

Practitioner Guide to SB 91

Alaska Criminal Justice Commission



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An Introduction to Senate Bill 91

Alaska's prison population, which includes both pretrial and post-conviction inmates, has grown by 27 percent between 2005 and 2014, nearly three times faster than the resident population. The total corrections population, including those incarcerated as well as those on community supervision, grew 45 percent over the same ten year period, all 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 required significant capital expenditures, including construction of the \$240 million Goose Creek Correctional Center, which opened in 2012. The state's growing prison population and increased corrections spending, however, had not produced commensurate improvements in public safety outcomes: nearly two out of every three people released from Alaska prisons returned within three years.

Without a shift in policy, Alaska's prison population was projected to grow by another 1,415 inmates by 2024. These additional inmates would 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. Accommodating this projected growth was estimated to cost at least \$169 million.

Aiming to control prison and jail growth and recalibrate the state's correctional investments to 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.

Governor Walker, Senate President Meyer, Speaker Chenault, and former Chief Justice Fabe directed the Commission to conduct a comprehensive review of Alaska's criminal justice system and develop recommendations for legislative and budgetary changes. Beginning in the summer of 2015 and extending through the end of the calendar year, the commission conducted a rigorous review of Alaska's pretrial, sentencing, and corrections data, policies, and programs, as well as best practices and models from other states. In December of 2015, the Commission issued 21 consensus recommendations to reduce recidivism 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 on July 11, 2016.

The reforms are expected to avert all of the anticipated prison growth projected through 2024 and reduce the average daily prison population by 13 percent, saving an estimated \$380 million dollars in state spending (\$169 million in averted costs and \$211 million in net savings). Using a portion of the savings and 50 percent of tax receipts from the legal sale of marijuana in Alaska, the state will reinvest \$98.8 million over six years into treatment services in prison and in the community, reentry supports, pretrial services and supervision, violence prevention programming, and crime victims' services. This guide provides an outline of the statutory and budgetary changes enacted in S.B. 91.

Pretrial

Citation in Lieu of Arrest _____ **Section 51, eff. Jan. 1, 2017**

S.B. 91 expanded peace officers' discretion to issue citations in lieu of making an arrest. Previously, officers were authorized to issue citations for misdemeanors and violations unless they involved violence, domestic violence, or harm to another person or to property, or unless the officer believed the person was a danger to themselves or others. Officers now also have explicit authority to issue citations for class C felonies. Additionally, the former provision requiring arrest when the person posed a danger to themselves has been removed, because other options in Alaska law permit officers to respond in these crisis situations (e.g., Title 47 holds).

Timeline for Appearance When Issued a Citation _____ **Section 53, 54, eff. Jan. 1, 2017**

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.

Arrest Authorized for Violations of Pretrial Release Conditions and Failure to Appear _____ **Section 51, eff. Jan. 1, 2017**

S.B. 91 reclassified the offenses of failure to appear in court and violation of a condition of pretrial release 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 grants officers authority to arrest defendants for failure to appear and violations of release conditions rather than issue a citation. Officers also possess independent authority to arrest for violations of release conditions under existing statute, AS 12.25.030(b)(3)(C).

First Appearance Before a Judge _____ **Section 98, eff. July 11, 2016**

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

Pretrial Services Program _____ **Section 117, eff. Jan. 1, 2018**

S.B. 91 requires the Department of Corrections to create a pretrial services program by January of 2018. The new Pretrial Services program will conduct risk assessments for all defendants, 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. The Department must write the necessary regulations for the program, and adopt and validate the risk assessment tool with input from a variety of stakeholders, including the Department of Law, the Public Defender, the Department of Public Safety, the Office of Victims' Rights, and the Alaska Court System.

Pretrial Risk Assessment and Regulations for Release and Diversion Recommendations _____ **Section 117, eff. Jan. 1, 2018**

The Department of Corrections Commissioner must approve a validated pretrial risk assessment tool for use by the pretrial services program, 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.

Pretrial Release Report _____ **Section 117, eff. Jan. 1, 2018**

Before the defendant's first appearance in front of a judge (within 24 hours for those who have been arrested and detained), the pretrial services office 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.

Restrictions on Pretrial Services Officers' Recommendations Related to Money Bond _____ **Section 117, eff. Jan. 1, 2018**

S.B. 91 establishes 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 services officers to the court.

	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

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.

Terms explained:

- OR recommended: The pretrial services 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 services officer must recommend that the defendant be released on recognizance or on unsecured bond unless the officer finds substantial evidence that no combination of non-monetary release conditions can reasonably ensure court appearance and public safety.
- SB authorized: Recommendations of secured bond is authorized. The pretrial services 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.

Restrictions on Judges’ Authority to Order Money Bond _____ **Section 59, eff. Jan. 1, 2018**

Judges will be authorized to release any defendant on their own recognizance or on unsecured bond. Under S.B. 91, judges will be 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 under S.B. 91 will be significantly 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 limited circumstances.

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

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.

Terms explained:

- Mandatory OR: The defendant must be released on recognizance or on unsecured bond.
- 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 _____ **Section 161, eff. July 11, 2016**

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.

Temporary Detention of Felony Defendants at Request of Prosecutor _____ **Section 55, eff. Jan. 1, 2018**

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. Under S.B. 91, prosecutors continue to have this authority for all felony defendants except those class C felony defendants assessed as low-risk for pretrial failure, who must by law be released by the court on personal recognizance or unsecured bond.

Bail Review Hearings _____ **Sections 56, 57, eff. Jan. 1, 2018**

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. The only exception is when 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.

Non-Monetary Release Conditions _____ **Sections 60-63, eff. Jan. 1, 2018**

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 will be extended not just to peace officers, but also to pretrial services officers. Courts may also order defendants to be randomly drug tested by the pretrial services office.

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.

Pretrial Supervision _____ **Section 117, eff. Jan. 1, 2018**

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.

Other Roles of Pretrial Services Officers _____ **Section 117, eff. Jan. 1, 2018**

Pretrial services 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.

Hearing Reminders _____ **Section 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 _____ **Sections 68-71; eff. Oct. 9, 2016 (90 days after enactment)**

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 the requirements listed in Sections 70 and 71, 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.

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 two to five 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 11-12, and the limits for probation terms are set forth on page 13.

Sentencing Reclassifications

S.B. 91 made changes to the sentencing ranges for non-sex felonies, misdemeanors, and probation terms (see pages 11, 12, and 13, respectively). It also implements targeted reclassifications for the following offense types:

Reclassification of Certain Lower-Level Misdemeanors as Violations _____ **Sections 17, 29-31, 33-35, 41, eff. July 11, 2016**

S.B. 91 reclassifies six lower-level misdemeanors as violations, specifically: disregard of highway obstruction, promoting and exhibition of fighting animals, obstruction of highways, and second-time unlawful gambling. Additionally, the legislation reclassifies two offenses relating to pretrial misconduct as violations rather than misdemeanors or felonies: violation of a condition of release and failure to appear. 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.

Theft Offenses _____ **Sections 6-15, 8-23, 25, 93, eff. July 11, 2016**

S.B. 91 increases the felony threshold value for theft offenses from \$750 to \$1,000 and requires the level to be adjusted every five years to account for inflation. The legislation also 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 third and subsequent shoplifting offenses (see additional details on page 12).

Drug Offenses _____ **Sections 45-47, 93, eff. July 11, 2016**

S.B. 91 classifies possession of controlled substances (except GHB) as a Class A misdemeanor. The legislation also eliminates 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 reduces 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

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>

Misdemeanor Traffic Offenses _____ **Sections 105, 107, 108, 110, eff. July 11, 2016**

For driving on a suspended license offenses where the license was suspended for a driving under the influence (“DUI”) -related crime, S.B. 91 removes 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 reduces the classification from a misdemeanor to an infraction. Additionally, the legislation requires people convicted of first-time DUI and first time refusal offenses to serve their sentence on electronic monitoring (as opposed to a prison term). The sentences for first-time DUI and first-time refusal were not otherwise changed.

⁵ Weight thresholds here refer to aggregate weight.

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) – 1 year + fine
Second offense	30 days – 1 year	10 days – 1 year + fine

Felony Sentencing Ranges _____ **Sections 86-90, eff. July 11, 2016**

S.B. 91 modifies the presumptive and minimum sentencing ranges 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; offense directed at first responder 	[7 – 11] – 20 years	[5 – 9] – 20 years
<ul style="list-style-type: none"> Exception: Manufacture of methamphetamine in the presence of children 		[3 – 6] – 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>
<ul style="list-style-type: none"> Exception: Attempt or conspiracy to manufacture methamphetamine in the presence of children 	[2 – 4] – 10 years	[0 – 2] – 10 years
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 – 18 months susp.] – 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 – 3] – 5 years
Third and subsequent felony offense	3 – 5 years	2 – 5 years

Note: S.B. 91 did not modify sentencing ranges for sex felonies. Fines for felonies were not changed.

Key (for table on previous page):
 [X-Y] indicates a presumptive term.
 X indicates a mandatory minimum.

Misdemeanor Sentencing Ranges _____ Sections 32, 91-93, eff. July 11, 2016

S.B. 91 modifies 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 – 30 days] – 1 year
<ul style="list-style-type: none"> Exception: The following offenses were exempted from the change: <ul style="list-style-type: none"> o Assault in the fourth degree o Sexual assault or sexual abuse of a minor in the fourth degree o Indecent exposure in the second degree if the victim is under 16 o Harassment in the first degree 		<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: 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"> o Theft under \$250 o Removal of identification marks under \$250 o Unlawful possession under \$250 o Issuing a bad check under \$250 o Criminal simulation under \$250 		First offense: No incarceration Second offense: No incarceration Third offense: 0 – 5 days suspended (and 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>

Key:
 [X-Y] indicates a presumptive term.

⁶ This table lists available incarceration sentences, but does not include fines that may be ordered for misdemeanor offenses.

Probation Term Ranges _____ **Section 79, eff. July 11, 2016**

SB 91 modifies the 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

Suspended Entry of Judgment _____ **Section 77, eff. July 11, 2016**

S.B. 91 establishes a process for suspending an entry of judgment, 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.

Sex Trafficking and Prostitution _____ **Sections 36-40, eff. July 11, 2016**

S.B. 91 prohibits 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 clarifies 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.

Parole

Administrative Parole _____ **Section 122, eff. Jan. 1, 2017**

Starting in January 2017, many incarcerated persons will be eligible for administrative parole, a new procedure for parole release. On the earliest date of eligibility, persons serving time for a first-time, non-violent, non-sex misdemeanor or Class B or C felony will be released without a parole hearing if:

- The prisoner has been sentenced to a term of imprisonment of at least 181 days;
- The prisoner has served the greater of:
 - a quarter of the active term of imprisonment
 - the mandatory minimum term of imprisonment;
- The prisoner has completed the requirements of their case plan, including following institutional rules and completing treatment requirements; and
- The victim has not requested a parole hearing.⁷

Discretionary Parole Eligibility _____ **Sections 123-124, eff. Jan. 1 2017**

S.B. 91 expands 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 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.

⁷ Parole Board is required to contact victims at least 90-days before the inmate's earliest eligibility date and provide instructions on how to request a hearing.

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 _____ **Sections 127-128, 133, eff. Jan. 1, 2017**

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

- Mandates that the Parole Board (“Board”) review the suitability for parole of an eligible prisoner at least 90 days before the prisoner’s first parole eligibility date.
- Implements a presumption of release for most prisoners who have met the requirements of their case plan.⁸ This presumption can be overcome if the Board finds that the prisoner poses a threat of harm to the public if released.
- If the Board denies parole, allows the Board to schedule a subsequent parole hearing within two years of the person’s first parole eligibility date or most recent parole hearing.

Geriatric Parole _____ **Sections 123, 127, eff. Jan. 1, 2017**

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

⁸ Presumption does not apply to prisoners convicted of unclassified felonies.

society will be furthered by release on parole, the prisoner will not pose a threat of harm to the public, and release of the prisoner on parole would not diminish the seriousness of the crime.

Community Supervision⁹

Graduated Sanctions and Incentives* _____ **Sections 114-115, eff. Jan. 1, 2017*

Beginning in 2017, the Department of Corrections must 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 will include:

- 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.

Caps on Length of Stay for Revocations Based on Technical Violations* _____ **Sections 84, 145, eff. Jan. 1, 2017*

S.B. 91 limits the maximum revocation sentence for technical violations of community supervision¹⁰ 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.

⁹ 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.

¹⁰ 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.

Earned Compliance Credits _____ **Sections 114, 151, eff. Jan. 1, 2017**

S.B. 91 requires 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.

Early Discharge (Probation and Parole) _____ **Sections 81, 115, 143-144, eff. Jan. 1, 2017**

S.B. 91 requires probation officers to 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 one year of successful probation for those convicted of Class C Felonies 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.

Additionally, S.B. 91 requires parole officers to 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.

Restitution Payment Schedule _____ **Section 115, eff. Jan. 1, 2017**

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.

Good Time on Electronic Monitoring _____ **Section 154, eff. July 11, 2016**

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.

Community Residential Centers (a.k.a. Community Restitution Centers) _____ **Section 159, eff. July 11, 2017**

S.B. 91 requires 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.

Alcohol Safety Action Program _____ **Sections 170-173, eff. July 11 2016 (referral limitations) and Jan. 1, 2017 (screening and monitoring)**

S.B. 91 limits 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. Additionally, S.B. 91 requires 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.

Community Work Service _____ **Sections 75-76, eff. July 11, 2016**

S.B. 91 increases 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.

Crime Victims' Rights

S.B. 91 implements the following policies impacting crime victims' rights:

- Requires the prosecuting attorney, at the victim's request, to confer with the victim of a felony crime or domestic violence offense before entering into a plea agreement. Section 94, eff. Oct. 9, 2016 (90 days after enactment).
- Prohibits a law enforcement agency investigating a sexual offense from disclosing 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. Section 95, eff. Oct. 9, 2016 (90 days after enactment).
- Forbids an employer from penalizing a victim of sexual assault for reporting the offense to law enforcement or participating in the investigation. Sections 96-97, eff. Oct. 9, 2016 (90 days after enactment).
- Prohibits a defendant from claiming an exemption against garnishment of his or her Permanent Fund Dividend to pay court-ordered victim restitution and allows a probation officer to set up a restitution payment schedule for probationers if the court has not already done so. Sections 115, 161, eff. July 11, 2016 and Jan. 1, 2017.
- Requires the court, at the time of sentencing, to 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. Section 65, eff. Oct. 9, 2016 (90 days after enactment).
- Requires the DOC, within 30 days of sentencing, to 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. Section 141, eff. Jan. 1, 2017.
- Mandates that the Parole Board 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. Sections 130-131, eff. Jan. 1, 2017.
- Requires the court or Parole Board to 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. Sections 81, 114, 151, 156, eff. Jan. 1, 2017.
- Authorizes the Parole Board to impose as condition of release any of the terms of a domestic violence protective order, including the requirement that the parolee complete a program for perpetrators of domestic violence. Section 138, eff. Jan. 1, 2017.

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 ¹¹
Additional implementation costs (database upgrades, ASAP resources, and Parole Board and Judicial Council staffing)	\$7.1 Million
Total reinvestment	\$98.8 Million

Oversight and Accountability

Oversight Commission _____ **Sections 122, 163-165, 183, eff. July 11, 2016**

S.B. 91 extends the life of the Alaska Criminal Justice Commission to 2021 and requires 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 requires the Commission to prepare special reports with recommendations for improvements in DUI-related interventions and collection of victim restitution, among other topics.

Reporting of performance measures

S.B. 91 requires 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.

¹¹ \$6 Million of this reinvestment line item will be reimbursed by the federal government through Medicaid beginning in 2019.

Re-Entry and Collateral Consequences

Re-Entry Planning _____ **Section 155, eff. Jan. 1, 2017**

Starting January 1, 2017, S.B. 91 requires 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. The 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.

Food Stamps _____ **Section 169, eff. July 11, 2016**

S.B. 91 lifts 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.

Driver's Licenses _____ **Sections 101, 103, 109, eff. July 11, 2016**

S.B. 91 requires 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 authorizes 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.

Civil in rem Forfeiture _____ **Section 3, eff. July 11, 2016**

S.B. 91 abolishes common law civil in rem forfeiture functions if they are used instead of a criminal proceeding.