



March 2, 2017

The Honorable John Coghill, Chair
Senate Judiciary Committee
Alaska State Senate
State Capitol
Juneau, AK 99801

by email: Senator.John.Coghill@akleg.gov

Re: SB 54 Crime and Sentencing, ACLU of Alaska Review

Dear Senator Coghill:

Thank you for the opportunity to share our feedback on Senate Bill 54. The American Civil Liberties Union of Alaska opposes three aspects of SB 54 because these changes do not reflect the sound policymaking processes and goals that were initially sought when the Legislature created the Criminal Justice Commission.¹ Specifically, we oppose the provisions relating to increased penalties for (1) violations of conditions of release, (2) first-time Class C felonies, and (3) the third instance of low-level theft, theft in the fourth degree.

The ACLU of Alaska represents thousands of members and activists throughout Alaska. Our mission is to preserve and expand the individual freedoms and civil liberties guaranteed by the Alaska and United States Constitutions. The ACLU also works to reform criminal laws to end criminal justice policies that lead to mass incarceration, over-criminalization, racial injustice, and that stand in the way of a fair and equal society.²

Fundamentally, the criminal law reforms that were agreed upon and the reinvestment processes that were created as a part of comprehensive criminal justice reform in Alaska must be given a chance to work as they were designed. Many of the reinvestment and diversionary programs that form an integral part of this process are in their fledgling stages. Reforms like these have worked and have been allowed to take effect in other states, including states in the Deep South like Alabama and Mississippi. Alaska should not buck that trend. It is simply too early

¹ AS 44.19.645, the law that created the Criminal Justice Commission, provides that the Commission was to provide recommendations based upon “peer reviewed and data-driven research,” and “efficacy of evidence-based restorative justice initiatives.”

² See ACLU Criminal Law Reform Project, <https://www.aclu.org/issues/criminal-law-reform>.

to make reactive judgments about whether the policy decisions that were made have met Alaska's goals of reducing recidivism and deriving the most public safety benefits from the dollars spent in the criminal justice system. The latest recommendations from the Criminal Justice Commission that are encompassed in SB 54 are not based on the peer-reviewed research and evidence-based data that the Commission was tasked with analyzing.

(1) Violations of Conditions of Release

For criminal defendants released either before trial on bail or as part of their sentence on probation, courts will often create conditions for their release, which may include, for example, avoiding certain places, or avoiding alcohol, if alcohol was involved in the underlying offense. Currently, if an individual violates those conditions, he or she can be arrested, given a fine of up to \$1,000, and the court may reassess whether those conditions are appropriate.³

The concern raised before the Criminal Justice Commission that prompted this change was that judges and magistrates found it difficult to bring those arrested before the same judge who created the conditions of release to make appropriate changes, if needed. In other words, "magistrate judges looking at another judge's case at [2:00 a.m.] are simply not comfortable re-setting bail in that case."⁴ Rather, those judges who were available when the individual was arrested, preferred to have the judge in the person's underlying criminal case review the bail conditions because that person was most likely to be familiar with it.

Consistent with the Commission's recommendation, SB 54, would require that violations of conditions of release be elevated to a Class B misdemeanor offense, which would require an active term of imprisonment.

At an estimated cost of \$150 dollars per day, per inmate in corrections, changing violations of conditions of release to Class B misdemeanors is likely the most costly method to resolve an administrative problem within the judicial system. It is also unnecessary. One solution to this issue has already been successful as judges have become accustomed to procedure: the judge in the underlying criminal cases began to include instructions in the original order (setting forth the conditions of release)

³ AS 11.56.757.

⁴ Alaska Criminal Justice Commission, Meeting Summary at 3, Dec. 8, 2016, *available at* http://www.ajc.state.ak.us/sites/default/files/meeting-summaries/commission/acjcmeetingsummaryfordecember82016_0.pdf.

on whether to hold a person if he or she violates those conditions.⁵ These solutions allow for a court to enforce its orders and conditions of release, without saddling people with new criminal convictions. Given more time, the court system can arrive at an expedient solution that will not cause the state to incur greater costs without the need for this legislative change.

Incarcerating someone to resolve this administrative issue on clarifying bail conditions could cause those individuals to be fired from their jobs, evicted from their homes, and to lose valuable connections with the community that help that person reenter society successfully. The Legislature could save substantial costs by allowing the courts to use the procedures that it has created to address this, and removing sections 1, 2, and 9 from SB 54.

(2) Presumptive Incarceration for First-Time Class C Felony Offenses

Secondly, SB 54 removes the presumption of a suspended sentence for first-time low-level felony offenses. Class C felony offenses currently carry a presumptive term of suspended imprisonment of zero to 18 months.⁶ A suspended term of imprisonment means that these individuals are given a chance to reenter society provided that they abide by the rules that the court creates for them upon their release. If they do not abide by those rules, they are returned to serve out their sentence. Courts already enjoy the discretion to provide more restrictive sentences if aggravating factors or extraordinary circumstances are present in a given case.⁷

Section 6 of SB 54 would add an active term of imprisonment ranging from zero to 120 days as the presumption in first-time Class C felony cases. The Criminal Justice Commission considered the concerns regarding presumptive terms of imprisonment for Class C felonies and recommended enacting a zero to 90 day presumptive range. There is no evidence that creating a presumption of an active term of imprisonment for all Class C felonies makes sense in terms of spending the state's limited corrections dollars wisely. Studies that have reviewed prison sentences as they relate to recidivism rates concluded that "[n]one of the analyses conducted produced any evidence that prison sentences reduce recidivism," and indeed, most concerning, for people who pose a lesser risk to public safety, the opposite was true: "the lower risk group who spent more time in prison had higher

⁵ Alaska Criminal Justice Commission, Meeting Summary at 5, Dec. 8, 2016, *available at* http://www.ajc.state.ak.us/sites/default/files/meeting-summaries/commission/acjmeetingsummaryfordecember82016_0.pdf.

⁶ AS 12.55.125(e)(1).

⁷ See AS 12.55.155 - 12.55.175.

recidivism rates.”⁸ For first-time offenders, such a result does not promote public safety.

The Commission noted expressly in its recommendations, “The Commission did not have any data or empirical evidence to show that a term of 0-90 days would reduce recidivism; this recommendation will almost certainly increase the prison population.”⁹ There is no evidence that SB 54’s provisions, even further increasing the presumptive sentencing range to 120 days, would serve a greater role with respect to public safety, recidivism, or deterrence.

The purpose of having the sentence presumptively suspended for people convicted for the first time, of these less serious felonies in particular, is to prevent those persons from experiencing the effects of even short terms of imprisonment that are likely to cause criminal behavior—including being fired from their jobs and unable to support their families, evicted from their homes, and losing ties to their families and community. For these first-time offenders, many of whom have just made one of the gravest mistakes of their lives, allowing him or her an opportunity to maintain those ties, with appropriate supervision, enhances the goals of reform and the strength of our families and communities.

(3) Increased Penalties for Theft in the Fourth Degree

SB 54 increases the penalty for low-level theft offenses, based not on evidence of a documented increase in such offenses, or evidence that harsher penalties would result in greater deterrence, but rather on third-hand accounts of perceptions of an increase these offenses. As with the other recommendations, the Criminal Justice Commission noted that “[it] did not have any data that this recommendation would prevent these types of theft[,]” and indeed that “[t]here is no evidence to support the notion that rates of petty theft are related to prison sentences.”¹⁰ Given the absence of data-driven reforms and the need to allow criminal reform to fully take shape, these recommendations should be given limited weight.

⁸ Paul Gendreau & Claire Goggin, *The Effects of Prison Sentences on Recidivism*, Centre for Criminal Justice Studies, Dep’t of Solicitor General of Canada (1999) *available at* <https://www.prisonpolicy.org/scans/e199912.htm>.

⁹ Alaska Criminal Justice Commission, *Recommendations to the Legislature: January 29, 2017*, at 5, *available at* http://www.ajc.state.ak.us/sites/default/files/commission-recommendations/acjcrecommendations1-142017_12.pdf.

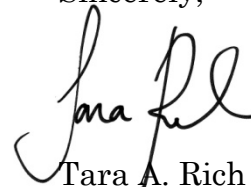
¹⁰ Alaska Criminal Justice Commission, *Recommendations to the Legislature: January 29, 2017*, at 3, *available at* http://www.ajc.state.ak.us/sites/default/files/commission-recommendations/acjcrecommendations1-142017_12.pdf.

Conclusion

The Criminal Justice Commission's recommendations that are encompassed in SB 54 presents a marked departure from the manner in which the Commission previously analyzed issues and created recommendations, which had focused on data-driven responses. The efforts in studying the data for more than a year and making evidence-based changes to crimes and sentencing are only part of the reform effort. The other critical half of this project is reinvesting in programs designed to divert people from prisons and reducing barriers to allow each person to avoid the criminal justice system, and to live, work, and thrive in the community. It must be given time to work. We urge the Legislature to refrain from making policy changes that could seriously jeopardize the savings that the criminal reform law created until there is more information about whether the law is working as it was designed.

We appreciate the opportunity to share our concerns about SB 54 with the Senate Judiciary Committee. We hope our testimony proves valuable to Members contemplating SB 54.

Sincerely,



Tara A. Rich
Legal & Policy Director

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