



Alaska Criminal Justice Reforms

Why they are critical for serving justice-involved Trust beneficiaries

Since Senate Bill 91 was signed into law on July 11, 2016, about 60% of the provisions have gone into effect. One of the largest reform provisions, the Pretrial Enforcement Division, will begin operations in January 2018.

A key element of SB 91 is the investment into programs and services that support successful reentry for people with substance use and mental health disorders—including access to substance abuse and mental health treatment, Medicaid enrollment, case management support, housing and employment assistance. Justice-involved individuals with these disabilities are more likely to remain stable, sober, and productive in the community when they have access to community supports.¹

The practice of diverting low-risk defendants to treatment and other community services instead of incarceration, has been demonstrated to decrease the likelihood they will reoffend.²

According to a 2014 study, Alaska Mental Health Trust beneficiaries represent more than 40% of the incarcerations in Alaska's corrections system each year and their median length of incarceration is "significantly longer than for other offenders."³ Trust beneficiaries are Alaskans with mental illness, substance use disorders (SUD), intellectual and developmental disabilities, Alzheimer's disease and related dementia, and traumatic brain injury.

In 2017, the Alaska Department of Corrections (DOC) reported that DOC "by default is the largest provider of mental health and substance use disorders in the state."⁴

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Justice Reinvestment Initiative in the USA

The Justice Reinvestment Initiative (JRI)⁵ is a model of criminal justice reform that engages state government, judges, prosecutors, defense attorneys, victims' advocates, corrections staff, law enforcement, businesses, community service providers, and people with lived experience of incarceration in implementing reforms based on practices that have shown in states across the United States to promote rehabilitation, reduce state spending on prison hard beds, and reduce the likelihood of future criminal behavior.

The JRI model of criminal justice reforms promotes: 1) amending sentencing laws; 2) reforming pretrial practices; 3) modifying prison release practices; 4) strengthening prison and community support services, including supervision practices; and 5) reinvesting savings into practices that support the reforms.

In the 1990s, advances in computer technology made data analysis more affordable and user-friendly, which supported better data-driven decision-making. The psychology of criminal conduct also underwent a dramatic transformation during this period with an increased focus on treatment and other supports to match an offender's specific risk, needs, personality, and motivational level. Understanding these elements then helped inform a more targeted and effective approach to serving justice-involved individuals, with the goal of increasing public safety and saving states millions in criminal justice spending.

Reforms similar to SB 91, in other states, have closed prisons, reduced costs, and increased public safety. For example,

- Texas closed three correctional facilities and averted \$684 million in new prison construction

and operating costs. They reinvested \$241 million of the savings into institutional and community-based treatment and diversion programs.

- North Carolina closed five correctional facilities and reinvested \$38 million in probation and community-based treatment.
- Hawaii invested in treatment programs and hired more corrections and victims' services staff. They saw a 4% reduction in their prison population and saved \$2.5 million in corrections costs.⁶ ❖

SB 91 and Criminal Justice Reforms in Alaska

Alaska's prison and jail population increased 27% between 2005 and 2014, almost three times faster than the state's resident population. This trend prompted the building of a new prison in 2012 for \$240 million, with an annual operating budget of \$50 million.⁷

In that same period, the pretrial population (people who cannot afford bail and have to wait in a prison bed for their trial or sentencing) increased 81%; two-thirds of the state's sentenced population were non-violent offenders; and 1 in 5 offenders were incarcerated for a technical violation of probation or parole conditions.⁸

The Alaska Criminal Justice Commission (ACJC) was formed in 2014 to address these and other related issues and recommend evidence-based reforms that had shown in other states to reduce recidivism, produce better outcomes, and decrease correctional spending.

The provisions outlined in SB 91, recommended by the ACJC, were based on Alaska data and practices shown to demonstrate success in other jurisdictions. The main provisions in SB 91 are:

- Changes in charging and sentencing practices
- Modified bail and pretrial release practices
- Increased use of criminogenic risk assessment tool
- Improved reentry planning practices
- Diverts low-level offenders to prison diversion—such as substance use treatment, electronic monitoring, and other supervision strategies
- Implementation of a Pretrial Enforcement Division
- Caps the length of prison stays for technical violations of probation and parole supervision conditions ⁹

A report by the Pew Charitable Trusts predicts that once the reforms of SB 91 have been fully implemented and requisite time has passed to evaluate the effects, the state could see a 13% reduction of incarcerated individuals by 2024, and a savings of \$380 million (\$169 million in avoided costs and \$211 million in net savings).¹⁰ ❖

An overview of the reforms outlined in SB 91 can be found in a report by the Pew Charitable Trusts, *“Alaska’s Criminal Justice Reforms: Comprehensive law improves pretrial, sentencing, and corrections policies.”*

http://www.pewtrusts.org/~media/assets/2016/12/alaskas_criminal_justice_reforms.pdf



The Alaska State House of Representatives votes 28-10 to pass SB 91 in May 2016. The bill contained similar reforms passed by the Texas legislature that resulted in the closure of three prisons and diverted \$694 million from new prison construction and reinvested the savings into community-based treatment and diversion programs that have shown success in reducing recidivism.

How SB 91 Improves Conditions for Alaska Mental Health Trust Beneficiaries

Since the passage of SB 91, enhanced reentry efforts are underway to assist justice-involved Trust beneficiaries to remain stable, employed, housed, and productive in the community, and increase public safety through the reduced likelihood that they will commit other crimes. These provisions include:

- Individualized case management planning to assess risk and identify reentry needs 90 days prior to an inmate’s release. People with substance use disorders are more likely to be identified in this process and their treatment needs considered after release. SB 91 provided funds for a grant program that supports case managers providing reentry support to returning citizens.

- Access to rehabilitation options by expanding institutional substance use treatment programs for incarcerated people with shorter sentences and increased funding for community-based treatment programs.
- Coordinated access to job training and employment assistance after release.
- Access to rehabilitation programming to certain offenders living in Community Residential Centers (CRCs).
- Strengthened community supervision practices to focus resources on high-risk offenders and use incentives and sanctions more effectively.
- Access to a limited driver's licenses to people convicted of a first felony DUI offense if: 1) the person participated in a therapeutic court program, or, if living where there isn't a therapeutic court, participated in a treatment program similar to a therapeutic court program, and 2) can prove he or she has been sober for 18 months. In both cases, the individual must complete the program in order to get the limited license.
- Expanded definition of good time for any time spent in a residential program for treatment of alcohol or drug abuse under prerelease furlough.
- Improved population management approaches, such as keeping low-level offenders separate from serious violent offenders in CRCs. A large body of research shows that mixing low-level misdemeanor offenders with high-level criminal offenders results in the low-level offenders learning anti-social coping skills, adopting more serious criminal behaviors, and returning to the community at higher risk for committing additional crimes.
- Discretionary parole reforms to allow for certain geriatric offenders to have early release. With adequate supports, geriatric offenders can return to the community and live with dignity after they have served their time. Also, expands parole eligibility to most felony offenders, excluding unclassified felons and certain sex felons.
- Updates the misconduct involving controlled substances offenses to better align penalties with the severity of offenses. SB 91 makes possession of most drugs a misdemeanor rather than a felony, and creates different felony penalties for drug distribution to distinguish between high- and low-volume dealers.
- Removed restrictions on Supplemental Nutrition Assistance Program (SNAP), Alaska's food stamp program, eligibility for people convicted of drug felonies, provided they comply with supervision conditions and treatment requirements.
- Identified that 50% of revenue collected from marijuana taxes be placed into a "Recidivism Reduction Fund" to be invested in evidence-based support services and programs—which may include housing and employment support, substance use and mental health treatment, peer and recovery support services, life skills training, victims' services, and evidence-based therapeutic practices that work with a person's motivation to commit crimes. ❖

Myths and Misunderstandings about SB 91

Myth #1: Violent and property crimes have increased because of SB 91

Crime rates in Alaska have been rising for decades, prior to the passage of SB 91. Specifically, violent crimes have steadily increased since 1986,¹¹ and property crimes have increased since 2011.¹² There are other factors that could be contributing to rising crime rates—including Alaska’s economic recession, unemployment, increased abuse of heroin, prescription drugs and other illegal drugs, workforce reductions, and state budget reductions, which have forced cuts to police, prosecutors, and community treatment programs.

Myth #2: SB 91 requires violent and intoxicated offenders be released on their own recognizance

About the same time that SB 91 passed the Legislature, the state’s presiding judges met to change the bail schedule, which establishes release procedures for arrestees. The new schedule allowed (but did not require) that people arrested for certain offenses may be released on their own recognizance (OR). If an arrestee is dangerous or vulnerable, the arresting officer may contact an on-call judge and request the person be held, and a different bail set. The courts have a 24-hour on-call judge for this purpose.

The reality is that some police officers are utilizing their option to request a different bail and others are not. On-call judges have reported that since the bail schedule change, they have received calls of this nature and usually set a different bail—with the arrestee almost always being held at least until the next morning. To be clear, police officers are not required to release someone on their own recognizance, and always have the option to call a judge to request the arrestee be held when the situation calls for it.

Myth #3: SB 91 forces an officer to issue a citation instead of arrest

Current law requires peace officers to issue citations for all violations, but allows them to *use their discretion* for misdemeanors. Under certain circumstances, however, arrest is mandatory.¹³ In these cases, the officer is required to make an arrest and take the person before the court, which may then release him or her on bail.¹⁴ Effective in January 2017, an officer now has the expanded discretion to write citations for class C felonies, while mandatory arrests continue to be required for domestic violence crimes. Again, under SB 91, an arresting officer is *not required* to release a defendant for a class C felony, but allows him or her discretion to assess the circumstances at the scene and choose whether or not to release with a citation or arrest.

Myth #4: A higher bail will keep high-risk people behind bars and streets safer

A person’s ability to pay a higher bail is not an accurate predictor of whether or not he or she will commit another crime or fail to appear in court. The focus on money in release decisions means that people are not properly screened for more rational

measures of public safety. For example, a drug dealer may have a lot of cash to pay a high bail, but is a higher risk for going back to committing more crimes, while a person holding down a regular job and supporting a family who may not be able to afford bail, is a lower risk for committing another crime or not appearing for court.

The Justice Policy Institute reported that, “there is no definitive association between a particular charge and the amount of money that would guarantee appearance at court or deter future criminal activity. Hence, the bail amounts are arbitrary and cannot guarantee safety in the community, and are unrelated to a person’s financial means.” Additionally, “an inability to pay bail may coerce people to plead guilty so they can get out of jail sooner, despite being innocent.”¹⁵

The pretrial screening process that will begin in January 2018, will require a risk assessment for every arrestee within 24 hours of arrest to determine their risk for committing another crime or failing to appear in court. This practice has, in other states, resulted in safer release practices and increased the likelihood that higher risk individuals will be detained accordingly.

Myth #5: The longer someone spends in jail the more rehabilitated they'll be

While it seems counterintuitive that a shorter prison term could increase the likelihood of offender rehabilitation, research on the “schools of crime” theory suggests that sending nonviolent offenders to prison exposes them to criminal behaviors and practices they may not have otherwise come in contact with, increasing their likelihood of committing more crimes in the future.¹⁶ Also, when a low-risk offenders spend time in jail and lose their livelihood and productive activities in the community, they are at higher risk for desperation, alcoholism or drug use, and resorting to criminal behavior.

SB 91 shortened prison terms and expanded opportunities for enhanced supervision for low-risk offenders. These measures have shown in other states to keep low-risk offenders stable and productive in the community, reducing the likelihood of recidivism, and reduced likelihood of developing more harmful criminal behaviors.



SB 91 established policies and funding sources that focus on treatment for certain low-risk individuals with substance abuse and/or mental health disorders, which has shown repeatedly across the nation to be more effective over incarceration for changing criminal behavior and reducing recidivism.



Advocate Kara Nelson, a person in long-term recovery with lived experience of incarceration and drug addiction, speaks at the signing of SB 91 on July 11, 2016, as Governor Bill Walker, Lieutenant Governor Byron Mallott, and Alaska Criminal Justice Commission chair Greg Razo look on.

Current Criminal Justice Legislation before the Alaska State Legislature

Senate Bill 54 – Crime and Sentencing, by Senator John Coghill. This bill proposes substantive changes to SB 91, many of which respond to concerns raised by the public, law enforcement, and prosecutors.

SB 54 addresses these major areas: C-felony penalties, misdemeanor penalties, sex trafficking, and violations of conditions of release (VCOR).

The C felony provisions and theft in the fourth degree penalty have raised the most controversy since the bill's passage.

While SB 91 set the penalty for first time class C felony to probation with a suspended term of imprisonment of up to 18 months (except for felony DUI or refusal), public concerns and testimony from the Department of Law prompted the Alaska Criminal Justice Commission to recommend increasing the penalty to 0 to 90 days in the first version of the bill. As it has passed through the legislative process, the penalty changed to a presumptive sentencing range of 0 to 365 days.

SB 91 also eliminated both active and suspended terms of imprisonment for fourth degree theft under \$250 unless the person has been convicted twice before for a similar crime. For a third offense, the court, then, could impose a maximum of five days' suspended imprisonment and a maximum of six months' probation. There is no jail time imposed for theft in the fourth degree, unless the person violates their probation within the six-month probationary period. However, courts can still impose fines and community service. SB 54 changes the penalty for a person convicted of theft in the fourth degree (and similar offenses) in the following ways: 1st offense: up to five days of suspended imprisonment and up to six months' probation; 3rd offense: up to five days imprisonment and six months' probation; 3rd and subsequent offenses: up to 10 days imprisonment and six months' probation.

House Bill 171 – Employment of Prisoners, by Representative Dean Westlake. This bill authorizes DOC to enter into contracts and cooperative agreements for the employment of inmates. The sponsor statement reads: "Over 90 percent of those incarcerated will return to our communities. It is important that we allow these individuals to develop the skills necessary to be successful as they reenter into society....HB 171 will enhance the ability of the commissioner to accept contracts or cooperative agreements in order to strengthen the current employment of Alaskan prisoners." If passed, DOC will be able to provide products and services to the general public through private-public partnerships "in full consultation with industry stakeholders" and give inmates opportunities for building valuable work skills. Meaningful employment helps inmates pay victim restitution, court fees, fines, and other costs associated with confinement, and enhances opportunities for restorative justice.

For more information on these bills, go to www.akleg.gov, under "Bills and Laws." ❖

Reinvestment in Recidivism Reduction and Violence Prevention in FY17-FY18

The following state funds were allocated in FY17-FY18 to address programming associated with criminal justice reforms:

- \$3 million = Community-based Reentry Services (DHSS)
- \$1 million = Substance Abuse Treatment in Prison (DOC)
- \$1.5 million = Substance Abuse Treatment at CRCs (DOC)
- \$3 million = Victims' Services/Violence Prevention (CDVSA)

DHSS funds were used in FY17 as follows:

- Enhancement of Alcohol Safety Action Program (ASAP) screening and monitoring to include new screening tools and training;
- Expansion of community reentry programs and coalitions and funding for emerging coalitions to build support for improved reentry services, including hiring reentry case managers;
- Funding for the two-year DOC study by the University of Alaska to assess the effectiveness of DOC's Vivitrol Intervention Program;
- Improvements to the Alaska Corrections Offender Management System (ACOMS) and Alaska Automated Information Management System (AKAIMS) for secure case management tracking and increased functionality.

DOC FY17 reinvestment expenditures were below allocations due to unexpected provider contract changes. However, DOC was able to continue basic programming at some institutions and expand at some CRCs, and plans to fully utilize all funding in FY18. Programming includes:

- Outpatient SUD services at Seaside Center/Nome, Northstar Center/Fairbanks, Cordova Center/Anchorage, with expanded service planned for Glacier Manor/Juneau;
- Medication Assisted Treatment (MAT) for incarcerated opioid addicts releasing from Anchorage, Mat-Su, Kenai, Fairbanks, Nome.

Council on Domestic Violence and Sexual Assault (CDVSA) expenditures in FY 17 included funding for the following primary prevention programs:

The COMPASS project, Stand Up Speak Up, Talk Now Talk Often, Coaching Boys to Men, The Green Dot, Girls on the Run, prevention summits, conferences and victims' services training, and Community-based Primary Prevention Grants (CBPPP). ❖

Building Community Support Services for Justice-Involved Individuals

Community support services remain a critical component to the success of criminal justice reform because they provide what people need to remain stable, sober, and productive in the community. Community supports such as treatment, housing and employment assistance, peer and recovery support services, case management, life skills training, victims' services, and therapeutic practices that work with a person's motivation to commit crimes—are key for successful rehabilitation.

Although efforts are being made to increase access to support services for justice-involved individuals through additional funding and policy changes, the need remains substantial because there are not enough services and funding sources are not stable. Community service providers do not currently have the resources to serve the number of justice-involved individuals expected to be diverted from prison at the pretrial level, and reentering the community at the reentry level. Additionally, people with felony convictions face extensive barriers to housing and employment and other supports after release.

Continued attention and investment is critical to building and maintaining the capacity to serve justice-involved individuals appropriately so that they will be able to live in the community with appropriate supports, as needed, to remain crime-free. Without this support, the reforms of SB 91 will be at risk for not delivering the predicted positive returns. ❖



Christina Love and Kara Nelson, advocates in long-term recovery, with lived experience of incarceration and drug addiction, testify before the House Labor and Commerce Committee on HB 171, a bill that authorizes the Alaska Department of Corrections to enter into contracts and cooperative agreements for the employment of inmates.

Public advocacy for criminal justice reforms

Alaska advocacy groups are coming together to support the criminal justice reforms passed in SB 91. Community reentry coalitions, recovery and peer organizations, non-profit and for-profit service providers, faith-based organizations, and individuals are reaching out to educate policymakers, businesses, and citizens about the reforms and why incarceration is not the best way to keep communities safe.

Criminal justice legislation has brought smart justice practices to Alaska and will require a sustained effort over time for the positive results to be realized. The strategies passed in SB 91 should by no means be the end of Alaska's justice reinvestment effort.

A report on national criminal justice reforms cautions: "In some cases, state leaders believe their work is done when the bill is passed, even though implementation is just as crucial to success ... A related challenge is impatience over a lack of immediate results. Justice Reinvestment can be a lengthy process, and state leaders and champions must balance the expectation of positive impacts with the reality that such impacts may take several years to be fully realized."¹⁷

Public education, media exposure, and advocate support is still needed to educate policymakers, business owners, government agencies, and citizens about the importance of maintaining the reforms.

Advocates are sharing a common message and acting to maintain momentum as reform policies are implemented. They are testifying at public meetings, using social media, and sharing their personal stories to educate policymakers, law enforcement, judges and attorneys, corrections staff, and others about the value of serving justice-involved individuals with proven methods that actually reduce the likelihood of recidivism.

When advocates write letters to the editor and op-ed pieces, speak on radio talk shows and at town hall meetings, they spread the word and offer balance to the discussion.

The Trust and partner advisory boards support the reforms that serve people with disabilities appropriately—during incarceration, and at both the pretrial and reentry phases. Priorities includes:

- Ensuring Alaskan policymakers and citizens know about the successes in other states in terms of cost savings and reduction of crime, reduced recidivism, and increased the likelihood of rehabilitation.
- Ensuring all the provisions of the reforms have been implemented as intended and providing the necessary time after implementation for the reforms to be evaluated and demonstrate results.
- Reinvesting savings from the reforms into evidence-based community support services—such as treatment and recovery support, housing and employment assistance, transportation, family reunification and life skills training. ❖

Talking Points

- It is too early to determine the cause of the increase in crime and the relationship to SB 91. Crime rates in Alaska have been rising for decades, prior to the passage of SB 91. Specifically, violent crimes have increased steadily since 1986, and property crimes have been increasing since 2011.
- There are other factors that could be contributing to rising crime rates—including Alaska's economic recession, unemployment, increased abuse of heroin, prescription drugs and other illegal drugs, workforce reductions, and state budget reductions, which have forced cuts to police, prosecutors, and community treatment programs.
- Only about 60% of the provisions of SB 91 have gone into effect, with one of the largest reform provisions, the Pretrial Enforcement Division, not being operational until January 2018.
- Many of the reforms in SB 91 will help people with addiction and mental health disorders get appropriate treatment, which will increase their likelihood of stability and not committing future crimes.
- Repealing SB 91 is “throwing the baby out with the bath water.” Many of the provisions have the full potential to show successful results, given the time to see them implemented and evaluated.
- Research shows that supervised treatment is more likely to reduce criminal behavior than a stiffer prison sentence. People with substance use disorders and mental illness who complete treatment are more likely to remain sober, stay stable, and be productive members of the community.
- Reforms in other states, similar to SB 91, have closed prisons, reduced costs, and increased public safety:
 - Texas closed three correctional facilities and averted \$684 million in new prison construction and operating costs. They reinvested \$241 million of the savings into institutional and community-based treatment and diversion programs.
 - North Carolina closed five correctional facilities and reinvested \$38 million in probation and community-based treatment.
 - Hawaii invested in treatment programs and hired more corrections and victims' services staff. They saw a 4% reduction in their prison population and saved \$2.5 million in corrections costs.
- SB 91 was the first step towards reducing criminal recidivism, increasing public safety and healthier communities, but the enacted provisions should not be viewed as “the answer.” Achieving the intended results will require a sustained and enhanced effort over time.

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¹ Washington State Institute for Public Policy, <http://www.wsipp.wa.gov/BenefitCost>

² Ibid.

³ Trust Beneficiaries in Alaska's Department of Corrections, Hornby Zeller Associates (May 2014), pii). <http://mhtrust.org/mhtrawp/wp-content/uploads/2014/10/ADOC-Trust-Beneficiaries-May-2014-FINAL-PRINT.pdf>

⁴ Substance Abuse Treatment Services in the State of Alaska Department of Corrections," Alaska Department of Corrections, February 16, 2017.

⁵ Bureau of Justice Assistance, Office of Justice Reforms: <https://www.bja.gov/programs/justicereinvestment/index.html>

⁶ Justice Reinvestment Initiative State Assessment Report, Urban Institute, January 2014.

⁷ Alaska's Criminal Justice Reforms: Comprehensive law improves pretrial, sentencing, and corrections policies, PEW Charitable Trusts Brief, (Dec. 2016). http://www.pewtrusts.org/~media/assets/2016/12/alaskas_criminal_justice_reforms.pdf

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ "Violent Crime Reported in Alaska, 1986-2015," Alaska Justice Statistical Analysis Center FACT SHEET, University of Alaska Anchorage, February 2017, https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/alaska-justice-statistical-analysis-center/documents/Fact_Sheets/ajsac.17-02.viol_crimes_1986-2015.pdf

¹² "Property Crime Reported in Alaska, 1986-2015," Alaska Justice Statistical Analysis Center FACT SHEET, University of Alaska Anchorage, January 2017, https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/alaska-justice-statistical-analysis-center/documents/Fact_Sheets/ajsac.17-02.viol_crimes_1986-2015.pdf

¹³ Arrest is mandatory in the following cases: if the officer cannot ascertain the person's identity, when the person presents a danger to themselves or others, when the crime involves violence or harm to people or property, when the person requests to go before the court, or when the crime involves domestic violence.

¹⁴ Letter to Governor Bill Walker, from the Alaska Department of Law, providing a section by section explanation of SB 91, July 2016. Website: http://law.alaska.gov/pdf/bill-review/2016/002_JU2016200423.pdf

¹⁵ "Bail Fail: Why the U.S. should end the practice of using money for bail," Justice Policy Institute, September 2012. Webpage: http://www.justicepolicy.org/uploads/justicepolicy/documents/bailfail_executive_summary.pdf

¹⁶ Alaska Criminal Justice Commission: Justice Reinvestment Report, December 2015. Webpage: http://www.ajc.state.ak.us/sites/default/files/imported/acjcrecommendations_ak_justice_reinvestment_initiative_report_to_acjc_12-9.pdf

¹⁷ Justice Reinvestment Initiative State Assessment Report, Urban Institute, January 2014, p5