

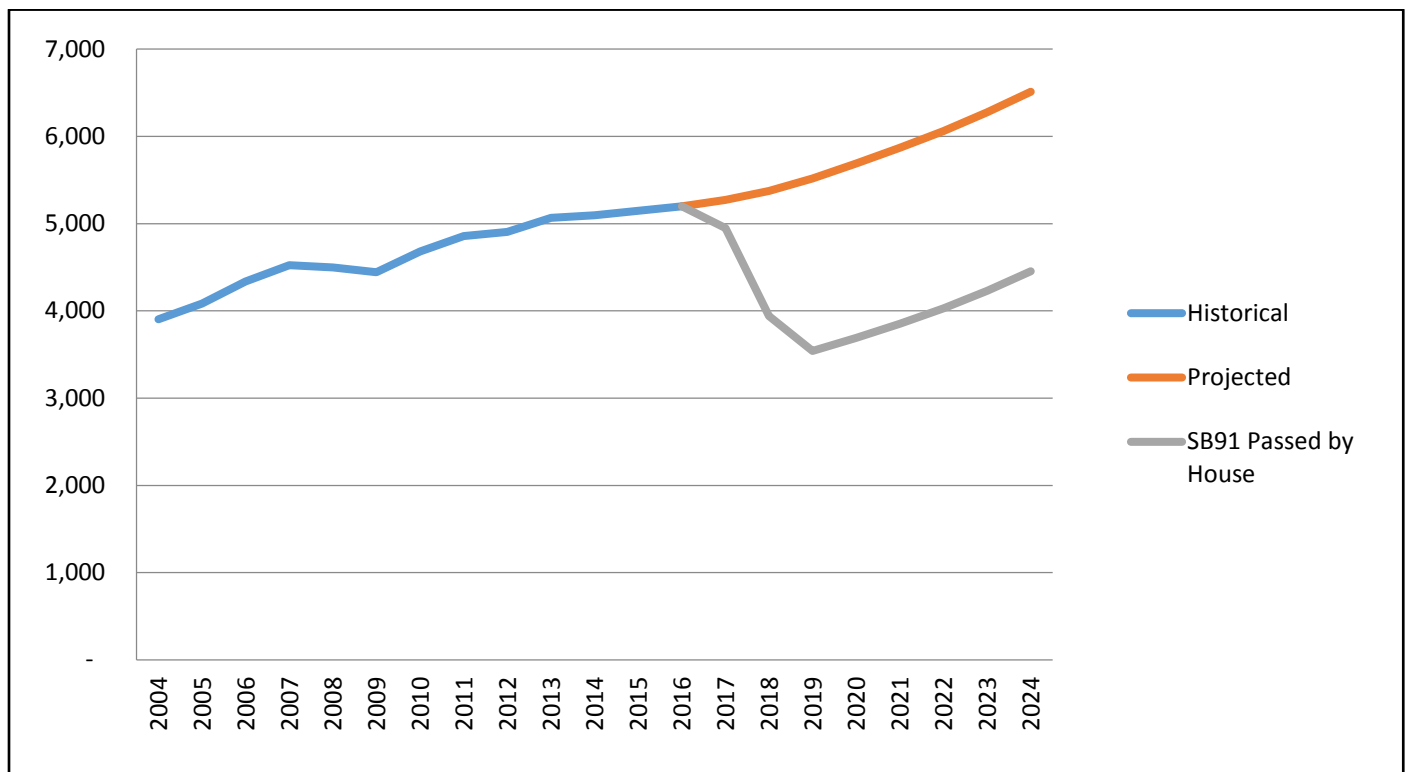
# Senate Bill 91: Alaska's Justice Reinvestment Reforms

Seeking a better public safety return on Alaska's criminal justice spending, the 2014 Alaska State Legislature established the Alaska Criminal Justice Commission (ACJC) and directed it to develop data-driven and research-based policy recommendations that would control corrections costs while holding public safety paramount.

In the Spring of 2015, Governor Bill Walker and legislative leadership requested and obtained technical assistance for the ACJC's work from the Public Safety Performance Project at the Pew Charitable Trusts as a part of the Justice Reinvestment Initiative, a joint project between the U.S. Department of Justice and Pew. Over the following seven months, the ACJC analyzed the drivers of the prison population growth, studied the research about what works to address criminal behavior, and consulted with criminal justice stakeholders. In December of 2015, the Commission issued 21 consensus recommendations to reduce recidivism and corrections spending in Alaska.

Senate Bill 91 advances the ACJC recommendations for comprehensive sentencing and corrections reforms. The reforms in SB91 will avert future prison growth and safely reduce the average daily prison population by 13 percent over the next ten years.

FIGURE 1: ALASKA'S HISTORICAL AND PROJECTED PRISON POPULATION



*This summary highlights provisions of SB 91 stemming from recommendations of the Alaska Criminal Justice Commission; it is not all-inclusive of every measure in the bill.*

# Commission Recommendations

In its final report, the Alaska Criminal Justice Commission issued 21 consensus recommendations to reduce recidivism and corrections spending in Alaska. These recommendations prioritized:

**Implementing evidence-based pretrial practices** by making changes to bail practices to focus pretrial release decisions more on risk than on ability to pay, and expanding law enforcement's discretion to use citations in lieu of arrest for lower-level nonviolent offenders.

**Focusing prison beds on serious and violent offenders** by diverting nonviolent misdemeanor offenders to alternatives; revising drug crime penalties to focus the most severe punishments on higher-level drug dealers; raising the felony theft threshold and indexing it to inflation; realigning sentence ranges in statute; expanding and streamlining the use of discretionary parole; and implementing a specialty parole option for the oldest cohort of prisoners.

**Strengthening probation and parole supervision** by standardizing sanctions for violations of probation and parole conditions to ensure they are swift, certain, and proportional; establishing incentives to comply with conditions; focusing treatment resources on high-needs offenders; and extending good time eligibility to offenders serving sentences on electronic monitoring.

**Improving reentry programming** by ensuring that individuals exiting prison have the resources they need to remain crime-free and become contributing members of society.

**Ensuring oversight and accountability** by requiring collection of key performance measures and establishing an oversight council.

**Reinvesting in programs proven to reduce recidivism and protect public safety** by directing nearly \$99 million over the next six years into evidence-based pretrial supervision; in-prison and community-based alcohol and substance abuse treatment; transitional support for offenders returning to the community; and victims' services and violence prevention programming.

Senate Bill 91, as passed, advanced most of the Commission's recommendations. A detailed policy summary is included below.

## Fiscal Impact

Senate Bill 91 is expected to produce significant savings to the state by averting projected growth in the prison population and reducing the current prison population by 13 percent over the next decade. The reforms are estimated to save a total of \$380 million (\$211 million in direct net savings; \$169 in savings from averted growth). The legislation would also reinvest nearly \$99 million into programs designed to improve public safety, reduce recidivism, and support crime victims.

# Senate Bill 91: Policy Summary

Policy reforms included in SB 91 are detailed below:

## Implement evidence-based pretrial practices

In Alaska, the number of pretrial inmates has grown by 81% over the past decade, driven in large part by increases in how long defendants stay behind bars prior to case disposition. SB 91 adopts a number of evidence-based pretrial reforms designed to improve public safety and pretrial outcomes:

### ***Risk-Based Release Decision-Making***

Release decisions will now be made based on a defendant's risk, as assessed by a validated pretrial risk instrument, and alleged offense. Defendants will fall into three potential categories:

**Required release on personal recognizance or unsecured bond:** Low- and moderate-risk defendants charged with non-violent, non-DUI misdemeanors; low-risk defendants charged with non-violent, non-DUI class C felonies.

**Presumption of release on personal recognizance or unsecured bond,** which can be overcome if the judge finds that monetary bail is the only way to reasonably assure court appearance and public safety: Defendants charged with DUI; Low- and moderate-risk defendants charged with failure to appear or violation of release conditions; high-risk defendants charged with a non-violent misdemeanor; moderate- and high-risk defendants charged with a non-violent class C felony; and all other defendants assessed as low-risk for pretrial failure.

**Monetary bail may be ordered:** All other defendants, which includes any moderate- and high-risk defendant charged with a person, DV, or sex offense or higher-level felony. In all cases, the courts may order additional, non-monetary release conditions, including complying with pretrial supervision, so long as they are the least restrictive conditions necessary to assure court appearance and public safety.

### ***Pretrial Supervision***

SB91 establishes a pretrial services program at the Department of Corrections to conduct pretrial risk assessments using an objective, data-based, validated pretrial risk assessment tool; make recommendations to the court regarding release decisions and conditions; and supervise pretrial defendants who are released. The use of third-party custodians will be restricted to only those cases where pretrial supervision is not available and no secured monetary bond is ordered. Additionally, the courts will be required to send court date reminders to defendants to help improve court appearance rates.

### ***Arrest Procedures***

Peace officers will now be permitted (but not required) to issue a citation for class C felony offenses, unless the person is a danger to others or the offense involves violence or harm to another person or to property.

**Failure to Appear (FTA):** FTA is now an arrestable violation, unless the defendant fails to appear for more than 30 days or in order to avoid prosecution (in which case it remains a misdemeanor or Class C Felony).

**Violation of Conditions of Release (VCOR):** VCOR is now an arrestable violation. Under SB 91, FTA and VCOR are responded to by arresting the defendant, revoking bail, conducting a new pretrial risk assessment, and then either detaining the individual in prison or releasing the person with greater restrictions or conditions.

## Focus prison beds on serious and violent offenders

In Alaska, length of stay for felony offenses is up across all offense types and classes: for drug and property offenders, length of stay has increased by roughly 30 days over the last decade, and for public order and sex offenders, length of stay has nearly doubled.

Evidence suggests, however, that for many offenders, incarceration is not more effective at reducing recidivism than non-custodial sanctions – and a growing body of research shows that for many low-level offenders, prison terms may increase rather than reduce recidivism. Further, the most rigorous research in the field shows that longer prison stays do not reduce recidivism any more than shorter prison stays.

SB 91 adopts a number of reforms designed to focus expensive prison beds on serious and violent offenders, including:

### ***Misdemeanor Sentencing and Classification***

Senate Bill 91 includes the following changes to misdemeanor sentencing and classification:

**Class B Misdemeanors:** Sets the maximum term of imprisonment for a Class B Misdemeanor to ten days, except if the offense is distribution of explicit images. Sets a maximum term for disorderly conduct of 24 hours. Reclassifies certain Class B misdemeanors as violations.

**Class A Misdemeanors:** Provides for a presumptive range of zero to thirty days for Class A Misdemeanors, with exceptions for offenses with mandatory minimums of thirty days or above, for cases in which the conduct was among the most serious included in the definition of the offense, for defendants with similar past convictions, and for assault in the fourth degree, sexual assault in the fourth degree, sexual abuse of a minor in the fourth degree, indecent exposure in the second degree if the victim is under 15, and harassment in the first degree.

### ***Felony Sentencing***

Reduces the presumptive sentencing range for non-sex felony offenses as follows:

**FIGURE 2: FELONY PRESUMPTIVE SENTENCING COMPARISON**

Class	First	Second	Third	Exceptions
A	3 – 6 years (was 5 – 8)	8 – 12 years (was 10 – 14)	13 – 20 years (was 15 – 20)	Use of dangerous weapon/offense directed at first responder: 5 – 9 years for first offense
B	0 – 2 years (was 1 – 3)	2 – 5 years (was 4 – 7)	4 – 10 years (was 6 – 10)	Criminally negligent homicide: Of a child, 2 – 4 for a first offense; of an adult, 1 – 3 for a first offense
C	0 – 18 months (suspended) (was 0 – 2)	1 – 3 years (was 2 – 4)	2 – 5 years (was 3 – 5)	First-time DUI: 120-239 days; second-time DUI: 240-359 days; third and subsequent DUI: 360 days to two years

## ***Controlled Substances***

Senate Bill 91 includes the following policy changes related to controlled substances:

**Possession:** Reduces the classification of possession offenses for all controlled substances except GHB to a Class A Misdemeanor and eliminates the imposition of active imprisonment time for the first two misdemeanor possession offenses.

**Commercial:** Reduces the penalty for commercial offenses relating to less than 1 gram of a IA substance 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.

## ***Theft***

Senate Bill 91 includes the following policy changes related to theft:

**Felony Theft Threshold:** Increases the threshold value for theft related offenses from \$750 to \$1,000 and requires the level to be adjusted every five years to account for inflation.

**Shoplifting:** Eliminates use of incarceration as a sanction for theft under \$250 (first two offenses), and limits the use of incarceration to 5 days suspended imprisonment and six months of probation for subsequent shoplifting offenses.

## ***Traffic Offenses***

Senate Bill 91 includes the following policy changes related to theft:

**DUI-Related DWLS:** Removes the mandatory minimum for first time DUI-related DWLS offenders and reduces the mandatory minimum for second time DUI-related DWLS offenders to 10 days.

**Non-DUI Related DWLS:** Reduces the penalty for non-DUI-related DWLS offenses from a misdemeanor to an infraction.

**First-time DUI:** Requires first-time DUI offenders to serve a mandatory term of electronic monitoring. If unavailable, imprisonment is determined by the Department of Corrections.

## ***Suspended Entry of Judgment***

Establishes a sentencing option that allows a court to suspend entering a judgment of guilt in some cases and allow the person to serve time on probation. If the person successfully completes probation, the court would then discharge the person and dismiss the case.

## ***Administrative Parole***

Creates an administrative parole option, which grants parole without a hearing, for first-time non-violent, non-sex misdemeanor and Class B or C felony offenders who have completed the requirements of their case plan, followed institutional rules, and in cases where a victim has not requested a parole hearing

## ***Discretionary Parole***

Senate Bill 91 makes the following changes to discretionary parole:

**Eligibility:** Expands eligibility for discretionary parole to all offenders except unclassified sex offenders. For other sex offenders, eligibility for discretionary parole starts once they have served 50% of their sentence.

**Process:** Streamlines the hearing process for discretionary parole by requiring the parole board to hold hearings for all prisoners who are eligible, rather than wait for prisoners to determine eligibility and prepare an application prior to a hearing.

**Geriatric Parole:** Expands eligibility for discretionary parole to inmates who are over the age of 60, have served at least 10 years of their sentence, and have not been convicted of an unclassified or sexual felony.

## Strengthen probation and parole supervision

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 of supervision; and integrating treatment into supervision. SB 91 requires Alaska to adopt these evidence-based community supervision strategies, including:

### ***Administrative Sanctions and Incentives***

Requires the Department of Corrections to establish an administrative sanction and incentive program to facilitate a prompt and effective response to compliance with or violations of conditions of probation or parole.

### ***Cap Technical Violation Stays***

Limits the maximum sentence for technical violations of probation or parole for offenders who are not in the PACE program 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. The maximum sentence for absconding is limited to 30 days. Arrests for new criminal conduct, failing to complete batterer's intervention or sex offender treatment, or failing to comply with special sex offender conditions of release are not considered technical violations.

### ***Earned Compliance Credits***

Requires the commissioner to establish a program that allows probationers and parolees to earn a credit of 30 days for each 30 day period served in which the person has complied with conditions of supervision.

### ***Early Discharge***

Requires probation or parole officers to recommend early discharge for any probationer/parolee who has served at least one year (Class C Felonies) or two years (Class A and B Felonies), completed any required treatment, and has not been found in violation of their conditions of probation for at least one year, with an exception for offenders convicted of an unclassified or sex felony offenses, or a crime involving domestic violence.

### ***Maximum Probation Terms***

Limits probation terms to 15 years for a sex offense, ten years for a non-sex unclassified felony, five years for other felony offenses, three years for a misdemeanor assault, domestic violence or sex offense, two years for a second-time misdemeanor DUI, and one year for any other offense.

### ***Good Time on Electronic Monitoring***

Extends good time credit to individuals on electronic monitoring.

### ***CRCs***

Requires CRC's to provide treatment, reduce mixing of low and high risk offenders, and adopt quality assurance measures, including standards for assessing risk levels.

### ***Alcohol Safety Action Program***

Restricts ASAP referrals to persons who have been referred by a court for a DUI-related offense, and requires the ASAP program to screen for criminogenic risk and monitor based on risk level.

### ***Community Work Service***

Prevents the court from converting community work service into a sentence of imprisonment. Increases the value of an hour of community work from three dollars to the state minimum wage.

## Improve reentry programming

Almost everyone incarcerated in Alaska will eventually be released to the community. SB 91 included reforms designed to improve the re-entry process – and, in doing so, improve public safety by reducing recidivism.

### ***Re-Entry Planning***

Requires the Department of Corrections to work with prisoners to prepare a re-entry plan, beginning 90 days before the date of release. The department must partner with one or more community non-profits to assist in the re-entry process, and must identify resources available to the prisoner in the community. Finally, the department must assist prisoners with obtaining state identification prior to release.

### ***Food Stamps***

Lifts the restriction on eligibility for food stamps for persons convicted of drug felonies, provided the individual is compliant with conditions of probation and has completed treatment or is still working toward rehabilitation.

### ***Driver's Licenses***

Requires the DMV to restore a person's driver's license if all charges have been dismissed or if the person has been acquitted of DUI. Authorizes the court to grant limited license privileges for felony DUI offenders if the person has completed a court-ordered treatment program, has proof of insurance and has installed an ignition interlock device.

## Ensure oversight and accountability

The reforms to Alaska's correctional and criminal justice systems will require careful implementation and oversight. To ensure that reforms are monitored for fidelity and efficacy, SB 91 requires:

### ***Oversight Commission***

Extends the life of the Alaska Criminal Justice Commission and requires the Commission to review and analyze the implementation of the legislation and annually make recommendations on how savings from reforms should be reinvested to reduce recidivism.

### ***Reporting of performance measures***

Requires state agencies to collect and report data on key performance measures, and requires the Commission to use that data to monitor the reforms and, if necessary, recommend additional reforms in the future.

## Reinvest in practices proven to reduce recidivism and protect public safety

To support implementation of the requirements of SB 91 and further advance the legislation’s goals of protecting public safety, reducing victimization and sustaining reductions in the prison population, SB 91 reinvests a substantial portion of the savings as well as new revenue from marijuana tax receipts over the next six years:

**FIGURE 3: REINVESTMENT**

<b>Pretrial Services/Supervision</b>	\$54.2 Million
<b>Victims Services &amp; Violence Prevention</b>	\$11 Million
<b>DOC Treatment Services</b>	\$11 Million
<b>Re-Entry Support Services</b>	\$15.5 Million <sup>1</sup>
<b>Additional Implementation Costs</b> Includes: Additional staff, training, database upgrades to support implementation	\$7.1 Million
<b>Total Reinvestment</b>	<b>\$98.8 Million</b>

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<sup>1</sup> \$6 million of this is projected to be reimbursed by the federal government assuming receipt of federal waiver starting in FY19.