

A Practitioner's Guide to Criminal Justice Reform

Alaska Criminal Justice Commission



October 29, 2018 – Includes S.B. 91, S.B. 54, S.B. 55, and H.B. 312

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An Introduction to Criminal Justice Reform in Alaska

Alaska's prison population grew by 27 percent between 2005 and 2014, nearly three times faster than the resident population. The probation and parole population also grew significantly in that same period. This was costly: Alaska spent \$327 million on corrections in fiscal year 2014, up from \$184 million in 2005. In addition to these operating costs, the growth of the prison population required significant capital expenditures, including construction of the \$240 million Goose Creek Correctional Center, which opened in 2012. The increases in the prison population and corrections spending did not improve public safety outcomes: nearly two out of every three people released from Alaska prisons reoffended and returned to prison within three years.

Without a shift in policy, Alaska's prison population was projected surpass the state's capacity to house them by 2017, requiring the state to reopen a closed facility and either transfer inmates out of state or build a new prison. Aiming to control prison and jail growth and ensure the best possible public safety returns, the Alaska State Legislature in 2014 unanimously passed Senate Bill 64, establishing the interbranch Alaska Criminal Justice Commission ("Commission"). The Commission is 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.

The Commission's task was to conduct a comprehensive review of Alaska's criminal justice system and develop recommendations for legislative and budgetary changes. The Commission conducted a rigorous review of Alaska's criminal justice data, policies, and programs, as well as best practices and models from other states. In December of 2015, the Commission issued a report with recommendations intended to reduce both the recidivism rate and corrections spending in Alaska. The recommendations were drafted into legislation and introduced as Senate Bill 91. After vetting by five legislative committees in over fifty public committee hearings, the Legislature passed S.B. 91 by a two-thirds majority in both chambers with a 16-2 vote in the Senate, a 28-10 vote in the House, and a 14-5 Senate concurrence vote. Governor Walker signed S.B. 91 into law in July 2016.

The reforms were expected to avert all of the anticipated prison growth and reduce the average daily prison population. However, after S.B. 91 was passed, some practitioners and members of the public thought that the reforms went too far. Responding to these concerns, the Commission sent another set of recommendations to the legislature in January 2017 to scale back some of the reforms and to make technical corrections to S.B. 91. These recommendations made their way into two bills: S.B. 54 and S.B. 55, both of which were signed into law in 2017. Some additional changes were made with H.B. 312, signed into law in June 2018. This guide provides an outline of the statutory and budgetary changes enacted in S.B. 91, S.B. 54, S.B. 55, and H.B. 312. It is intended to be thorough, but is not exhaustive; to be sure of the applicable law, consult the relevant statutes. Provisions are effective immediately unless otherwise noted.

Pretrial

Citation in Lieu of Arrest _____ **S.B 91 § 51**

S.B. 91 expanded peace officers' discretion to issue citations in lieu of making an arrest. Previously, officers were authorized to issue citations only for misdemeanors and violations. Officers now also have explicit authority to issue citations for class C felonies. *Statute affected: AS 12.25.180*

Timeline for Appearance When Issued a Citation _____ **S.B. 91 §§ 53, 54**

If the citation is for a felony or a misdemeanor, notice for the defendant to appear in court must be at least two working days after the issuance of the citation (previously the minimum notice period was five days). If the citation is for a violation or infraction, the notice to appear continues to be at least five days after the issuance of the citation. *Statute affected: AS 12.25.190*

Arrest Authorized for VCOR, FTA, and assaults at a healthcare facility _____ **S.B 91 § 5 / H.B. 312 § 8**

S.B. 91 reclassified the offenses of failure to appear in court (FTA) and violation of a condition of pretrial release (VCOR) as violations in most circumstances. Previously, they were misdemeanors or felonies depending on the underlying offense. To ensure that defendants who fail to appear in court or who violate the terms of their pretrial release conditions are brought back before the judge for a bail review hearing, S.B. 91 granted officers the authority to arrest defendants for these violations rather than issue a citation. S.B. 54 reinstated VCOR as a crime (a Class B Misdemeanor), but the arrest provision was left unchanged (see page 10). *Statute affected: AS 12.25.180*

H.B. 312 authorized warrantless arrest for a person who commits fourth-degree assault at a healthcare facility if that person was not seeking medical treatment or was stable for discharge. *Statute affected: AS 12.35.030(b)*. [Effective Sept. 5, 2018]

First Appearance Before a Judge _____ **S.B. 91 §§ 50, 98**

Under S.B. 91, defendants must be brought before a judge after arrest within 24 hours, absent compelling circumstances, rather than the 48 hours allowed under previous law. In no event may the defendant's first appearance before a judge occur later than 48 hours after arrest. *Statutes affected: AS 12.25.150, AS 12.70.130*

Bail for Intoxicated Persons _____ **S.B. 54 § 27**

S.B. 54 provided that if the supreme court establishes a bail schedule for misdemeanor offenses, it must include a provision that any intoxicated person released from Department of Corrections (DOC) custody must be given a breath test and may be detained until the person's breath is less than .08 or the intoxicated person is handed over to someone who is willing to care for them. [Reference the bail schedule issued Dec. 8, 2017, available at: <http://www.courtrecords.alaska.gov/webdocs/jord/docs/bail-schedule12-17.pdf>.] *Statute affected: AS 12.30.011*

Pretrial Enforcement Division _____ **S.B. 91 § 117 / S.B. 54 § 45**

S.B. 91 required DOC to create a pretrial program by January of 2018. The new Pretrial Enforcement Division will conduct risk assessments for all defendants who are brought into custody or for whom the prosecution requests an assessment. It will also make recommendations to the court about pretrial release and release conditions, and provide varying levels of supervision to defendants who are released while awaiting disposition of their cases. *Statutes affected: AS 33.07.010, -.020, -.030, -.040, -.090*

Pretrial Risk Assessment and Regulations for Release and Diversion Recommendations _____ **S.B. 91 § 117**

The DOC Commissioner must approve a validated pretrial risk assessment tool for use by the Pretrial Enforcement Division, and work with the Department of Law, Public Defender, Department of Public Safety, Office of Victims' Rights, and the Alaska Court System to develop regulations that align with the statutory changes on pretrial release decisions to guide the recommendations of pretrial services officers related to release/detain decisions, conditions of release, and pretrial diversion. *Statutes affected: AS 33.07.010, -.020, -.030, -.040, -.090*

Pretrial Release Report _____ **S.B. 91 § 117**

Before the defendant's first appearance in front of a judge (within 24 hours for those who have been arrested and detained), the Pretrial Enforcement Division must conduct a risk assessment and prepare a pretrial release report for the judge that includes the risk score, a notation of any potential substance abuse treatment need if indicated by the offense or criminal history, and recommendations to the judge, in accordance with Department regulations, regarding:

- The appropriateness for release of the defendant on personal recognizance or on unsecured bond;
- The least restrictive conditions of release that will reasonably ensure the defendant's court appearance and public safety; and
- The appropriateness of supervision of the defendant by the pretrial services office during the pretrial period.

Statutes affected: AS 33.07.010, -.020, -.030, -.040, -.090

Restrictions on Pretrial Enforcement Officers' Recommendations Related to Money Bond _____ S.B. 91 § 117

S.B. 91 established a pretrial release decision-making framework in statute with limitations on the use of secured money bond, based on the defendant's charge and risk level. The table below summarizes the limitations that apply to recommendations from pretrial enforcement officers to the court. *Statutes affected: AS 33.07.010, -.020, -.030, -.040, -.090*

	Misdemeanors [exceptions ¹]	Class C felonies [exceptions ²]	DUI/refusal	FTA/VCOR	Other
Low-risk	OR recommended	OR recommended	OR recommended	OR presumptively recommended	OR presumptively recommended
Mod-risk	OR recommended	OR recommended	OR recommended	OR presumptively recommended	SB authorized
High-risk	OR recommended	OR recommended	OR presumptively recommended	SB authorized	SB authorized

Terms explained:

- **OR recommended:** The pretrial enforcement officer must recommend to the judge that the defendant be released on recognizance (a promise to appear in court) or on unsecured bond (a promise to pay an agreed-upon amount of money if the defendant fails to appear in court or violates release conditions; the bond is "unsecured," meaning no money is paid upfront in order to be released from jail).
- **OR presumptively recommended:** The pretrial enforcement officer must recommend that the defendant be released on recognizance or on unsecured bond unless the officer finds substantial evidence that no combination of non-monetary release conditions can reasonably ensure court appearance and public safety.
- **SB authorized:** Recommendations of secured bond is authorized. The pretrial enforcement officer may still recommend that the defendant be released on recognizance or on unsecured bond.
- **Low-, Mod-, or High-risk:** Levels of risk of pretrial failure (low, moderate, or high) as scored by a validated pretrial risk assessment instrument.
- **DUI/refusal:** Driving under the influence or refusal to submit to a chemical test.
- **FTA/VCOR:** Failure to appear in court or violation of a condition of pretrial release.
- **Other:** Class B or higher felony charges, as well as all other charges that fall under an exception enumerated in the statute and that are not listed in another column.

¹ Exceptions: Domestic violence offenses, person offenses, failure to appear, or violation of a release condition.

² Exceptions: Domestic violence offenses, person offenses, or failure to appear.

Restrictions on Judges' Authority to Order Money Bond _____ S.B. 91 § 59 / H.B. 312 §§ 12, 13

Judges are authorized to release any defendant on their own recognizance or on unsecured bond. Under S.B. 91, judges are authorized to order unsecured or partially-secured (10 percent posting) performance bonds. Previously all performance bonds had to be fully secured (paid in full upfront prior to release from jail). The use of secured money bond is now more restricted. See the below table and explanations of restrictions on judges' authority to order secured money bond. Note that there are some categories for which the pretrial services officer must recommend release on recognizance or on unsecured bond, but the judge may depart from that recommendation under certain circumstances. *Statute affected: AS 12.30.011*

	Misdemeanors [exceptions ³]	Class C felonies [exceptions ⁴]	DUI/refusal	FTA/VCOR	Other
Low-risk	Presumptive OR	Presumptive OR	Presumptive OR	Presumptive OR	Presumptive OR
Mod-risk	Presumptive OR	Presumptive OR	Presumptive OR	Presumptive OR	SB Authorized
High-risk	Presumptive OR	Presumptive OR	Presumptive OR	SB Authorized	SB Authorized

Terms explained:

- Presumptive OR: The defendant must be released on recognizance or on unsecured bond, unless the judge finds clear and convincing evidence that no combination of release conditions with recognizance release or unsecured bond can reasonably ensure appearance in court and public safety. If the judge makes this finding on the record, secured money bond is authorized.
- SB Authorized: Secured money bond is authorized. The court may still release the defendant on recognizance or on unsecured bond.

Collection of Forfeited Unsecured Bonds _____ S.B. 91 § 161

When an unsecured bond has been forfeited for failure to appear or violations of pretrial release conditions, the state may garnish the defendant's permanent fund dividend to collect the debt. *Statute affected: AS 43.23.065*

Temporary Detention of Defendants at Request of Prosecutor _____ S.B. 91 § 55 / S.B. 54 § 26 / H.B. 312 § 10

Previously, prosecutors had the authority to request that a felony defendant be detained for an additional 48 hours after the defendant's first appearance in order to demonstrate that release of the person would not reasonably ensure court appearance and public safety. S.B. 91 and S.B. 54 changed that authority for certain class C felony defendants, but H.B. 312 undid those changes. Additionally, H.B. 312 extends this authority

³ Exceptions: person offenses, sex offenses, domestic violence offenses, driving under the influence / refusal to submit to a chemical test, failure to appear in court, violation of a condition of release.

⁴ Exceptions: person offenses, sex offenses, domestic violence offenses, driving under the influence / refusal to submit to a chemical test, failure to appear in court, violation of a condition of release.

to cover any defendant (including misdemeanants) with a criminal conviction or charge that has not been considered in the pretrial risk assessment tool. *Statute affected: AS 12.30.006*

Bail Review Hearings _____ **S.B. 91 §§ 56, 57**

Defendants who remain in custody 48 hours after their first appearance before a judge continue to be entitled to a review of their release conditions. In that review, judges now have to revise any conditions of release that have prevented the defendant from being released, unless the judge finds clear and convincing evidence that less restrictive release conditions cannot reasonably ensure court appearance and public safety. After the initial bail review, a defendant who remains in custody continues to be able to request additional bail review hearings every seven days if they are able to present new information not previously considered. Previously, “new information” excluded the person’s inability to post secured money bond. Under S.B. 91, that provision has changed, and “new information” now includes the person’s inability to post the required bond. A person may only receive one bail review hearing solely related to his or her inability to post bond. *Statute affected: AS 12.30.006*

Non-Monetary Release Conditions _____ **S.B. 91 §§ 59-63**

The court continues to have discretion to order additional (non-monetary) conditions of release if they are the least restrictive conditions necessary to reasonably assure court appearance and public safety. Potential special conditions of release for those convicted of alcohol and drug offenses have previously included authorizing law enforcement to conduct warrantless searches based on reasonable suspicion that the person is in possession of alcohol or drugs. Under S.B. 91, this search authority is extended not just to peace officers, but also to pretrial enforcement officers. Courts may also order defendants to be randomly drug tested by the pretrial enforcement division.

Under S.B. 91, new restrictions are placed on the court’s authority to order a defendant to be supervised by a third-party custodian. This condition will only be authorized if pretrial supervision by the state is not available, if no secured money bond has been ordered, and if no other combination of release conditions can reasonably ensure court appearance and public safety. The eligibility for a person to serve as a third-party custodian will also be slightly expanded. Previously, the law excluded anyone who “may be called” as a witness. The new law will exclude people when “there is a reasonable probability that the state will call” them as a witness. *Statutes affected: AS 12.30.011, AS 12.30.016, AS 12.30.021*

Pretrial Supervision _____ **S.B. 91 § 117**

Under S.B. 91, pretrial services officers are authorized to supervise defendants during the pretrial period. They must, however, impose the least restrictive level of supervision necessary to reasonably ensure court appearance and public safety, and prioritize higher levels of supervision for moderate- and high-risk defendants and those accused of serious charges. The Department of Corrections may contract with private providers for pretrial supervision with electronic monitoring devices. *Statutes affected: AS 33.07.010, -.020, -.030, -.040, -.090*

Other Roles of Pretrial Enforcement Officers _____ **S.B. 91 § 117 / H.B. 312 § 18**

Pretrial enforcement officers will be authorized by law to recommend pretrial diversion, and coordinate with community-based organizations and tribal courts and councils to develop and expand pretrial diversion options. They may recommend that certain defendants comply with an alcohol or substance abuse monitoring program and refer interested defendants to substance abuse screening, assessment, and treatment. They are also authorized to arrest defendants without a warrant when they have probable cause to believe the defendant has failed to appear in court or violated the terms of the pretrial release conditions. *Statutes affected: AS 33.07.010, -.020, -.030, -.040, -.090*

Hearing Reminders _____ **S.B. 91 § 178, eff. Jan. 1, 2019**

Starting in January of 2019, S.B. 91 will require the court to remind defendants who were released before disposition about any upcoming court hearings at least 48 hours before each hearing.

Credit for Time Served Pretrial on EM or in treatment _____ **S.B. 91 §§ 68-71 / S.B. 54 § 29**

S.B. 91 changed the factors a court considers when deciding whether to grant credit for time served pretrial in a treatment program. Judges now may grant credit for programs that meet certain requirements, potentially including non-residential programs, depending on the degree to which the programs limit the defendant's freedom. Credit for time served in a private residence on electronic monitoring is capped at 360 days for felony person crimes, domestic violence, sex offenses, delivery of drugs to minors, first degree burglary, and first degree arson. S.B. 54 clarified that the new provisions did not authorize a person to serve time on electronic monitoring after conviction if the person is ineligible per AS 12.30.040(b). *Statute affected: AS 12.55.027*

Sentencing

Primer on Sentencing in Alaska

Statutory maximums and presumptive ranges for prison terms: Alaska classifies non-sexual offenses into different categories depending on the seriousness of the offense. Sexual offenses are also categorized by class, but the sentencing provisions described here do not apply. In the most serious category of unclassified offenses the law sets minimum and maximum terms. For Class A, B, and C felonies, the law sets presumptive ranges that depend on the class, the type of offense, and the person’s prior felony convictions. For example, a person sentenced for a first-time Class B felony would face a maximum of ten years of prison, and a presumptive range of zero to two years. A judge must impose a sentence within the presumptive range absent the establishment of aggravating or mitigating factors.

Understanding active and suspended imprisonment time and probation terms: When a prison sentence is authorized by law, the judge is often authorized to “suspend” some or all of the prison time. When imprisonment time is suspended, “active” time is the portion that the defendant will serve in the custody of the Department of Corrections, usually in a prison; and “suspended” time is the portion to be served only if the defendant fails on probation. When the judge suspends some or all of the imprisonment, the judge may also set a term of probation supervision in the community, in which case, after completing any active term of imprisonment, the defendant would be released on probation. During the probationary term, the defendant can be imprisoned for some or all of the suspended time if he or she violates the conditions of probation. The statutory limits for incarceration terms are set forth on pages 13-14, and the limits for probation terms are set forth on page 15.

Sentencing Reclassifications

S.B. 91, S.B. 54, and S.B. 55 made changes to the sentencing ranges for non-sex felonies, misdemeanors, and probation terms (see pages 13, 14, and 15, respectively). They also implemented targeted reclassifications for certain offense types as explained below.

Reclassification of Certain Lower-Level Misdemeanors as Violations* _____ **S.B. 91 §§ 17, 26-31, 33-35, 41 / SB 54 §§ 19-20, 36*

S.B. 91 reclassified several lower-level misdemeanors as violations, specifically: disregard of highway obstruction, promoting an exhibition of fighting animals, obstruction of highways, and second-time unlawful gambling. Additionally, the legislation reclassified failure to appear as a violation rather than a felony or misdemeanor. Failure to appear when the person intended to avoid prosecution and where the person does not make contact within 30 days of the failure to appear remains a misdemeanor or felony crime. *Statutes affected: AS 11.46.460, AS 11.56.730, AS 11.61.145, AS 11.61.150, AS 11.66.200*

S.B. 91 also reclassified violation of conditions of release (VCOR) as a violation. S.B. 54 then reclassified VCOR as a crime—it is now a Class B misdemeanor punishable by up to 5 days in prison. *Statutes affected: AS 11.56.757, AS 12.55.135*

Theft Offenses _____ **S.B. 91 §§ 6-15, 8-23, 25, 93 / S.B. 54 §§ 2-18 / SB 55 §§ 1-3**

S.B. 91 increased the felony threshold value for theft offenses from \$750 to \$1,000 and required the value to be adjusted every five years to account for inflation. S.B. 54 returned the threshold value to \$750, but the inflation adjustment provisions remain in statute. S.B. 55 clarified that the inflation adjustment does not apply to the \$25,000 threshold (the Class B felony threshold value). *Statutes affected: AS 11.46.130-295, -.360, -.482, -.486, -.530, -.620, -.730, -.982.*

S.B. 91 eliminated provisions that elevated fourth-degree theft to third-degree theft for the third offense; S.B. 54 reinstated those provisions to apply at the fourth offense. *Statutes affected: AS 11.46.140; AS 11.46.220.*

S.B. 54 altered the mental state required for Criminal Mischief 5 when the conduct is joyriding: the offender now must “disregard” with “criminal negligence” the fact that the vehicle is stolen rather than know the vehicle is stolen. *Statute affected: AS 11.46.486*

S.B. 91 eliminated or reduced the use of incarceration as a sanction for theft under \$250. S.B. 54 returned the use of incarceration for these offenses (see additional details on page 14). *Statute affected: AS 12.55.135*

Drug Offenses _____ **S.B 91 §§ 45-47, 93**

S.B. 91 classified possession of controlled substances (except GHB) as a Class A misdemeanor. The legislation also eliminated the imposition of active prison time for the first two possession offenses for any controlled substance (except GHB, see additional details on page 12), allowing imprisonment only upon a failure of supervision. Additionally, S.B. 91 reduced the classification for commercial offenses relating to less than 1 gram of IA substances or 2.5 grams of IIA or IIIA controlled substances to a Class C felony, and more than 1gram of IA controlled substance to a Class B felony.⁵ *Statutes affected: AS 11.71.030, -.040, -.050, -.060*

Substance	Amount	Prior Law	Current Law
Class IA Substances (e.g. heroin)			
Possession	Any amount	Class C felony	Class A misdemeanor
• Exception: Possession of GHB	Any Amount	Class C felony	<i>Unchanged</i>
Possession w/Intent, Sale, Distribution, Manufacturing	More than 1g/25 tablets	Class A felony	Class B felony
	Less than 1g/25 tablets		Class C felony
Class IIA and IIIA Substances (e.g. cocaine and methamphetamine)			
Possession	Any Amount	Class C felony	Class A misdemeanor
Possession w/Intent, Sale, Distribution, Manufacturing	Less than 2.5g/50 tablets	Class B felony	Class C felony
	More than 2.5g/50 tablets		<i>Unchanged</i>

⁵ Weight thresholds here refer to aggregate weight.

Misdemeanor Traffic Offenses _____ **S.B. 91 §§ 105, 107, 108, 110 / S.B. 54 § 42**

For driving on a suspended license offenses where the license was suspended for a driving under the influence (DUI) -related crime, S.B. 91 removed the mandatory minimum for first-time offenses and reduces the mandatory minimum for second-time offenses. For driving on a suspended license where the suspension was for a reason other than a DUI, S.B. 91 reduced the classification from a misdemeanor to an infraction. For driving without a valid license (DVOL), S.B. 54 reduced the classification from a misdemeanor to an infraction. *Statutes affected: AS. 28.15.011, AS 28.15.291*

Additionally, S.B. 91 required people convicted of first-time DUI and first-time refusal offenses to serve their sentence on electronic monitoring (as opposed to a prison term). *Statutes affected: AS 28.35.030, AS 28.35.032*

Traffic Offense	Prior Law	Current Law
Driving with a Suspended License/Reason other than DUI		
First offense	(10 days w/10 suspended) – 1 year	Infraction (no jail – fine)
Second or subsequent offense	10 days – 1 year	
Driving with a Suspended License/DUI-related		
First offense	(20 days w/10 suspended) – 1 year	(10 days w/10 suspended) –30 days (up to 1 year if aggravated) + fine
Second offense	30 days – 1 year	10 days – 1 year + fine

Felony Sentencing Ranges**S.B. 91 §§ 86-90 / S.B. 54 §§ 32, 33**

S.B. 91 modified the presumptive and minimum sentencing ranges for non-sex felony offenses. It did not modify sentencing ranges for sex felonies. Fines for felonies were not changed (consult AS 12.55.035 for applicable fines). Sentencing changed for non-sex felony offenses as follows:

Felony Class	Prior Law	Current Law
Unclassified felonies (non-sex offenses)		
Murder I	<u>20</u> – 99 years	<u>30</u> – 99 years
Murder II	<u>10</u> – 99 years	<u>15</u> – 99 years
Attempted Murder I, Misconduct involving a controlled substance I, and kidnapping	<u>5</u> – 99 years	<i>Unchanged</i>
Class A felonies (non-sex offenses)		
First felony offense	[5 – 8] – 20 years	[3 – 6] – 20 years
<ul style="list-style-type: none"> Exception: Offense committed with a dangerous weapon; caused serious physical injury or death 	[7 – 11] – 20 years	[5 – 9] – 20 years
<ul style="list-style-type: none"> Exception: conduct directed at peace officer or first responder 		[7 – 11] – 20 years*
Second felony offense	[10 – 14] – 20 years	[8 – 12] – 20 years
Third and subsequent felony offense	15 – 20 years	13 – 20 years
Class B felonies (non-sex offenses)		
First felony offense	[1 – 3] – 10 years	[0 – 2] – 10 years
<ul style="list-style-type: none"> Exception: Criminally negligent homicide of a child 	[2 – 4] – 10 years	<i>Unchanged</i>
<ul style="list-style-type: none"> Exception: Criminally negligent homicide of an adult 	[1 – 3] – 10 years	<i>Unchanged</i>
Second felony offense	[4 – 7] – 10 years	[2 – 5] – 10 years
Third and subsequent felony offense	6 – 10 years	4 – 10 years
Class C felonies (non-sex offenses)		
First felony offense	[0 – 2] – 5 years	[0 – 2] – 5 years*
<ul style="list-style-type: none"> Exception: Waste of a wild food animal or hunting on the same day airborne by a registered guide 	[1 – 2] – 5 years	<i>Unchanged</i>
<ul style="list-style-type: none"> Exception: First-time felony DUI 	[120 – 239 days] – 5 years	<i>Unchanged</i>
Second felony offense	[2 – 4] – 5 years	[1 – 4] – 5 years
Third and subsequent felony offense	3 – 5 years	2 – 5 years

*S. B. 54 reverted these sentences back to what they were before S. B. 91.

Statute affected: AS 12.55.125

Key:

[X-Y] indicates a presumptive term.

X indicates a mandatory minimum.

Misdemeanor Sentencing Ranges**S.B. 91 §§ 32, 91-93 / S.B. 54 §§ 35-37**

S.B. 91 modified the sentencing ranges⁶ for non-traffic misdemeanors as follows:

Misdemeanor Class	Prior Law	Current Law
Class A		
Class A – General	0 – 1 year	[0 – 30 days] – 1 year
<ul style="list-style-type: none"> Exception: Misconduct involving a controlled substance in the fourth degree (possession of a controlled substance) 		First offense: 0 – 30 days suspended Second offense: 0 – 180 days suspended Third offense: 0 – 1 year
<ul style="list-style-type: none"> Exception: The following offenses were exempted from the change: <ul style="list-style-type: none"> Assault in the fourth degree Sexual assault or sexual abuse of a minor in the fourth degree Indecent exposure in the second degree if the victim is under 16 Harassment in the first degree Posting an explicit image of a minor on the internet 		<i>Unchanged</i>
<ul style="list-style-type: none"> Exception: Class A misdemeanors with a mandatory minimum sentence of 30 days or more 	mandatory minimum – 1 year	<i>Unchanged</i>
Class B		
Class B – General	0 – 90 days	0 – 10 days
<ul style="list-style-type: none"> Exception: Disorderly conduct 	0 – 10 days	0 – 24 hours
<ul style="list-style-type: none"> Exception: Violation of conditions of release 	0 – 90 days/0 – 1 year	0 – 5 days
<ul style="list-style-type: none"> Exception: Misconduct involving a controlled substance in the fifth degree 	0 – 90 days	First offense: 0 – 30 days suspended Second offense: 0 – 180 days suspended Third offense: 0 – 10 days
<ul style="list-style-type: none"> Exception: For the following theft offenses: <ul style="list-style-type: none"> Theft under \$250 Removal of identification marks under \$250 Unlawful possession under \$250 Issuing a bad check under \$250 Criminal simulation under \$250 		First offense: 0 – 5 days Second offense: 0 – 10 days Third offense: 0 – 15 days (Sentences include a maximum six-month probation term)
<ul style="list-style-type: none"> Exception: Distribution of explicit images of a minor; Harassment in the second degree 		<i>Unchanged</i>

Statute affected: AS 12.55.135

Key:

[X-Y] indicates a presumptive term.

⁶ S.B. 91 § 72 raised the maximum fine for Class A misdemeanors to \$25,000 (up from \$10,000). The maximum fine for a Class B misdemeanor remains \$2000. See AS 12.55.035.

Probation Term Ranges _____ **S.B. 91 § 79 / S.B. 55 § 14**

SB 91 modified the maximum terms of probation as follows:

Probation Type	Prior Law	Current Law
Felony Probation		
Sex Felony	0 – 25 years	0 – 15 years
Unclassified Felony	0 – 10 years	<i>Unchanged</i>
A Felony		0 – 5 years
B Felony		
C Felony		
Misdemeanor Probation		
Misdemeanors – <i>General</i>	0 – 10 years	0 – 1 year
<ul style="list-style-type: none"> • Exception: For the following offenses: <ul style="list-style-type: none"> ○ Person misdemeanor crimes ○ Misdemeanor crimes involving domestic violence ○ Sex misdemeanor crimes 		0 – 3 years
<ul style="list-style-type: none"> • Exception: Misdemeanor DUI and refusal offenses if the person previously has been convicted of a DUI or refusal 		0 – 2 years

Statute affected: AS 12.55.090

Mandatory Suspended Terms and Probationary Periods for Sex Offenses _____ **S.B. 54 § 34**

In addition to an active term of imprisonment, courts must impose the following minimum suspended terms of imprisonment and probationary periods for sex offenses.

Offense	Minimum Suspended Term	Minimum Probationary Period
Unclassified felonies	5 years	15 years
Class A or B felonies	3 years	10 years
Class C felonies	2 years	5 years

Statute affected: AS 12.55.125

Suspended Entry of Judgment _____ **S.B. 91 § 77 / S.B. 55 §§ 11-13**

S.B. 91 established a process for suspending an entry of judgment (SEJ), whereby if a person pleads guilty or is otherwise found guilty of a crime, the court may, with the consent of the defense and prosecution, impose conditions of probation without imposing or entering a judgment of guilt. Upon successful completion of probation, the court shall discharge the person and dismiss the case. A defendant is eligible unless he or she:

- Was convicted of murder, manslaughter, criminally negligent homicide, assault in the first and second degree, stalking, assault of an unborn child, kidnaping, custodial interference in the first degree, human trafficking, robbery, arson in the first degree, or a felony sex offense, excepting failure to register as a sex offender;
- Used a firearm was in the commission of the current offense;
- Has previously been granted a suspension of judgment, unless the court finds rehabilitative prospects are high and suspending judgment adequately protects the victim and the community;
- Has current charges for a felony, misdemeanor assault or reckless endangerment, and has one or more prior convictions for a person offense (misdemeanor or felony); and
- Is currently, or has previously, been convicted of a crime involving domestic violence.

S.B. 55 clarified that the conditions of probation imposed in an SEJ case may not include a term of imprisonment, and that if a person is discharged from an SEJ and the case is dismissed, that person has not been convicted of a crime. *Statute affected: AS 12.55.078*

Municipal Ordinance Penalties _____ **S.B. 91 § 113 / S.B. 55 § 24**

If a municipality proscribes a penalty for violation of a municipal ordinance, and that ordinance is the same as or similar to a crime listed in state statute, the penalty may not be greater than that imposed for violation of the state statute. *Statute affected: AS 29.25.070*

Sex Trafficking and Prostitution _____ **S.B. 91 §§ 36-40 / S.B. 54 §§ 21-23**

S.B. 91 prohibited a person for being prosecuted for prostitution the person witnessed or was the victim of certain serious crimes, reported the crime to law enforcement, and cooperated with law enforcement. It also clarified that a person cannot be prosecuted for sex trafficking themselves and that living in the same location as a person engaged in prostitution is not facilitating sex trafficking. *Statutes affected: AS 11.66.100, -.130, -.135, -.150.*

Parole

Administrative Parole _____ **S.B. 91 § 122 / S.B. 54 § 72**

S.B. 91 created administrative parole, a new procedure for parole release. S.B. 54 repealed administrative parole.

Discretionary Parole Eligibility _____ **S.B. 91 §§ 123-124**

S.B. 91 expanded discretionary parole eligibility to all persons who have been sentenced to a term of imprisonment of at least 181 days, except for those convicted of unclassified or Class A sex offenses, those serving a mandatory 99-year term for murder in the first degree, those serving

less than one year pursuant to a suspended imposition of sentence, or those who have been deemed ineligible by the court. *Statute affected: AS 33.16.090*

Offense	Non-sex felonies	Prior Law	Current Law	Eligibility	Sex felonies	Prior Law	Current Law	Eligibility
Unclassified Felony		Parole Eligible	Parole Eligible	Mandatory minimum, or 1/3 of sentence		Not eligible	Not eligible	None
A Felony								
No prior felony		Not eligible	Parole Eligible	Mandatory minimum, or 1/4 of sentence		Not eligible	Not eligible	None
One prior felony		Not eligible	Parole Eligible			Not eligible	Not eligible	
Two prior felonies		Not eligible	Parole Eligible			Not eligible	Not eligible	
B Felony								
No prior felony		Parole Eligible	Parole Eligible	Mandatory minimum, or 1/4 of sentence		Not eligible	Parole Eligible	Mandatory minimum, or 1/2 of sentence
One prior felony		Not eligible	Parole Eligible			Not eligible	Parole Eligible	
Two prior felonies		Not eligible	Parole Eligible			Not eligible	Parole Eligible	
C Felony								
No prior felony	Parole Eligible	Parole Eligible	Mandatory minimum, or 1/4 of sentence	Not eligible	Parole Eligible	Mandatory minimum, or 1/2 of sentence		
One prior felony	Parole Eligible	Parole Eligible		Not eligible	Parole Eligible			
Two prior felonies	Not eligible	Parole Eligible		Not eligible	Parole Eligible			

Discretionary Parole Procedure _____ **S.B. 91 §§ 127-128, 133 / S.B. 54 § 53**

S.B. 91 implemented the following changes to discretionary parole procedures:

- The Parole Board (“Board”) must review the suitability for parole of an eligible prisoner at least 90 days before the prisoner’s first parole eligibility date.
- There is a presumption of release for most prisoners who have met the requirements of their case plan.⁷ This presumption can be overcome if the Board finds that the prisoner will pose a threat of harm to the public if released.

Statutes affected: AS 33.16.100, -.110, -.130

Geriatric Parole _____ **S.B. 91 §§ 123, 127**

S.B. 91 creates a geriatric parole valve for prisoners who are at least 60 years of age, have served at least 10 years of a sentence, and have not been convicted of an unclassified or a felony sex offense. When considering a prisoner for release under this provision, the legislation mandates that the Board consider whether a reasonable probability exists that the prisoner will live and remain at liberty without violating any laws or conditions, the prisoner’s rehabilitation and reintegration into society will be furthered by release on parole, the prisoner will not pose a threat

⁷ Presumption does not apply to prisoners convicted of unclassified felonies.

of harm to the public, and release of the prisoner on parole would not diminish the seriousness of the crime. *Statutes affected: AS 33.16.090, 110*

Community Supervision⁸

***Graduated Sanctions and Incentives* _____ S.B. 91 §§ 114-115, 141**

Beginning in 2017, the Department of Corrections was required establish an administrative sanctions and incentives program to encourage compliance and facilitate a prompt and effective response to violations of probation or parole conditions.

The new program established by regulation includes:

- Incentives for probationers and parolees to comply with their supervision conditions; prescribed sanctions that are graduated in severity to respond to technical violations of conditions; and a decision-making process to guide probation and parole officers in their uses of incentives and sanctions.
- Policies and procedures that ensure a review of previous positive and negative behaviors, violations, incentives and sanctions; appropriate due process protections (including notice, opportunity to challenge the allegations and proposed response, and an opportunity to ask for review of the proceedings); and approval by the Commissioner for enhanced sanctions.

Probation and parole officers must apply these sanctions and incentives, and keep records of all sanctions and incentives imposed. *Statutes affected: AS 12.55.110, AS 33.05.020, AS 33.05.040, AS 33.16.180*

***Caps on Length of Stay for Revocations Based on Technical Violations* _____ S.B. 91 §§ 84, 145**

S.B. 91 limited the maximum revocation sentence for technical violations of community supervision⁹ to:

- 3 days for the first revocation;
- 5 days for the second revocation;
- 10 days for the third revocation; and
- Up to the remainder of the suspended sentence for the fourth or subsequent revocation.

⁸ Note that these provisions regarding community supervision do not apply to those convicted of misdemeanors. Misdemeanants are on “open court” supervision and the Commissioner of Corrections does not assign probation officers to misdemeanants.

⁹ Restrictions do not apply to supervisees in the Probation Accountability with Certain Enforcement (“PACE”) program. PACE is a specialized program for certain high-risk felony probationers.

The maximum sentence for absconding is limited to 30 days. Absconding is defined as failing to report within five working days after release from custody, or failing to report for a scheduled meeting with a probation or parole officer and failing to make contact within 30 days of the missed meeting.

Arrests for new criminal conduct, failing to complete batterer's intervention programming or sex offender treatment, or failing to comply with special sex offender conditions of release are not considered technical violations for purposes of the sentence length cap.

A court may not incarcerate a defendant for failing to complete court-ordered treatment if the reason for the failure was an inability to pay, and the defendant made continuing good faith efforts to complete the treatment. *Statutes affected: AS 12.55.110, AS 33.16.215*

Earned Compliance Credits _____ **S.B. 91 §§ 114, 151 / S.B. 54 §§ 43, 63**

S.B. 91 required the DOC to establish a program allowing people on probation or parole to earn credits off their total supervision sentence of 30 days for each-30 day period served in which the supervisee complied with their conditions. The program must include policies and procedures for calculating and tracking credits earned, for reducing the person's period of probation or parole based on credits earned, and for notifying the victim. Probationers convicted of a sex offense or crime involving domestic violence must complete all treatment programs before being discharged. *Statutes affected: AS 33.05.020, AS 33.16.270*

Early Discharge (Probation and Parole) _____ **S.B. 91 §§ 81, 115, 143-144 / S.B. 54 § 30**

Probation officers must recommend to the court that probation be terminated and a defendant be discharged from probation if a probationer:

- Has completed all treatment programs required as a condition of probation;
- Has not been found in violation of conditions of probation;
- Is currently in compliance with all conditions for all of the cases for which the person is on probation; and
- Has not been convicted of an unclassified felony offense, a sexual felony, or a crime involving domestic violence.

Eligibility for early discharge begins after 18 months of successful probation for those convicted of Class C Felonies (this period was increased to 18 months from 1 year by S.B. 54) and after two years for those convicted of Class A or B Felonies.

Before a court may terminate probation and discharge a probationer, the court shall allow the victim to provide input to the court and shall consider the victim's input. If the victim had earlier requested to be notified, the Department of Corrections shall send the victim notice of the recommendation to terminate probation and inform the victim of their right to provide input. *Statutes affected: AS 12.55.090, AS 33.05.040*

Additionally, parole officers must also recommend early discharge to the Parole Board for a parolee who:

- Has completed at least one year on parole;
- Has completed all treatment programs required as a condition of parole;
- Has not been found in violation of conditions of parole for at least one year; and

- Has not been convicted of an unclassified felony, a sexual felony, or a crime involving domestic violence.

Statute affected: AS 33.16.210

Restitution Payment Schedule _____ **S.B. 91 § 115**

S.B. 91 requires probation officers to create restitution payment schedules when the court has not already created one, based on the probationer's ability to pay. Existing law authorizes the Parole Board to order restitution as a condition of parole. *Statute affected: AS 33.05.040*

Good Time on Electronic Monitoring _____ **S.B. 91 § 154 / S.B. 54 § 64**

S.B. 91 entitles convicted individuals to a good time deduction for any time spent on electronic monitoring or in a residential program for treatment of alcohol or drug abuse during a pre-release furlough. S.B. 54 established that prisoners do not have a liberty interest in being on electronic monitoring status. *Statutes affected: AS 33.20.010, AS 33.30.061*

Community Residential Centers (a.k.a. Community Restitution Centers) _____ **S.B. 91 § 159**

S.B. 91 required a number of reforms to Community Residential Centers ("CRCs"):

- The DOC must develop and enforce quality assurance measures and policies to ensure those who have been assessed as high risk for reoffending are given priority for acceptance into a CRC and that centers establish internal procedures to limit instances in which those assessed as high risk are housed with those assessed as low risk.
- CRCs must provide comprehensive treatment for substance abuse, cognitive behavioral disorders, and other criminogenic risk factors.

Statute affected: AS 33.30.151

Alcohol Safety Action Program _____ **S.B. 91 §§ 170-173 / S.B. 54 § 71 / S.B. 55 § 26 / H.B. 312 §§ 28, 32**

S.B. 91 limited referrals to the Alcohol Safety Action Program ("ASAP") to those who have been referred by a court after being charged with a DUI-related offense. S.B. 54 repealed this provision, mandating that ASAP be available to any misdemeanant charged or convicted of a crime related to the use of alcohol or a controlled substance. H.B. 312 ensured that this change would become effective on July 1, 2018 (removing language from S.B. 54 that made the change conditional upon full funding).

S.B. 55 clarified that ASAP was also available for people cited for minor consuming alcohol violations.

Additionally, S.B. 91 required the Department of Health and Social Services to develop regulations for the operation and management of ASAP that ensure screenings are conducted using a validated risk tool and monitoring of participants is appropriate to the risk of re-offense. *Statutes affected: AS 47.37.040, AS 47.37.130, AS 47.38.020*

Community Work Service _____ **S.B. 91 §§ 75-76**

S.B. 91 increased the value of an hour of community work for purposes of working off court-ordered fines from three dollars to the state minimum wage.

Additionally, the court is prohibited from offering a defendant the option of serving jail time in lieu of performing uncompleted community work or converting uncompleted community work hours into a sentence of imprisonment. If a court does order community work as part of a defendant's sentence, the defendant has 20 days after the date set by the court to provide the court with proof of community work. If the defendant fails to provide proof, the court shall convert those community work hours to a fine equal to the value of the work. *Statute affected: AS 12.55.055*

Crime Victims' Rights

- The prosecuting attorney, at the victim's request, must confer with the victim of a felony crime or domestic violence offense before entering into a plea agreement. **S.B. 91 § 94**. *Statute affected: AS 12.61.015*
- A law enforcement agency investigating a sexual offense may not disclose information related to the investigation to an employer of the victim except when the victim and law enforcement agency determine that such disclosure is necessary. **S.B. 91 § 95**. *Statute affected: AS 12.61.016*
- An employer may not penalize a victim of sexual assault for reporting the offense to law enforcement or participating in the investigation. **S.B. 91 §§ 96-97**. *Statute affected: AS 12.61.017*
- A defendant may not claim an exemption against garnishment of his or her Permanent Fund Dividend to pay court-ordered victim restitution, and a probation officer may set up a restitution payment schedule for probationers if the court has not already done so. **S.B. 91 §§ 115, 161**. *Statutes affected: AS 33.05.040, AS 43.23.065*
- The court, at the time of sentencing, must provide the crime victim with a form that provides information on whom to contact with questions about the sentence or release of the perpetrator of the offense; the potential for release on furlough, probation, or parole and the potential for an award of good time credit; and that allows the crime victim to update their contact information with the court, with the Victim Information and Notification Everyday (VINE) service, and with the DOC. **S.B. 91 § 65**. *Statute affected: AS 12.55.011*
- DOC, within 30 days of sentencing, must notify a crime victim of the earliest dates the perpetrator of the offense could be released, the process for release, and whom to contact for more information. **S.B. 91 § 141**. *Statute affected: AS 33.16.180*

- The Parole Board must provide notice to victims of sexual assault and crimes involving domestic violence at least 30-days before a discretionary parole hearing. The Board must also inform the victim of any decision to grant or deny parole, the date of expected release, and the conditions of parole that may affect the victim. For inmates convicted of other offenses, the Parole Board must make every effort to notify the crime victim before release if requested by the victim. **S.B. 91 §§ 130-131.** *Statute affected: AS 33.16.120*
- The court or Parole Board must notify the crime victim and provide an opportunity for the victim to provide input, and to consider the victim’s input, before granting early discharge from probation or parole supervision in the community. **S.B. 91 §§ 81, 114, 151, 156.** *Statutes affected: AS 12.55.090, AS 33.16.270, AS 33.30.013*
- Protective orders (restraining orders) issued in another jurisdiction are recognized in Alaska and enforceable. **S.B. 55 §§ 7, 15, 17-22.** *Statutes affected: AS 12.30.027, AS 12.65.130, AS 18.65.867, AS 18.66.130, AS 18.66.140, AS 25.24.210, AS 25.24.220*

Reinvestment

To support implementation of S.B. 91 and further advance the legislation’s goals of protecting public safety, reducing victimization and sustaining reductions in the prison population, the Legislature and Governor provided a total reinvestment package of \$98.8 million between 2016 and 2022. This reinvestment is funded in part by direct savings from the pretrial, sentencing and corrections reforms, and is supplemented with 50 percent of state’s new revenue from tax receipts on the legal sale of marijuana.

S.B. 91 Reinvestment Package (2016-2022)	
Pretrial services and supervision	\$54.2 Million
Victims’ services and violence prevention programming	\$11 Million
Substance abuse and behavioral health treatment services in prison	\$11 Million
Community-based behavioral health and reentry services	\$15.5 Million ¹⁰
Additional implementation costs (database upgrades, ASAP resources, and Parole Board and Judicial Council staffing)	\$7.1 Million
Total reinvestment	\$98.8 Million

¹⁰ \$6 Million of this reinvestment line item will be reimbursed by the federal government through Medicaid beginning in 2019.

Oversight, Reporting, Training and Accountability

Oversight Commission _____ **S.B. 91 §§ 122, 163-165, 183 / S.B. 54 §§ 1, 41, 68-70**

S.B. 91 extended the life of the Alaska Criminal Justice Commission to 2021 and required the Commission to oversee implementation of the legislation, report annually on performance metrics, outcomes, and savings, and make annual recommendations on how savings from reforms should be reinvested to reduce recidivism. Additionally, S.B. 91 required the Commission to prepare special reports with recommendations for improvements in DUI-related interventions and collection of victim restitution, among other topics. S.B. 54 required the Commission to provide informational sessions to law enforcement regarding changes to the law, and to study the characteristics of inmates sentenced to a term of incarceration of 30 days or more. *Statutes affected: AS 22.20.220, AS 44.19.645, AS 44.19.647, AS 44.66.010*

Reporting of performance measures _____ **S.B. 91 §§ 163-167**

S.B. 91 required the courts, the Department of Public Safety, and the DOC to collect and report data on key performance measures, and requires the Commission to use that data to monitor and report on the impact of S.B. 91 reforms. *Statutes affected: AS 44.19.645, AS 44.19.647*

Reporting on sexual assault examination kits _____ **S.B. 55 § 28**

S.B. 55 required the Department of Public Safety to gather information and report to the legislature on untested sexual assault examination kits. (An ongoing reporting requirement was added by HB 31, in signed into law in June 2018.)

Re-Entry and Collateral Consequences

Re-Entry Planning _____ **S.B. 91 § 155, 158**

S.B. 91 required the Department of Corrections to begin working with incarcerated persons 90 days before their release dates to create a written re-entry plan. The plan must show where the person expects to live and work (if feasible), as well as what types of treatment, counseling services, education programs, health, and other services needed for a successful return to the community will be available. The plan must take into account the person's risk level and any court-ordered conditions of probation. DOC will help the person returning to the community to obtain and pay for a valid state identification card, work as a partner with community non-profits to help with the re-entry process, and coordinate with the Department of Labor and Workforce Development to ensure access to job training and employment assistance. *Statutes affected: AS 33.30.011, AS 33.30.95*

Food Stamps _____ **S.B. 91 § 169**

S.B. 91 lifted the restriction on eligibility for food stamps for persons convicted of drug felonies, provided the individual is compliant with conditions of probation or is pursuing or has completed required treatment. Statute affected: AS 47.27.015

Driver's Licenses _____ **S.B. 91 §§ 101, 103, 109 / S.B. 55 § 23**

S.B. 91 required the Department of Motor Vehicles to rescind the administrative revocation of a person's driver's license if all charges have been dismissed or if the person has been acquitted of DUI or refusal. Additionally, S.B. 91 authorized the court to grant limited license privileges for a person convicted of a felony DUI offense if the person has completed a court-ordered treatment program as part of a therapeutic court process, has proof of insurance, has installed an ignition interlock device, and is otherwise eligible to be re-licensed. If the person resides in a community without a therapeutic court, the person may submit alternative information to the court to support the request for a limited license. Once the person has successfully driven under the limited license for three years (no new DUI or refusal convictions and no revocations of the license), the DMV shall restore the person's driver's license upon request and if the person complies with standard re-licensing requirements. *Statutes affected: AS 28.15.165, AS 12.65.201, AS 28.35.030*

Civil in rem Forfeiture _____ **S.B. 91 § 3**

S.B. 91 abolished common law civil in rem forfeiture functions if they are used instead of a criminal proceeding. *Statute affected: AS 09.55.700*

For questions or corrections, please email the Criminal Justice Commission's Project Attorney, Barbara Dunham, at bdunham@ajc.state.ak.us or call 907-279-2526 x18.