounting for the factors listed above.

It the court grants the petition, it shall provide the petitioner with a certificate indicating that the petitioner has not committed any new offenses and has shown evidence of rehabilitation.

[13] If a petitioner is granted a certificate of rehabilitation, that does not prevent the petitioner from later petitioning for a redaction.

APPENDIX

RECOMMENDATION TO THE ALASKA LEGISLATURE
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 4-2018, adopted April 23, 2018:

Amend provisions in AS 12.47.050 regarding the release of guilty but mentally ill prisoners

A defendant found guilty but mentally ill (GBMI) is sentenced as a regular criminal defendant. The statute governing disposition of GBMI defendants, AS 12.47.050, requires the Department of Corrections (DOC) to provide treatment to such prisoners so long as they are dangerous. In addition, the statute imposes restrictions on GBMI prisoners, precluding them from being released on parole or furlough so long as they are receiving treatment for the mental disease or defect that causes them to be dangerous.

DOC interprets this statute to mean that a GBMI prisoner who is receiving treatment–even if the treatment is simply the regular administration of medication and the prisoner is otherwise stable—may not be released on parole or furlough. There is no formal review process for determining whether a GBMI prisoner may be released. Since the statute was enacted, no GBMI prisoner has been released. DOC has begun assessing these cases on an ad-hoc basis, but DOC staff report that they would appreciate some legislative guidance.

Accordingly, the Commission recommends the following:

> **Amend AS 12.47.050(d):** Notwithstanding any contrary provision of law, *if the Commissioner of Corrections determines, by clear and convincing evidence, that the defendant suffers from a mental disease or defect that causes the defendant to be dangerous to the public peace or safety* a defendant *found guilty but mentally ill* ~~receiving treatment under (b) of this section~~ may not be released
>
> (1) on furlough under AS 33.30.10-33.30.131, except for treatment in a secure setting; or
> (2) on parole.
> *(3) Not less than 180 days before a defendant found guilty but mentally ill is eligible for parole under AS 33.16.089, AS 33.16.090 or AS 33.20.040 or furlough under AS 33.30.101, the commissioner of corrections shall determine, following a hearing, whether the defendant is ineligible for release under this subsection.*
> *(4) If the commissioner determines that the defendant is ineligible for release under this subsection, the commissioner shall conduct subsequent hearings under (3) of this subsection annually until such time as the defendant is found to be eligible for release under this subsection.*

APPENDIX

Amend AS 12.47.050(e): Not less than 30 days before the expiration of the sentence of a defendant found guilty but mentally ill, the commissioner of corrections shall file a petition under AS 47.30.700 for a screening investigation to determine the need for further treatment of the defendant if

~~(1) the defendant is still receiving treatment under (b) of this section; and~~

~~(2)~~ the commissioner has good cause to believe that the defendant is suffering from a mental illness *and is likely to cause serious harm to self or others;* ~~that causes the defendant to be dangerous to the public peace or safety;~~ in this paragraph, "mental illness" *and "likely to cause serious harm to self or others"* have~~s~~ the meaning given in AS 47.30.915.

These amendments would shift the focus from whether the prisoner is receiving treatment to whether the prisoner is currently dangerous. It would require DOC to hold a dangerousness hearing 180 days before parole release eligibility. The Commission recommends this timeframe because the parole board must hold a parole release hearing within 90 days of parole eligibility. The Commission recommends subsection (4) because of the fluidity of mental illness.

Note that even if a GBMI prisoner were found to be eligible for release under this section, the prisoner would still have to qualify for release under the various furlough and parole statutes. Under AS 33.30.091 and AS 33.30.101, DOC may not release someone on furlough unless DOC determines with reasonable probability that the prisoner will not break the law. Under AS 33.16.100, the parole board may not release someone on discretionary parole unless the board finds a reasonable probability that the person will live without violating the law. In other words, if a GBMI prisoner is found eligible under AS 12.47.050(d), it does not necessarily mean that the prisoner will be released; it just means the prisoner will be granted consideration for release under the regular parole and furlough procedures.

The amendment to AS 12.47.050(e) would change the standard for referral for civil commitment to mirror the language of the civil commitment statutes. This recommendation is intended as a clean-up to the statutory language. In order for the court to order a Title 47 screening investigation (the beginning of the civil commitment process), a petitioner must allege that the respondent is "gravely disabled or to present a likelihood of serious harm to self or others."[1] The recommended change to 12.47.050(e) would align the two standards.

[1] AS 47.30.700(a).

RECOMMENDATION TO THE ALASKA LEGISLATURE
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 5-2018, adopted September 24, 2018:

Expand data sharing capacity, infrastructure, and formalized agreements among agencies to improve behavioral health outcomes.

In order to improve behavioral health outcomes for Alaskans, the Commission recommends increased effort and funding support to further develop the state's data systems infrastructure along with the requisite staff capacity in order to improve data sharing and collaboration between agencies.

Although significant strides have been made to improve data collection and sharing within and across State agencies, challenges remain regarding infrastructure, staff capacity and data sharing agreements. These are required to regularly and consistently collect, analyze and report on criminal justice trends and programs intended to promote rehabilitation and recidivism reduction. Furthermore, increased data sharing capacity promotes greater communication among agencies for the purpose of better identifying and meeting the behavioral health needs of Alaska's justice-involved population. Data sharing also allows analysts to have a more complete picture of aggregate data to identify trends and help inform policy discussions and decisions.

RECOMMENDATION TO THE ALASKA LEGISLATURE
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 6-2018, adopted September 24, 2018:

Expand Crisis Intervention Training Efforts

The Commission recommends increased effort and funding support for: (1) Crisis Intervention Team (CIT) training opportunities, (2) enhanced CIT law enforcement response with a mental health co-response element in existing communities with a CIT program, and (3) establishing the co-response model in communities where there is interest and capacity.

Some local law enforcement agencies and their officers (in Anchorage, Palmer, Wasilla, Juneau, and Fairbanks), as well as some officers and units of the Alaska State Troopers, have been trained in the Memphis model of Crisis Intervention Team training. However, increased and enhanced efforts are needed. Crisis Intervention Team training provides law enforcement officers with skills and knowledge to better respond to individuals experiencing a mental health or behavioral health crisis.

The co-response model involves both a law enforcement officer and a mental health practitioner responding to identified calls involving persons in a mental health crisis to divert the individual (when appropriate) to needed services instead of jail. The co-response approach helps find long-term solutions for individuals whose behavioral health needs led them to the point of crisis. It relieves the burden of law enforcement officers to locate appropriate services for the individual in crisis, decreases the number of repeat calls for service for the same individual, and when appropriate, prevents unnecessary incarcerations.

RECOMMENDATION TO THE ALASKA LEGISLATURE
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 7-2018, adopted September 24, 2018:

Develop crisis stabilization centers

The Commission recommends that the Legislature support current efforts aimed toward the development, implementation and operations of crisis stabilization centers in communities where there is a shared commitment to developing such centers. The Commission also recommends exploring the development of this type of service in other communities around the state.

Although hospital emergency rooms in Anchorage provide critical emergent and acute psychiatric care, that level of care may not be required for some individuals if other options existed. Therefore, crisis stabilization centers would offer law enforcement officers a diversion option instead of jail for individuals who are experiencing a crisis and need to be removed from a situation. Currently, the Department of Health and Social Services has issued a request for proposals to establish a crisis stabilization facility in Southcentral Alaska, using $4,000,000 in funds appropriated during the 2018 legislative session. If DHSS receives responses to the request and a project is created, this funding would last just under three years.

RECOMMENDATION TO THE LEGISLATURE OF ALASKA
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 1-2020, adopted January 30, 2020:

Draft a Resolution Regarding Medicaid Coverage

The Commission recognizes the importance of providing treatment for mental health and substance use disorders for people who are incarcerated. Successful completion of mental health and/or substance use treatment is likely to help individuals remain crime-free once they are released from custody. Offering this treatment to people who are incarcerated is therefore likely to reduce recidivism and provide a public safety benefit.

Many people who are in prison would be eligible for Medicaid coverage, but for the fact that they are incarcerated. Medicaid regulations do not allow reimbursement for any treatment rendered to people who are incarcerated. (However, if a person is transferred from a correctional facility to a medical facility for inpatient treatment for 24 hours, Medicaid will reimburse eligible persons for those services.)

In practice, the prohibition on Medicaid reimbursement for individuals who are incarcerated means that any person who is incarcerated will have to discontinue their patient status with any community service providers once they begin their term of incarceration, and then re-establish their patient status once they are released from incarceration. This disruption in treatment can make the reentry process more difficult and increase the risk of recidivism.

The Commission therefore recommends that the Alaska Legislature draft a resolution in support of a waiver of the Medicaid regulations prohibiting coverage for people who are incarcerated. Specifically, the Commission recommends that the Legislature support a waiver that will allow Medicaid to cover the cost of behavioral health treatment for the 90-day period preceding release.

RECOMMENDATION TO THE LEGISLATURE OF ALASKA FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 2-2020, adopted August 27, 2020:

Recommendation Regarding Civil Detention of People with Mental Disorders

The Commission recommends that the legislature pass legislation that assures that persons subject to an emergency evaluation order issued by the court under AS 47.30.700, or who have been taken into custody under AS 47.30.705, due to their grave disability or mental illness, are not placed in a jail or other correctional facility except for protective custody purposes and only while awaiting immediate transportation to a treatment facility. These persons should be transported to the nearest evaluation facility, as soon as is practicable to arrange the most immediate transportation, given the physical location of the person within the state of Alaska.

Holding civil detainees in jail or correctional facilities who are disabled by and suffering from a mental disorder can cause them irreparable harm, because correctional facilities are designed to be punitive. Correctional facility beds should be used solely for detention, correctional, rehabilitative and educational purposes of persons charged or convicted of criminal offenses.

RECOMMENDATION TO THE LEGISLATURE OF ALASKA FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 3-2020, adopted, September 10, 2020:

Implementation of the Crisis Now model

The lack of a dedicated behavioral health crisis intervention system in Alaska stresses emergency department, first responder, judicial, correctional, and public safety systems. Response efficiency is degraded when existing systems that are not specially trained and equipped to handle behavioral health crisis are required to do so.

Crisis Now is a framework for behavioral health crisis response that offers an alternative to traditional law enforcement responses.[1] The Crisis Now framework comprises four core elements, detailed below, that provide targeted interventions for people experiencing a behavioral health crisis. This enhanced crisis response, which includes options to respond at appropriate levels, will ensure better care for individuals who are suffering as well as offer law enforcement officers a diversion option alternative to jail and emergency rooms.

Crisis Now is recognized and supported by the Substance Abuse Mental Health Services Administration (SAMSHA) as a framework for best practice behavioral health crisis care, by the National Association of State Mental Health Program Directors, the National Action Alliance for Suicide Prevention and endorsed by Crisis Intervention Team International. In 2020, the Legislature enacted SB 120, which establishes the necessary legal framework for implementation of the Crisis Now framework in Alaska communities.

Therefore, the Commission recommends that the Legislature, following the passage of SB 120:

- **Develop an effective crisis response system.** The Commission recommends that the Legislature support current efforts aimed toward the development, implementation, and operations of effective crisis response and stabilization programming, which operate within the *Crisis Now* framework in communities where there is a shared commitment to developing enhanced behavioral health response to mental health and behavioral health crisis. The core elements of an effective crisis response system includes:
    - **A regional or statewide crisis call center** that coordinates in real time with the other components;
    - **Centrally deployed, 24/7 mobile crisis teams** to respond in-person to individuals in crisis in community (preferably includes a peer with lived experience for high engagement, and a clinician).
    - **Crisis stabilization programs** which include 23-hour observation recliners and short-term stabilization beds, which may be operated separately or jointly, offering a safe, supportive and appropriate behavioral health crisis placement for those who cannot be stabilized by call center clinicians or mobile crisis team response. These centers must accommodate voluntary and involuntary placement.
    - **Essential Crisis Care Principles and Practices** which include recovery orientation, trauma informed care, significant use of peer staff, commitment to Zero Suicide/Suicide Safer Care, strong commitments to safety for

[1] Crisis Now's website is at https://crisisnow.com/.

consumers and staff, and collaboration with law enforcement.

The primary purpose is to provide the appropriate and immediate mental health/behavioral health intervention for individuals in a crisis through a well-designed, well-coordinated continuum of services that requires strong collaborations between community services, public safety and behavioral health providers. Currently, there is work underway to develop and implement the Crisis Now framework in Anchorage, Fairbanks, and the Mat-Su Valley.

The Commission also recommends that the Legislature support the development of this type of service in other communities around the state. Work is commencing to identify elements of the framework that are feasible for rural communities. The expansion of *Crisis Now* to these communities will require state agencies to work together with tribal health organizations and other local partners to avoid creating larger gaps or disparities in access to care between rural and urban Alaska communities. It is important to note that not all communities will have the demand or capacity to implement all the components of the framework. For that reason, it will be critical to continue to offer and expand Crisis Intervention Team (CIT) training, explained further below, to all levels of law enforcement, correctional officers and other first responders.

RECOMMENDATION TO THE LEGISLATURE OF ALASKA FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 4-2020, adopted September 10, 2020:

Recommendation Regarding Crisis Intervention Team (CIT) Training

It is critical that identified law enforcement personnel, inclusive of dispatch and tribal police officers, receive specific training to manage a person experiencing a behavioral health crisis and have established partnerships with community behavioral health service providers. CIT trained law enforcement personnel are critical to de-escalating a person's crisis, connecting them to appropriate professional behavioral health services and mitigating the risk of harm (to the person in crisis or the law enforcement officer) or inappropriate incarceration.

The Commission recommends that the legislature allocate increased funding to the Alaska Police Standards Council to

(1) support existing law enforcement agencies, their respective communities and tribal police officers to enhance Crisis Intervention Team (CIT) training (CIT) opportunities and
(2) expand and/or establish a CIT co-response model in communities where there is necessity, interest, and capacity.

CIT academies based on the Memphis Model have been held in Alaska since 2001 in Anchorage, Fairbanks, Juneau and the Mat-Su Valley. However, for a variety of reasons, including staff turnover, the number of CIT trained law enforcement personnel is insufficient.

Although there identified communities interested in developing and implementing the Crisis Now model as an evidence-based approach to address the needs of persons in a behavioral health crisis, this will not negate the need for CIT trained law enforcement and other first responder personnel. In fact, the personnel implementing the Crisis Now model will be those trained in the CIT model.

Furthermore, not all communities in Alaska will have the capacity to implement the Crisis Now model. In these areas having CIT trained law enforcement and other first responders will promote better outcomes for Alaskans experiencing a behavioral health crisis. The co-response of a law enforcement officer and a mental health practitioner will address the behavioral health needs of the individual in crisis, reduce repeat calls for service for the same individual, and prevent unnecessary incarcerations.

RECOMMENDATION TO THE LEGISLATURE OF ALASKA FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 5-2020, adopted September 10, 2020:

Recommendation Regarding Computer Access for Inmates

The Commission recommends that the legislature authorize the use of computers and other modern technologies with the Department of Corrections to facilitate an inmate's rehabilitation or the inmate's compliance with a reentry plan or case plan developed under AS 33.30.011, including use related to employment, education, vocational training, access to legal reference materials, visitation, or health care.

The Commission recognizes the importance of expanding access to computers for inmates in Alaska Department of Corrections custody for rehabilitation, reentry and recidivism reduction in several ways.

First, successful completion of mental health and/or substance use treatment is likely to reduce recidivism. Treatment can be economically and effectively delivered to many inmates online and through CCTV systems.

Second, returning citizens struggle with the use of modern technology such as computers, touch screens, tablets and cell phones as they endeavor to navigate and integrate into the community. Long term inmates who have been incarcerated for years and decades have literally been left behind from technology that they will be required to use to seek employment, apply for health care, food stamps and other emergent benefits which assist with reentry. They are released into our communities with little functional knowledge about modern and appropriate use of everyday technologies. Teaching inmates how to use computers and other modern technologies to access engage in educational and vocational opportunities, access resources, communicate around release planning, learn computer skills that have become nearly mandatory by most employers, or otherwise retain familiarity with computers and technology will help to improve rehabilitation, reentry and recidivism reduction outcomes.

Finally, access to computers allows inmates to apply for Medicaid and other government benefits prior to their release to community. Medicaid regulations do not allow reimbursement for any treatment rendered to people who are incarcerated. Waiting until after prison release to apply for Medicaid causes delays in health care and behavioral health treatment, frustrating the goals of rehabilitation, reentry and reducing recidivism.

Access to computers for inmates should be free because most people who are incarcerated are low to no income.

RECOMMENDATION TO THE LEGISLATURE OF ALASKA
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 6-2020, adopted September 10, 2020:

Make Bail Conditions Accessible to Law Enforcement Officers

When a person is charged with a crime and released from jail before trial, a judge will assign that person conditions of release which the person must follow until trial. These conditions of release are often known as bail conditions. In addition to requiring payment or assurance of a cash bond, common bail conditions include restrictions on travel as well as prohibitions on the use of alcohol and controlled substances, possessing weapons, or contact with victims or witnesses.

If a person who is released pending trial violates any of the assigned bail conditions, that person can be charged with violating a condition of release (VCOR), arrested, and sent back to jail. Court-ordered conditions of release therefore play a key role in ensuring that pretrial defendants will appear for their trial and will not pose a threat to victims, witnesses, or the larger community.

However, it is difficult for law enforcement officers to enforce these conditions of release because most officers in Alaska do not have direct access to bail conditions. Bail conditions are ordered by a judge and set forth in a paper order. If an officer comes into contact with a pretrial defendant, the officer will not know what the defendant's bail conditions are without consulting the paper file in the local courthouse.

In some locations in Alaska, local courts have found a way to share information on bail conditions with law enforcement. In Fairbanks, court personnel enter information on bail conditions into the Department of Public Safety's criminal justice database, the Alaska Public Safety Information Network (APSIN); law enforcement personnel can then access the information easily. This system is staff-intensive and costly for the courts, and therefore has not been implemented in other locations.

Still, the Commission believes that public safety would be enhanced if bail conditions were more accessible to law enforcement personnel statewide, and therefore recommends that state agencies and the court system continue to work together to explore viable methods for making them available and easily accessible. This may be achieved using the Fairbanks model or another method. Regardless of the method used, it would ideally allow real-time or rapidly-entered changes to the bail conditions, so that officers have access to the most current bail conditions.

RECOMMENDATION TO THE ALASKA LEGISLATURE
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendations 7, 8, and 9-2020, adopted September 10 and October 15, 2020:

Recommendations to Improve Communication for Victims of Crime

Introduction

A person who has been the victim of a crime in Alaska often faces numerous barriers to help, healing, and understanding their rights. Through listening sessions, online surveys, and meeting with stakeholders from around the state, the Alaska Criminal Justice Commission has found that there is room for improvement at every stage of a victim's interaction with the criminal justice system.[1] Many of the gaps in services that victims experience are in essence gaps in communication. This document makes several recommendations for ways Alaska can improve services for victims of crime.

Background

Listening Sessions

Beginning in January 2019, the Commission held victim listening sessions in Juneau, Fairbanks, Ketchikan, Bethel, Anchorage, and at the Alaska Federation of Natives (AFN) Convention in Fairbanks. Attendance varied at each session, with participants representing victims of a variety of crimes. A common theme at all listening sessions concerned communication and follow-up from law enforcement and prosecutors. Many participants stated they had difficulty ascertaining the status of their case, believed that no one followed up on their report of a crime, or felt like they weren't being taken seriously.

Participants also spoke about the difficulty of navigating the legal system and not understanding the process. Some noted that the trauma of experiencing crime made it difficult for them to retain information or to know what to do in times of crisis. Many suggested that there could be better ways of informing victims of crime what services are available to them and reaching out to them about their case.

Victim Surveys

In mid-May 2019, Commission staff launched an online survey for victims of crime in Alaska. The survey asked respondents about their location, what helped or would have helped them immediately after the crime or long-term, what helped or would have helped them to understand the criminal justice process, whether they were able to access services, and anything else they thought the Commission should know.

[1] Not everyone who has been affected by criminal activity wishes to be referred to as a victim. Some might prefer the term "survivor," for example. For the sake of clarity, however, this recommendation uses the term "victim."

Survey respondents were from all over the state and had experienced many different types of crime. Many respondents expressed problems with communication from police or prosecutors, saying they were unsure what had happened after they reported a crime or were unsure what was happening with the criminal case in the court system. Many wanted more information in general about how the criminal justice system worked. These responses included the following[2]:

- *I wish I knew more about what is happening with my trial. I wish I knew why some decisions were made during the entire trial. I want to know why my trial is still active after 5 years.*

- *I have no idea what's going on with my pending court case. A new DA was apparently assigned but I found this out from CourtView. No one told me. I wish I never filed charges against my rapist. Nobody gives a [hoot] about me or keeping me informed even though I'm supposed to testify against him in trial sometime. It feels like being victimized over and over again when you're blown off by staff or treated rudely.*

- *I was confused, intimidated, and had no idea what to expect in the process, and was forced to try and figure it out on my own reading stuff online….The legalese involved in trying to read about court procedures is overwhelming. Having someone to TALK to would make it more accessible.*

Some felt that police or prosecutors did not conduct a thorough enough investigation, and some felt that the consequences the defendant faced were inadequate; these problems also related to communication in that better communication from the officials involved could have helped the victims understand why a certain course of action had been taken. These responses included the following:

- *[It would have helped if] they would [have] arrested the defendant for violating a restraining order but instead they didn't charge him, [and] a month later, my family member was killed.*

- *[It would have helped if] the police and detectives were more responsive. Assigned me an official that was off for the three days following [the] break-in. Our family are now detectives. We are the ones following leads, talking to people and giving information to the detectives. At this time I have not heard from police or detective in over three weeks.*

- *We were excluded from the criminal case even after requesting to be involved. [The] first time [the] DA contacted us was after a plea deal had been struck reducing two felony assault charges down to a misdemeanor charge of assault in the fourth degree.*

[2] Quotations from the survey responses have been lightly edited for clarity and to remove potentially identifying information.

Many survey respondents indicated that they needed services, whether in the form of advocacy, housing, financial support, counseling, or legal services. Many said they had not been able to access needed services or that they had experienced barriers to accessing services. These responses included the following:

- *Mental health options for dealing with the trauma [would have helped long-term].*
- *Getting all the resources [immediately after the crime occurred would have helped me to] begin healing. Free counselling, services offering safety [and] services to help recover from trauma.*
- *Financial assistance to move out of a shared house and to hide from my abuser [would have helped me immediately after the crime].*

Finally, many respondents said that they felt there had been a lack of respect for their experiences and rights as victims; some said that they felt that defendants had more rights than they did. Some felt as though they had not been taken seriously when they reported the crime committed against them. These responses included the following:

- *Victims have rights. Please stop victimizing them further by allowing defendants to run the show. A timely trial is important for closure and healing.*
- *When I reported [being raped] to the police department, the police department in [Northwest Alaska] ignored my case.... The court refused to believe me when I reported it.*
- *I feel like I continue to be victimized and the criminal is having more rights and services than myself. I would like my possessions back that were taken and being held [as evidence].*

<u>Workgroup Meetings</u>

To respond to the concerns shared in both the listening sessions and the survey responses, the Commission convened a workgroup comprised of Commissioners, victim advocates, and interested members of the public. The workgroup met several times and identified improved communication with victims as a priority. The workgroup then developed the following recommendations.

Recommendation 7-2020: Public Outreach (Approved on 9/10/20)

People often have trouble retaining information directly after experiencing a traumatic event such as becoming the victim of a crime. Victims receive a lot of information directly after a crime occurs and they may not be able to process that information. The Commission received feedback from victims that they were not aware that help was available to them after the crime occurred.

The Commission therefore recommends creating a statewide public awareness campaign to let the general public know that there are resources available for victims of crime and where to find more information. Care should be taken to reach everyone, statewide, and include people of all ethnicities.

This effort should reach the general public as a way to build awareness of the services that are available to victims of all crimes. Having a simple outreach campaign to raise awareness of where people should go if they become the victim of a crime should help victims, their friends, and their family remember that there are resources available.

The Commission recommends that the Office of Victims' Rights (or another state agency) take the lead on this campaign in collaboration with local and nonprofit organizations.

Recommendation 8-2020: Victim Advocates Working in Partnership with Law Enforcement (Approved on 9/10/20)

Many victims are not able to connect to available services immediately after a crime occurs. Respondents to the Commission's survey often noted that they weren't aware help was available immediately after the crime occurred, and that having immediate access to services would have helped them. Having mechanisms in place that would both enable victims to easily reach out to service providers and enable service providers to reach out to victims will help get victims access to services more quickly.

The Commission recommends that law enforcement agencies work in partnership with victim advocates and victim service agencies in two ways: first, by providing all victims of crime with simple contact information after a crime occurs, and second, by inviting victim advocates to work with law enforcement officers to proactively reach out to victims of all crimes.

Providing information to victims of crime about where to get help dovetails with a requirement, already in statute, that law enforcement officers provide all victims with information about the Office of Victims' Rights. In addition to the Office of Victims' Rights, additional resources are available to victims depending on their geographical location in the state. Victims should be aware of the services available to them in their area.

The Commission recommends that law enforcement agencies and victim service providers and advocacy agencies collaboratively develop a simple handout or card with a website, phone number, and address that will direct victims to relevant services. This information should be specific to the region in which the victim lives. Law enforcement officers should be required to distribute these handouts or cards to all crime victims.

Some victims experience significant trauma and may not be in a place to receive information directly after a crime occurs. These victims may benefit from receiving a phone call from a victim advocate in the day or two following the crime. The Commission recommends that the legislature require all law enforcement agencies to partner with a victim advocacy organization to conduct this outreach. The partnership can be as simple as requiring officers to offer to contact a local advocacy group on behalf of the victim.

The Commission suggests that law enforcement agencies look to the recent partnership between the Anchorage Police Department and Victims for Justice. In this partnership, APD officers responding to the scene of a crime will ask victims if they wish to be contacted by an advocate. At the end of the officer's shift, the officer will hand the contact information for the victim and basic information about the crime to a VFJ advocate. The information shared is limited; this avoids complications due to limits on law enforcement data sharing in active cases.

These partnerships will require state resources to be successful. The Commission believes that connecting victims of crime to services is a vital public safety function and these partnerships should be adequately resourced.

Recommendation 9-2020: Establish Victim Coordinator Positions to Improve Communication to Victims (Approved 10/15/20)

The Commission has heard consistent and strong messages, (through public comment, victim listening sessions, and surveys) that victims of crime are frustrated because they do not know the status of their court case, understand court processes or how to access services and supports to address the collateral consequences of being victimized. For example, they often did not know when or if a case was filed, when or whether they would have the opportunity to testify or address the court, or the court process and ultimate resolution of the case. For crime victims, dealing with this kind of uncertainty impacts their personal lives and schedules, and is barrier to personal resolution and healing.

AS 12.61.015 requires prosecuting attorneys to make a reasonable effort, when requested, to notify or confer with victims of domestic violence and felony crimes about certain aspects of the criminal case. The Department of Law employs paralegals to contact these victims, to connect victims to an automated hearing notification service so that victims may be informed of upcoming hearings, and to field questions about the criminal justice process generally and the case against the defendant. In addition, paralegals are required to perform traditional paralegal duties designed to comply with the defendant's due process rights, such as obtaining and providing the defense with all material required to be discovered pursuant to Rule 16; drafting necessary notice pleadings such as notice of experts and 404(b) notices; and locating and issuing subpoenas for *all* witnesses necessary for hearings and trials. Finally, paralegals are also required to fulfill the state's chief support role for prosecutors, performing duties including, but not limited to, conducting legal research, organizing and analyzing evidence, assembling exhibits, preparing affidavits and other routine pleadings, and obtaining other information for case preparation. Paralegals play an important role in criminal case processing and bear a heavy workload for all criminal prosecutions, not simply those with traditional victims involved.

Therefore, the Commission recommends that the Legislature appropriate funding to the Department of Law, Criminal Division to establish Victim Coordinator positions (Coordinators) to assist all crime victims. Once charges have been filed, these Coordinators would be assigned cases, receive victim contact information from the prosecutor and serve as the point of contact for the crime victim concerning routine scheduling matters and general victim notification requirements until case resolution by the Court. They would reach out to the victim, making reasonable efforts to ensure that the victim is aware of the Victim Coordinator's role and the victim's ability to opt in or out of continued contact with the Coordinator. The assigned paralegal would still primarily fulfill the traditional role of working with the victim concerning the substantive matters of the case.

Examples of the position duties/responsibilities for victims who opt-in for continued contact with the Coordinator, include but are not limited to:

- Ensuring that the victim receives sufficient advance notice of hearings, whether through an automated system, e-mail notification or phone calls, to prepare for and attend the hearing, if desired;
- Answering the victim's general questions about the criminal justice process, including changes of plea, trials, sentencing, and any post-trial procedures such as parole, restitution, and probation;
- Providing the victim information and referrals to appropriate services and supports to address any difficulties experienced as a direct result of the crime (medical, mental health, financial, shelter, childcare, employment, etc.);
- When appropriate, attending court hearings to help the victim understand what is happening; and
- Providing information and referral to victim advocacy services.

NOTE: As an employee of the Department of Law, the Victim Coordinator shall not serve as a victim advocate.

RECOMMENDATION TO THE LEGISLATURE OF ALASKA FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 10-2020, adopted September. 10, 2020:

Recommendation Regarding Child Offender Safety Valve

The Commission recommends that the legislature pass legislation that assures that, unless subject to earlier parole eligibility, a person who was younger than 18 years old at the time he or she committed an offense or multiple offenses and who was tried and sentenced as an adult is eligible for parole no later than his or her 15th year of incarceration. The imposition of lengthy prison terms, including mandatory prison terms of 15 years or more, without a reasonable opportunity for release, violates the human rights of children. After serving 15 years, a person who was tried as an adult for a crime or crimes committed when he or she was younger than 18 years old shall be given a meaningful opportunity to obtain release where the Parole Board considers the diminished culpability of children as compared to that of adults, the hallmark features of youth, and any demonstrated maturity and rehabilitation of the person.

The Commission recommends that such legislation be applied retroactively.

RECOMMENDATION TO THE LEGISLATURE OF ALASKA
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 11-2020, adopted December 3, 2020:

Create the Alaska Criminal Justice Advisory Taskforce

The Alaska Criminal Justice Commission is scheduled to sunset beginning June 30, 2021 and conclude its affairs by June 30, 2022. The Commission recommends that certain of its key duties and functions should continue, and that these duties and functions should be taken up by a new successor body: The Alaska Criminal Justice Advisory Taskforce. The duties and functions of the Taskforce should include:

- Data analysis, research, and reporting on all aspects of Alaska's criminal justice system established in the Alaska Constitution, including state laws, public safety, rehabilitation, crime and incarceration rates, the needs of victims, and other factors as set forth in the Alaska Constitution;
- Receiving data related to the criminal justice system from the Alaska Department of Corrections, the Alaska Department of Public Safety, the Alaska Department of Law, and the Alaska Court System;
- Identifying areas for improving the efficiency and effectiveness of the criminal justice system;
- Recommending expenditures from the Recidivism Reduction Fund;
- Making other recommendations and providing analysis as requested by the Legislature, the Executive, and the Judiciary; and
- Issuing an annual report.

The Commission recommends that membership of the Taskforce should be substantially the same as that of the Commission with the following minor changes:

- Appointments to the Taskforce should be made to ensure representation of rural Alaska on the Taskforce;
- The Commissioner of the Department of Health and Social Services should be a voting member;
- Rather than the Attorney General, the Deputy Attorney General for the Criminal Division of the Department of Law or their designee should be a voting member;
- Rather than a municipal law enforcement representative, there should be two peace officer representatives, one representing a rural community off the road system and one representing an urban community, who should be appointed by the Alaska Chiefs of Police; and
- The victims' rights advocate should be appointed by the Alaska Network on Domestic Violence and Sexual Assault.

Rather than providing the definition of recidivism in the section of the statutes describing the annual report requirements, the Commission recommends that the definition of recidivism should be located in the definition section.

RECOMMENDATION TO THE LEGISLATURE OF ALASKA FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 1-2021, adopted March 11, 2021:

Access to Digital Technology and Virtual In-Reach in Alaska's Correctional System

The Alaska Criminal Justice Commission (ACJC) recognizes the importance of access to digital technology for timely, efficient, and appropriate function of government, business, and the everyday lives of citizens. Within the criminal justice system, technology is critical for communication, access to records, effective probation and parole, and delivery of programming to justice-involved Alaskans.

Current internal systems related to inmate programming within the Alaska Department of Corrections (ADOC) are antiquated and constrained by state law restrictions, lack of funding, and outdated infrastructure. Community contract and volunteer providers report they cannot fully assist ADOC with the reentry support processes ADOC is required to implement under AS 33.30.011. The ACJC supports ADOC's efforts to improve and expand access to digital technology within Alaska's correctional system.

Institutional facilitation of community based in-reach programs provide ADOC inmates with access to essential programming to promote stability, productivity, and reduce recidivism. This programming encompasses education and training, behavioral health treatment and recovery, life skills, faith-based and culturally relevant activities, family and parenting programs, and more. Programming also allows incarcerated individuals to learn the practical technological skills necessary for integration into stable community life, such as establishing employment, housing, communication, and connecting with community providers.

Recidivism rates in Alaska have declined in recent years. To sustain this trend, technological solutions are needed to address ADOC's specific challenges. For instance, pandemic response measures have required a reduction to the full array of internal programming, supports, and services previously available to inmates before the pandemic; and the March 2020 suspension of visitation also suspended community in-reach programs and activities provided by contractors and volunteers. Specific technological solutions are being identified; but some require statutory changes, and some require funding and/or infrastructure resources to implement. These solutions could provide more effective programming and communication opportunities post-pandemic. Examples might include "virtual in-reach" through controlled video conferencing; coordination with Department of Administration to access IDs and licenses before release; closed-circuit institutional television for broadcasting outside-produced programming; and virtual communication and support for reentry service providers serving rural and smaller communities.

Recommendation:

The ACJC recommends the Alaska State Legislature make statutory changes and budget allocations necessary for expanded use of technology utilizing limited access through a secure platform within ADOC for programming, communication, visitation, and reentry services that allows ADOC to more effectively work with state and community partners and improve inmate access to supports and services that have shown to promote success and reduce recidivism. This might include:

- Updating Alaska state statutes related to inmate access to technology.
- Modernizing definitions and policies related to inmate access to technology.
- Providing funding for expanded ADOC infrastructure, staff, and programming.

RECOMMENDATION TO THE LEGISLATURE OF ALASKA FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 2-2021, adopted May 25, 2021:

Recommendation Regarding Vocational Programming

People who have been incarcerated are less likely to recidivate if they are able to obtain high-quality, well-paying employment.[1] However, obtaining employment post-prison is an uphill battle, and formerly incarcerated individuals are unemployed at much higher rates than the general public.[2] This is particularly true for formerly incarcerated people of color.[3]

The Alaska Department of Corrections (ADOC) helps incarcerated individuals better their chances of employment upon release by providing vocational programming through training and apprenticeships. Vocational education is one of the most cost-effective investments in criminal justice programming in Alaska.[4] ADOC has recently conducted a thorough review of its vocational programming and stands ready to expand and scale up its offerings that mirror and are relevant to the areas of employment that the market offers reentrants in their communities upon release.

The small engine repair program, for example, is particularly relevant to people who will be released to rural Alaskan communities where there are high rates of small boat and snow machine usage. An example of a successful apprenticeship program, the welding program offered in association with the Ironworkers gives participants the chance to learn valuable skills that will translate to high-paying jobs post-release.

ADOC has also been collaborating with the Department of Labor and Workforce Development (DOLWD). Previously, DOLWD job placement experts were placed within correctional facilities, working with incarcerated people who were about to be release. This

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[1] Jennifer Doleac, "Can Employment-Focused Programs Reduce Reincarceration Rates?" Econofact, June 29, 2018. Available at: https://econofact.org/can-employment-focused-reentry-programs-keep-former-prisoners-from-being-reincarcerated.

Kevin Schnepel, "Do Post-Prison Job Opportunities Reduce Recidivism?" IZA World of Labor, November, 2017. Available at: https://wol.iza.org/uploads/articles/399/pdfs/do-post-prison-job-opportunities-reduce-recidivism.pdf

Anke Ramakers et al., "Not Just Any Job Will Do: A Study on Employment Characteristics and Recidivism Risks After Release," International Journal of Offender Therapy and Comparative Criminology, December 2017. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5669259/.

[2] Lucius Couloute and Daniel Kopf, "Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People," Prison Policy Initiatie, July 2018. Available at: https://www.prisonpolicy.org/reports/outofwork.html.

[3] *Id*.

[4] Valle, Araceli, "Alaska Results First Initiative: Adult Criminal Justice Program Benefit Cost Analysis" Alaska Justice Information Center, University of Alaska Anchorage, September 29, 2017. Available at: https://scholarworks.alaska.edu/handle/11122/7961.

program was very successful, but ended when the grant funding for the program was not continued. More recently, ADOC has received a grant that includes a career counselor to work with incarcerated individuals returning to rural communities. ADOC and DOLWD are also looking into ways to assess whether returning citizens have been able to obtain employment using the skills they have learned while incarcerated.

The Commission supports these efforts, and makes the following recommendations to increase ADOC's focus in this area:

(1) The Commission recommends that the ADOC prioritize and expand vocational education and employment efforts, particularly those that will lead to meaningful and well-paying employment, and to seek additional funding to do so if needed.

(2) The Commission also recommends an expansion of the ADOC and Alaska Department of Labor and Workforce Development collaboration to enhance the opportunity for inmates to receive training and to secure employment prior to their release from custody. The Commission recommends that DOLWD once again place job specialists within individual correctional facilities, if feasible.

(3) The Commission also recommends that a neutral evaluation be funded and conducted to determine how many reentrants who received education or vocational training within the ADOC were employed on release in a job that directly utilized or required the education or vocational training they received in custody. The Commission supports DOLWD's efforts to develop a system to track whether reentrants are employed.

RECOMMENDATION TO THE LEGISLATURE OF ALASKA FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 3-2021, adopted May 25, 2021:

Recommendation Regarding Sustained Funding for Reentry Services

Between 2013 and 2017, the State of Alaska's average three-year recidivism rate decreased from 67% to 60.61% for individuals convicted of felonies and released from an Alaska Department of Corrections institution.[1] This progress in reducing the State's recidivism rate required investment of resources and funding from the State of Alaska into services and supports provided to returning citizens by state and community partners. Some examples of reentry supports and services include case management, transition planning, housing assistance, employment and training, and access to treatment and recovery services. Investment in these services and supports contributes to increased public safety and safer communities throughout Alaska and is vital to the continued success of reentry programs, which largely consist of local stakeholders who rely on grant funding. To safeguard this investment, advance public safety, and continue to decrease recidivism, the Commission recommends that the legislature continue to support sustained and stable funding for reentry supports and services at the state, community, agency, and individual reentrant level.

[1] *Alaska Department of Corrections Budget Overview Division of Health and Rehabilitative Services: Hearings before the Corrections Finance Subcommittee*, 2021st Senate (Alaska Feb. 23, 2021) (testimony of Laura Brooks).

RECOMMENDATION FROM ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 4-2021, adopted May 25, 2021

Recommendation to Withdraw Recommendation Regarding Definition of Criminal Recidivism in a Statutory Definition

(In Connection with Recommendation 11-2020 to Create the Alaska Criminal Justice Advisory Taskforce)

The Alaska Criminal Justice Commission (Commission) is scheduled to sunset beginning June 30, 2021, and conclude its affairs by June 30, 2022. The Commission previously recommended (ACJC Recommendation 11-2020) that certain of its key duties and functions should continue, and that these duties and functions should be taken up by a new successor body: The Alaska Criminal Justice Advisory Taskforce. The duties and functions of the Taskforce should include:

- Data analysis, research, and reporting on all aspects of Alaska's criminal justice system established in the Alaska Constitution, including state laws, public safety, rehabilitation, crime and incarceration rates, the needs of victims, and other factors as set forth in the Alaska Constitution;
- Receiving data related to the criminal justice system from the Alaska Department of Corrections, the Alaska Department of Public Safety, the Alaska Department of Law, and the Alaska Court System;
- Identifying areas for improving the efficiency and effectiveness of the criminal justice system;
- Recommending expenditures from the Recidivism Reduction Fund;
- Making other recommendations and providing analysis as requested by the Legislature, the Executive, and the Judiciary; and
- Issuing an annual report.

As part of its current data analysis function, the Commission has reported on criminal recidivism. In Recommendation 11-2020, the Commission recommended including a definition of recidivism in the definition section of the Taskforce's enabling statutes, but did not recommend what that definition should be. The Commission then asked its Rehabilitation, Reentry, and Recidivism Reduction (RRRR) Workgroup to develop a detailed definition.

The RRRR Workgroup met and considered possible criminal recidivism definitions and measures appropriate to the statutory duties and functions of a successor entity to the ACJC. In the course of this work, the RRRR Workgroup learned that many states and state agencies around the

country, including Alaska's Department of Corrections (DOC), have traditionally measured recidivism only for felons leaving prison and only after a three-year follow-up period.

More recently, however, many states have moved to using more flexible measures of recidivism, in order to help policymakers readily answer key questions about the performance of the criminal justice system. Having more flexible measures of recidivism is useful for:

- Understanding short-term trends in reoffending, to identify immediate impacts to facilities, courts, defenders, prosecutors, and other criminal justice entities;
- Understanding recidivism's impact on the entire incarcerated population (including people convicted of misdemeanors) and the justice system as a whole, informing policy and measuring costs to the state;
- Understanding patterns of re-offending among convicted defendants who are not sentenced to terms of incarceration; and
- Evaluating program outcomes for programs that serve reentrants for a shorter duration than three years.

The RRRR workgroup ultimately decided it was unnecessary to enact a definition in statute, noting several disadvantages to identifying specific recidivism measures in its statute. First, the measures that would be used by a successor entity to the ACJC would necessarily differ from measures used by other entities for other purposes. Second, recidivism measures will differ depending on the nature of the particular analysis the ACJC's successor entity may wish to do or be asked to do. Finally, the DOC may wish to request that its own definition of recidivism be added to its governing statutes, and contended that it would confuse matters to have two statutory definitions.

For these reasons, the Commission withdraws its recommendation (stated in ACJC Recommendation 11-2020) that the definition of recidivism should be located in a definition section of the statute.

The Commission does recommend that the successor entity to the ACJC adopt the following definition for purposes of discharging its duties and functions under ACJC Recommendation 11-2020:

> "Criminal Recidivism" is defined as the extent to which a person previously convicted of a crime subsequently is charged with or convicted of a new criminal offense, or a violation of probation or parole.

The Commission also recommends that the successor entity should use the following standard methods of measuring recidivism:

The percentage of people who are

1) Remanded to the Department of Corrections;
2) Convicted; or
3) Arrested

For a subsequent technical violation or new criminal offense, after having been

1) Convicted of a prior criminal offense; or
2) Released from DOC custody after serving a term of incarceration for a prior criminal offense.