Reclassifying Nonviolent, Small Quantity Drug Possession as a Misdemeanor: Potential Impacts on Alaska's Budget and Society

RESEARCH SUMMARY

1/16/13

Note: This is a summary of a more detailed, 95-page report produced in late 2012. The forecasting methodology and calculations leading to the cost and savings estimates in this summary are spelled out in detail in the full version; it also contains a large number of citations for the factual assertions made herein. A copy of the full report is available upon request.

Executive Summary

At present, if an individual in Alaska is found in possession of even trace amounts of a Schedule IA or IIA controlled substance, they can be charged with a felony. In contrast, fourteen states currently classify small quantity, nonviolent drug possession as a misdemeanor offense; in 2010, Colorado joined the ranks of these states in an attempt to reduce state expenditures.

Alaska's prison population is currently growing at one of the fastest rates in the nation, with much of that growth driven by incarceration of drug offenders. It costs the State approximately $49,275 per year to incarcerate each of these prisoners. Capital expenses at the Goose Creek prison totaled more than $250 million, and the Department of Corrections estimates that all of its facilities, including Goose Creek, will again be at capacity by 2016.

Reclassifying drug possession as a misdemeanor should lead to aggregate savings to the State of between $5.77 and $10.31 million over four years. These savings arise primarily from reduced incarceration, adjudication, and legal costs, and should grow over time. The conservative estimate developed for this report did not include capital expenses from prison construction.

Comparative analysis of states in which drug possession is already a misdemeanor suggests that reclassification's effect on public safety should be minor. Misdemeanor states actually have slightly lower rates of violent crime (including intimate partner and sexual violence), property crime, and drug use, as well as higher rates of drug treatment.

This reform would also remove a plethora of collateral consequences imposed by federal statute, state law, and private actors. Removing these collateral consequences should have wide-ranging benefits for offenders and their families, and would improve employment prospects, a variable strongly correlated with decreases in alcoholism, domestic violence, and recidivism.

Finally, insofar as reclassification might cause limited disruption to Alaska's current penal system and law enforcement strategy, sufficient policy tools exist to address many of these challenges. These tools include increased evaluation of offenders, an "escalating punishment" regime similar to Alaska's current approach to DUI's, expanded treatment for high-risk and drug-addicted offenders, and the innovative "PACE" program for similar probationers. Due to their impact on recidivism, these policy responses should also reduce total State expenditures over time.

Reclassifying small quantity, nonviolent drug offenses thus presents the Legislature with an opportunity to reduce government expenditures, while simultaneously preserving public safety and improving the prospects of drug users for rehabilitation and reentry.

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I. Introduction: Alaska's Prison Population Growth

Alaska is a national leader in prison population growth. A recent study by the Federal Bureau of Justice Statistics, which analyzed data from 2009-2010, found a 5.9% year-to-year increase in the number of Alaskan prisoners, the fourth highest jump in the nation. During that same measurement period, the number of prisoners nationwide actually fell, as many states embraced reforms to reduce prison populations and control costs.

Alaska has not yet embarked on many of these reforms. Despite the construction of the 1,536 bed Goose Creek facility—at a cost of approximately $250 million—the Department of Corrections (DOC) estimates that all of its beds will again be full by 2016 if the prison population continues to grow at 3% or more. Incarceration costs approximately $49,275 per inmate, per year, and the DOC's operating budget has grown from $166.7 million in 2005 to $323.2 million in 2013.

Alaska's prison growth is *not* driven by increased incarceration of violent criminals. From 2002 to 2010, the proportion of violent to non-violent criminals incarcerated in Alaskan prisons flipped from 58% violent and 42% nonviolent, to 36% violent and 64% nonviolent. Increasingly, Alaska is locking up *nonviolent* offenders. According to a DOC report the primary drivers of Alaska's prison population growth are:

- An increase in Petitions to Revoke Probation (PTRP's) and probation violations.
- Increased admission for Felony Theft in the Second Degree—theft of property valued over $500—and increased sentence lengths associated with these offenses.
- A 63% rise in prison admission for drug offenders, particularly felony offenders convicted of possession offenses.

Note that the latter two points are inexorably connected to the first; felony offenses result in formal probationary periods, which in turn increase the number of probationers subject to possible PTRP's. While each of these factors invites a policy response, this brief tackles one driver in particular: Alaska's small quantity drug possession laws.

II. Drug Policy and Prison Population Growth

Drug and alcohol abuse are both serious problems in Alaska, and cause tremendous harm to users, their friends, families, and the broader community. Many violent and property crimes are connected to drug or alcohol use, and abuse of these substances cost the Alaskan economy an estimated $1.2 billion in 2010. However, research has found that violent crime in Alaska is tied far more closely with alcohol use than with drugs, including 30% of homicides, 30% of aggravated assaults, and 22.5% of sexual assaults (versus 15.8%, 5.1%, and 2.4% for drugs, respectively). National studies have also found a causal link between alcohol and domestic violence.

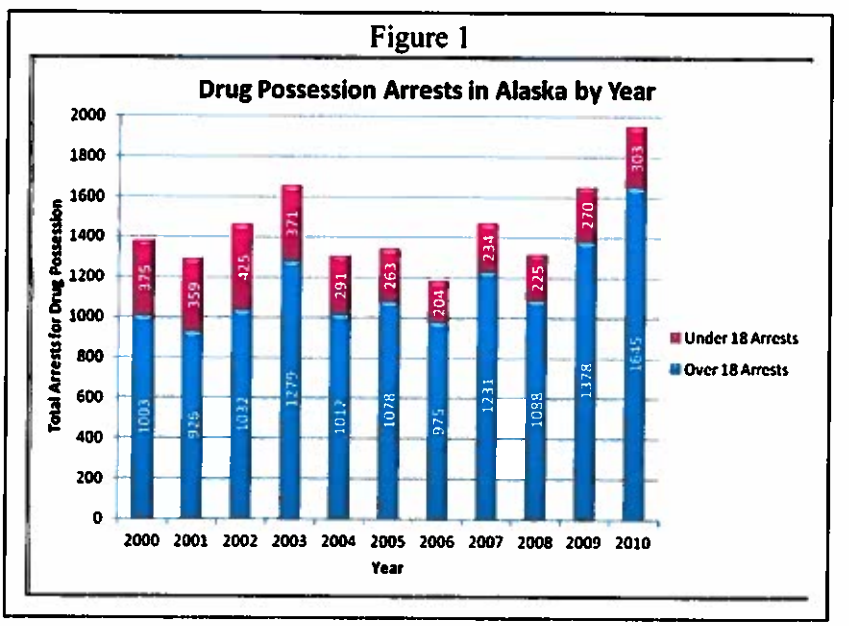
Despite the significant dangers associated with both alcohol and drug use, policy makers have responded to these two challenges in vastly different ways. The criminalization of the possession and sale of the latter has lead to a host of ancillary costs, and is one of the largest contributors to prison populations. **Specifically, Alaska's recent prison growth is at least partially attributable to its approach towards nonviolent, non-distributory drug possession.**

A. Increased Arrests and Charging of "MICS-4" Felony Possession

Alaska is one of 36 states in which the possession of any quantity—even trace amounts taken from clothing or a pipe scraping—of a Schedule IA or IIA substance is a felony. Common substances that bear Alaska's Schedule IA label include opium and oxycodone; Schedule IIA substances include cocaine and psychedelic mushrooms. Small quantity drug possession offenses fall under AS 11.71.040, which lays out "Misconduct Involving a Controlled Substance in the Fourth Degree," or "MICS-4's." The MICS-4 statute describes a variety of offenses, however, for the remainder of this report, discussion of "reclassification" of MICS-4 offenses refers only to the statute's simple possession provision: "...[A] person commits [MICS-4] if the person ... possesses... **any amount** of a schedule IA or IIA controlled substance."

According to data from the DPS—illustrated in Figure 1—between 2000 and 2010, drug possession arrests rose by 570 incidents. This represented an increase of 41.36% arrests, more than tripling Alaska's population growth rate over the same period. Though the data for 2011 and 2012 is not yet available, complementary data from the Alaska Court System suggests that we will continue to observe growth in drug possession arrests.

Figure 1



The upward trajectory for arrests is consistent with the number of MICS-4 cases filed in the Court System over the last five years. Significantly more MICS-4 cases were filed in 2010 than in the preceding two years (See Figure 2). Yet the 2010 count itself falls short of 2011, and pales in comparison to 2012; fiscal year 2012 tallied 15% more MICS-4 charges than 2010 and 57% more than 2008. While MICS-4 charges are not a perfect proxy for possession arrests, one would expect a correlation between the two.

Cross-referencing the MICS-4 data with broader data on felonies from the Court System's Annual Reports reveals an interesting trend. While the total number of felonies filed grew by 10.9% percent between 2009 and 2011, from 5,821 cases to 6,454 cases, the number of MICS-4's filed grew at more than three times that rate (increasing by 242 cases, or 38%). In absolute terms, **more than one-third of the increase in all felony charges in Alaska over this period can be attributed to increases in the number of MICS-4's charged.**

Figure 2

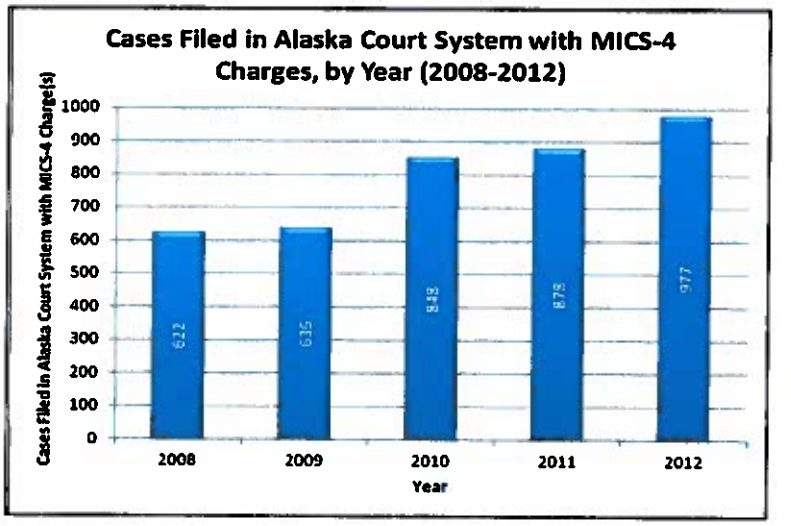
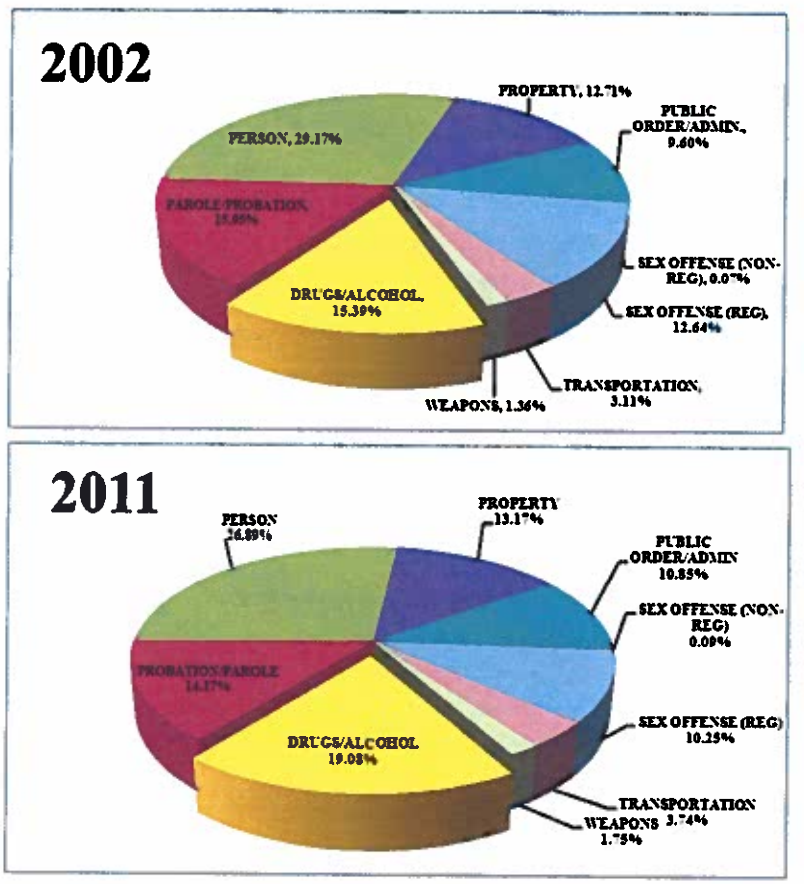


Figure 3: Percent of Standing Offender Population in Alaska Department of Corrections Facilities by Offense Class



Perhaps unsurprisingly, as the number of drug possession arrests and MICS-4 filings have increased, so too have the number and percentage of inmates serving time in Alaskan prisons on drug offenses. As represented in Figure 3, between 2002 and 2011 the proportion of Alaska's prison population incarcerated due to a drug or alcohol offenses rose from 15.39% to 19.36%, by far the fastest growing offense category, growing nearly three times faster than any other.

B. Increase in DOC Population

As illustrated in Figures 4 and 5, the DOC saw an increased number of prisoners admitted on drug charges between 2002 and 2010. And while the number of misdemeanants remained relatively stable, the number of felony drug offenders increased substantially.

According to DOC data, between 2002 and 2010, the number of felony admissions—for all charges—increased by 56.22%, versus an 11.33% increase in misdemeanor admissions. Drug felonies were one of the fastest growing categories, increasing by 81% over this span. Whereas in 2002 the DOC admitted approximately one felony offender per three misdemeanants, by 2010 this ratio had narrowed to one felony offender per two misdemeanants.

In sum, compared to ten years ago, the State today incarcerates far more people, for longer periods, and more frequently on felony charges. A larger percentage of these prisoners are serving time based on drug convictions, and one of the most common and increasingly-charged drug offenses for which Alaskans receive a felony and are imprisoned is MICS-4 possession.

Figure 4: Alaska Drug Admissions by Crime Degree, 2002-2010

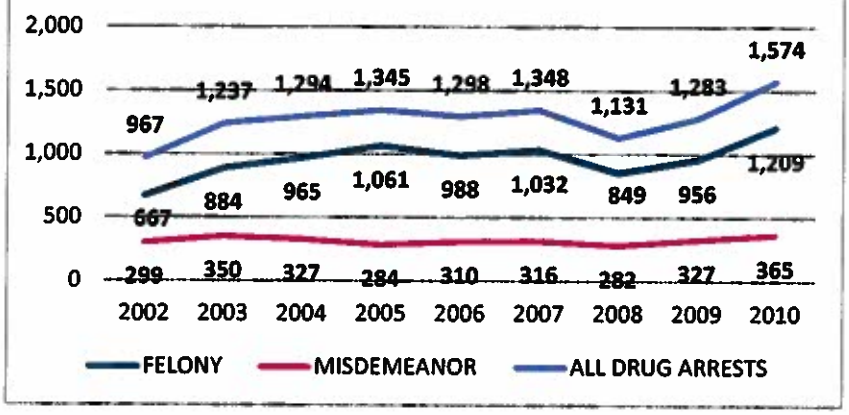
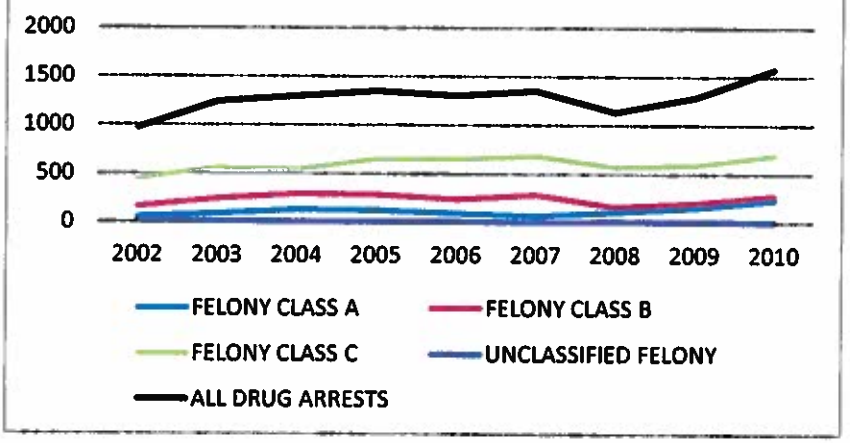


Figure 5: Alaska Felony Drug Admissions, 2002-2010



III. Focusing on Felony Convictions

Historically, a felony charge was reserved for only the most serious crimes. In early English history, the standard punishment for a felony conviction was death. Today, felonies come with a much wider gamut of possible punishments; simultaneously, a far broader swathe of the population has been charged with or convicted of a felony.

Though less serious crimes today receive the "felony" label, much of their original stigma—the perception that felonies represent the very worst offenses against the public—remains. If an employer or coworker hears "felony," they are probably more likely to think an offender's crime was assault or embezzlement than, for example, breaking an iPad (a felony offense, if it is worth more than $500).

While not every felony conviction leads to jail time, and misdemeanants can serve up to a year in prison, a felony conviction is associated with longer sentences. In the Alaskan context, a 2004 study found that an offender convicted of a MICS-4 felony received an average sentence of 15.1 months. In contrast, defendants had the charges reduced to either an "Attempted MICS-4" or a MICS-5, both misdemeanors, received sentences of only 2.6 and 2.2 months, respectively. It is important to stress that these average sentences do not equate to average jail time, as many sentences are suspended or reduced. But—combined with longer formal probation terms—the 2004 study points to a wide gap between felony and misdemeanor convictions in terms of incarceration and supervision.

It is also important to understand that many felony offenders serve their jail time on what is called euphemistically the "installment plan," as they violate their formal probation (often by missing appointments or submitting a "hot" urine sample) and enter jail on an originally suspended sentence. The growth of petitions to revoke probation is part and parcel of this "installment plan" approach. When many offenders plea to a suspended sentence, almost every party involved—with the exception, perhaps, of the offender themselves—believes that they will serve all or most of that sentence eventually, now that a court has "hung paper" on them.

For those felons who do see time—particularly the nonviolent offenders targeted by reclassification—the impact on those they leave behind can be devastating. Researchers studying the communities left behind by incarcerated offenders have concluded that as "family caretakers and role models disappear or decline in influence, and as unemployment and poverty become more persistent, the community, particularly its children, becomes vulnerable to a variety of social ills, including crime, drugs, family disorganization, generalized demoralization and unemployment" (Petersilia, 3-4). Another study found that "Incarceration carries significant and enduring economic repercussions for the remainder of the person's working years. ... [Former] inmates work fewer weeks each year, earn less money and have limited upward mobility. These costs are borne by offenders' families and communities, and they reverberate across generations" (Pew, at 3).

Because the decision to label a crime a felony or a misdemeanor is often left to the discretion of the state, even in the drug context where the federal government plays an active role, reclassifying felony offenses has emerged as a possible method to reduce the prison population and avoid the broader governmental and societal costs associated with felonization.

A. <u>The Collateral Consequences of a Felony: Cascading Effects</u>

In addition to longer sentences, a felony conviction also carries with it a plethora of "collateral consequence." These are sanctions other than prison or formal probation, which are not imposed explicitly as part of the sentencing process. These consequences—along with the special stigma of a felony—make re-entry following jail time more difficult, and disrupt the offenders' lives and communities long after they have served their sentences. As a result, a felony conviction, even one that does not result in jail time, significantly reduces expected life outcomes.

First and foremost, "[a] felony conviction greatly lowers ex-offenders' prospects in the labor market..." (Schmitt, at 1). Both formal prohibitions and informal practices create "an insurmountable obstacle" to finding employment (Pew, at 22). Even offenders with significant work experience struggle to find jobs. A study from the American Southwest, which examined the different affect on employability of misdemeanors versus felonies found that "After the applicant [passed an] initial screening, relevant work experience increased the employability of those with no criminal history and those with a misdemeanor conviction, but had no effect on those with a felony." (Varghese, at 129).

Unemployment, in turn, is tied to a variety of problems, including an **enormously elevated likelihood of recidivating**. (Auckerman, at 33). A study conducted outside of Alaska "found that former prisoners who are unemployed are *three times* more likely to return to prison than those with steady jobs." (*Id.*) Another concluded that "[U]nemployment is one of the leading factors for the return of offenders to a life of crime..."[1] Felon unemployment has also been associated with increased drug and alcohol abuse, "which in turn is related to child and family violence." (Petersilia, at 3, 5).

In addition to negative employment effects, a conviction for felony drug possession in particular carries with it a string of additional legal consequences, some of which seem punitive, arbitrary and disconnected from either the rehabilitation of the offender or the protection of the public. Many of these are cataloged below.

Beyond the legal sanctions, research indicates that the social stigma attached to a felony works to keep an offender mired in the criminal milieu. A unique study from the state of Florida helps illustrate this point (Chiricos *et al*).

Florida law allows judges to, on their discretion, "withhold adjudication" of certain felons who enter plea deals. Importantly, these convicts do *not* have a felony placed on their record; on employment forms they can legally answer that they have never been found guilty of a felony. There is enough arbitrariness and randomness in the process that—with some statistical controls—this procedure is an excellent "natural experiment." After analyzing some 95,919 cases, researchers concluded that:

> **"[I]ndependent of the effects of all other predictors, having been convicted of a felony increases the odds of recidivism by 17 percent when compared with those who had adjudication withheld."**[2]

Again, this study did not compare serious criminals and non-serious criminals. The comparison groups here were convicted of the *same crimes*. However, in one group, the convicts were labeled as felons, with all the attendant stigma and collateral consequences. In the other, though they had the same length of formal probation, the convicts did not receive the "felon" label or the collateral consequences. Those who did not receive the "felon" label were 17 percent less likely to recidivate.

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[1] Bonta, J. & Andrews, D., *Risk, Need, Responsivity Model for Offender Assessment and Rehabilitation*. Cat. No.: PS3-1/2007-6. Canada (2007).
[2] *Id.* at 565.

Finally, there is some evidence that collateral consequences and felon stigmas do not impact racial groups in a uniform way. The same employment study from the Southwest cited above found that "Latino offenders with a felony conviction faced greater bias than Anglo offenders with a felony conviction" (Varghese, at 178). Perhaps because a conviction reinforced already-existing stereotypes, "Latino ex-offenders appear to face greater employer bias than their Anglo counterparts, making it more difficult for them to obtain legal employment...." (*Id.* at 179). In other words, an employer may be more willing to overlook a conviction on the record of a prospective Caucasian employee, seeing the offense a lapse in judgment by an otherwise good person, while interpreting the same conviction as a confirmation of unfit moral fiber or increased likelihood of bad behavior from a minority applicant.

Unfortunately, this research was not extended to Alaska Natives. While a detailed study of the racial and ethnic disparity in Alaska's prison population is outside the scope of this report, the potential for disparate impacts resulting from Alaska's system of collateral consequences, particularly those based on the discretion of a private employer or a public official, warrants further research.

B. The Collateral Consequences of a Felony: Cataloged in Alaska

Private organizations, municipalities, the State of Alaska, and the federal government all impose their own collateral consequences. Many of these restrictions attach to any criminal conviction, not just a felony. Others apply only to drug convictions, but also to *all* drug convictions—felony or misdemeanor. Therefore, reclassifying drug possession as a misdemeanor would not remove or reduce all collateral consequences. However, analysis conducted for this report indicates that reclassification would substantially reduce collateral consequences imposed on nonviolent, small quantity drug possessors, without having to specifically address and reform each thread in the tangled web of private action and public policy that ensnares all those convicted of a crime.

What follows is an account of collateral consequences in Alaska that would apply to a conviction for *any felony* or a *drug felony*, but not to a *drug misdemeanor*. The more important collateral consequences that would be impacted by felony possession reclassification are summarized in Figure 6. A far more extensive list is included in the full report as Appendix B.

Not all of these collateral consequences are formalized in statutes or regulations. Calls and requests to a variety of organizations revealed a number of unwritten but uniformly imposed restrictions, such as the Anchorage School District's ten-year ban on employing felons in non-teaching capacities.

Figure 6: Collateral Consequences Connected to Felonies and/or Drug Felonies

Citation	Title/Substance	Mandatory/Discretionary	Duration
AS 15.05.030(a); AS 33.30.241(a). *See also* AS 15.60.010(9) ...	Suspension of voting rights in federal, state and municipal elections until the date of unconditional discharge.	Mandatory/Automatic	Until completion of probationary period

10 USCS § 504(a)	Ineligible for enlistment in the armed forces.	Discretionary (waiver)	Permanent/Unspecified
Interview with former hiring professional for major pipeline subcontractor.	Ineligible for employment in most oil and gas related jobs on the North Slope or along the Alyeska Pipeline.	Mandatory/Automatic (private hiring policies)	Permanent/Unspecified
AS 43.23.005(d); AS 43.23.028 (public notice).	Ineligible for a dividend if during the qualifying year the individual was sentenced or incarcerated on a felony or on a misdemeanor following a prior felony or two or more prior misdemeanors.	Mandatory/Automatic	Year of sentencing
21 U.S.C Section 862a	Ineligible for food stamps and temporary assistance to needy families.	Mandatory/automatic	Permanent/Unspecified
AS 47.05.300-390; 7 AAC 10.900-990. Also Interview with HSS Background Check Program Teresa Narvaez	5-year employment barrier at any facility that is licensed, certified, approved or eligible to receive funding from the Department of Health and Social Services for "vulnerable populations."	Mandatory/Automatic	Five year term from end of probationary period.
13 AAC 89.010.	Ineligible to become Village Police Safety Officer.	Mandatory/Automatic	Ten year period
24 USCS § 412(b)	Ineligible for residency in Armed Forces retirement home.	Mandatory/Automatic	Permanent/Unspecified
18 U.S.C. § 922(g)(1)	Under federal law, a felon cannot possess "any firearm or ammunition." "Ammunition" is defined as "cartridge cases, primers, bullets, or propellant powder designed for use in any firearm."	Mandatory/Automatic	Permanent
28 USCS § 1865(b)(5)	Ineligible for jury service	Mandatory/Automatic	Permanent/Unspecified

Even the full report's list is only a partial accounting; it may be logistically impractical to deliver a comprehensive report, as every private organization can establish its own policy. Reclassifying

possession as a misdemeanor would allow at least some offenders to avoid these collateral consequences, and thus reintegrate into the community more easily.

IV. The Estimated Budgetary Impact of Reclassification

Fourteen states already classify simple possession of Schedule IA and IIA substances as a misdemeanor. Unfortunately for the purposes of this paper, in most of those states the misdemeanor status of the offense is a historical artifact. While "[reclassification] of simple use or possession of drugs offers huge potential for cost savings in almost every jurisdiction," only Colorado has actually followed through with a reclassification effort in the last decade (Kopel, at 553). Because the Colorado legislature changed the law in 2010, there is a paucity of "time-series" data with which to demonstrate the effects of reclassification. Nevertheless, through projections developed in other states, and analysis of Alaska's cost structure, we can develop a rough estimate of reclassification's savings.

A. Savings from Reduced Incarceration

When the Colorado legislature debated reclassification in 2010, the Legislative Council Staff (similar to Alaska's Legislative Research Service) estimated that the reclassification would save the state approximately $56.5 million over 5 years, primarily through reduced incarceration costs. A similar projection developed by California's Legislative Affairs Office in 2012 predicted $224 million in annual savings from a reclassification bill.

Precisely how many possession offenders will not serve time if they are convicted of a misdemeanor rather than a felony is a complicated question, as is the estimated decrease in average sentence length. Much of the reduction in the prison population will not come from offenders actually avoiding jail, but rather serving less time. An offender spending two weeks in jail, rather than two months, makes a large difference when multiplied over hundreds of cases.

In 2011, there were 149 inmates in Alaska DOC prisons for whom a MICS-4 offense was their highest charge, and another 50 in Community Residential Centers (halfway houses) (Offender Profile 2011, at 14 and 25). However, this measure likely under-represents the true number of individuals in prison with MICS-4 as their underlying offense. Many offenders end up in prison, or return to prison, for technical violations of their probation and parole. After including these additional MICS-4 offenders—which work out to approximately 32 prisoners in hard beds and 8 filling slots in Residential Centers—we can begin to compare Alaska's prison population with the two states that have already produced estimates of the effect of reclassification.

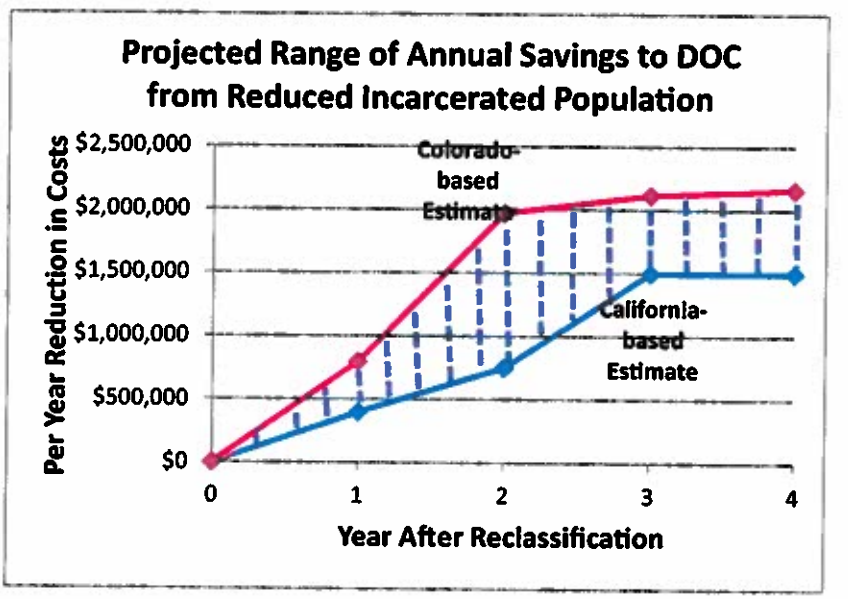
In Colorado's case, the Legislative Council estimated that the "Bed Impact"—that is, the reduction in full prison beds on an annual basis—would be 217 in the first full year of their reform's implementation, rising to 589 by 2014-2015. In California, the LAO predicted that "within a few years" the state prison population would decline by 2200 inmates, and the county jail population would also decrease by approximately 2000 (Alaska, unlike California, operates a unified system). Of course, both Colorado and California have larger prison populations than Alaska; this report hypothesizes that the anticipated impact of reclassification in those states would be proportionally larger as well.

Using these ratios and estimates from the legislative offices of these two states, we can develop a rough picture of the reduction in the incarcerated population for Alaska. Because of differences in the economics, demographics, and legal structure of each of these states, as well as the imperfection of the original estimates developed by the other states' legislative offices, this forecast contains a great deal of uncertainty. Nevertheless, these projections are presented in Figure 7.

Figure 7: Estimated Annual Prison Reduction in Alaska based on Analogous Projections			
State	**Estimated Annual Reduction in Incarcerated Population**	**Ratio of Drug Incarceration to Alaska's**	**Estimated Annual Prison Reduction in Alaska**
Colorado	217 inmates rising to 589 inmates	12:1	18 inmates rising to 49 inmates
California	4200 inmates	123:1	34 inmates

After adjusting for the reduced expense of halfway houses versus jail time, **aggregated savings based on reduced incarceration over the four years range from a low of $4.14 million to a high of $7.04 million.** Figure 8 represents a possible range of savings based on these calculations.

Figure 8



Furthermore, there are reasons to believe that these projections are conservative estimates of reclassification's impact on DOC's prison population and the attendant savings. For example, **there is a strong possibility that the DOC would see a shift in population *between* its facilities, as many offenders who previously had occupied a prison's hard bed instead serve their time in a halfway house.** This shifting of the population was not captured in the Colorado or California's estimates, and would be a considerable source of cost savings.

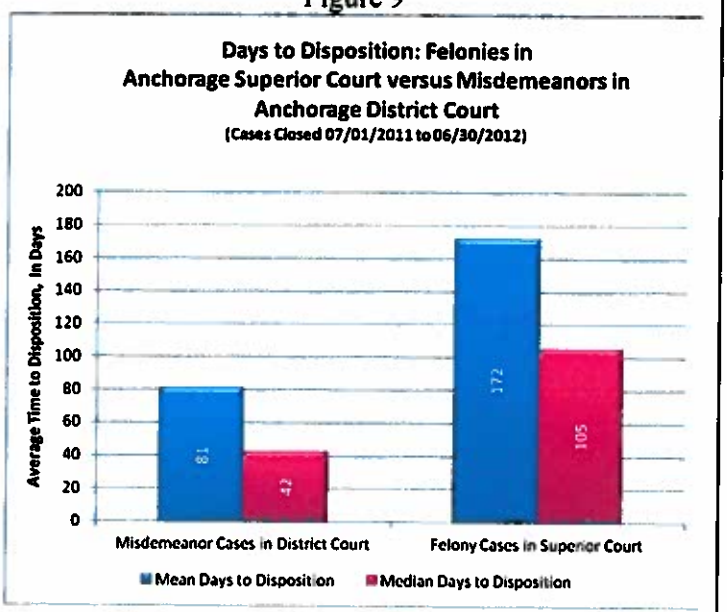
B. Savings from Reduced Costs in Prosecution, Public Defense, and Judicial Processing

Many other state agencies would be impacted by this policy change. The judiciary and its partner agencies process hundreds of felony possession charges each year; reclassification would likely shorten these processing times, and require less resources, particularly on the defense side.

Data provided by the Alaska Court System indicates that it takes more than twice as long for the average felony in Anchorage Superior Court to reach disposition—that is, to end in dismissal, sentencing, or some other resolution—than it does for a misdemeanor in Anchorage District Court.

While the exact difference in terms of cost is difficult to estimate, this data suggests that an offense being designated a felony is associated with a longer legal process, with implications for the case-loads and man-hours of judges, prosecutors, public defenders, and their respective support staffs. The Court System data is presented in form in Figures 9.

Figure 9



In calculating reclassification's impact on legal costs, we must also consider how the charging practices of prosecutors would change in response to this reform. In conversations with prosecutors, it became clear that some cases that today are revised downwards from a higher charge to a MICS-4 during negotiations with defense counsel—and in the prosecutors' own screening process—would no longer be revised downward in this fashion. Simply put, in some cases where a prosecutor might be willing to drop a charge from one felony to a lower level felony, they are very resistant to reducing that same felony charge to a misdemeanor. This is not to suggest that dropping from a felony to a misdemeanor does not happen. But it is safe to conclude that in at least some cases where higher charges would have been revised down to simple possession, that revision will no longer take place if simple possession is a misdemeanor. Instead, the prosecutors are likely to press the higher charge or use the lesser charge of "attempted" MICS-2 or MICS-3 (which is a felony) in their plea bargain negotiations.

In the following cost calculations, we use three estimations of shifting charging practices by prosecutors in response to reclassification, corresponding with a "high," "medium," and "low" projection of cost savings. Under these projections, we assume that reclassification would result in either 1/3, 1/2, or 2/3 of what are today MICS-4 possession felonies being charged or prosecuted instead as MICS-2 or MICS-3 distribution felonies.

With those caveats, we turn towards projecting cost savings from legal and adjudication costs. **First, the Court System, and the anticipated cost savings associated with the reduction in days to disposition.**

A tabulation of savings related to reduced days to disposition, as well as reduced grand jury costs (misdemeanor offenses do not require grand juries), discounted by the three anticipated levels of shifting charging practices, yields three estimated levels of annual savings for the Court:

- Low: $26,225
- Medium: $38,885
- High: $52,545

Shortly before the completion of this report, the Court System produced its own estimate of savings resulting from reclassification, and concluded that there would be approximately $35,000 per year in savings. While this is slightly lower than the mid-range estimate produced here, it is still remarkably close to this report's forecasts.

Next we consider the reduced costs of Public Defense after reclassification. A recent survey of private defense attorneys provides the best available proxy for costs. Revising the survey results downwards in the interest of conservatism, and then again by the three levels of changing charging practices, again yields three estimates of cost savings:

- Low: $382,000
- Medium: $574,000
- High: $764,000

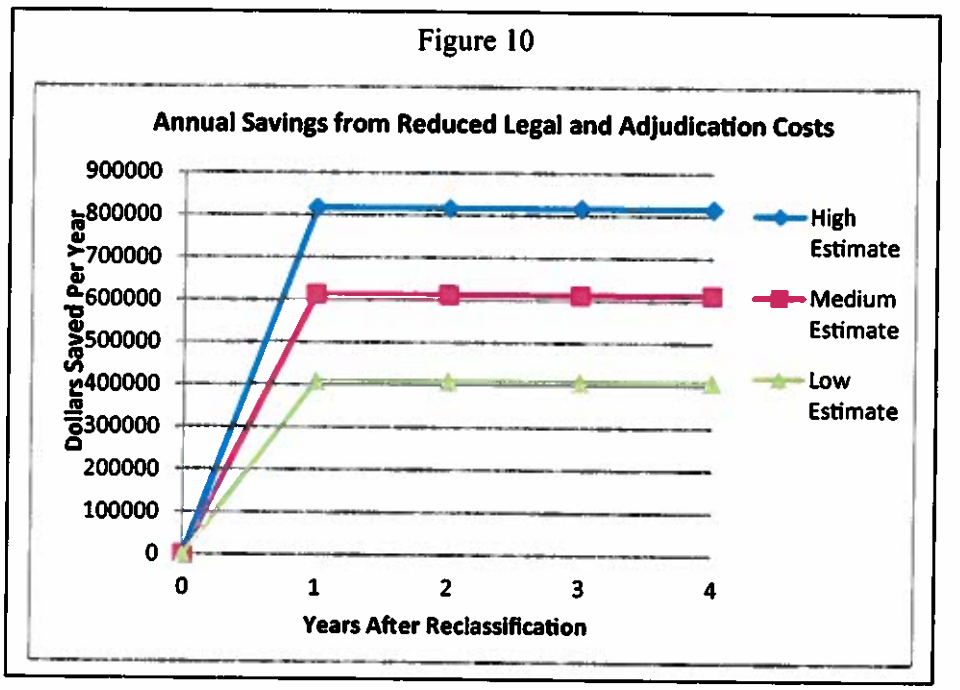
These estimates are quite consistent with an independent estimate of cost savings from the Public Defender's office, which predicted annual savings of approximately $670,500.

Finally, while it seems likely that reduced days to disposition and grand jury time would result in at least some cost savings for prosecutors, the Department of Law was unable to produce statistics to demonstrate how reclassification would impact their balance sheets.

In the interests of again erring on the side of caution in estimating cost savings, this report assumes zero dollars in cost savings from the Department of Law.

This report thus projects between $408,000 and $817,000 in annual savings to the state from reduced legal and adjudication costs from reclassification, with a mid-range estimate of $613,000 per year. Because we do not have time-series numbers to analogize to, as was the case in the number of prisoner bed days, here we assume uniform savings over the four years. These projections are expressed in Figure 10.

Figure 10



If we add the projected savings from reduced legal and adjudicatory costs to those from reduced incarceration, we arrive at an aggregated four-year estimate of between $5.77 and $10.31 million in cost savings to the State.

C. Constant Costs: Probation, Parole, and Law Enforcement Agencies

Aside from the DOL, there are several other relevant agencies in which cost savings are possible, yet not large or likely enough to add to our estimate.

One area where savings seem plausible is reduced supervision costs associated with probation and parole. Alaska has a unified probation/parole system, where formal supervision is performed on both types of offenders by the DOC's Division of Probation and Parole (DPP). In most cases, Alaska only provides formal supervision to felony offenders, meaning that we might expect a savings to the DPP from possession offenders receiving only informal probation. However, due to the current caseload of the DPP, no estimated savings for DPP are included herein.

Currently, the DPP—particularly its Anchorage office—supervises many more offenders than is desirable, given its staffing. According to interviews with DPP staff, at present DPP line probation officers in Anchorage supervise far more cases than is optimal. This is driven in part by "over-supervision" of low-level offenders who likely do not need formal supervision. Therefore, while reclassification will likely reduce the number of offenders placed on formal probation, the Department is unlikely to reduce FTE's (the primary source of hypothetical cost savings). Instead, the DPP would probably use this decrease in formal probationers to reduce caseloads for probation officers, improving services to the remaining probationers under supervision.

Costs to the Department of Public Safety and municipal law enforcement agencies should also remain fairly constant. A Class A misdemeanor is grounds for an arrest, just like a Class C felony, and law enforcement officers spoken to for this report expressed skepticism that many of those arrested now for drug possession would not be arrested or processed if the offense was reclassified as a high-level misdemeanor. One APD officer stated that when they saw drugs on the job they "had to deal with it," and that "it was easier to make an arrest, than to not make an arrest," meaning that not making an arrest in many contexts—and certainly the drug context—would require the explicit sign-off from a commanding officer, often after consultation with the prosecutors. This would be the case regardless if the offense was a Class C felony or a Class A misdemeanor.

D. Possible Sources of Budgetary Increase or Shifting

There are several places in which reclassification may lead to a shifting of the State's budget or the budgets of municipalities like Anchorage. For example, it is conceivable that with fewer possession offenders in prison law enforcement agencies may have increased workloads, assuming that some proportion of those offenders recidivate. However, these impacts should be modest.

Additionally, with fewer offenders carrying felony convictions on their records, more will be eligible for certain public benefits, such as food stamps. Yet the federal government shoulders the vast majority of food stamp costs. Similarly, following reclassification, a few hundred more Alaskans per year should be eligible for the Permanent Fund Dividend, but this should not have a direct impact on the State budget, as the PFD has its own funding mechanism.

It is also likely that this reform will shift at some costs from the State onto the Municipality of Anchorage (MOA). The MOA brings a disproportionate percentage of misdemeanor charges; the city currently operates an efficient, speedy court for resolving possession misdemeanors (district courts cannot hear felonies). While this might be a significant source of savings for the State—given the time and difficulty in resolving felony cases—it fortunately should not be a large burden on the MOA, which operate a cheaper, more efficient system for possession offenders.

V. Reclassification's Effect on Public Safety

If simple drug possession is reclassified as a misdemeanor, one would expect a small number of offenders to avoid prison time, and a larger group to receive shorter prison sentences. These offenders would be returned to their communities sooner, and might perpetrate crimes that otherwise would have been prevented by their incarceration. One might also expect that reclassifying possession as a misdemeanor might reduce the disincentive to use drugs.

These are serious concerns, and provide much of the political justification for lengthy prison sentences. Fortunately, these concerns are not borne out by the available data, at least when applied to the relatively modest reform of reclassification. Circumstantial evidence from other states suggests that the effect on public safety will not be large, and may be outweighed by the positive impact of reducing collateral consequences. Figure 11 is a map of the Lower 48 States, with the fourteen states that currently categorize drug possession as a misdemeanor highlighted in red. These states do not

Figure 11: States in which Simple Drug Possession is a Misdemeanor Offense

exhibit poorer outcomes on a number of measures that we would expect to observe if misdemeanor classification was causally linked with a large-scale deterioration in public safety; this suggests that reclassification's impact on public safety would not be substantial.

When using data comparing states it is important not to overstate one's conclusions. With a small sample size and many potential confounding factors, it is difficult to conduct rigorous statistical analysis that identifies causal relationships between policies and outcomes. Still, the almost random distribution of misdemeanor states helps mitigate concerns that a major confounding factor—like misdemeanor states being disproportionately wealthy—is systematically skewing the data.

The misdemeanor states are politically, economically, and geographically diverse. While a detailed investigation of every state's history and legal code was not conducted for this report, it seems unlikely that this cross-section of states would share an overarching similarity.

Without making direct claims about causality, it is the case that the fourteen states that classify simple possession as a misdemeanor do not appear to have worse drug abuse or public safety outcomes than the states that classify drug possession as a felony. **As presented in Figure 12, the misdemeanor states actually have slightly lower rates of violent crime, property crimes, and drug use.** These states also have higher drug treatment admission rates and lower incarceration rates. Of course, this presents a causality problem. It may be that the higher drug treatment admission rates in misdemeanor states are the primary cause of the more positive outcomes—rather than the classification of possession offenses itself. **But this data simultaneously undercuts the idea that the threat of a felony is necessary to incentivize an individual to enter treatment.**

Figure 12

	Felony States	Misdemeanor States
Rate of Violent Crime Per 100,000	397.5	376.4
Rate of Property Crime Per 100,000	3,071.9	2,913.2
Incarceration Rate Per 100,000	401.23	372.20
Illicit Drug Use, Excluding Marijuana	3.61%	3.55%
Drug Treatment Admission Rates Per 100,000	431.69	512.65
Rates of rape, physical violence, and/or stalking by an intimate partner with a female victim in 2010	36.23%	35.5%

Turning briefly to a topic of particular importance in Alaska—sexual and domestic violence—the Centers for Disease Control and Prevention found that, in 2010, rates of rape, physical violence, and/or stalking by an intimate partner with a female victim (as measured by lifetime prevalence) were lower in misdemeanor states. Rates of rape of women by any perpetrator and other sexual violence by any perpetrator with a female victim were also lower in misdemeanor states; in felony states, 20.01%

of women reported being raped, and 45.02% reported being subject to some form of sexual violence other than rape, compared to misdemeanor-state rates of 16.9% and 41.04%, respectively. Again, one cannot claim that misdemeanor possession classification was causally related to lower rates of intimate partner and sexual violence, but the numbers are at least suggestive that misdemeanor classification is uncorrelated with higher levels of these crimes.

Why do the misdemeanor states appear to have better public safety outcomes than felony possession states? Aside from statistical noise (that is, the results are just a coincidence), the most likely causal links between felonizing possession and negative public safety outcomes are 1) the criminogenic effects of prison[3] and 2) the collateral consequences of a felony conviction—discussed at length above. While none of this data speaks to the immediate effect of reclassification in the short term—about which we do not have data—it does appear that, at least over the long term, misdemeanor states perform as well or better than felony states on certain important measures of public safety.

VI. Challenges Posed by Reclassification

In interviews conducted for this report, some public officials and stakeholders reacted negatively to the idea of reclassification, at least if the reform was not structured to deal with their specific concerns. Some were opposed to the idea regardless of the reform's final configuration.

Concerns included:

- Drug offenders need prison sentences in order to "get clean."
- The threat of a misdemeanor might not be enough incentive to keep offenders in treatment.
- Misdemeanants in Alaska appear more likely to reoffend after their release than convicted felony offenders. (See Alaska Judicial Council, *Criminal Recidivism in Alaska, 2008 and 2009* at 15, 16)
- Alaska provides relatively little structure or supervision to its misdemeanant population
- Reclassification is unnecessary, because law enforcement already "screens" out minor cases, particularly those of first-time or youthful offenders.
- Law enforcement agencies, such as APD's Vice Unit, might lose leverage in their investigations of more serious drug offenders, namely large-scale drug dealers.
- Treating drug possession as a misdemeanor "sends the wrong message" regarding the seriousness and danger of drug use.

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[3] **That is, those who are imprisoned are actually *more* likely to commit further offenses than they otherwise would have been.** *See e.g.* Daniel S. Nagin, Francis T. Cullen, and Cheryl Lero Jonson, *Imprisonment and Reoffending*, the University of Chicago, 0192-3234/2009/0038-0005, at 122 (2009)("Sociologically inspired criminology portrays imprisonment as a social experience that is criminogenic due to in-prison and postprison experiences"). *See also* Francis T. Cullen, Cheryl Lero Jonson, and Daniel S. Nagin, *Prisons Do Not Reduce Recidivism The High Cost of Ignoring Science*, the Prison Journal, September 2011 91: 48S-65S, first published on July 19, 2011. On page 50S, the authors state: "[H]aving pulled together the best available evidence, we have been persuaded that prisons do not reduce recidivism more than noncustodial sanctions." Later, they assert that, "On balance, the evidence tilts in the direction of those proposing that the social experiences of imprisonment are likely crime generating." *Id.* at 60S.

- It can be emotionally unsatisfying, particularly for some prosecutors, to see "bad guys" avoid felonies or jail time. Treatment often does not feel as emotionally gratifying to the prosecutor or the community as a prison sentence.

Each of these concerns was met by other stakeholders with a rational counterargument, with the exception, perhaps, of the AJC's study on misdemeanants. At present, it is not clear why misdemeanants in Alaska seem to reoffend at a higher rate. However, though the study did attempt a number of statistical controls, it was not designed to measure the effect of a *change* in classification for a given crime.

One argument can be dispensed with fairly quickly: that offenders need lengthy prison sentences in order to "get clean." Whatever other benefits may come from incarceration—and the DOC's recent efforts to improve and expand in-custody drug treatment increase those benefits—separation of addicts from an environment in which drugs are available is not one of them. Simply stated, drugs are available in prison. One defense agency employee even stated that drug addicts have been known to intentionally get arrested, so that they could enter the jail and pursue their habit.

Moving on to more serious critiques of reclassification: it is the case that Alaska provides relatively little structure or treatment to misdemeanants after release. The State requires formal probation supervision only for felony offenders. Formal supervision can lead to PTRP's and re-incarceration, but it can also provide critical support for convicts with few other allies in their attempt at reentry or recovery. Yet probation officers at the DPP were very resistant to the idea of providing formal supervision to misdemeanants. This resistance is driven in part by fiscal and staffing concerns, but also flows from P.O.s' understanding of probationer psychology. They believe that the threat of a suspended misdemeanor sentence—which can lead to a year of jail time, but usually carries far shorter sentences—is often not enough to keep an offender complying with formal probationary terms.

However, Alaska already has an intermediate program operating in the space between intensive DPP supervision and no supervision at all. Called the Alcohol Safety Action Program, or ASAP, this program is housed in the Department of Health and Social Services and includes both formal probation officers and criminal technicians. The probation officers at the DPP suggested that ASAP might be able to handle many of the drug possession offenders. A supervisor at the ASAP program confirmed that they already work with a number of drug addicted convicts, some of whom have received a misdemeanor rather than a felony for purely technical reasons. This intermediate approach would also help combat the true problem currently facing the DPP: **over-supervision** caused by default sentencing practices (tacking on years of formal probation) that diverts resources away from high-risk offenders.

The idea expressed by some prosecutors that there are already multiple screening points for drug possession offenders, particularly the discretion of patrol officers, and that offenders who are not in involved in drug distribution or hard-core drug addiction are not often charged with felonies, did not square with patrol officers' accounts. It may be that charges are often reduced by the prosecution during their initial screening of cases, or at the negotiating and plea bargaining phase. But when it

came to schedule IA and IIA substances, APD officers did not seem inclined—or believe it was proper—to "look the other way."

Discussions with APD officers also alleviated most concerns about any declining law enforcement leverage in investigations. Many drug users are repeat offenders, thus a felony charge—or a violation of probation with significant jail time—should be available even after reclassification. In some circumstances a misdemeanor alone may be enough to win cooperation, because, as one APD officer stated, "there is no honor among thieves."

The view among some prosecutors that offenders would be "getting off easy" after reclassification because they might only have to do treatment is of course contrary to arguments from others about the necessity of a felony to force offenders into treatment. It may be true that sometimes "treatment feels like it's not justice," but if treatment is proven to be more effective than prison time in actually ending drug use (and it is), then policy makers should not let emotions cloud their judgment. Furthermore, the fact that drug treatment rates are actually higher in misdemeanor states, and that both Alaska and the MOA have already had success with misdemeanant treatment programs, demonstrates that properly-calibrated sentencing policies for misdemeanants is enough to keep most in treatment.

Finally, in the context of some prosecutors arguing that Alaska needs an incentive structure that encourages treatment, there is another simple reform that the State should pursue. It is common practice today that an offender who agrees to a plea deal and simply serves their time in prison will receive less time than that which is suspended for someone who agrees to enter treatment. So, for example, a drug offender might plea to 4 months of time to serve, or 6 months of time suspended contingent on completing drug treatment. This creates an added risk for those seeking treatment who might genuinely want to get clean, and is a major reason that defense counsel sometimes recommends that their client enter jail immediately. Simply **equalizing the sentences** would remove this disincentive. It would also reduce recidivism—because jail has not been shown to be effective in breaking addiction—and save the State money: because treatment is so much cheaper than prison, the expected cost of each individual who attempts treatment is lower than that of the offender who immediately enters prison, so long as our evaluation tools are reasonably accurate in determining the probability someone will complete treatment. It is unclear whether this policy should be adopted by statutory change, or could be done by a Court Rule or a DOL directive, but **if prosecutors are serious about the need for drug treatment, they should not oppose this equalization.**

VII. Policy Approaches to Address Reclassification's Challenges

Policy options exist that would address any remaining concerns introduced above. The three that hold the most promise are 1) structuring reclassification as an "Escalating Punishment" regime, similar to Alaska's current approach to DUI's 2) expanding evaluation, treatment and supervision of offenders to identify and treat those who are at high risk to recidivate, and 3) expanding the PACE Program, a policy innovation the state has already begun to implement.

A. Structuring Reclassification Appropriately: Escalating Punishment

Reclassification requires a statutory change, passed by the Alaskan Legislature, if it is to become a reality. An effective reform law would both address some of the challenges reclassification might pose, and keep the law in a simple, understandable form that does not create too much confusion in the legal community. The simplest way to enact reclassification involves making the most significant changes to the *MICS-5* statute. A MICS-5 violation is a Class A Misdemeanor; the statute currently makes no mention of Schedule IA or IIA substances.

Adding Schedule IA and IIA substances to the MICS-5 statute, up to a certain non-distributory amount, would serve to make possession of small quantities these substances a misdemeanor. This would also require a small change to the MICS-4 statute, upping the quantity of Schedule IA or IIA substances needed from "any amount" to some quantity larger than MICS-5 but smaller than MICS-3. This approach has the advantage of leaving the other, non-simple-possession felonies contained in the MICS-4 untouched. It also leaves the door open for proposals to deal with "frequent flyer" repeat offenders, while avoiding an overly complex legal regime.

Over the course of many interviews for this report, an idea repeatedly arose to adapt drug possession laws to mirror an approach Alaska already takes in several other contexts, including DUI's, low-level assaults, and some types of theft. This approach adopts what might be called "escalating punishment" for repeat offenders. That is, if a defendant has offended multiple times in a given period (usually five or ten years), their charge escalates in seriousness, climbing from a low-level misdemeanor to a high-level misdemeanor, or from a high-level misdemeanor to a felony. This approach helps separate out the individuals who simply made a mistake, and are very unlikely to re-offend, from those who are more serious threats to public safety. Under the DUI escalating punishment system, for example, the vast majority of first time offenders (as much as 80%) *never* re-offend; the misdemeanor punishment serves as a potent wake-up call, while simultaneously not crippling an offender's future employment and life prospects in the way a felony conviction does.

An escalating structure also provides an opportunity to address the stakeholders' concerns about convincing drug addicts to enter and stick with treatment. Several interviewees believed that it was possible to incentivize treatment (for those for whom treatment was appropriate) by imposing a sufficiently large amount of suspended time. This time hangs hang over an offender's head until completion of treatment and probation. Crucially, studies have shown that **"Court ordered substance abuse treatment works as well as voluntary treatment"** (Reentry Task Force, at 85).

Of course, there will always be certain addicts who, because of their overriding drug dependence, will violate regardless of the amount of suspended time. But these exceptional cases should not drive Alaska to over-supervise or over-sentence the majority of drug possession offenders. For a much larger group of possession offenders, a significantly shorter suspended sentence can achieve our treatment goals. One judge speculated that about 6 months of suspended time would be needed to incentivize a typical offender to stay in a 12 month drug treatment program; about 9 months

would be needed to "win compliance" for 18 months of treatment. Eighteen months is the current standard for Alaska's drug courts. Prosecutors actually gave lower estimates: one thought that 80 days would probably be sufficient, though 120 days would be preferable. Another felt that 120 to 180 days would be needed for an intensive 18 month program.

The following is a theoretical structure for the MICS-5 possession offense, which should alleviate concerns that reclassification will lead to a drop in treatment participation:

- **First possession offense within five year period**: Misdemeanor offense, with minimum of 120 days of suspendable time. Mandatory assignment to ASAP supervision and screening. Mandatory assignment to drug treatment if determined appropriate by evaluation.
- **Second possession offense within five year period**: Misdemeanor offense, with minimum of 180 days of suspendable time. Mandatory enrollment in PACE or "PACE Lite" supervision (discussed further below), if determined appropriate by evaluation. Mandatory assignment to drug treatment if determined appropriate by evaluation.
- **Third possession offense within five year period**: Felony offense, under revised MICS-4 statute. Mandatory assignment to drug treatment and formal probation, with a PACE option, if determined appropriate by evaluation.
- **Any subsequent possession offenses within ten year period**: Felony offense, with felony guidelines tracking multiple MICS-4 offenses. Evaluation, supervision, and treatment at least as stringent as third offense.

This "escalating punishment" system would maintain a heavy hammer for prosecutors to bring down on repeat offenders, and minimize the probability a drug addict avoids treatment.

B. Expanding Evaluation and Treatment

Different types of offenders respond to different types of treatment and sentences. In order to reduce recidivism, the State must ensure that it is matching offenders with the appropriate sentences, wellness programs, and levels of supervision, and then ensure that those treatment options are available. At present, the state has an acute shortage of slots in certain treatment facilities.

Fortunately, the State already has fairly sophisticated tools for determining prognostic risk levels and criminogenic needs. These tools are based on a wealth of social science, which has allowed researchers to predict with a relatively high degree of certainty an offender's likelihood to recidivate. For example, researchers know that "[a]mong drug-involved offenders, the most reliable and robust prognostic risk factors include a younger age, male gender, early onset of substance abuse or delinquency, prior felony convictions, previously unsuccessful treatment attempts, a diagnosis of antisocial personality disorder, and regular contacts with antisocial or substance-abusing peers." (Marlowe, at 2).

The upshot of this research is that programs like therapeutic courts, which Alaska has implemented with some success, are not appropriate for everyone. The key is determining which offender is likely to respond, and which is not, and diverting the latter into a different type of program. The same is true of formal supervision for probationers: too often years of formal probation are tacked onto sentences simply because it is standard practice. At the same time, some offenders—such as drug addicts caught committing property crimes—slip through the sentencing process without receiving the release conditions needed to get them off drugs.

The DOC recently updated their approach to their long-standing evaluation tool, known as LSI-R (Level of Service Inventory-Revised), which provides most of the data our criminal justice system requires to determine the appropriate level of supervision needed for each offender. The LSI-R involves a structured interview conducted by a trained assessor, with the addition of supporting documentation and drug tests if needed, and is an effective way to identify the offenders who are a "low" or "low-moderate" risk to recidivate. For these offenders, "over-supervision," usually in the form of formal probation with the DPP, can have a deleterious effect. Moreover, it takes resources away from the higher risk offenders, increasing the probability that the latter group will re-offend.

At present, misdemeanants in Alaska are not evaluated with the LSI-R tool. If drug possession becomes a misdemeanor, it is important that the offenders who are today being charged with MICS-4 drug felonies continue to be evaluated with the LSI-R tool. This evaluation is important to understand the level of supervision required for that offender, and to determine their level of treatment.

Ultimately, the aim of drug policy is to prevent crime, break addiction, and reduce recidivism. Studies have shown that modern treatment is a more effective way to accomplish these goals than simple jail time.[4] The decrease in reoffending flowing from treatment, in turn, helps reduce incarceration. Unfortunately, one common refrain from many stakeholders interviewed for this report was that, at present, Alaska does not have enough treatment options or treatment beds available. While the situation has improved in recent years, slots can still be very hard to come by.

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[4] *See, e.g.* Bahr, Stephen J., Paul E. (Lish) Harris, Janalee Hobsen Strobell, and Bryan M. Taylor, *An Evaluation of a Short-Term Drug Treatment for Jail Inmates*, INTERNATIONAL JOURNAL OF OFFENDER THERAPY AND COMPARATIVE CRIMINOLOGY (May 28, 2012)(Abstract: "Survival analysis was used to estimate the hazard of recidivism during 14 months following release from jail. The hazard ratio was significantly lower for the treatment than control group, and an analysis using propensity scores confirmed these results. Only 27% of the treatment participants were returned to jail or prison for more than 30 days, compared with 46% of the matched control group. According to qualitative responses from the participants, the program helped inmates recognize the consequences of their behavior and change their perspective."); Andres F. Rengifo, Andres and Don Stemen, *The Impact of Drug Treatment on Recidivism: Do Mandatory Programs Make a Difference? Evidence From Kansas's Senate Bill 123*, CRIME & DELINQUENCY (January 22, 2010) (Abstract: "Using multinomial logistic regression, the authors found that participation in SB 123 was generally associated with a *decrease* in the likelihood of recidivism. ..."); Reichert, Jessica and Dawn Ruzich, *Community Reentry after Prison Drug Treatment: Learning from Sheridan Therapeutic Community Program Participants*, Illinois Criminal Justice Information Autority (January 2012) (Abstract: "This evaluation found that the Sheridan program is effective at reducing recidivism and improving offender's chances for successful reentry"); Mitchell, Ojmarrh, David B. Wilson, Doris L. MacKenzie, *Does incarceration-based drug treatment reduce recidivism? A meta-analytic synthesis of the research*, JOURNAL OF EXPERIMENTAL CRIMINOLOGY, Volume 3, Issue 4, pp 353-375 (December 2007).

When Colorado revised its statutes in 2010, it identified effective treatment as a method to address some of the same concerns raised by stakeholders in Section VI. In an attempt to stem any increase in drug use from reclassification, the reform bill began with a "legislative declaration" that "successful, community-based substance abuse treatment and education programs, in conjunction with mental health treatment as necessary, provide effective tools in the effort to reduce drug usage and criminal behavior in communities."[5] The declaration continued: "savings recognized from reductions in incarceration rates should be dedicated towards funding community-based treatment options and other mechanisms that are accessible ... for the implementation and continuation of such programs."[6]

This approach—plowing savings from criminal justice reform back into programs that reduce drug addiction and recidivism, thereby creating a positive feedback loop—is known in the reform community as "justice reinvestment," or simply "reinvestment." A study by researchers at the University of Alaska's Institute of Social and Economic Research (ISER) found that "over time the benefits of strategically expanding [treatment and prevention] programs that reduce crime and keep more Alaskans out of prison far outweigh the costs" (Martin, at 4). The ISER researchers continued:

★★★★★★★★★★

The Promise Of Reinvestment In Alaska

"These programs would serve inmates, at-risk juveniles, and young children. They are all intended to reduce future crime in some way. Programs that treat substance-abuse or mental heath disorders have been shown to reduce recidivism—and ... almost all current [Alaskan] inmates have those disorders.

Education and substance-abuse treatment programs for inmates save two to four times what they cost, reduce recidivism by about four percentage points, and can reach the most people.

Intervention programs for juveniles who have committed crimes are very effective at saving money and reducing recidivism, but they serve a much smaller number of people.

...

Alternatives to prison for some people charged with lesser offenses save [the State of Alaska] money right away, and almost all reduce recidivism. ..."

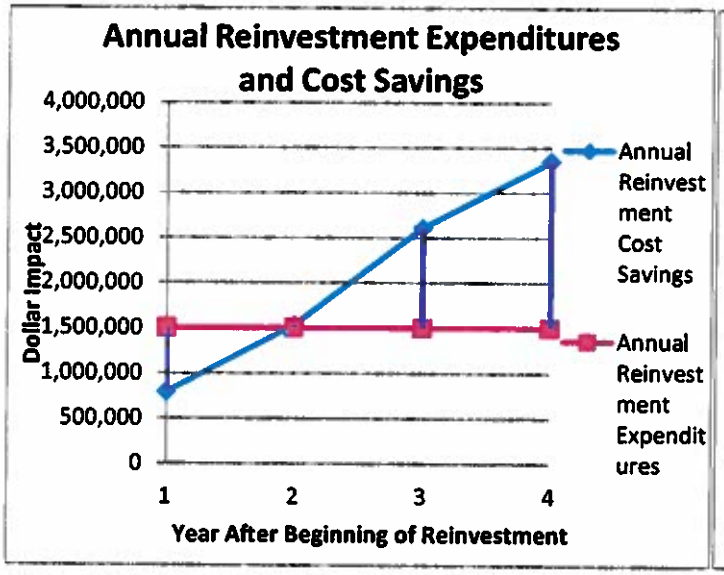
★★★★★★★★★★

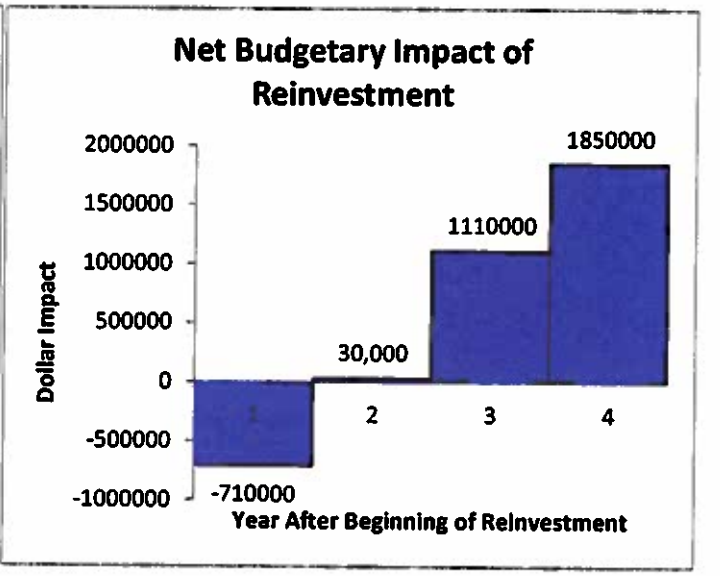
Whether using funds won in reclassification or elsewhere, it is in Alaska's best interest to expand the types of programs studied by ISER.

[5] H.B. 10-1352 § 1 (amending COLO. REV. STAT. § 18-18-406(1)(b)).
[6] *Id.* at (1)(b)

If the state effectively targeted $1.5 million of the projected savings from reclassification into programs like adult residential treatment and juvenile institutional transition, the ISER projections lead to an estimated $8.28 million in aggregate cost savings over the course of four years, for a net fiscal benefit of $2.28 million. This projected investment and return is represented in Figure 13.

Figure 13





In an attempt to keep the projections conservative, the estimates expressed in Figure 13 do not include cost savings from reduced legal and adjudication costs. However, assuming that each non-incarcerated individual predicted by ISER represented just one felony case, and that those felonies took the average number of days to reach disposition, this leads to an estimated reduction in legal and adjudication costs of approximately $770,000 over four years.

This reinvestment effort, combined with a maintenance and expansion of evaluation, should address most of the worries raised in the AJC study regarding recidivism in the misdemeanant community, at least as applied to drug possession offenders impacted by reclassification. Evaluation will identify the high-risk misdemeanants, and steer them towards treatment and heightened supervision. Furthermore, the type of programs the ISER study recommends increasing funding for include those targeted at high risk offenders, particularly juveniles. This comports well with AJC's own conclusions as to where efforts to reduce recidivism should be targeted.

C. PACE and "PACE Lite"

Another reinvestment opportunity, though one so new it was not analyzed by the ISER study, comes to Alaska from Hawaii. Called "Hawaii's Opportunity Probation with Enforcement" or "HOPE," this innovative supervision model is known as "Probationer Accountability with Certain Enforcement" or "PACE" in Alaska.

The HOPE/PACE model is based off of an understanding that swift and certain punishment is the most effective means of ensuring that probationers comply with their probationary terms. This is in line with "Classical deterrence theory [that] has long held that the threat of a mild punishment imposed reliably and immediately has a much greater deterrent effect than the threat of a severe punishment that is delayed and uncertain."[7] Speed and certainty is crucial because the offender population disproportionately exhibits "poor impulse control, high effective discount rates (i.e., valuing even slightly delayed consequences at a steep discount to more immediate consequences), and a strongly external locus of control (i.e., a tendency to attribute events in their lives to luck and the actions of others rather than to their own actions)."[8]

The PACE program can thus achieve better compliance and reduced recidivism with markedly shorter overall sentence times. As summarized by the DOC:

> Under the HOPE model, when a PACE probationer violates a condition of probation for failure to make a probation office or drug/alcohol test appointment, or tests positive for the use of drugs/alcohol, the probation officer immediately files a [PTRP] with the court. The court in turn expeditiously processes the PTRP and the execution of a bench warrant. Then, with the cooperation of the local and state law enforcement, the warrant is given priority and served as quickly as possible. The probationer appears in court within 24 to 48 hours upon arrest. The arraignment, adjudication, and imposition of sanctions may occur in one single court hearing as opposed to multiple court hearings.

Alaska opened the PACE program in July of 2010, beginning with an Anchorage test site; so far the results are promising. Anecdotally, one Anchorage judge—interviewed about a year after the AJC study—reported a "better than 50% reduction in jail time" for PACE probationers versus traditional probation. These results are comparable to a National Institute of Justice evaluation of HOPE, which found a 48% reduction in days served by HOPE probationers versus a control group on traditional probation.

Drug possession offenders evaluated as a high risk to re-offend are good candidates for PACE supervision; that their crime would be a misdemeanor following reclassification does not mean PACE cannot work for them, so long as they have an appropriate sentence that incentivizes them to stick with the program.

In keeping with the "escalating punishment" structure proposed above, when implemented correctly PACE quickly vamps up punishment on "frequent flyers," who represent the most difficult and costly portion of the drug using population. This 'behavioral triage' function –identifying those in need of treatment by documenting their actual conduct rather than relying on assessment tools – is an independent benefit of PACE.

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[7] Rosen, Jeffrey, "Prisoners of Parole," *New York Times* (January 8th, 2010). Available at: http://www.nytimes.com/2010/01/10/magazine/10prisons-t.html?pagewanted=all

[8] Hawken, Angela and Mark Kleiman, "Research Brief: Evaluation of HOPE Probation," at 2 (July 2008). Available at: http://www.pewtrusts.org/uploadedFiles/HOPE_Research_Brief.pdf

Despite this litany of positive outcomes, traditional PACE may actually represent more supervision than is necessary for moderate risk offenders. It is almost certainly too much supervision for those evaluated as low risk. At the 2012 National Association of Sentencing Commissions Conference, a researcher suggested that a "HOPE Lite" approach be developed for misdemeanants.[9] While the specifics of the researcher's proposal may not be appropriate for drug-using misdemeanants in the wake of reclassification, the general promise of this idea was echoed by several interviewees for this report. Creating a "PACE Lite" program could involve a shorter participation period (12 rather than 18 months), slightly relaxed level of supervision, community work service rather than jail time for initial sanctions, and other changes agreed on by participating agencies. These changes would all aim to balance the need for swift and certain punishment with an understanding that "over-supervision" can have a negative effect on certain offenders, in addition to being a waste of funds.

Because both PACE and "PACE Lite" require dedication of agency resources, and the latter would require research and development, this report recommends devoting additional financial resources towards these efforts. If PACE or "PACE Lite" is as effective as preliminary results from both inside and outside the state indicate, the reduction in long-term sentencing, and therefore overall incarceration, should lead to another boost to cost savings.

VIII. Conclusion and Recommendations

The total cost of the programs laid out in Section VII amount to $2 million in additional annual spending, or $8 million over four years. As it happens, the ISER study on reinvestment predicts about $8.28 million in savings over that same period resulting from $1.5 million being steered towards ISER-recommended programs. Thus, even assuming that increased evaluation and expanding PACE do not lead to their own cost savings, Section VII's reform package should be revenue neutral over the span of 4 years. More importantly, these additional reforms—including a DUI-like, escalating structure for reclassification—should address most of the concerns raised by skeptics of reclassification.

Reclassification itself should lead to considerable cost savings to the State; like reinvestment, those benefits should grow over time. Evidence further suggests that these savings can be achieved with relatively little impact on public safety. Additionally, by removing the stigma and collateral consequences of felony convictions from hundreds of offenders per year, reclassification will reduce much of the indirect costs associated with felonizing a large group of non-violent offenders. While these costs are difficult to calculate precisely, they include reduced employment prospects, decreased civic participation, increased stress on the family of the offender, and an increased likelihood of recidivism. Reclassifying drug possession as a misdemeanor will thus greatly improve life prospects for offenders, and positively impact a significant number of Alaskan families and communities.

[9] Carns, Teri and Carmne Gutierrez, "Criminal Justice Working Group Memorandum RE: NASC," at 1 (September, 2012). Document available upon request.

Recommendations:

- Amend the MICS-5 statute to include the possession of small amounts of Schedule IA and IIA substances. Increase the amount of these substances required to trigger the MICS-4 statute from "any amount," to some larger amount that implies distribution.

- Shift from a "one-size-fits-all" felony charge for possession offenses to an escalating punishment strategy that reserves felony convictions for repeat offenders.

- Reinvest in both evaluation and treatment of drug offenders. Shift low-risk offenders from formal DPP probation to ASAP substance abuse supervision and high-risk offenders into more intensive programs.

- Continue to implement and expand the PACE program, and ensure that drug offenders who would have received possession felonies and been eligible for PACE remain eligible as misdemeanants. Mandate enrollment in PACE or "PACE Lite" for those drug offenders who have been evaluated as appropriate candidates.

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*The full version of this report cites to these works and others. Once again, the full version is available upon request.