



City of Kodiak
KODIAK POLICE DEPARTMENT
CHIEF OF POLICE



Why Senate Bill 91 (SB 91) Has Tied the Hands of Law Enforcement

In conjunction with SB 91 (Senate Bill), law enforcement agencies were notified of an administrative order establishing a statewide bail schedule. That bail schedule changed how law enforcement was to process offenders. It would appear the legislators, when creating SB 91, did not anticipate the judges new bail order. The crime of disorderly conduct, under SB 91, has a maximum penalty of 24 hours in jail, but under the bail schedule, they are to be release immediately.

The bail schedule made most misdemeanor crimes an OR (own recognizance) release, in other words they are released without posting any money and out of jail in less than an hour. This has caused our law enforcement officers to deal with offenders, sometimes several times during a shift, and giving the appearance to the public that we are not “doing our jobs”.

SB 91 was developed with the anticipation there would be more treatment options, less recidivism and in general, going with the national trend of justice reform. Below is an overview of SB 91 provided by the Department of Law.

Senate Bill 91 limits the use of incarceration in all phases of the criminal justice process. Incarceration is initially limited by reclassifying certain criminal conduct to lower level offenses. For example, under current law most illegal drug possession is a class C felony. SB 91 reclassifies all drug possession, except possession of the “date rape drug,” as class A misdemeanors and mandates no active term of imprisonment for the first offense. SB 91 also increases the felony threshold for property crimes from \$750 to \$1,000 and mandates no active term of imprisonment for lower level property crimes under \$250. Additionally, SB 91 decriminalizes several misdemeanor offenses by classifying them as violations and limits prosecution of prostitution and sex trafficking in the third degree with new defenses or by redefining elements. All of these measures will limit the use of incarceration as a sanction by redefining the unlawful conduct encompassed by those offenses.

SB 91 also limits pretrial incarceration by encouraging peace officers to issue citations rather than arrest offenders. The bill expands the category offenses for which an officer may issue a citation and includes class C felonies in that category. SB 91 also makes the criteria for pretrial release less stringent and creates a pretrial services program to monitor defendants and help ensure they are complying with their release conditions. These measures reduce the use of incarceration after charging, but pretrial.

SB 91 made several changes to criminal statutes effective July 1, 2016. Most changes applied to offenses committed after the effective date, but some applied to cases that were pending

prosecution at the time of the effective date thus materially changing that pending prosecution. These changes predominantly reduce the level of offense to decrease, if not eliminate jail, as a sanction for criminal conduct.

A. Some of the crimes reduced to violations.

SB 91 reduces seven crimes to violations. A violation is a noncriminal offense not punishable by incarceration. The most common sanction for a violation is a fine. Here a few examples that are having a negative impact on our community.

Failure to appear *July 1, 2016.*

Under current law, when a person knowingly fails to appear for a hearing in a criminal prosecution, then that person commits the crime of failure to appear (FTA). The severity of the FTA is based on the level of the offense charged in the underlying case for which the person failed to appear. If the underlying offense is a felony, then the FTA is a class C felony. If the underlying offense is a misdemeanor, or the person is a material witness in a criminal case, then the FTA is a class A misdemeanor.

SB 91 amends FTA by creating a new violation-level offense, punishable by a fine of up to \$1,000 that applies when a defendant contacts the court within 30 days after failing to appear. This essentially creates a 30-day grace period except when a defendant fails to appear with the intent to avoid prosecution in the underlying case or fails to appear for more than 30 days. Then FTA will be a class A misdemeanor or class C felony, depending on the class of the underlying offense.

2. Violating conditions of release *July 1, 2016.*

Under current law, a defendant who violates conditions of release may be charged with a crime. Violating conditions of release (VCOR) is currently a class A misdemeanor if the defendant's underlying charge is a felony and a class B misdemeanor if the defendant's underlying charge is a misdemeanor.

SB 91 will eliminate this distinction and reduce all VCOR offenses to violations similar to a traffic offense, with no jail time and a fine not to exceed \$1,000, essentially, there is no consequence for repeated violations of conditions of release.

Driving while license suspended (DWLS) *July 1, 2016.*

Under current law, a person commits DWLS (a class A misdemeanor) by driving after their license has been suspended or revoked or by driving in violation of the terms of a limited license. The penalties are based on (1) whether the defendant has prior DWLS convictions and (2) the underlying basis for the suspension or revocation, e.g., DUI, points, etc. There are different mandatory minimum penalties for DWLS based on different reasons for the suspension or revocation.

SB 91 alters the sentencing structure in three ways for DWLS based on a DUI conviction. First, the mandatory minimum is lowered by eliminating the 10 days of active jail time. Second, another part of the mandatory minimum under current law, the \$500 fine and 80 hours of community work service, is also eliminated. Third, the basis for an increased penalty is changed from counting the number of DUIs to counting the number of previous DWLS convictions based on a DUI suspension.

SB 91 alters DWLS based on all reasons other than a DUI by reducing them from a class A misdemeanor with a mandatory minimum jail sentence to an infraction similar to any other traffic ticket with no jail. This creates an anomalous result in the statutory scheme since driving without a valid license remains a higher level offense as a class A misdemeanor than driving with a suspended license.

B. Added crimes.

1. Arson *July 1, 2016.*

Current law defines arson in the third degree (a class C felony) as damaging a motor vehicle by fire, but only if the vehicle is on public property. SB 91 expands the definition to include a vehicle that was on private property.

C. Felonies reduced to misdemeanors.

Felony crimes are those for which the maximum sentence is over one year. SB 91 amends various statutes so that conduct currently classified, as felony conduct will now be misdemeanor conduct.

1. Property crimes *July 1, 2016.*

Current law generally divides property crimes into four degrees based on the value of the property involved and on the defendant's criminal history for committing similar offenses. The thresholds for the levels of the offense are as follows: under \$250 (B misdemeanor), \$250 - \$750 (A misdemeanor), \$750 - \$25,000 (C felony), and more than \$25,000 (B felony). SB 91 alters this scheme in three ways. First, it repeals recidivist punishment for thefts under \$250. SB 91 would make all thefts under \$250 B misdemeanors regardless of the number of prior convictions. Second, SB 91 raises the threshold for a class C felony property crime from \$750 to \$1,000. Third, SB 91 provides for an automatic increase of the \$250 and \$1,000 thresholds (but not the \$25,000 threshold) based on inflation.

2. Misconduct involving a controlled substance (drug offenses) *July 1, 2016.*

Alaska law contains a comprehensive scheme of misconduct involving a controlled substance (MICS) offenses, ranging from unclassified felonies to class B misdemeanors, addressing illegal drugs. All drug offenses have been reduced one level, for example a Class B felony becomes a

Class C felony and Class C felony becomes a Class A misdemeanor crime. Which means Class C felonies can be cited and released instead of being arrested.

Provisions related to arrest, bail, and pretrial release.

A. Arrest.

1. Increase discretion to issue a citation instead of arrest (sec. 51).

Currently, AS 12.25.180 defines when a peace officer may issue a citation, as opposed to arresting a person. The current law requires peace officers to issue citations for all violations and allows the officer to use their discretion in issuing citations for misdemeanors, except that arrest is mandatory (1) when the officer cannot ascertain the person's identity, (2) when the person presents a danger to themselves or others, (3) when the crime involving violence or harm to people or property, (4) when the person requests to go before the court, and (5) when the crime involves domestic violence. In those cases, the officer is required to make an arrest and take the person before a committing magistrate, who may then release them on bail.

SB 91 expands the officer's discretion to use citations by allowing the issuance of citations for class C felonies and by eliminating the requirement of mandatory arrest; under four of the five circumstances listed in AS 12.35.180(a) and described above, one circumstance in which arrests will still be mandatory is domestic violence crimes.