

SB 56 - Reclassifying Small Quantity Drug Possession

Pursuing Restorative Justice and
Proportionality in our Drug Laws

A Balance of Justice and Proportionality in the Law

“The punishment of an offender should fit the crime”

Misc. Involving Controlled Substance 4th Degree (MICS 4) AS 11.71.040(a)(3)(a) C Felony

A person possesses any amount of a schedule IA or IIA drug.

- Example: Possession of one grain of a pain killer like hydrocodone without a prescription. The law currently has no dosage matrix to discriminate between trafficking, peddling, and simple possession. It is no defense that the amount of drug was not a useable quantity, only that the substance be positively identified in a narcotics test.

Assault 3rd Degree - AS 11.41.220(a)(1)(a) C Felony

A person causes fear of imminent serious physical injury by means of a dangerous instrument.

- Example: A person points a firearm at the head of another person and threatens to kill them.

Proportionality Cont'd

Stalking 1st Degree

AS 11.41.260

C Felony

- Example: A person engages in a “course of conduct” with a victim (i.e. following them, entering their property, contacting by phone, delivering items to victim) and places victim in fear of death or physical injury and the person possesses a deadly weapon.

Sexual Assault 3rd Degree AS 11.41.425(a)(1)(2) C Felony

- Example: A person engages in sexual contact with a person who he knows is mentally incapable, incapacitated or otherwise unaware and unable to consent to the sex act. Or, a prison guard engaging in sexual penetration with a prisoner.

Indecent Exposure 1st Degree AS 11.41.458(a) C Felony

- Example: A person knowingly exposes his genitals to a child while masturbating.

Proportionality Cont'd

Vehicle Theft 1st Degree AS 11.46.360 C Felony

- Example: A person, having no right to do so, steals a car, truck, motorcycle, motorhome, airplane, or boat of another person. Or, a person steals a police car.

Endangering the Welfare of a Vulnerable Adult 1st Degree AS 11.51.200 C Felony

- Example: A person fails, without lawful excuse, to provide support for a vulnerable adult and the vulnerable adult is in the person's care by authority of law and the vulnerable adult suffers serious physical injury.

Promoting Contraband 1st Degree AS 11.56.375(a) C Felony

- A person illegally brings a firearm or drugs into a prison.

Proportionality Cont'd

Possession of Child Pornography AS 11.61.127 C Felony

- A person knowingly possesses child pornography.

Unlawful Furnishing of Explosives AS 11.61.250(a) C Felony

- A person gives explosives to another knowing that the person intends to use them to commit a crime.

Sex Trafficking 3rd Degree AS 11.66.130(a) C Felony

- A person, with intent to promote prostitution, manages, supervises, controls or owns a place of prostitution.

Cruelty to Animals AS 11.61.140(a) C Felony

- A person intentionally inflicts severe physical pain or prolonged suffering on an animal. Or, a person knowingly kills an animal with intent to intimidate or threaten another person.

Class A Misdemeanor Offense

Penalty - Up to 1 year in prison, \$10,000 fine

A serious charge and penalty

Assault in the Fourth Degree

AS 11.41.230

A person “recklessly causes physical injury to another person” or “with criminal negligence... causes physical injury to another person by means of a dangerous instrument.” This can **include domestic violence**, as defined in AS 18.66.990.

Driving Under the Influence (DUI/DWI)

AS 28.35.030

A first and second Driving Under the Influence (DUI) charge

Resisting or Interfering with Arrest

AS 11.56.700(a)

A person knowing a peace officer is making an arrest, and with intent to prevent the arrest, resists the arrest of himself or interferes with the arrest of another by force.

Official Misconduct

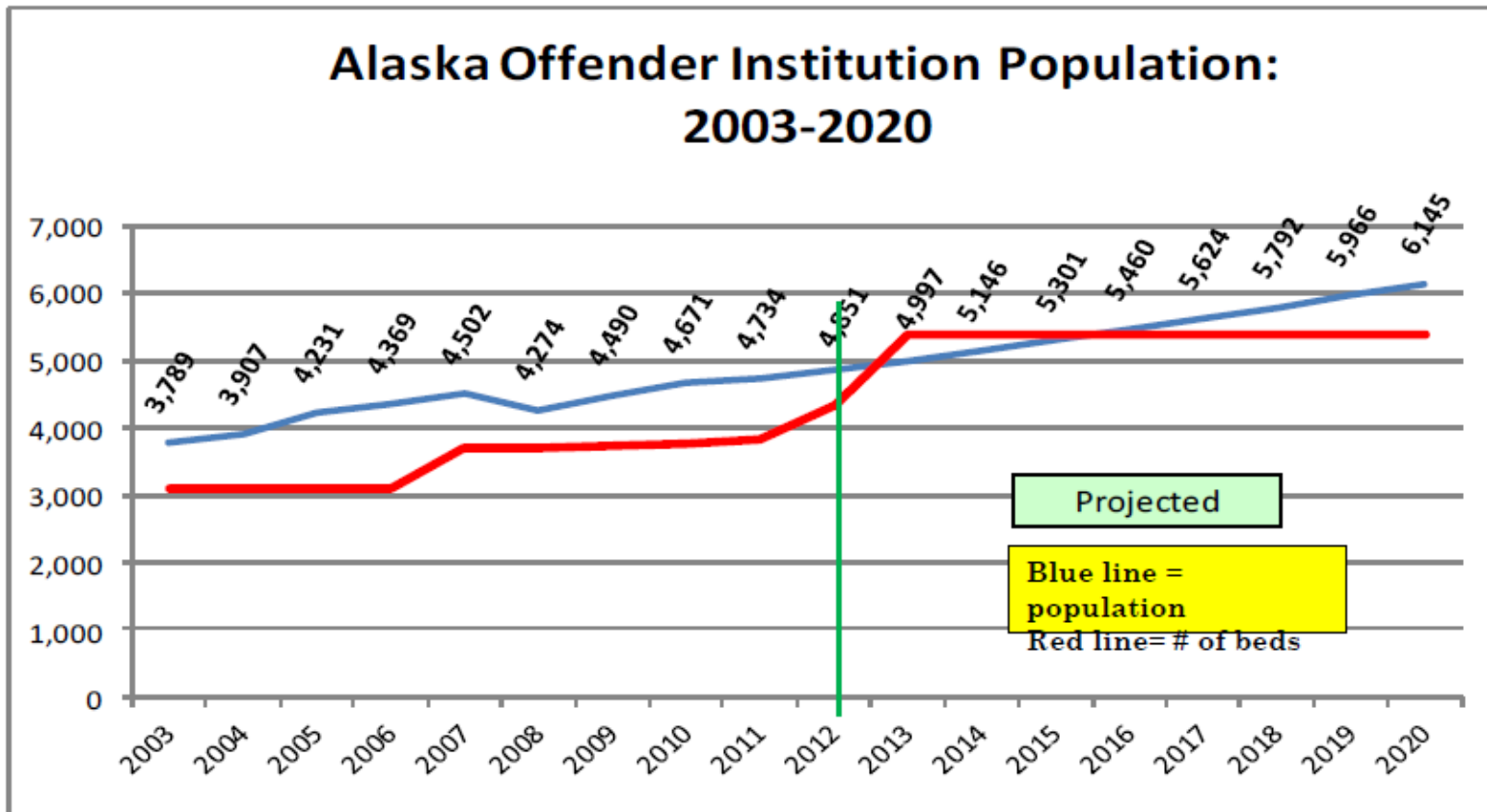
AS 11.56.850(a)

A public servant knowingly, and with intent to obtain a benefit or to injure or deprive another of a benefit, performs an unauthorized exercise of his official function; or refrains from performing a duty of his office.

SB 56 - Distinguishing between traffickers, peddlers and addicts

- SB 56 creates an “Escalating Punishment” system, similar to the State’s approach to DUI’s, Theft, Criminally Negligent Burning and Assault. Key features:
 - Reclassification of small quantity possession to a Class A misdemeanor
 - “3-strikes” Rule. Gives person a chance for meaningful reform, if they screw up twice, and fail to participate in their own rehabilitation, the next offense results in a felony charge.
 - Strict quantity limits; over the limit = implied distribution = felony.
 - No restrictions placed on law enforcement or prosecutors to pursue drug manufacturers and dealers, regardless of quantity (i.e., evidence of manufacturing or selling drugs = felony).
- This should lead to reductions in:
 - Prison incarceration costs
 - Legal and adjudication costs
 - Low-risk offenders being placed on felony probation
 - Re-entry barriers for simple possession offenders getting out of prison
 - Reduction in indirect costs, such as public assistance for med., housing & food
- Significant cost savings while maintaining public safety.

Alaska's Prison Population Growth

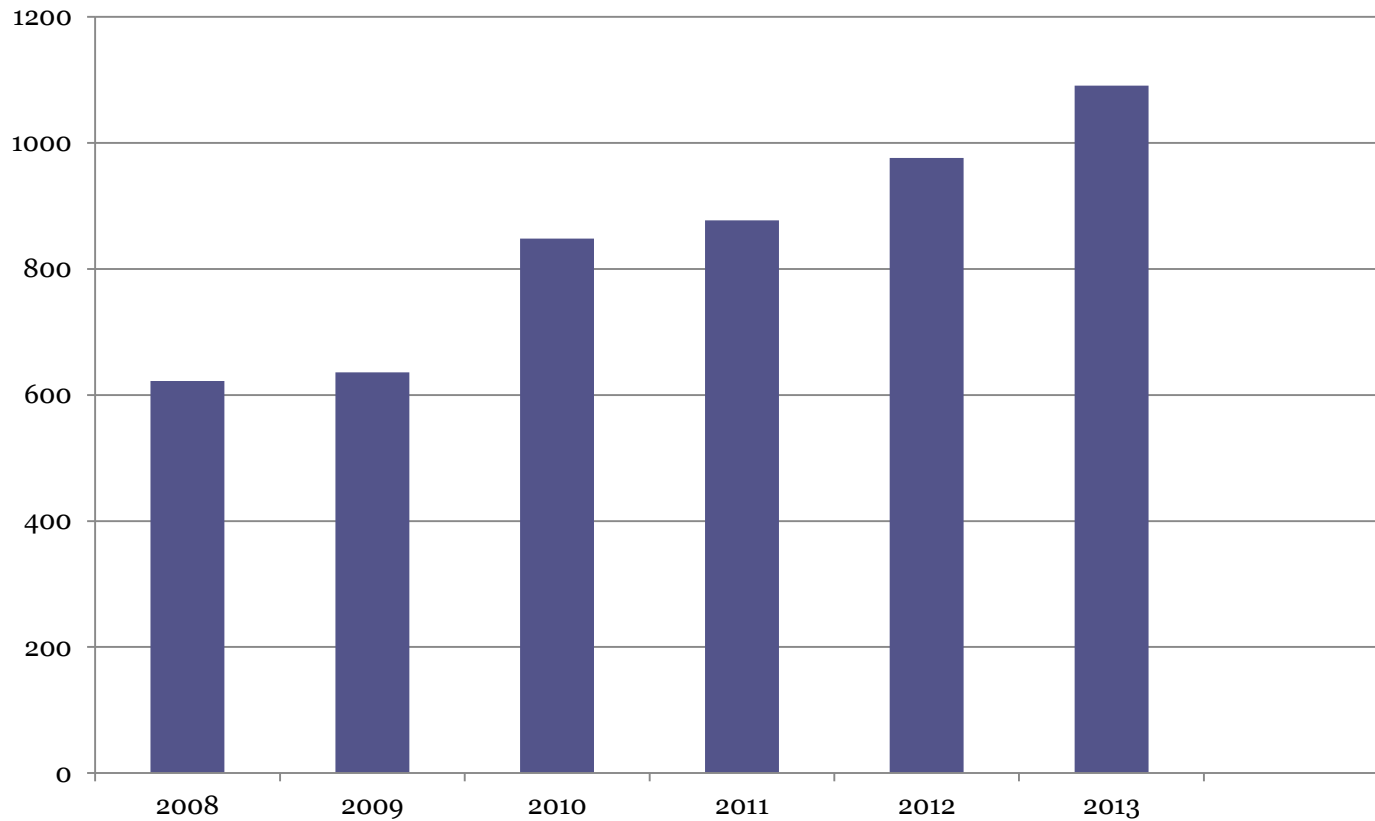


From 2003 to 2012, the annual average inmate population grew slightly less than 3% per year. Projections are based on a 3% growth rate. Based on this rate, inmate population is estimated to reach 6,145 by 2020. **(Note: Stated differently, the DOC population grew by approximately 28% in the decade preceding 2012. According to US Census Data, the total population of Alaska grew by just 13.3% from 2000 to 2010, a similar period.)**

Drivers of Alaska's Prison Population Growth

1. Increased admission for Felony Theft in the Second Degree—theft of property valued over \$500—and increased sentence lengths associated with these offenses.
 2. A 63% rise in prison admission for drug offenders, particularly felony offenders convicted of possession offenses.
>>Addressed by SB 56
 3. Increase in Petitions to Revoke Probation (PTRP's) and probation violations.
>>Connected to number of offenders on felony probation; greatly impacted by SB 56.
- Source: DOC Memo, *Factors Driving Alaska's Prison Population Growth*, at 1 (August 24, 2012).

Alaska Court Cases Filed w/ MICS 4 Charge



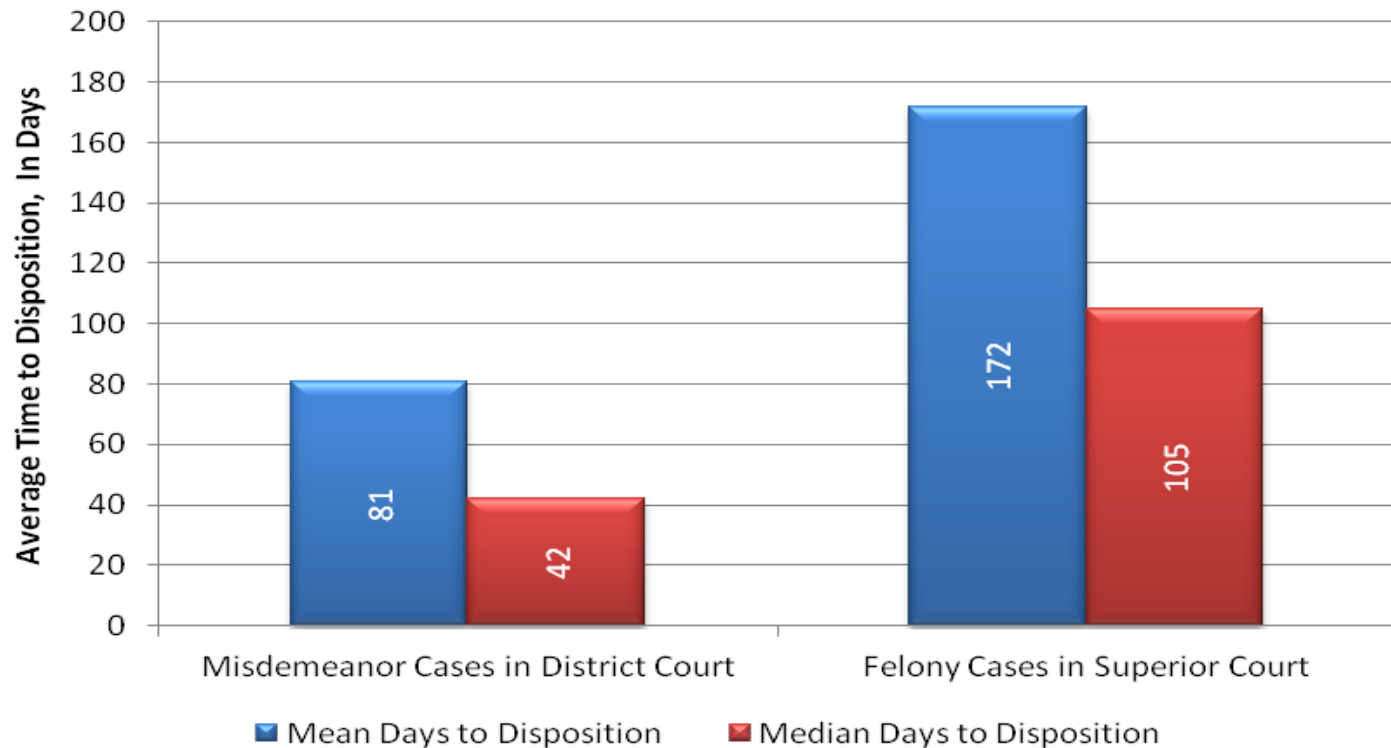
- **Misconduct Involving a Controlled Substance Fourth Degree - Class C Felony**

Collateral Consequences from Small-Quantity Drug Possession Felonies

- *“Our legal system has created barriers to work, education, business opportunities, volunteerism, and housing – the very things that are necessary to prevent recidivism.”*— Senator John Coghill
- Alaska ranks number one in the nation for state-created legislative and regulatory barriers to successful reentry for individuals with a criminal record, according to the national Legal Action Center (LAC). –Deborah Periman, Alaska Justice Forum 30 (3-4), UAA Justice Center
- Offenders who complete their sentences seldom, if ever, stop paying for their crimes
- Barriers to reentry into society after prison effect 1 of 31 Alaskans.
 - Medicare/Medicaid facilities → federal law
 - Anchorage School District → district policy
 - North Slope → Private HR decision
- Difficulty to find housing
- Restrictions on ability to adopt, or receive placement of foster children
- Inability to qualify for public assistance benefits on release from prison
- Ineligible to become a Village Public Safety Officer
- SB 56 allows Alaskans to avoid many of these consequences, if they are not repeat offenders.

Reduced Legal and Adjudication Costs

Days to Disposition: Felonies in Anchorage Superior Court versus Misdemeanors in Anchorage District Court
(Cases Closed 07/01/2011 to 06/30/2012)



SB 56 - A Fiscally Conservative Policy

- Legislative Research Service identified approximately \$14M in annual cost savings, the majority of which came from DOC
- Office of Public Advocacy Fiscal Note – *There will likely be a decrease for OPA in the cost of providing contract attorney defense services. Estimate \$250,000.00 savings in FY 2013. Savings of \$1,100/case @ 255 cases. Indeterminate note.*
- Public Defender Agency Fiscal Note – *Will reduce the cost of processing individual cases...will reduce the overall cost growth rate of the Agency's budget. Zero fiscal note.*
- Dept of Corrections Fiscal Note – *In 2012, there were 427 MICS 4 convictions which carried an average length of stay of 188.1 days...the department could see a potential reduction in mandays of 54,186.3 days. Indeterminate fiscal note. If only half these convictions were impacted by this bill, it would save over \$4M each year.*

A Fiscally Conservative Policy Cont'd

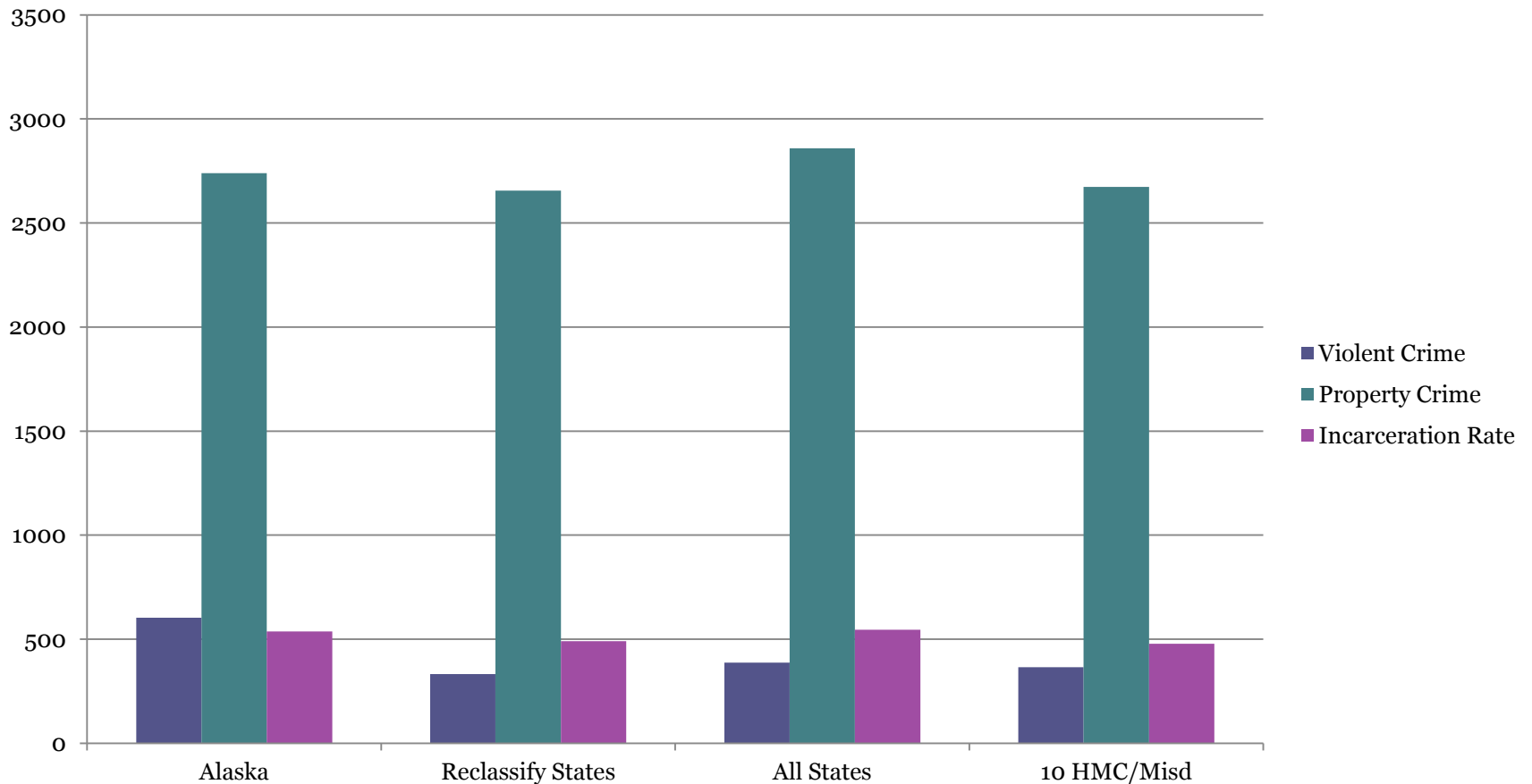
- Department of Law Fiscal Note – *The fiscal note is indeterminate. Generally, reducing an offense from a felony to a misdemeanor creates a savings in the criminal justice system.*
- DPS, Alaska State Troopers Fiscal Note – *Passage of this bill would not change the investigative process regarding these offenses and will have no fiscal impact on the Division of Alaska State Troopers...a zero fiscal note is being submitted.*
- DPS, Laboratory Services Fiscal Note – *A zero fiscal note.*

Public Safety Impacts

- 13 States have reclassified some Schedule I and IIA drugs from felony to misdemeanor possession based on a dosage matrix include Wyoming, Wisconsin, Iowa, Kentucky, Tennessee, Mississippi, South Carolina, West Virginia, Pennsylvania, Delaware, Vermont, Massachusetts and Maine.
- Alaska's adult incarceration rate is 537 per 100,000 – *BJS Prisoners in 2012 Report*
- Average adult incarceration rate of these 13 states is 490 per 100,000.
- Five (5) of these states have a higher adult incarceration rate per 100,000 (665 avg) - Delaware, Kentucky, Mississippi, South Carolina & Tennessee.
- Eight (8) states have a lower adult incarceration rate per 100,000 (381 avg) – Iowa, Maine, Massachusetts, Pennsylvania, Vermont, West Virginia, Wisconsin, and Wyoming.

Public Safety: 2012 Statistical Comparison

Bureau of Justice Statics - Prisoners in 2012, FBI - Crime in the U.S. 2012



Kleiman, Mark (2012, Apr 22)

Rethinking the War on Drugs, *Wall Street Journal*

- The U.S. has reached a dead end in trying to fight drug use by treating every offender as a serious criminal. Blanket drug legalization has some superficial charm—it fits nicely into a sound-bite or tweet—but it can't stand up to serious analysis. The real prospects for reform involve policies rather than slogans. It remains to be seen whether our political process—and the media circus that often shapes it—can tolerate the necessary complexity.
- "For every complex problem," H.L. Mencken wrote, "there is an answer that is clear, simple and wrong."

Probable Outcomes of SB 56

- Balance of justice and proportionality in our laws
- Large reduction in barriers to reentry for offenders, improvement in employability
- More persons successfully restored to a healthy lifestyle
- Minimal impact on public safety
- Significant fiscal savings
- The proposed bill language is more conservative than that of Wyoming, a state that is not a bastion of liberalism, and has had good results.

Support

Alaska Native Justice Center

Alaska Mental Health Board

Advisory Board on Alcoholism and Drug Abuse

Central Peninsula Hospital

CPH Behavioral Health Associates

Walt Monegan, APD Chief, Retired

Carmen Gutierrez, Recent DoC Deputy
Commissioner

Niesje Steinkruger, Superior Court Judge, Retired

Thank you!

- Questions?