

HB

178

<TARGET><BILL>HB 178</BILL><SUBJECT>HB
178</SUBJECT><COMM>HJUD28</COMM></TARGET>

Alaska State Legislature
House of Representatives

Rep.Doug.Isaacson@akleg.gov

Representative Doug Isaacson



Session
State Capitol
Juneau, AK 99801
Phone - (907) 465.4427
Fax - (907) 465.2197

Date: 3/27/13

To: Representative Wes Keller, Chair
House Judiciary Committee

From: Representative Doug Isaacson

Re: HB 178 Hearing Request

I respectfully request a hearing for HB 178 – Re-Classifying of Certain Drug Offenses- at your earliest convenience.

Please find the following materials in the HB 178 packet:

- HB 178
- Sponsor Statement
- Sectional Analysis
- Fiscal Notes 1-7
- Fiscal Impact of Reclassifying Misconduct Involving a Controlled Substance IV LRS Report 13.061
- Memorandum: Comparison between Alaska and Wyoming Possession Laws and Current Corrections Outcomes
- Factors Driving Alaska's Prison Population Growth
- Reclassifying Nonviolent, Small Quantity Drug Possession as a Misdemeanor: Potential Impacts on Alaska's Budget and Society
- Reclassifying Nonviolent, Small Quantity Possession
- Prison Problems: Reduced Recidivism Would Fight Against Rising Costs
- SB 56 – Response to Questions from March 18th Hearing
- Letter of Support for SB 56, Carmen Gutierrez
- Letter of Support for SB 56, Sidney K. Billingslea
- Letter of Support for HB 178, Jeffrey Mittman
- Letter of Opposition for HB 178, John Lucking, Jr.

Alaska State Legislature House of Representatives

Rep.Doug.Isaacson@akleg.gov

Representative Doug Isaacson

Interim

301 Santa Claus Lane
North Pole, AK 99705

Session

State Capitol
Juneau, AK 99801
Phone - (907) 465.4527



SPONSOR STATEMENT FOR HB 178

Alaska's prison population is currently growing at the rate of 3% per year while other states are seeing a decrease. Despite the \$250 million Goose Creek Correctional Center, the Department of Corrections reports a rising influx of inmates per bed and that all prison beds will be full by 2016. Simultaneously, per inmate incarceration costs have risen from \$110/day to \$147/day, now equaling more than \$53,000/inmate per year. Since 2005, the DOC's operating budget has spiked nearly 94%, from \$167M to over \$323M. Most astoundingly, a growing number of *non-violent* offenders are occupying Alaska's prison beds, totaling up to approximately 64% of the prison population. In comparison, research conducted in states where small quantity possession is already a misdemeanor shows that reclassification should have minuscule impact on the safety of the public. Misdemeanor states actually have slightly *lower* rates of violent crime, property crime and drug use.

With our prisons packed and the cost of incarceration skyrocketing, we must seek responsible ways to slow prison population growth while preserving public safety. According to DOC data, from 2002 to 2011, *non-violent* offenders have been the fastest growing segment in our prison population; drug and alcohol offenses account for a substantial portion of this growth. A recent study by an Alaskan researcher concluded that a significant driver of Alaska's prison population growth is the rise in admissions for non-violent, small-quantity drug offenders, particularly those convicted of a felony convicted of non-distributive possession. Reforming our drug policy could slow this driver of prison growth and save the state millions of dollars, which could be invested into drug rehabilitation. This conclusion is supported by leading justice reform policy groups such as recent DOC Dep. Commissioner Carmen Gutierrez, and Legislative Legal Research Services who concur that the fiscal burden of our current drug laws is significant and does not adequately address drug reform.

HB 178 creates an escalating punishment regime, similar to Alaska's approach to DUI's, reclassifying the initial possession of non-distributive (small quantity) amounts of Schedule IA (e.g. heroin, codeine, oxycodone) and IIA substances (e.g. methamphetamine, mushrooms, cocaine) from a Class C Felony to a Class A Misdemeanor. Reclassifying offenses will continue to provide serious criminal penalty for drug possession, however, first time offenders are offered the chance to avoid severe collateral consequences and the longer prison sentences of a felony. Additionally, it protects law enforcement's ability to aggressively pursue distributors and repeat offenders.

This reform will benefit offenders and their families by removing the humiliation of a felony conviction, markedly increasing employment prospects, professional licensing, and housing opportunities, all variables strongly correlated with decreased alcoholism, domestic violence and recidivism.

Staff contact: Dave Talerico & Marissa Banks, (907)465-4527

Alaska State Legislature House of Representatives

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SECTION ANALYSIS – HB 178

Section 1

1. Amends the criminal statute AS 11.71.040 (Misconduct Involving Controlled Substance in the Fourth Degree), raising the quantity of Schedule IA or IIA controlled substance needed to be found in an offender's possession that would precipitate a felony charge from "any amount" to a quantity that implies distribution.
2. Establishes that the quantity possessed that implies distribution and opens an offender to a felony charge is 15 or more tablets, ampules, or syrettes when the Schedule IA or IIA is found in such a form.
3. Further establishes that the quantity possessed that implies distribution and opens an offender to a felony charge is 3 grams when the Schedule IA or IIA substance is in the form of a preparation, compound, or mixture.
4. Creates a carve out for the substances heroin and Lysergic acid diethylamide (LSD), each of which will be subject to a stricter felony quantity limit: 500 milligrams for heroin and 300 milligrams for LSD.
5. Provides for an "escalating punishment" system wherein a repeat offender found in possession of any amount of Schedule IA or IIA substance may still be prosecuted for Misconduct Involving a Controlled Substance in the Fourth Degree—a Class C Felony—if they have been previously convicted of any drug offense defined in AS 11.71.010 – 11.71.050 in the five years preceding the current offense.
6. Leaves unaffected any provisions of this statute or any other controlled substance statute that empowers law enforcement and prosecutors to charge and convict distributors of controlled substances.

Section 2

1. Provides that offenders found in possession of small quantities of Schedule IA and IIA substances may be prosecuted under AS 11.71.050 (Misconduct Involving a Controlled Substance in the Fifth Degree), a Class A Misdemeanor.
2. Establishes that an offender may be prosecuted of a Misconduct Involving a Controlled Substance in the Fifth Degree if they are found with any amount of a Schedule IA or IIA substance up to the felony limits, above which they are subject to felony convictions under AS.71.040.
3. Establishes the felony limit as 15 tablets, ampules, or syrettes if the substance is found in such a form, or 3 grams if found in a preparation, compound, or mixture.
4. Includes carve outs for heroin and LSD, for which the felony limits will be 500 and 300 milligrams, respectively.

Section 3

1. Establishes that this Act applies to offenses committed on or after the effective date of the Act, except that references to previous convictions in the "escalating punishment" or "three strikes" provisions of Section 1 include convictions occurring before, on, or after the effective date.

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Section 4

1. Removes conflicting language related to Bath Salts from the MICS-4 and MICS-5 statute. After the passage of this bill, Bath Salts will be treated as other Schedule IIA controlled substances, with the same felony limits as, for example, methamphetamine.

Section 5

1. Provides for an effective date.

HOUSE BILL NO. 178

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE ISAACSON

Introduced: 3/20/13

Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to certain crimes involving controlled substances; and providing for an**
2 **effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 11.71.040(a) is amended to read:

5 (a) Except as authorized in AS 17.30, a person commits the crime of
6 misconduct involving a controlled substance in the fourth degree if the person

7 (1) manufactures or delivers any amount of a schedule IVA or VA
8 controlled substance or possesses any amount of a schedule IVA or VA controlled
9 substance with intent to manufacture or deliver;

10 (2) manufactures or delivers, or possesses with the intent to
11 manufacture or deliver, one or more preparations, compounds, mixtures, or substances
12 of an aggregate weight of one ounce or more containing a schedule VIA controlled
13 substance;

14 (3) possesses

1 (A) any amount of a [(i)] schedule IA or IIA controlled
2 substance, and, two or more times within the preceding five years, the
3 person was convicted under

4 (i) AS 11.71.010 - 11.71.050; or

5 (ii) a law or ordinance of this or another jurisdiction
6 with elements similar to those of an offense under the provisions
7 described in (i) of this subparagraph [; OR (ii) IIA CONTROLLED
8 SUBSTANCE EXCEPT A CONTROLLED SUBSTANCE LISTED
9 IN AS 11.71.150(e)(11) - (15)];

10 (B) 25 or more tablets, ampules, or syrettes containing a
11 schedule IIIA or IVA controlled substance;

12 (C) one or more preparations, compounds, mixtures, or
13 substances of an aggregate weight of

14 (i) three grams or more containing a schedule IIIA or
15 IVA controlled substance except a controlled substance in a form listed
16 in (ii) of this subparagraph;

17 (ii) 12 grams or more containing a schedule IIIA
18 controlled substance listed in AS 11.71.160(f)(7) - (16) that has been
19 sprayed on or otherwise applied to tobacco, an herb, or another organic
20 material; or

21 (iii) 500 milligrams or more of a schedule IIA
22 controlled substance listed in AS 11.71.150(e)(11) - (15);

23 (D) 50 or more tablets, ampules, or syrettes containing a
24 schedule VA controlled substance;

25 (E) one or more preparations, compounds, mixtures, or
26 substances of an aggregate weight of six grams or more containing a schedule
27 VA controlled substance;

28 (F) one or more preparations, compounds, mixtures, or
29 substances of an aggregate weight of four ounces or more containing a
30 schedule VIA controlled substance; [OR]

31 (G) 25 or more plants of the genus cannabis;

1 (H) 15 or more tablets, ampules, or syrettes containing a
 2 schedule IA or IIA controlled substance; or

3 (I) one or more preparations, compounds, mixtures, or
 4 substances of an aggregate weight of

5 (i) three grams or more containing a schedule IA or
 6 IIA controlled substance except a controlled substance listed in (ii)
 7 or (iii) of this subparagraph;

8 (ii) 500 milligrams or more of a schedule IA
 9 controlled substance listed in AS 11.71.140(d)(11); or

10 (iii) 300 milligrams or more of a schedule IIA
 11 controlled substance listed in AS 11.71.150(b)(12);

12 (4) possesses a schedule IIIA, IVA, VA, or VIA controlled substance

13 (A) with reckless disregard that the possession occurs

14 (i) on or within 500 feet of school grounds; or

15 (ii) at or within 500 feet of a recreation or youth center;

16 or

17 (B) on a school bus;

18 (5) knowingly keeps or maintains any store, shop, warehouse,
 19 dwelling, building, vehicle, boat, aircraft, or other structure or place that is used for
 20 keeping or distributing controlled substances in violation of a felony offense under this
 21 chapter or AS 17.30;

22 (6) makes, delivers, or possesses a punch, die, plate, stone, or other
 23 thing that prints, imprints, or reproduces a trademark, trade name, or other identifying
 24 mark, imprint, or device of another or any likeness of any of these on [UPON] a drug,
 25 drug container, or labeling so as to render the drug a counterfeit substance;

26 (7) knowingly uses in the course of the manufacture or distribution of a
 27 controlled substance a registration number that is fictitious, revoked, suspended, or
 28 issued to another person;

29 (8) knowingly furnishes false or fraudulent information in or omits
 30 material information from any application, report, record, or other document required
 31 to be kept or filed under AS 17.30;

1 (9) obtains possession of a controlled substance by misrepresentation,
2 fraud, forgery, deception, or subterfuge; or

3 (10) affixes a false or forged label to a package or other container
4 containing any controlled substance.

5 * **Sec. 2.** AS 11.71.050(a) is amended to read:

6 (a) Except as authorized in AS 17.30, a person commits the crime of
7 misconduct involving a controlled substance in the fifth degree if the person

8 (1) manufactures or delivers, or possesses with the intent to
9 manufacture or deliver, one or more preparations, compounds, mixtures, or substances
10 of an aggregate weight of less than one ounce containing a schedule VIA controlled
11 substance;

12 (2) possesses

13 (A) less than 25 tablets, ampules, or syrettes containing a
14 schedule IIIA or IVA controlled substance;

15 (B) one or more preparations, compounds, mixtures, or
16 substances of an aggregate weight of less than

17 (i) three grams containing a schedule IIIA or IVA
18 controlled substance except a controlled substance in a form listed in
19 (ii) of this subparagraph;

20 (ii) 12 grams but more than six grams containing a
21 schedule IIIA controlled substance listed in AS 11.71.160(f)(7) - (16)
22 that has been sprayed on or otherwise applied to tobacco, an herb, or
23 another organic material; or

24 (iii) 500 milligrams containing a schedule IIA
25 controlled substance listed in AS 11.71.150(e)(11) - (15);

26 (C) less than 50 tablets, ampules, or syrettes containing a
27 schedule VA controlled substance;

28 (D) one or more preparations, compounds, mixtures, or
29 substances of an aggregate weight of less than six grams containing a schedule
30 VA controlled substance; [OR]

31 (E) one or more preparations, compounds, mixtures, or

1 substances of an aggregate weight of one ounce or more containing a schedule
2 VIA controlled substance;

3 (F) less than 15 tablets, ampules, or syrettes containing a
4 schedule IA or IIA controlled substance; or

5 (G) one or more preparations, compounds, mixtures, or
6 substances of an aggregate weight of less than

7 (i) three grams containing a schedule IA or IIA
8 controlled substance except a controlled substance listed in (ii) or
9 (iii) of this subparagraph;

10 (ii) 500 milligrams of a schedule IA controlled
11 substance listed in AS 11.71.140(d)(11); or

12 (iii) 300 milligrams of a schedule IIA controlled
13 substance listed in AS 11.71.150(b)(12); or

14 (3) fails to make, keep, or furnish any record, notification, order form,
15 statement, invoice, or information required under AS 17.30.

16 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 APPLICABILITY. This Act applies to offenses committed on or after the effective
19 date of this Act, except that references to previous convictions in AS 11.71.040(a)(3), as
20 amended by sec. 1 of this Act, include convictions occurring before, on, or after the effective
21 date of this Act.

22 * **Sec. 4.** AS 11.71.040(a)(3)(C)(iii) and 11.71.050(a)(2)(B)(iii) are repealed.

23 * **Sec. 5.** This Act takes effect July 1, 2013.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 178
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB178-DOA-OPA-3-28-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: ISAACSON
Requester: House Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Office of Public Advocacy
OMB Component Number: 43

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Richard Allen, Director	Phone:	(907)269-3504
Division	Office of Public Advocacy	Date:	03/29/2013 03:51 PM
Approved By:	Curtis Thayer, Deputy Commissioner	Date:	03/29/13
	Department of Administration		

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. HB178

Analysis

HB178 would likely result in drug offenders charged with simple possession facing misdemeanor rather than felony charges, depending on the offender's criminal history and the amounts involved. The Office of Public Advocacy submits a zero fiscal note.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 178
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB178-DOA-PDA-3-29-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: ISAACSON
Requester: House Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Public Defender Agency
OMB Component Number: 1631

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Quinlan Steiner	Phone:	(907)334-4414
Division	Public Defender Agency	Date:	03/29/2013 03:41 PM
Approved By:	Curtis Thayer, Deputy Commissioner	Date:	03/29/13
	Department of Administration		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB178

Analysis

HB178 reduces the level of offense for simple possession of small quantities of certain controlled substances from a felony to a misdemeanor. The bill provides for a felony charge for simple possessing based upon two or more prior convictions in the preceding five years.

The Public Defender Agency does not anticipate a fiscal impact and, therefore, submits a zero fiscal note.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 178
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB178-DOC-OC-03-31-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: ISAACSON
Requester: House Judiciary, Finance

Department: Department of Corrections
Appropriation: Administration and Support
Allocation: Office of the Commissioner
OMB Component Number: 694

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

This is the original version of the bill.

Prepared By: Kevin Worley, Director
Division: Administrative Services, Department of Corrections
Approved By: Leslie Houston, Deputy Commissioner
Department of Corrections

Phone: (907)465-4641
Date: 03/31/2013 06:30 AM
Date: 03/31/13

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 178

Analysis

Passage of this legislation would reduce the offense level for possession of small amounts of certain controlled substances from a class C felony to a class A misdemeanor. At this time, data is not available for the Department to calculate the number of offenders who would be sentenced as misdemeanors under this legislation. The Department will continue to monitor the potential impacts of this legislation.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 178
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB178-LAW-CRIM-03-29-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: ISAACSON
Requester: (H) Judiciary

Department: Department of Law
Appropriation: Criminal Division
Allocation: Criminal Justice Litigation
OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services	***		***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	0.0	***	***	***	***	***

Fund Source (Operating Only)

None							
Total	***	0.0	***	***	***	***	***

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version, not applicable.

Prepared By: Loretta Withington, Division Operations Manager
Division: Administrative Services Division
Approved By: Michael C. Geraghty, Attorney General
Department of Law

Phone: (907)465-5427
Date: 03/29/2013 12:00 AM
Date: 03/29/13

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 178

Analysis

Under current law it is a class C felony to possess any amount of a Schedule IA controlled substance (for example opium or morphine) or a Schedule IIA controlled substance (for example cocaine or LSD). HB 178 would make possession of these controlled substances a class C felony (1) if the defendant, in the five years preceding the offense, had been convicted two or more times of misconduct involving a controlled substance in the first, second, third, fourth, or fifth degrees, or a law or ordinance in another jurisdiction with similar elements; (2) possesses 15 or more tablets, ampules, or syrettes containing a schedule IA or IIA controlled substance; or (3) or possesses three or more grams of a preparation containing a schedule IA or IIA controlled substance, unless it is heroin, in which case it would be a class C felony to possess 500 milligrams or more, or unless it is LSD, in which case it would be a class C felony to possess 300 milligrams or more.

HB 178 would make possession of lesser amounts of substances described in (2) and (3) above, a class A misdemeanor under AS 11.71.150.

The fiscal note is indeterminate. Generally, reducing an offense from a felony to a misdemeanor creates a savings in the criminal justice system. Felony trials generally take more of a prosecutor's time than do misdemeanor trials. However, sometimes there are unforeseen consequences. For example, with the increased complexity in the law, this bill will probably require more time in screening and evaluating cases. Further, it is likely that a case involving possession with intent to distribute a controlled substance, which would be charged as a class B felony, would go to trial on that charge rather than be resolved as a class A misdemeanor for simple possession. These are factors, along with others, that we cannot predict at this time.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 178
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB178-DPS-LAB-03-28-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: ISAACSON
Requester: (H) Judiciary

Department: Department of Public Safety
Appropriation: Statewide Support
Allocation: Laboratory Services
OMB Component Number: 527

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Orin Dym, Forensic Laboratory Manager
Division: Office of the Commissioner
Approved By: Joseph A. Masters, Commissioner
Department of Public Safety

Phone: (907)254-1284
Date: 03/28/2013 02:08 PM
Date: 03/28/13

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB178

Analysis

This bill would adjust the penalties related to certain offenses involving possession of schedule IA and IIA controlled substances.

The sections of the bill relating to possession of specific quantities of a controlled substance will affect the analysis practices within the Scientific Crime Detection Laboratory (SCDL). The minimum thresholds established by this bill will require testing of enough of the substance to meet the threshold.

For example, whereas the SCDL currently may need to positively identify only one tablet to determine whether it was a prohibited substance under the law, analysis of at least 15 tablets (if present) may now need to be analyzed to meet the threshold and burden of proof.

Though there will be some impact to the workload, it is expected that the SCDL can manage it within its current staffing. Therefore, a zero fiscal note is being submitted.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 178
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB178-DPS-DET-03-28-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: ISAACSON
Requester: (H) Judiciary

Department: Department of Public Safety
Appropriation: Alaska State Troopers
Allocation: Alaska State Trooper Detachments
OMB Component Number: 2325

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
---------------------------	--	--	--	--	--	--	--	--

Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Lieutenant Rodney Dial
Division: Alaska State Troopers
Approved By: Joseph A. Masters, Commissioner
Department of Public Safety

Phone: (907)254-1284
Date: 03/28/2013 02:00 PM
Date: 03/28/13

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB178

Analysis

This bill would reclassify certain offenses related to possession of schedule IA and IIA controlled substances.

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. Therefore, a zero fiscal note is being submitted.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version HB178
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) HB178-ACS-TRC-3-28-13 Dept. Affected Alaska Court System
 Title Relating to Crimes Inv. Controlled Substances Appropriation Trial Courts
 Allocation _____
 Sponsor Representatives Isaacson and Keller
 Requester _____ OMB Component Number 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES	FY14	FY14	FY15	FY16	FY17	FY18	FY19
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated **SUPPLEMENTAL (FY13) operating costs** _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY14) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? no
 If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version.

Prepared by Nancy Meade, General Counsel
 Division Alaska Court System
 Approved by Nancy Meade for Christine Johnson, Administrative Director
Alaska Court System

Phone 907-463-4736
 Date/Time 3/28/13 1:00 PM
 Date 3/28/2013

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB178

Analysis

House Bill 178 would reclassify certain drug possession crimes. Currently, possession of *any* amount of a schedule IA controlled substance is Misconduct Involving a Controlled Substance in the Fourth Degree, a class C felony under AS 11.71.040(a). Section 1 of the bill would classify as a Class C felony (1) possession of any amount of schedule IA or IIA controlled substances only *if* the defendant has two or more prior convictions of this or other drug possession laws within the last five years, (2) possession of more than a specified amount of more pure forms of schedule IA or IIA controlled substances, and (3) possession of a specified amount of preparations or mixtures of certain schedule IA and schedule IIA controlled substances.

Section 2 of the bill would classify the possession of the lesser amounts of schedule IA or IIA controlled substances (those that Section 1 would remove from AS 11.71.040(a)) as Misconduct Involving a Controlled Substance in the Fifth Degree, a Class A misdemeanor, under AS 11.71.050(a).

This change would have the effect of moving certain drug possession cases from felonies to misdemeanors; for the court system, that means handling those cases in the district court (with jurisdiction over misdemeanors) rather than superior court (with jurisdiction over felonies). Generally, misdemeanor criminal cases are less expensive for the court system to process than felonies: misdemeanor charges do not need to be considered by a grand jury, misdemeanors often settle earlier in the life of the case than felonies, and district court judges are paid less and have a higher caseload than superior court judges (because the cases are generally less complicated). Because of these general principles, the court system is likely to save some money and deal with these misdemeanor drug possession cases more efficiently under HB 178.

The court's statistics, however, are kept according to the statutory reference(s) on the charging documents filed by law enforcement. For different reasons, drug possession cases may be filed by the Department of Law as a violation of the general statute (AS 11.71.040), or by subsection (AS 11.71.040(a)), or by subparagraph (AS 11.71.040(a)(3)). The court enters the charge on the incoming charging document into the court's case management system, but we are not then able to accurately count the number of cases that involve a charge under AS 11.71.040(a)(3)(A). The court can say that 977 cases were filed with a MICS 4 charge in FY 12; the number was 878 in FY11 and 848 in FY12. But, these numbers include all cases with any charge under AS 11.71.040, which has numerous sections and subsections that concern a variety of criminal drug behaviors.

In addition, HB 178 would reclassify only a portion of the charges under that section as misdemeanors (depending on the amount of the controlled substance possessed and the defendant's prior convictions), and our statistics do not show which cases or the number of cases that would be in this category.

The court predicts increased efficiency from moving some cases from superior court to district court, but cannot predict the number of cases or actual fiscal impact. The court therefore submits a zero fiscal note.



LEGISLATIVE RESEARCH SERVICES

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Research Brief

TO: Senator Johnny Ellis
FROM: Chuck Burnham, Legislative Analyst
DATE: January 8, 2013
RE: Fiscal Impact of Reclassifying Misconduct Involving a Controlled Substance IV
LRS Report 13.061

You asked us to delineate the fiscal impact on the State of reclassifying the criminal charge of Misconduct Involving a Controlled Substance IV from a class C felony to a class A misdemeanor. You also wanted to know what legal restrictions are attached to felons that are not experienced by misdemeanants.

With the data available to us, we are unable to reliably calculate the annual fiscal impact of reclassifying Misconduct Involving a Controlled Substance IV (MICS 4). We are, however, able to provide a rough calculation of the cost of imprisonment and parole for those convicted of class C felonies as compared to costs for class A misdemeanants over the entire, multi-year course of those cases. As we detail below, using this "life-cycle" methodology, we estimate that had the average number of prisoners discharged in recent years after serving a sentence for a MICS 4 felony been instead convicted of a class A misdemeanor, the costs associated with the entirety of their collective sentences would have been reduced by an average of roughly \$14.3 million per annual cohort of discharged prisoners. We emphasize that this is the difference in aggregate costs but should not be viewed entirely as possible savings should the reclassification be made. That is, a portion of such costs are fixed—those for heating prisons and paying correctional officers, for example—and would be incurred regardless of the length of sentence for a given crime or group of prisoners.

It is important to note that our conclusions are made in the absence of certain important information including, significantly, data from the Alaska Department of Law, and a detailed understanding of how other variables in the criminal justice process may change, thereby altering costs, should a reclassification of MICS 4 occur. Nonetheless, the single most significant cost associated with both class C felonies and class A misdemeanants, and the largest expenditures made for each by a wide margin, are generated by incarcerating and providing parole supervision for those convicted of such crimes. Therefore, because periods of both incarceration and parole are invariably much longer for felons, we are confident that reclassifying MICS 4 to a class A misdemeanor would result in substantial net savings to the state.

MICS 4 Crimes and Penalties

As you know, the crimes classified as MICS 4 are enumerated at AS § 11.71.040. They include manufacturing or delivering any amount of a schedule IVA or VA drug, or more than one ounce of a schedule VIA substance; possession of any amount of IA or IIA drugs or larger amounts of IIIA and IVA substances; and a variety of other offenses ranging from possession of certain drugs near schools to obtaining a controlled substance through fraud or forgery.¹ There are six levels of controlled substance offenses in Alaska Statute, decreasing in severity from MICS 1 to MICS 6. Therefore, although offenses classified as MICS 4 are not among the most serious drug crimes, those offenses are treated in Alaska law as being sufficiently serious to warrant punishment at the felony level.

Pursuant to AS § 12.55.125(e) and AS § 12.55.035(b)(4), individuals convicted of a class C felony are subject to imprisonment of up to five years and/or a maximum fine of \$50,000, with consideration given to aggravating and mitigating factors in establishing punishment within the presumptive ranges set out in AS §§ 12.55.155-175. By contrast, the maximum penalty assigned to a class A misdemeanor is one year imprisonment and/or a \$10,000 fine. Clearly, given disparate penalties,

¹ We include a copy of AS § 11.71.040 as Attachment A. As you know, in the schedules of controlled substances, drugs, narcotics, and related substances are grouped by the perceived risk they pose to users and society with schedule IA containing the most dangerous drugs (heroin and methamphetamines, for example) through schedule VIA, which contains substances such as marijuana that are perceived as relatively less dangerous.

reclassifying MICS 4 in the manner you contemplate would be a consequential change both to those convicted and to the state's criminal justice budget.²

Estimated Fiscal Impacts of Reclassification

The reclassification of MICS 4 would most directly impact the operations, and therefore budgets, of three state entities—the Departments of Law (DOL) and Corrections (DOC) and the Alaska Court System (ACS). We contacted representatives of each for assistance on your request.

Department of Law

Staff with the DOL determined that their electronic records systems do not offer any means of determining the Department's historical costs associated with prosecuting MICS 4 cases and, therefore, there is no ready basis for estimating the impacts of reclassification.³ Producing such an estimate would require an extensive review of physical court files, which would be both time-intensive and likely to produce imprecise findings.

Based on data provided by the Court System, which we detail below, it is reasonable to believe that reclassifying MICS 4 to a lesser offense would result in a reduction in the hours that DOL attorneys and staff spend on those cases. Clearly, however, the cases would not be eliminated completely. We cannot say whether the reduction in time dedicated to prosecuting MICS 4 cases were they class A misdemeanors would be sufficient to justify eliminating staff positions. If this were to be the case, it would most likely occur in Anchorage, where roughly half of MICS 4 cases are heard. We speculate that the overall annual impact on the DOL budget would be in the tens of thousands of dollars—perhaps into the low hundreds of thousands if a limited number of positions were eliminated—and that, impacts in the millions of dollars are unlikely.

Alaska Court System

According to ACS General Counsel Nancy Meade, in recent years the state's courts have heard an average of approximately 900 cases in which a charge of MICS 4 was brought.⁴ Of these, MICS 4 was the only or most serious charge in roughly 71 percent of cases, or about 640 per year on average. These are the cases that reclassification of MICS 4 would significantly impact.⁵ However, it is important to emphasize that very few—less than one percent—of MICS 4 cases are contested at trial. This is because the vast majority of such cases are settled through plea arrangements that take relatively little court time. In fiscal year (FY) 2012, just four MICS 4 trials received a verdict by jury.

Although discernible savings would likely occur in the ACS budget with a reclassification of MICS 4, the overall net impact would likely be relatively small. Any cost reductions would likely stem primarily from the transfer of cases from Superior Court, where felonies are heard, to District Court, where misdemeanors are handled. At the district level, juries are reduced in size from twelve to six members and judges' salaries are lower. Ms. Meade estimates that combined these two factors would likely produce approximately \$35,000 in annual savings. She cautions, however, that these projections are theoretical and based on limited data.

² This report focuses strictly on costs; however, there would no doubt be impacts beyond strictly fiscal matters should MICS 4 be reclassified. For example, where prosecutors currently offer a reduction in charges in exchange for guilty pleas in MICS 4 cases in order to expedite proceedings, their ability to do so may be hampered should defendants be facing a class A misdemeanor charge. Further, it is unclear how, if at all, the change might impact penalties for other levels of MICS crime, and how those changes would alter judicial proceedings.

³ We communicated with Anne Carpeneti, Attorney V, on several occasions via email and telephone (907-465-3428) regarding this request.

⁴ Ms. Meade can be reached at 907-264-8264. We include her full analysis of the impact on the ACS of reclassifying MICS 4 as Attachment B.

⁵ The remaining MICS 4 cases were brought in addition to more serious charges. According to Ms. Meade, the reclassification of MICS 4 would have very little impact in such cases.

Department of Corrections

In researching your request we encountered numerous uncertainties. What is abundantly clear, however, is that any significant savings from reclassifying MICS 4 to a misdemeanor would come from the Department of Corrections.

As we mentioned, the maximum penalty for a class C felony is five times that for a class A misdemeanor. Although the contrast is not as stark in actual penalties handed down, the difference remains substantial, leading to wide variation in the cost of care for felons as compared to misdemeanants. Michael Matthews, Research Analyst IV with the DOC, compiled data from FY 2008 to FY 2011 on the average cost of imprisonment and probation for those convicted of MICS 4 compared to that for class A misdemeanors.⁶ Please note that these are not annual expenditures but rather the average cost of care over the entire course of multi-year term of incarceration and parole for all such prisoners who were discharged during the years in question.

For both felons and misdemeanants the daily costs of imprisonment and parole were the same at \$140.46 and \$6.73, respectively. The major difference, as you might expect, lay in the length of sentence. Those convicted of class A misdemeanors and discharged between 2008 and 2011 served an average of roughly 155 days of imprisonment and 263 days of probation. By contrast, MICS 4 convicts discharged over the same period were incarcerated for 457 days and served 441 days of probation, on average. In addition, about 41 percent of MICS 4 prisoners were discharged to a Community Correctional Facility, or "half-way house," for an average period of roughly 59 days, at a cost of \$80.17 per day, prior to entering probation. All told, the 1,289 MICS 4 convicts discharged between 2008 and 2011 generated corrections costs of over \$85.5 million. Had all of those prisoners been instead convicted of class A misdemeanors, and served the average sentences for such crimes, the cost would have been approximately \$28.3 million, or nearly \$57.2 million less than actual costs. This equates to cost of care reductions of approximately \$14.3 million per average annual cohort of MICS 4 prisoners discharged between 2008 and 2011. We include a table aggregating the data prepared by Mr. Matthews as Attachment C.

Please note that the cost of care for MICS 4 prisoners discussed above is a relatively blunt measure in that it is simply the total number of applicable prisoners multiplied by average costs for all prisoners. That is, the total cost of correctional institutions divided by the number of prisoner days. As a result, the difference between the costs of care for those convicted of MICS 4 and those found guilty of class A misdemeanors cannot, in a strict sense, be viewed as potential savings. A portion of the costs of operations (heat, certain maintenance costs, etc.) remain constant so long as the correctional facility in question holds prisoners.⁷ With the data available to us, we are unable to precisely identify what portion of the above differences in costs would be realized in actual savings to the State.

Loss of Revenue from Fines

In the fiscal years 2008-2012, the average of annual aggregate fines levied on MICS 4 convicts was about \$205,000. We do not have data on average misdemeanor fines but presume, for the sake of this report, that they would be roughly one-fifth of the MICS 4 average, or about \$41,000 per year. As a result of reclassification then, the state could expect to lose roughly \$154,000 in fines annually as a result of reclassification.

Legal Restrictions on Felons

Legal restrictions placed on felons but not on misdemeanants include the following:

AS 08.11—disqualified from obtaining certain professional licenses. (In certain instances, misdemeanants may also be barred from licensure.);

AS § 09.20.020—barred from serving as a juror until discharged from imprisonment, parole, and probation;

⁶ Mr. Matthews can be reached at 907-465-3313.

⁷ Presumably, with a significantly reduced prisoner population, portions of prisons or even entire facilities could be closed, thereby generating savings; however, we do not view the reclassification of MICS 4 alone as sufficient to cause such action.

AS § 11.61.200(a)(1)—may not possess a firearm capable of being concealed on one's person;

AS § 15.05.030—disqualified from voting until “unconditional release” from sentence;

AS § 18.65.440—revocation of licensure as a security guard upon conviction of a felony;

AS § 24.45.041—may not register as lobbyists; and

AS § 44.50.020-- commission as a Notary Public is unavailable to felons for ten years after conviction.⁸

We hope this is helpful. If you have questions or need additional information, please let us know.

⁸ Although we believe our research to be thorough, there may be additional legal restrictions placed upon felons that we were unable to locate due to variations in legal wording and construction.

Attachment A

AS § 11.71.040

1 of 1 DOCUMENT

ALASKA STATUTES
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*** Current through the 2011 First Regular Session of the Twenty-Seventh State Legislature and the 2011 First and Second Special Sessions. ***

*** Annotations current through opinions posted on Lexis.com as of June 22, 2012. ***

TITLE 11. CRIMINAL LAW
CHAPTER 71. CONTROLLED SUBSTANCES
ARTICLE 1. OFFENSES RELATING TO CONTROLLED SUBSTANCES

Go to the Alaska Code Archive Directory

Alaska Stat. § 11.71.040 (2012)

Legislative Alert: LEXSEE 2012 AK. ALS 57 -- See section 1.

Sec. 11.71.040. Misconduct involving a controlled substance in the fourth degree

(a) Except as authorized in *AS 17.30*, a person commits the crime of misconduct involving a controlled substance in the fourth degree if the person

(1) manufactures or delivers any amount of a schedule IVA or VA controlled substance or possesses any amount of a schedule IVA or VA controlled substance with intent to manufacture or deliver;

(2) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance;

(3) possesses

(A) any amount of a schedule IA or IIA controlled substance;

(B) 25 or more tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;

(C) one or more preparations, compounds, mixtures, or substances of an aggregate weight of

(i) three grams or more containing a schedule IIIA or IVA controlled substance except a controlled substance in a form listed in (ii) of this subparagraph;

(ii) 12 grams or more containing a schedule IIIA controlled substance listed in *AS 11.71.160(f)(7)* -- (16) that has been sprayed on or otherwise applied to tobacco, an herb, or another organic material;

(D) 50 or more tablets, ampules, or syrettes containing a schedule VA controlled substance;

(E) one or more preparations, compounds, mixtures, or substances of an aggregate weight of six grams or more

containing a schedule VA controlled substance;

(F) one or more preparations, compounds, mixtures, or substances of an aggregate weight of four ounces or more containing a schedule VIA controlled substance; or

(G) 25 or more plants of the genus cannabis;

(4) possesses a schedule IIIA, IVA, VA, or VIA controlled substance

(A) with reckless disregard that the possession occurs

(i) on or within 500 feet of school grounds; or

(ii) at or within 500 feet of a recreation or youth center; or

(B) on a school bus;

(5) knowingly keeps or maintains any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place that is used for keeping or distributing controlled substances in violation of a felony offense under this chapter or *AS 17.30*;

(6) makes, delivers, or possesses a punch, die, plate, stone, or other thing that prints, imprints, or reproduces a trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of these upon a drug, drug container, or labeling so as to render the drug a counterfeit substance;

(7) knowingly uses in the course of the manufacture or distribution of a controlled substance a registration number that is fictitious, revoked, suspended, or issued to another person;

(8) knowingly furnishes false or fraudulent information in or omits material information from any application, report, record, or other document required to be kept or filed under *AS 17.30*;

(9) obtains possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge; or

(10) affixes a false or forged label to a package or other container containing any controlled substance.

(b) It is an affirmative defense to a prosecution under (a)(4)(A) of this section that the prohibited conduct took place entirely within a private residence located within 500 feet of the school grounds or recreation or youth center. Nothing in this subsection precludes a prosecution under any other provision of this section or any other section of this chapter.

(c) Nothing in (a)(5) or (6) of this section precludes a prosecution or civil proceeding brought under any other provision of this section or any other section of this chapter or under *AS 17*.

(d) Misconduct involving a controlled substance in the fourth degree is a class C felony.

Attachment B

Nancy Meade, General Counsel, Alaska Court System, analysis of the fiscal impact of reclassifying Misconduct involving a Controlled Substance IV from a class C felony to a class A misdemeanor

I've looked into your questions about the potential fiscal impact on the court system of reclassifying the MICS 4 crimes from felonies to misdemeanors. You did clarify that you are interested in the impact of reclassifying *all* MICS 4 charges, not just the possession charges, and that is the data that I used. In other words, the case statistics are for all charges brought under AS 11.71.040, whether the charge was for manufacture/distribution of Schedule IVA or VA drugs under (a)(1) or (2), running a "crackhouse" under (a)(5), using fraudulent pharmaceutical credentials or forms under (a)(7)-(a)(10), or possession of smaller amounts of specified proscribed drugs under (a)(3). We don't keep case statistics by statutory subsection of the offenses, so pulling out just the possession offenses would not have been possible with our data.

I'm sorry to say that my responses are fairly vague, because, as you note, there are lots of missing data pieces and coming up with a reliable estimate of the impact is difficult. I can say, though, with the caveats below, that the proposal could likely result in some fiscal impact; I estimate is that it **could save up to \$35,000 per year** for the court system. This savings is mostly because, as you know, felonies are handled in superior court and misdemeanors in the district court, and, very generally, district court cases are less expensive for the court to process. Below is an explanation and the reasoning I used.

1. There were 977 cases filed with a MICS 4 charge in FY 12; the number was 878 in FY11 and 848 in FY12, so I'll average those three years and begin with an **assumed 900 cases filed per year** with at least one charge under AS 11.71.040.
2. Of the 900 cases, some have other charges, which could be other felonies or other misdemeanors. This is relevant because if the case had other felony charges, reclassifying the MICS 4 to a misdemeanor would have very little impact, as the case would remain in superior court for resolution of the accompanying felony charges. Our case statistics show that the MICS 4 charge was the highest or only charge in the case in 71-72% of the cases over the last three fiscal years, meaning that those cases were handled in the superior court, but would be handled in the district court if the charge became a misdemeanor. For this estimate, then, I took 71% of the assumed 900 cases to conclude that **approximately 640 cases per year** are either stand-alone MICS 4 or MICS 4 with misdemeanor charges, but not other felony charges. These cases would become misdemeanors and be handled by the district court rather than the superior court under the proposal.
3. There are three potential areas of cost savings from moving 640 criminal cases from the superior court to the district court: no grand juries are used in misdemeanors, misdemeanor trials use 6 rather than 12 jurors, and a district court judge (who would be handling these cases) is paid at a lower salary than a superior court judge.
 - a. *Grand Juries.* A defendant is not entitled to a grand jury for a misdemeanor charge, so that could be seen as a cost savings for the system. This does not appear to be the case however, mainly because grand jurors are paid one flat fee per day (\$25) no matter how many hours they serve that day. (There are 18 grand jurors, so at \$25/juror/day, a day when the grand jury convenes costs the court \$450 in juror payments.) And, I heard an estimate from one prosecutor that presenting a MICS 4 charge to a grand jury might take about 20 minutes. (This is, obviously, anecdotal and not researched at this point.) You could conclude that 640 cases x 1/3 of an hour equals 213 hours in grand juror time, and at 7.5 hours

per day, that is a savings of 28.5 days. Then, \$450/day x 28 days equals \$12,787 in saved grand jury costs.

But, this savings is theoretical and is unlikely to actually occur in practice. That's because in nearly every grand jury day, multiple cases are presented for consideration. It is not the case that a grand jury convenes for just one case, such that removing that case from the grand jury would save the day's pay. Instead, the incremental 213 hours per year that the MICS 4 cases might take in grand jury time (which is equal to just 17.5 hours per month spread over the 12 court locations where grand juries convene, for approximately 1-1/2 hours of additional grand jury time per month per location) would be absorbed in the days when the grand jury is already convening to hear numerous cases, and is already being paid. Because the number of cases is low and the time spent presenting them to the grand jury is minimal, it is likely that making these cases misdemeanors rather than felonies would result in **extremely small, if any, actual savings of court funds for the grand jury aspect.**

- b. *Petit (Trial) Juries.* Trials in misdemeanor cases use six jurors, while felony trials use twelve. Again, this could be seen as a cost savings for the court, since it would save half the expense of juror payments if the trials for the MICS 4 cases were misdemeanor trials in district court.

This savings, again, would be quite small. This is because so few cases in general proceed through to a trial; the court has an overall trial rate in criminal cases of between 1 and 5%. For the approximately 640 cases where MICS 4 was the highest or only charge over the last three fiscal years, our data shows that very few were resolved by a jury trial. (For example, of the 271 MICS 4 cases in Anchorage in FY12, zero proceeded to a jury.) For this calculation, if we approximate that 2% statewide would go to a jury, that means that there could be possibly 12 trials around the state; these could last from 1-8 days for ALL the charges to be presented and resolved by the jury. (This approximation of the number of trials is high; as explained in section c. below, the percentage is actually between ½% and 2%. For this calculation, however, the court is supplying an optimistic estimate.) Six extra jurors x \$25/day x average of 4 days equals a savings of \$600/trial, x 12 trials equals **\$7,200 in trial juror pay.**

The court would also see small savings from other costs associated with the jury, such as parking fees (for trials held in Anchorage) and a meal provided during jury deliberations (if they proceed through a meal time; \$16/lunch x 6 extra jurors = \$96/trial). We could estimate that half the trials require a juror meal, and half require parking fees to be paid by the court; the **incidental jury costs could reach approximately \$900** for this number of trials. These juror pay and incidental jury costs may overstate the savings in this category, but those amounts may be possible.

- c. *Judge Processing Time.* If 640 cases were reclassified as misdemeanors rather than felonies, and therefore moved from the superior to the district court calendar, the court would experience some savings because the cases would be presided over by judges who make a lower salary. In theory, one might estimate the savings by comparing 640 to the average number of cases a superior court judge handles, and computing the percent of a judge's time these cases would take, and then considering that percentage of a salary as a savings; the cases would be added to the district court judge's caseload, and the two would be netted for the total potential savings.

This approach, however, has a flaw that makes the result imprecise. That is, even though a superior court judge generally handles 600 cases per year, it does not follow that removing these 640 MICS 4 cases from the superior court calendar would save about one judge's worth of time. The reason is that MICS 4 cases have an *extremely* low trial rate: between ½% and 2% of the MICS 4 cases have gone to trial statewide over the last three years. (In FY12, a total of *four* MICS 4 cases went to trial; the number was 10 in FY11, and 13 in FY10.) Though a superior court judge handles about 600 cases per year, the vast majority of the judge's time (and therefore of the court's costs) is spent on the cases that go to trial. Those are the cases with discovery disputes, motions to dismiss, and motions to suppress evidence that are filed, argued, and decided, and with a number of hearings to discuss the parties' readiness and scheduling. The cases that go to trial also involve time-consuming jury issues such as the wording of instructions, questioning and choosing jurors, and the time spent on the trial itself.

The cases that don't go to trial, like most of the MICS 4 cases, take up very little judge time, generally speaking, since they are often resolved right at the initial hearing (arraignment), or by the parties in a plea agreement that is presented to the court at one hearing before the case is closed. Even though just four of the 640 MICS 4 cases went to trial last year (and therefore the vast majority of the MICS 4 cases did not take significant judge time), the superior court judges would still see some small decrease in workload if these cases were eliminated from the statewide superior court calendar. Even if there were an average of just eight trials per year statewide that could be moved from the superior to the district court, at an estimated four days per trial, the court could see a savings of **approximately \$17,760** (\$23,680 in saved superior court pro tem judge time, minus the additional \$5,920 in district court pro tem judge time; though the pro tem judges are paid the same for work in both courts, the caseload in the district court is about four times higher per judge, and therefore the computed cost per day for a district court case is about one-fourth of the cost for a superior court case.).

In addition, the MICS 4 cases that do *not* go to trial (the other approximately 632 of the 640) certainly take some judge time, though the amount is variable and can't be calculated with our data. Though many of the charges are dismissed or result in a guilty plea very quickly, some may take more judge time for status hearings or other disputes. (These cases also take up time for other court staff who open the file, enter data, track deadlines, and do other file processing tasks, but those costs would remain the same whether the charge were a felony or a misdemeanor.) The savings in judge time from moving these non-jury-tried cases to the district court could be up to \$10,000, though the amount cannot be determined with accuracy.

In total, then, we can say that the proposal could result in approximately \$35,000 in savings to the court system (\$7,200 in trial juror pay + \$900 in incidental jury costs + \$17,760 in judge's trial time + ~\$10,000 in other time). Thank you for the chance to explain this, and if you have any more questions or want further information, please give me a call.

Attachment C

Michael Matthews, Research Analyst IV, Alaska Department of Corrections, analysis of the fiscal impact of reclassifying Misconduct involving a Controlled Substance IV from a class C felony to a class A misdemeanor

Cost of Care for MICS-4 Offenders

MICS-4 Variables	Total MICS-4 Discharges	Annual Averages					
		Number of Days Incarcerated for MICS-4 from Intake to Discharge	Number of MICS-4 Discharges that go to Probation	Number of Discharges Going to Probation Sent to a CRC	Length of Stay for MICS-4 Offenders Discharged from CRC	Number of Discharges going to Probation not including CRC	Length of Stay on Probation for MICS-4 not including CRC
Discharge Years (Calendar Year)							
2008-2011	1289	457	179	131	59	48	441

Class A Misdemeanors

Average Length of Sentence for Misdemeanor A Convictions Where There Were no Other Convictions of Greater Offense	Average Length of Stay on Probation for Misdemeanor A Discharges
156	263

> Total cost of care for MICS-4 offenders was calculated by multiplying the number of MICS-4 discharges by the average number of days incarcerated and multiplying the product by the average daily cost of care for offenders in institutions. Additionally, the cost of housing MICS-4 discharges in a CRC was created using the same methodology and added to the product of the institutional stay. Finally, the cost of putting MICS-4 discharges on probation was also added to the sum.

>The cost of Misdemeanor A offenders was created much the same way but with the following exceptions:

- ~ Instead of using average number of days incarcerated, average length of Misdemeanor A sentence was used. Since it is impossible to determine how long a judge will require an offender to remain incarcerated should the felony C drug conviction be changed to Misdemeanor A, the average length of sentence was used instead of average length of incarceration.
- ~ Very few discharged Misdemeanor A offenders ended up housed in a CRC, so this number was not used.
- ~ Average length of probation for Misdemeanor A discharges was calculated the same as probation length for felony C discharges.

Constants

Institution Daily Cost of Care	CRC daily Cost of Care	Probation daily Cost of Care
\$140.46	\$80.17	\$6.73

Calculations

Institutional Cost of Care for Felony C MICS-4 Offenders	CRC Cost of Care for Felony C MICS-4 Offenders	Probation Cost of Care for Felony C MICS-4	Total Cost Associated with MICS-4 Offenders from Intake to Full Discharge	Total Cost if Felony C Drug Convictions were Misdemeanor A Offenses	Potential Reduction in Cost
\$82,432,723.76	\$2,483,198.41	\$566,777.11	\$85,482,699.28	\$28,311,035.86	\$57,171,663.42

>Please note: These numbers should not be interpreted as realized savings. Actual savings in cost are difficult to calculate. For example, the heating bill for an institution will remain unaffected regardless of whether MICS-4 is a felony or misdemeanor.

Memo: Comparison between Alaska and Wyoming Possession Laws and Current Corrections Outcomes

Prepared for: Rick Allen, Chuck Kopp

Author: Forrest Dunbar

February 19th, 2013

Current Legal Regime

<u>Substance</u>	<u>Alaskan Felony Limits</u>	<u>Wyoming Felony Limits</u> ¹
Cocaine	Any amount = felony.	3 grams
Heroin	Any amount.	3 grams (powder form); 300 milligrams (liquid form)
Methamphetamine	Any amount.	3 grams
LSD	Any amount.	300 milligrams
Psychedelic Mushrooms	Any amount.	3 grams
Oxycodone/controlle d pharmaceuticals (IA & IIA)	Any amount	3 grams in "pill or capsule form"

	<u>Alaska Statute</u>	<u>Wyoming Statute</u>
<u>"Three Strikes" Language</u>	No three strikes language; automatic felony.	"Any person convicted for a third or subsequent offense under this paragraph, including convictions for violations of similar laws in other jurisdictions, shall be imprisoned for a term not more than five (5) years, fined not more than five thousand dollars (\$5,000.00), or both."

¹ Source: Wyoming Statute 35-7-1031. Unlawful manufacture or delivery; counterfeit substance; unlawful possession. Available at: <http://legisweb.state.wy.us/statutes/statutes.aspx?file=titles/Title35/T35CH7AR10.htm>

Current Outcomes

<u>Category</u>	<u>Alaska</u>	<u>Wyoming</u>
Total Corrections Population, 2011	5,957 ²	3,734 ³
Per capita correction populations, 2011, based on U.S. Census estimates	5,997 : 723,860 = 1 prisoner per 129 residents	3,734 : 567,356 = 1 prisoner per 152 residents
Percent of offenders (for AK) or probationers (for WY) who successfully complete supervision and do not return to custody within three years of release from supervision. (2008 population) ⁴	Felons: 61 Misdemeanants: 52 (recidivism rate of 48% for misdemeanants and 39% for felons, within just two years from release)	Felons: 66 Misdemeanants: 54 (recidivism rate of 46% for misdemeanants and 34% for felons, within three years from release)
Percent of Illicit Drug Use Including Marijuana in Past Month, Age 12+ (2009-2010) ⁵	14.15	7.07
Percent of Illicit Drug Use Excluding Marijuana in Past Month, Age 12+ (2009-2010) ⁶	3.98	3.27

² Alaska Department of Corrections, Offender Profile, at 7 (2011).

³ See The Sentencing Project, Wyoming: Total Offender Population (2011). Available at: <http://www.sentencingproject.org/map/statedata.cfm?abbrev=WY&mapdata=true>. It is difficult to perform an exact comparison for prisoners, as Wyoming does not operate a unified jail/prison system, as does Alaska. However, this count tracks closely to the Wyoming DOC Annual Report with regard to the prison population; the added jail population is based on a 2009 estimate.

⁴ See Wyoming Department of Corrections Annual Report, REPORT PERIOD: FY2011 (July 1, 2010 through June 30, 2011); Alaska Judicial Council, *Criminal Recidivism in Alaska, 2008 and 2009*, at 39 (November 2011). Available at: <http://www.aic.state.ak.us/reports/recid2011.pdf>. Measures of offenders versus probationers are not precisely the same, but more inclusive "offenders" measurement for WY would likely further skew the statistics in WY's favor, due to the higher success rate in WY's parolee population.

⁵ Substance Abuse and Mental Health Services Administration, "Appendix C: Comparison of the 2008-2009 and 2009-2010 Model-Based Estimates (50 States and the District of Columbia)." Available at:

<http://www.samhsa.gov/data/NSDUH/2k10State/NSDUHsae2010/NSDUHsaeAppC2010.htm#tabC.1>

⁶ *Id.*

Proposed Legal Regimes

<u>Substance</u>	<u>Alaska</u>	<u>Wyoming (Current)</u>
Cocaine	3 grams	3 grams
Heroin	500 milligrams	3 grams (powder form); 300 milligrams (liquid form)
Methamphetamine	3 grams	3 grams
LSD	300 milligrams	300 milligrams
Psychedelic Mushrooms	3 grams	3 grams
Oxycodone/ controlled pharmaceuticals (IA & IIA)	15 or more tablets, ampules, or syrettes	3 grams in "pill or capsule form"

	<u>Alaska Statute</u>	<u>Wyoming Statute</u>
<u>Three Strikes Language</u>	"...any amount of a schedule IA or IIA controlled substance, and, two or more times within the preceding five years, the person was convicted under (i) AS 11.71.010 - 11.71.050; or (ii) a law or ordinance of this or another jurisdiction with elements similar to those of an offense under the provisions described in (i) of this subparagraph... [is guilty of a felony.]"	"Any person convicted for a third or subsequent offense under this paragraph, including convictions for violations of similar laws in other jurisdictions, shall be imprisoned for a term not more than five (5) years, fined not more than five thousand dollars (\$5,000.00), or both." ⁷

⁷ Source: Wyoming Statute 35-7-1031. Unlawful manufacture or delivery; counterfeit substance; unlawful possession. Available at: <http://legisweb.state.wy.us/statutes/statutes.aspx?file=titles/Title35/T35CH7AR10.htm>

FACTORS DRIVING ALASKA'S PRISON POPULATION GROWTH

Prepared by Carmen Gutierrez, DOC

August 24, 2012

I. Introduction:

Today Alaska is at a crossroads. DOC has opened GCCC at a cost of \$250 million to Alaskans with an annual operating budget of \$50 million. We also know that if our prison population continues to grow at 3% per year plus, the state's prisons will be operating, once again, at 100% capacity by 2016. If our growth rate continues at its present pace we can either start planning to build a new prison today, recommit to incarcerating out-of-state, or look at proven best practice approaches that more effectively address criminality, reduce recidivism and build healthier, safer Alaskan communities.

Research shows that it is possible for Alaska to cut corrections costs without sacrificing public safety. This can be accomplished by adopting evidence-based practices and a cross-governmental approach to reform, focusing resources on high-risk offenders, supporting mandatory supervision and treatment in the community, and using real-time data and information to drive policy-making decisions. Research shows that implementation of evidence-based practices/programs leads to an average decrease in crime of between 10% and 20%.¹ Experience in other states such as Texas, Virginia and Oregon further reveals that with the implementation of these evidence-based approaches, these and other states have successfully cut corrections costs and reduced crime while at the same time improving offender outcomes and ensuring public safety.

II. Statement of the Problem: DOC's growing prison population, the increased costs to the State and the fact that under current practices, 66% of prisoners released from custody come back within the first three years of release. Alaskans do not appear to be receiving good value for the criminal justice dollars spent.

1. The state's prison population is growing at just over 3% per year. Since 2005, the hard bed prison population grew from 4,231 to 4,961 in 2012. At this current rate, DOC's inmate population will reach 6,313 by 2020.
2. Since 2005, DOC's budget has grown from \$166.698.3 to 323.191.7 in 2013. This is an average of more than 5.5% growth each year. DOC's agency operations accounts for the state's fifth highest user of GF funds exceeded only by HSS, EED, U of A, and DOT.
3. The 2012 daily cost to incarcerate in a hard prison bed per inmate per day is \$135.00 up from \$110.00 in 2005.
4. The average length of stay in prison for a felony offender has increased. In 2002, the average length of stay for a felon was 6.60 years. By 2011, that had grown to 7.20.

¹ *One in 31: The Long Reach of American Corrections*, March 2009, 24.

5. Two out of three prisoners released from custody return to custody within three years of release for a re-arrest, reconviction or remand on a Petition to Revoke Probation.²
6. More than 50% of the approximate 6000 people on probation in 2011 had a Petition to Revoke Probation filed against them, 67% of these petitions alleged technical or no new crime allegations.³

III. What are the factors driving Alaska's 3% per year growth rate:

1. Over the last ten years, DOC has moved from primarily incarcerating violent offenders to incarcerating primarily non-violent offenses. In 2002, 58% of DOC's prisoners were violent offenders. In 2010 that had reversed; 64% were non-violent offenders.⁴
2. Probation violations: The single highest cause for felony admission to prison is probationers' failure to abide by conditions of probation. This results in a Petition to Revoke Probation (PTRP) filed by the probation officer. The filing of PTRPs has risen dramatically over the last several years.
 - a. In 2002, there were 1,641 jail admissions for probation violations. In 2010, there were 2,755. By July 2011, 3889 of 6000 total probationers statewide had PTRPs filed. Of the PTRPs filed, 67% were for technical violations and the remaining 33% were for new crimes.
3. Felony Theft in the Second Degree is the third greatest reason for felony admission. Prison admission for these crimes has increased from 875 in 2002 to 1037 in 2011.⁵ In short, the number of Felony C Theft convictions has been steadily increasing at a faster pace than all other convictions. In 2011, felony property offenses represented 32% of all felony cases filed with the court system. The length of the sentence imposed for Felony C Theft has also been steadily increasing since 2005.
4. Incarceration for both misdemeanor and felony drug offenses has increased by 63% since 2002, from 967 admissions to 1,574 in 2010. During this same period, admissions for felony drug offenses have risen by over 81%.⁶ In 2011, 348 admissions for Misconduct Involving a Controlled Substance (possession), a class C felony offense, were for offenders between the ages of 18 to 29 years of age.

² *Criminal Recidivism in Alaska*, Alaska Judicial Council (January 2007). This study was updated by the *Criminal Recidivism in Alaska*, 2008 and 2009, Alaska Judicial Council (November 2011) study which followed released prisoners for two years and found the recidivism rate had remained about the same.

³ DOC probation data.

⁴ October 2011 DOC Offender Data.

⁵ DOC data prepared by DOC data analyst, February 2012.

⁶ *Id.*

IV. What DOC is currently doing to reduce recidivism:

1. Implemented PACE in Anchorage, Palmer and Fairbanks ⁷
 - a. Results of the Alaska Judicial Council 9/16/11 Preliminary Evaluation
 - PACE appears to be successful at reducing positive drug tests.
 - 66 percent of the PACE probationers were free of any positive drug tests during their first three months on PACE.
 - In contrast, prior to their enrollment in PACE, only 20 percent of those probationers were free of positive drug tests.
 2. DOC is expanding its rehabilitative institutional programs.
 - a. The best evidence-based institutional Substance Abuse Programs have been shown to reduce recidivism by 9 to 12% over a 3 year period. To date, DOC's programs Living Success Substance Abuse Treatment (LSSAT) and the Residential Substance Abuse Treatment (RSAT) programs are out-performing these national outcomes. DOC has followed substance abuse program completers for two years and is showing a 21% reduction in recidivism. We currently have the LSSAT in 8 of 13 institutions and the RSAT in two institutions. We are in the process of starting a LSSAT at GCCC with a RSAT to begin in FY14.
 - b. Prison Education programs work. Although DOC does not currently have recidivism data on those who have participated in its Education/Vocational Education programs, national data shows that basic or postsecondary education programs reduce recidivism by 8.3%. So do correctional industries programs, which reduce recidivism rates by 6.4%.
 - c. Cognitive Behavioral therapy (CAP) in prison or in the community reduces recidivism. A small sample study on the re-arrest of Alaska CAP completers compared to non- completers showed a recidivism reduction of 9.6%.
3. DOC's Offender Management Plan implemented in January 2012 and set forth in P & P 818.01 is similar to the approach Oregon DOC has been using since 2004. The Oregon approach is reported to have reduced Oregon's recidivism rate to the lowest in the country at 23%. ⁸ DOC has no outcome measures at this time given that it implemented the policy eight months ago.
4. As a result of technical assistance received from the National Institute of Corrections, DOC is reexamining the way it supervises probationers moving to evidence-based approaches. As a result of the NIC TA received and the analysis of its own data, the Division of Parole and Probation learned that it is not supervising based upon the results of its Level of Service Inventory Revised (LSI-

⁷ The Fairbanks and Palmer PACE programs are too new to have any evaluative data at this time.

⁸ Oregon's recidivism definition is narrow than the one used by the Alaska Judicial Council's 2007 and 2011 recidivism studies.

R) risk/needs assessment tool. In many cases it was found to be over-supervising low risk probationers and not providing sufficient supervision of higher risk probationers where more direction was needed on fundamental issues such as housing, employment and sober/mental health supports.

5. The Alaska Prisoner Reentry Task Force is encouraging the creation of community coalitions to address some of the challenges that face newly released individuals when returning to their communities. Community coalitions now exist in Kenai, the Mat-Su Valley and Anchorage.
6. DOC is working with the Department of Law and the Fairbanks Court System to implement the Fairbanks PACE Misdemeanor Domestic Violence Demonstration Project. Under this model, high-risk misdemeanor DV offenders are supervised by a DOC probation officer utilizing the PACE approach.
7. DOC is in the process of using the PACE model as an intermediary sanction approach for furloughed inmates.



SENATOR FRED DYSON

To: Senator Kevin Meyer, Co-Chair
Senator Pete Kelly, Co-Chair
Senate Finance Committee

From: Senator Fred Dyson

Date: March 19, 2013

Re: **SB 56 – Response to Questions from March 18th Hearing**

On Monday, March 18th, the Senate Finance Committee heard public testimony regarding SB 56, a bill which will reclassify certain nonviolent, small-quantity drug offenses as misdemeanors. Both supporters and opponents spoke to the substance of the bill. As the bill's sponsor, I would like to clear the air about a number of claims raised in the committee hearing.

First, I want to say that I have tremendous respect for Alaskans at the frontlines of our struggle with drugs and drug addiction, including the police officers and prosecutors who voiced their concerns during the hearing. Many of these concerns are valid, and deserve to be addressed.

Regarding the Quantity Limits Laid Out in SB 56

Officer Seth McMillan of APD expressed doubts regarding the appropriate quantity thresholds for an implied distribution felony as set out in SB 56. I was pleased that the officer seems to agree that *some* type of threshold is necessary to differentiate drug dealers from drug abusers, and that the current system, which brings down an automatic felony on a drug user or possessor for any amount whatsoever, is not effective.

The quantity limits laid out in SB 56 are based on a survey of other jurisdictions that now prosecute simple possession as a misdemeanor, or otherwise differentiate between "small" quantities and larger amounts that imply distribution. While detailed data from every jurisdiction was a bit difficult for my staff to track down, here is a chart from several of these jurisdictions:

Limits for "User Quantities" or Analogous Small Amounts of Controlled Substances

<u>State</u>	<u>Cocaine</u>	<u>Heroin</u>	<u>Methamphetamine</u>	<u>LSD</u>
Maine	7 grams	1 gram	7 grams	25 tabs or 1,250 micrograms (.000125 grams)
Oregon (simple possession is a felony; this defines "small amounts")	10 grams	5 grams	10 grams	Two hundred or more "user units"
South Carolina	1 gram	2 "grains" (0.13 grams)	1 gram	50 micrograms (.00005 grams)
Tennessee	.5 grams	(data missing)	.5 grams	(data missing)
Vermont	2.5 grams	.2 grams	2.5 grams	100 milligrams (0.1 grams)
Wisconsin	1 gram	Any amount	Any amount	1 gram
Wyoming	3 grams	0.3 grams (in liquid form). 3 grams in powder form	3 grams	0.3 grams

As you can see, SB 56's proposed quantity limits place us at about the average of these jurisdictions. In fact, our reform tracks most closely with the laws of Wyoming, a state which shares many of Alaska's political and demographic/geographic features:

Alaska & Wyoming Felony Quantities

<u>Substance</u>	<u>Alaska (Proposed)</u>	<u>Wyoming (Current)</u>
Cocaine	3 grams	3 grams
Heroin	500 milligrams	3 grams (powder form); 300 milligrams (liquid form)
Methamphetamine	3 grams	3 grams
LSD	300 milligrams	300 milligrams
Psychedelic Mushrooms	3 grams	3 grams
Oxycodone/ controlled pharmaceuticals (IA & IIA)	15 or more tablets, ampules, or syrettes, or 3 grams, whichever is smaller.	3 grams in "pill or capsule form"

I again want to point out that nothing in this bill prevents law enforcement or prosecutors from pursuing felony charges against drug dealers when they have evidence of distribution. Regardless of

the quantity possessed by a drug dealer, if there is evidence of distribution, the offender will be subject to a felony distribution charge.

Regarding the Assertions of Deputy Attorney General Rick Svobodny

I was pleased that Mr. Svobodny pointed out that our current laws on drugs, as structured in the early 1980's, do not take the costs of incarceration or adjudication into account. While SB 56 does not attempt to go line-by-line through our penal code and do so, it is very much in the spirit of matching laws with their real-world costs that this bill was introduced.

Mr. Svobodny also correctly pointed out that the "look back" portion of SB 56's three-strikes provision goes back for 5 years, while the "look back" for DUI's is currently 10 years. Though SB 56's "look back" differs from our DUI laws, I believe it is of an appropriate length for this type of offense. If a drug user has remained clean for 8 years, for example, I do think that if they happen to "fall off the wagon" we should acknowledge the capacity for rehabilitation demonstrated by this extensive clean period. In contrast, I find DUI's more troublesome, even if spaced out over many years, because of the very real possibility of a victim that stems from this behavior.

Mr. Svobodny further stated that SB 56 might be the "death knell" for therapeutic courts in Alaska. As a supporter of therapeutic courts, this was a topic my office gave considerable thought to before introducing SB 56. We would not have introduced the bill had we believed it would actually eliminate these treatment efforts.

Because SB 56 contains a three-strikes provision that preserves felony charges for drug-addicted repeat offenders (a provision of the bill that was suggested by an Anchorage judge, not coincidentally), we believe that the felony hammer will remain for those serious addicts most in need of therapeutic court intervention. Furthermore, after numerous conversations with stakeholders, we feel that an appropriately-structured misdemeanor sentence can be incentive enough to keep people in treatment, especially those first and second time offenders who are more amenable to that treatment. We can see this dynamic at work in the therapeutic courts run by the Municipality of Anchorage, which works with only misdemeanants.

Mr. Svobodny also mentioned that many offenders who currently qualify for therapeutic courts voluntarily choose jail time instead, even with the option of a "Suspended Imposition of Sentence" (SIS) for their felony charge. What he failed to point out is that after the completion of an SIS—wherein an offender avoids jail time and has the charge "set aside"—offenders nevertheless *still receive the label of a convicted felon* in our current system. I submit that this is the most serious disincentive for participation in the therapeutic courts, and urge the Department of Law to help address it.

Similar to his concerns about treating misdemeanants in the therapeutic courts, Mr. Svobodny also raised the issue of probation officers and misdemeanants. Yet here too, he misspoke. Mr. Svobodny

stated that Alaska provides no probation officer supervision to misdemeanants. This is not the case. While it is true that at present the DOC does not provide Division of Probation and Parole supervision to misdemeanants, nearly all misdemeanants convicted of substance abuse offenses are assigned to the Alcohol Safety Action Program (ASAP) and with it a probation officer from the Department of Health and Social Services. Supervision by this probation officer and completion of ASAP involves an initial assessment of the misdemeanant, assignment to treatment if appropriate, and follow up with the treatment provider to ensure that the offender completed this treatment. While the program's name might suggest an exclusive focus on alcohol offenses, research conducted by Mr. Dunbar, whose report you received, indicated that ASAP can and does work with the abusers of other substances. A supervisor at ASAP confirmed that they already work with a number of drug addicted convicts.¹

Finally, the full version of Mr. Dunbar's report also expressly addresses Mr. Svobodny's prediction that some prosecutorial practices will change (e.g. some MICS-3's will no longer be negotiated down to MICS-4's); that is why the report provides a "low," "medium," and "high" estimate of savings, each corresponding to a different level of prosecutorial adjustment.

Regarding Federal Grant Monies

Senator Bishop asked Mr. Svobodny if Alaska might miss out on certain federal grant monies if we adopted this reform. While Mr. Svobodny did not claim to know of specific grants that might be threatened by this reform, he did allude to problems winning federal grants now experienced by Colorado and Washington State following their legalization of marijuana. But this assertion conflates two different types of reforms. SB 56 does not legalize anything. Every drug that is currently illegal will remain illegal under SB 56, and will be subject to felony charges with regards to distribution—where the majority of federal dollars are targeted.

My office is aware of no evidence that the fourteen states which already classify possession as a misdemeanor are categorically disadvantaged when applying for federal grants because of this feature of their laws, or that they receive less grants per capita. Given that classifying possession as a misdemeanor while maintaining distribution felonies is a far cry from legalization, I doubt that such evidence exists.

Regarding the Seriousness of a Class A Misdemeanor

I would like to close with this point, because I believe it is tremendously important: at times during the public testimony, it was asserted or alluded to that by reclassifying possession as a Class A Misdemeanor we are "sending the wrong message to children," or indicating to them that we do not

¹Dunbar, Forrest, "Reclassifying Nonviolent, Small Quantity Drug Possession as a Misdemeanor: Potential Impacts on Alaska's Budget and Society," at 39 (January 7th, 2013). Summary version in committee packet; full version available upon request.

consider drug abuse a serious crime. Those of you who have worked with me know that I care deeply about Alaska's youth, and I think always about how our policies affect them. But I simply do not believe that a Class A Misdemeanor is an ambiguous message. It is a very serious charge—the highest level of misdemeanor—and can carry with it up to a year in prison and a \$10,000 fine. I suspect that if any of you told your son or daughter that their behavior could lead to a year in jail and a \$10,000 fine, they would not view that behavior as being condoned by our laws.

For comparison, I have included several other offenses that are Class A Misdemeanors. I think you will agree that they are unambiguously and rightly condemned by our legal code, and are perhaps even more dangerous than simple drug possession:

Assault in the Fourth Degree (AS 11.41.230), wherein an offender “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.**

A second DUI, as well as a first (AS 28.35.030).

Endangering the Welfare of a Child in the First Degree (AS 11.51.100 (b)), when the charge relates to operating a vehicle while under the influence of alcohol or another substance (as defined in AS 28.35.030).

Endangering the Welfare of a Vulnerable Adult in the Second Degree (AS 11.51.210) wherein an offender “fails without lawful excuse to provide support for the vulnerable adult and the vulnerable adult is in the person's care (1) by contract or authority of law; or (w) in a facility or program that is required by law to be licensed by the state.”

Sexual Abuse of a Minor in the Fourth Degree (AS 11.41.440), wherein either “(1) being under 16 years of age, the offender engages in sexual contact with a person **who is under 13 years of age** and at least three years younger than the offender; or (2) being 18 years of age or older, the offender engages in sexual contact with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim.”

These are all serious crimes, most of which require victims. Yet all of them are Class A Misdemeanors. If a Class A Misdemeanor was truly such an insignificant charge, we would have constituents—not to mention the Department of Law—beating down our doors to make these felonies. That this has not occurred demonstrates that a Class A Misdemeanor is far from a slap on the wrist or the legal equivalent of decriminalization. I thus believe that a Class A Misdemeanor is an appropriately serious charge for nonviolent, small-quantity offenders, and carries with it a strongly disapproving social message.

Representative Doug Isaacson
Alaska State Legislature



Rep.doug.isaacson@akleg.gov • phone: 907-465-4527 • fax: 907-465-2197

To: House Judiciary Committee
Rep. Wes Keller, Chair

From: Rep. Doug Isaacson

A handwritten signature in black ink, appearing to read "Doug Isaacson", written over the "From" line.

Re: HB 178 - April 3rd Hearing of the Judiciary Committee

This memo mirrors a similar response put out by Senator Dyson's office on March 19th, regarding HB 178's companion bill in the Senate. That response addressed testimony given by Deputy Attorney General Rick Svobodny and others before the Senate Finance Committee. Because Mr. Svobodny's testimony remained substantively unchanged between March 18th and April 3rd, most of the explanation and rebuttal already laid out by Senator Dyson's office stands. However, we have sharpened the focus on several points raised, provided additional detail where necessary, and omitted several sections present in the memo of March 19th, already included in the House bill committee packet.

Regarding the Comments of Deputy Attorney General Rick Svobodny

1. On Mandatory Sentencing

The supporters of this reform have analogized the proposed "three-strike" system to the State's approach to DUI's, domestic violence and theft. I believe that in the most important respect this analogy holds true: we do not usually impose an immediate felony sentence on first time offenders in those other offense categories, but provide an escalating punishment system that allows for redemption for first and second time offenders. However, Mr. Svobodny points out that unlike in the DUI context, there is no mandatory sentencing in this bill, and in that way possession offenses will not be analogous. This observation is correct, but not dispositive; I do not believe mandatory minimum sentences are appropriate in this context.

For possession offenders, I believe that judges should be given the discretion to order screening and treatment. These are tools they already have and widely deploy. We know from conversations with judges and attorneys that in the vast majority of instances when an offender is convicted of possession of a Schedule IA or IIA substance they will be ordered into a screening program similar to that conducted in Alcohol Safety Action Program (ASAP). In the rare case that this does not occur, it is because a judge has evaluated the specific circumstances (such as the case of the hunter with the old Oxycotin in his pocket that was raised in committee) and determined that this response is not necessary. We believe that judges are in the best position to make those calls based on the facts of the case and the criminal history of the defendant.

Studies have shown that providing drug treatment to offenders who are experimenters rather than addicts can actually be deleterious, and can lead to a deepening drug problem.¹ Furthermore, in cases where a prosecutor strongly believes that an offender is an addict, they have the ability to stress treatment elements in their plea bargain negotiations. They thus have a tremendous amount of influence over the process. I am confident that the overwhelming majority of people who require screening and treatment will receive that treatment under HB 178, and I believe the increased costs and negative side effects of a mandatory sentencing scheme significantly outweigh the benefit it might provide in capturing the very rare offender who falls through the cracks on their first offense.

2. Concerns about the "Look Back" Provision

Mr. Svobodny also correctly points out that the "look back" portion of HB 178's three-strike provision goes back for 5 years, while the "look back" for DUI's is currently 10 years. Though HB 178's "look back" differs from our DUI laws, it is an appropriate length for this type of offense. A drug user that has remained clean for 8 years, for example, and happened to "fall off the wagon" should be acknowledged as an example of the capacity for rehabilitation demonstrated by this extensive clean period. In contrast, I find DUI's more troublesome, even if spaced out over many years, as this is a lethal behavior (operating a motor vehicle while impaired) with the very real possibility of an innocent victim.

Mr. Svobodny raised the hypothetical of an offender violating at two or three year increments, and thus avoiding jail time. He stated that the first offense could lead to "no jail time," and the second offense could also lead to "no jail time," and the third, and the fourth, and so on, as the offender (rather cleverly, considering he or she would presumably be a drug addict) avoided the five year felony window. In addition to this being an unrealistic picture of offender behavior, it is also an extremely unlikely representation of prosecutor approaches to the plea and

¹ See e.g. the research underlying the Substance Abuse and Mental Health Services Administration's "Treatment Improvement Protocols," particularly protocol #43, which discusses matching patients "to appropriate levels of care and types of services." See also the work of Dr. Mark A.R. Kleiman of the UCLA School of Public Affairs.

sentencing processes. A repeat offender like the one he describes is almost certain to see jail time, even if he or she is fortuitous enough to avoid a felony charge. Our judges and prosecutors have easy access to records of prior offenses, and take those factors into consideration at sentencing.

3. Regarding the Therapeutic Courts

Mr. Svobodny stated in the Senate Finance hearing that reclassification might be the “death knell” for therapeutic courts in Alaska. Senator Dyson refutes this statement saying, “As a supporter of therapeutic courts, this was a topic my office gave considerable thought to before introducing SB 56. We would not have introduced the bill had we believed it would actually eliminate these treatment efforts.”

Because HB 178 contains a “three-strike” provision that preserves felony charges for drug-addicted repeat offenders (a provision of the bill that was suggested by an Anchorage judge involved in the therapeutic courts, not coincidentally), we believe that the felony hammer will remain for those serious addicts most in need of therapeutic court intervention. Furthermore, after numerous conversations with stakeholders, we feel that an appropriately-structured misdemeanor sentence can be incentive enough to keep many people in treatment, especially those first and second time offenders who are more amenable to that treatment. We can see this dynamic at work in the therapeutic courts run by the Municipality of Anchorage, which works with only misdemeanants.

Mr. Svobodny also mentioned that many offenders who currently qualify for therapeutic courts voluntarily choose jail time instead, even with the option of a “Suspended Imposition of Sentence” (SIS) for their felony charge. What he failed to point out is that after the completion of an SIS—wherein an offender avoids jail time and has the charge “set aside”—offenders nevertheless *still receive the label of a convicted felon* under our current system. I submit that this is the most serious disincentive for participation in the therapeutic courts, and urge the Department of Law to help address it.

Testimony by a representative of the Court System before the Senate Finance Committee further established that the Courts do *not* believe that there will be a shortage of individuals in the Anchorage drug court following reclassification, because of the high number of eligible individuals. I was surprised that Mr. Svobodny reiterated his claim following the Court representative’s testimony.

The problems in the Bethel therapeutic court, which Mr. Svobodny raised as an example of low participation, go far beyond any felony/misdemeanor distinction, and have been a frequent topic of conversation at the Criminal Justice Working Group.

Finally, Mr. Svobodny failed to mention that, while it is true that the Anchorage drug court serves exclusively felons, there are a number of mental health courts around the state that

serve primarily or exclusively misdemeanants. This is important, because many of those offenders are dual-diagnosis, suffering from both a mental disorder and substance abuse problems. This reform would actually *increase* the pool of eligible offenders for those therapeutic courts.

4. Probation Officers and Supervision

Similar to his concerns about treating misdemeanants in the therapeutic courts, Mr. Svobodny also raised the issue of probation officers and misdemeanants. He believes that probation officers are helpful in ensuring that offenders are both provided support and held accountable, a conviction that I share.

While it is true that the DOC does not provide Division of Probation and Parole supervision to misdemeanants, nearly all misdemeanants convicted of substance abuse offenses are assigned to programs such as the Alcohol Safety Action Program (ASAP) and with it a probation officer from the Department of Health and Social Services. Supervision by this probation officer and completion of ASAP involves an initial assessment of the misdemeanant, assignment to treatment if appropriate, and follow up with the treatment provider to ensure that the offender completed this treatment. While the program's name might suggest an exclusive focus on alcohol offenses, ASAP can and does work with the abusers of other substances. A supervisor at ASAP confirmed that they already work with a number of drug addicted convicts.²

5. Changing Prosecutor Behavior

Following this reform, Mr. Svobodny warned that some cases that are currently plead down to MICS-4 possession felonies would instead be prosecuted as higher level distribution felonies, because prosecutors are unwilling to agree to misdemeanor charges. The full version of Mr. Dunbar's report expressly addresses Mr. Svobodny's prediction that some prosecutorial practices will change as a result of reclassification (e.g. some MICS-2's and MICS-3's will no longer be negotiated down to MICS-4's); that is why the report provides a "low," "medium," and "high" estimate of savings, each corresponding to a different level of prosecutorial adjustment. Our cost savings projections thus take his prediction into account.

However, I cannot help but point out that if the Department of Law has evidence of drug distribution it should *already* be charging and pursuing those crimes as such. If this bill is coupled with an increased focus on drug distribution and a more aggressive approach towards drug dealers, I see that as a net positive, not a problem. In the rare instances where the DOL feels that a drug distribution charge is truly disproportionate to an offense, as in the Juneau case Mr. Svobodny raised, *and* that drug dealer has quantities small enough to avoid our felony

²Dunbar, Forrest, "Reclassifying Nonviolent, Small Quantity Drug Possession as a Misdemeanor: Potential Impacts on Alaska's Budget and Society," at 39 (January 7th, 2013). Summary version in committee packet; full version available upon request.

thresholds, then I would think that prosecutors should be content in pleading down to Class A misdemeanor and insisting on the full year in prison that can accompany that charge.

6. Prior Offenses in Other Jurisdictions

This reform establishes an “escalating punishment” regime, wherein an offender is subject to a felony charge if they have previously offended under our drug statutes. This includes offenses prior to the passage of this bill and offenses in other jurisdictions. Mr. Svobodny expressed concern that it will be difficult for the Department of Law to establish that an offense in another jurisdiction is analogous to an Alaskan offense, because other jurisdictions might have their own quantity limits—or no limits—that establish drug felonies and misdemeanors.

This logic does not follow. The language of HB 178 states clearly that an offender earns a “strike” if they violate:

- (i) AS 11.71.010 - 11.71.050; or
- (ii) a law or ordinance of this or another jurisdiction with elements similar to those of an offense under the provisions described in (i) of this subparagraph”

This covers the *highest level* of distribution crime (AS 11.71.010—Misconduct Involving a Controlled Substance in the First Degree) all the way down to a possession misdemeanor, following reform, of *any* amount of a Schedule IA or IIA substance (AS 11.71.050, as revised). Any conceivable crime of possession or distribution of a substance listed in Schedule IA or IIA, of *any* quantity, would count as a “strike” for the purposes of this statute. Moreover, in the determination of whether or not an offense from another jurisdiction is a “strike,” there is no differentiation between a felony and misdemeanor.³ Thus, the “strikes” provision should be a very easy element of the crime for the Department of Law to prove, because whatever the prior offense in another jurisdiction was, if it involves a Schedule IA or IIA substance, it counts as a “strike.”

7. “Bifurcated Trials”

Mr. Svobodny claimed that this reform will lead to “bifurcated trials” or even two trials for every offense. My staff discussed this issue at length with a number of criminal attorneys. According to those accounts, “bifurcated trials” are not two separate trials, but rather two separate parts of the same trial. The first part of the trial is used to prove possession; the second part determines “prior bad acts,” i.e. the former convictions needed for the “three strikes” language.

³ Though of course there may be a difference in sentencing based on the severity of a crime in another jurisdiction. But this factor already exists in all our laws, including the drug laws at issue.

But these “bifurcated trials” are not a major driver of expense. Alaska already has a number of contexts, including DUI and low-level theft, which use this system. The same jury is utilized in both portions of these trials, helping to alleviate the jury pool exhaustion warned about by Judge Steinkruger. In the vast majority of these cases, the defense simply stipulates to the prior convictions, because prior convictions are extremely easy for the State to prove. For the reasons stated in the section above, this holds true even when prior convictions are from other jurisdictions, as all convictions involving Schedule IA and IIA substances count as “strikes.” While this “bifurcated trial” process may lead to slightly longer or more expensive trial in a very limited number of cases, that additional cost is overwhelmed by the savings potential to the State of an overwhelming majority of cases being resolved faster, with less expensive judges and attorneys.

8. Specific Concerns Regarding LSD

At present, Alaska law stipulates that when measuring the quantity of a substance (for example, in a MICS-4 charge involving Schedule IIIA substances); the state calculates the total mass of the “preparations, compounds, mixtures, or substances of an aggregate weight.”⁴ Our current laws thus often charges people with having a much larger quantity of a substance than they might actually have, because the substance has been “cut” or diluted with other substances. Taken in this context—where the law is already heavily skewed against defendants—Mr. Svobodny’s specific concerns about LSD seem oddly placed. The State has not previously taken the position that it is unfair to charge an offender caught holding a large mixture with a higher charge than one caught with a smaller, purer form of a drug. Nevertheless, if Mr. Svobodny would prefer language that specifies a number of “delivery units”—in addition to or instead of aggregate weight—I am open to such a change, and hope to work with his office.

⁴ Alaska Stat. § 11.71.040(a)(3)(C)

Forrest Dunbar Biography

Forrest Dunbar was raised in Eagle and Cordova, Alaska, graduating from Cordova Junior/Senior High School in 2002. In 2012, he earned a joint MPP/JD from the Harvard Kennedy School and Yale Law School. After passing the Alaska Bar Exam in July of that year, Forrest began to conduct research on Alaska's drug policy on a year-long fellowship funded by the Arthur Liman Foundation. While the Office of Public Advocacy is the host of this fellowship and research, Forrest's testimony before the Alaska State Legislature in no way represents the views of OPA, the Department of Administration, or any other executive agency. He speaks on SB 56 and HB 178 as a private citizen exercising his First Amendment rights.

Reclassifying Nonviolent, Small Quantity Possession

Potential Impact on Alaska's
Budget and Society

Reclassification of Drug Possession

- SB 56 creates an “Escalating Punishment” system, similar to the State’s approach to DUI’s or DV4’s (Domestic Violence in the 4th Degree). Key features:
 - Reclassification of small quantity, nonviolent possession to a misdemeanor
 - “3-strikes” Rule. Repeat offenses= felony.
 - Strict quantity limits; over the limit = implied distribution = felony.
 - No restrictions placed on law enforcement or prosecutors to pursue drug dealers, regardless of quantity (i.e., any evidence of selling drugs = felony).
- This should lead to reductions in:
 - Prison admissions
 - Legal and adjudication costs
 - Low-risk offenders being placed on felony probation
 - Collateral consequences for simple possession offenders
 - Reduction in indirect costs, such as welfare costs
- Significant cost savings while maintaining public safety.

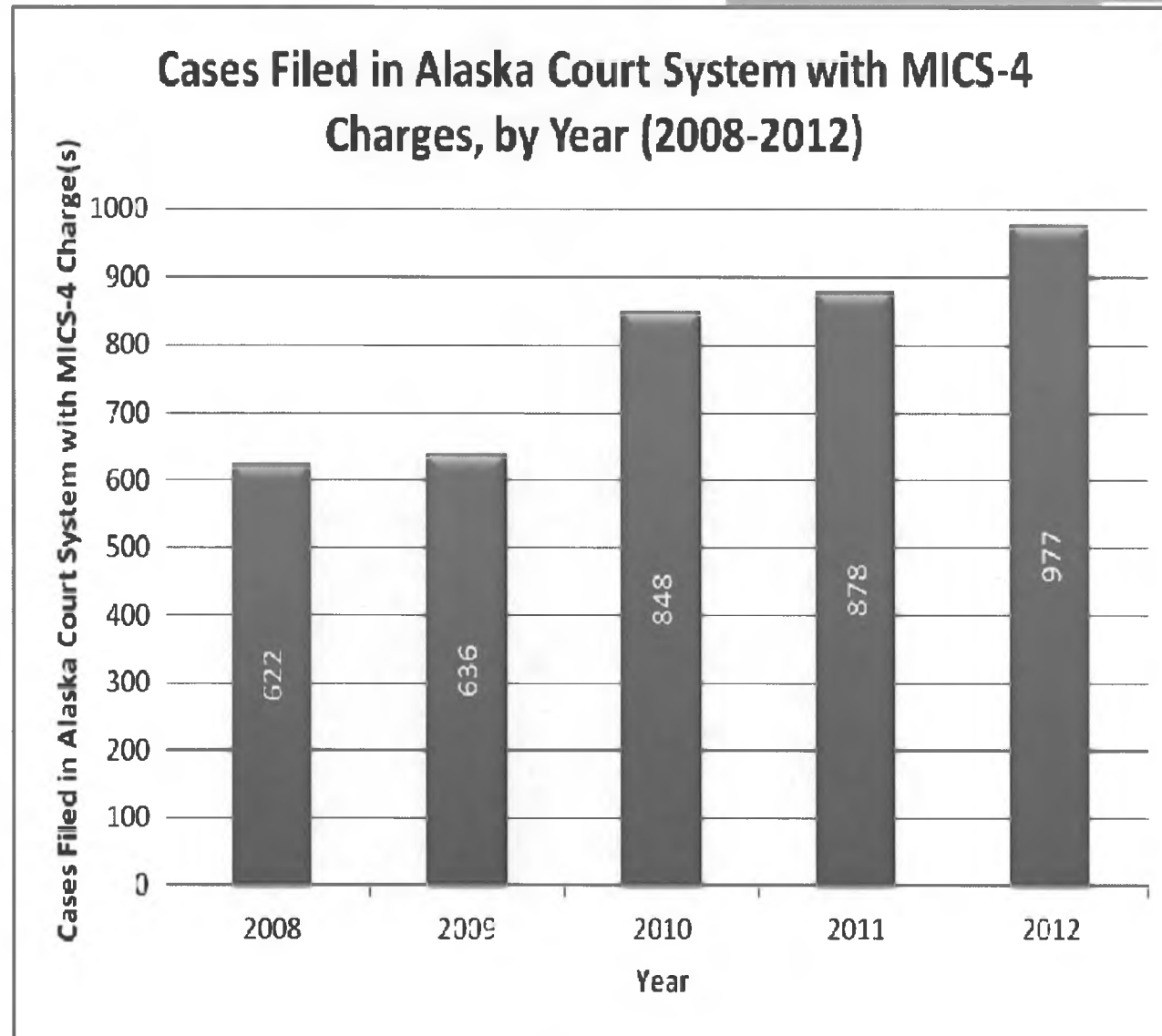
Alaska's Prison Population Growth



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 Senator Dyson's 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).

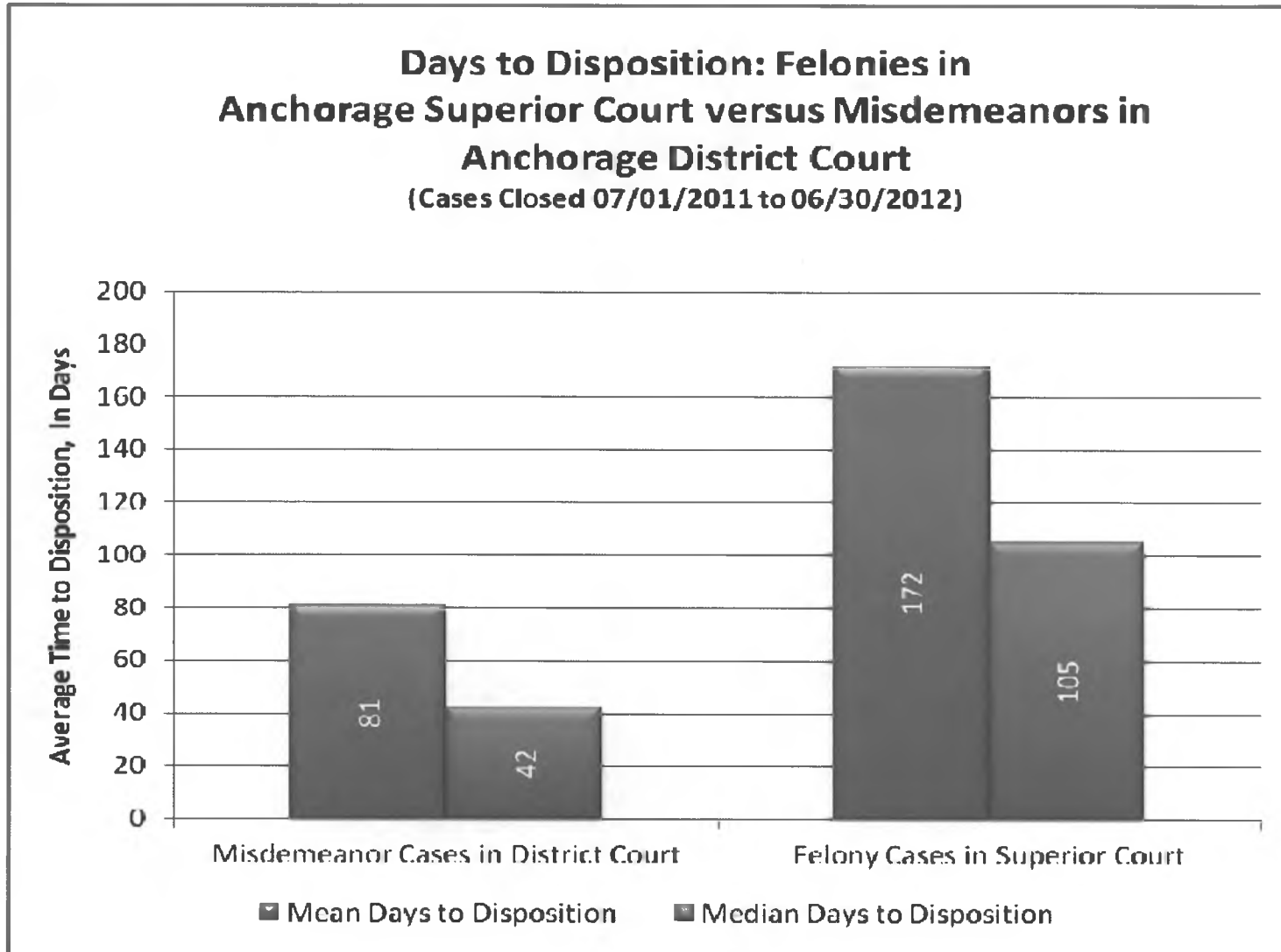


- MICS-4 (Misconduct Involving a Controlled Substance in the 4th Degree) is currently classified as a Class C Felony.

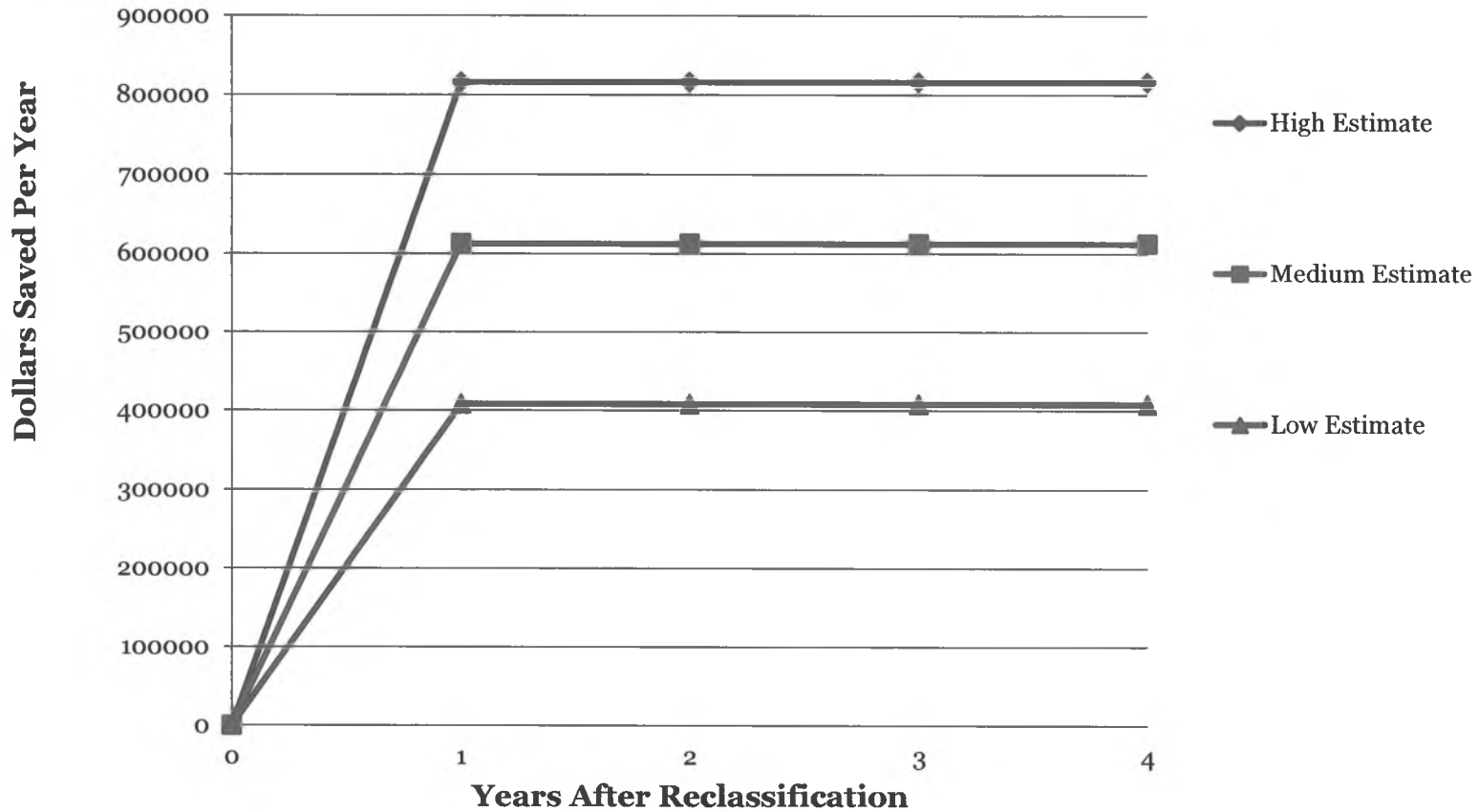
Collateral Consequences from Small-quantity Drug Felonies

- First and foremost, barrier to employment:
 - Medicare/Medicaid facilities → federal law
 - Anchorage School District → district policy
 - North Slope → Private HR decision
- Difficulty finding housing
- Inability to qualify for certain federal benefits, like Food Stamps
- Ineligible to become a Village Public Safety Officer
- Other barriers: stretched to 26 pages of appendices in full report
- SB 56 allows Alaskans to avoid many of these consequences if they are not repeat offenders.

Reduced Legal and Adjudication Costs

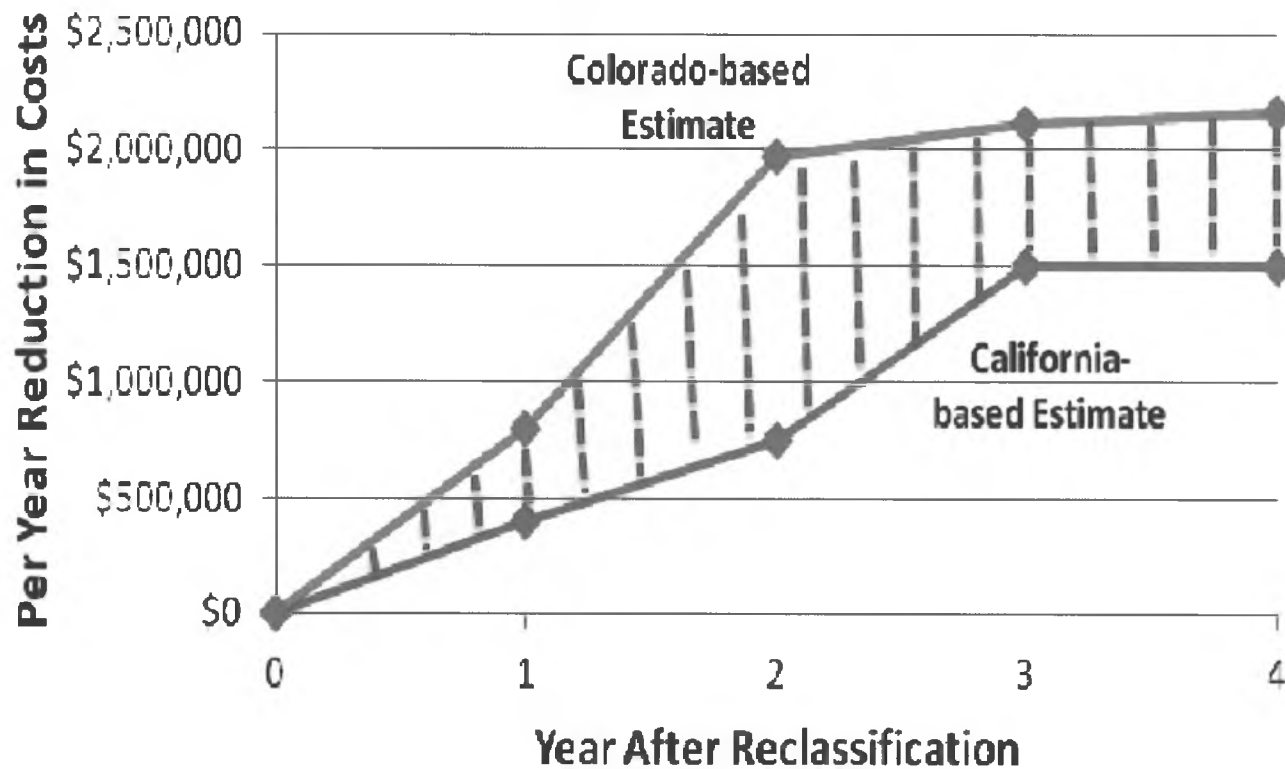


Annual Savings from Reduced Legal and Adjudication Costs



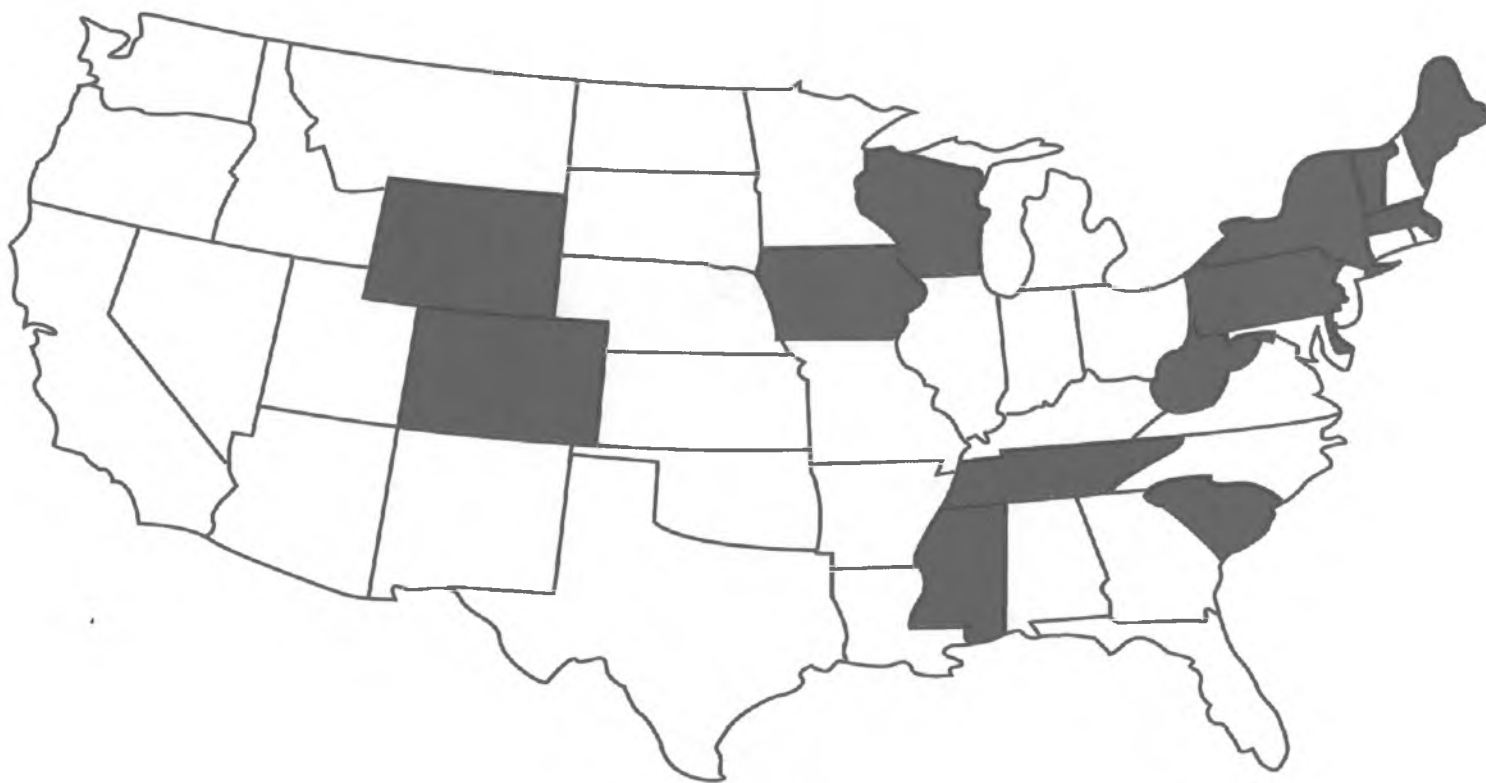
Even Assuming \$0 in savings from the Department of Law, projected savings still amount to \$408,000, \$613,000 or \$817,000 per year.

Projected Range of Annual Savings to DOC from Reduced Incarcerated Population



- Conservative estimates. The Legislative Research Service identified approximately \$14M in annual costs, the majority of which came from DOC.

Public Safety: Map of Lower-48 States Where Drug Possession is a Misdemeanor



Public Safety: Statistical Comparison

	States in which Possession is a Felony	States in which Possession is a Misdemeanor
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 (percent reporting)	36.23%	35.5%

Conclusions

- Predicted outcomes from SB 56:
 - Minimal impact on public safety.
 - Large reduction in collateral consequences for offenders and improvement in employability.
 - Reduction in Probation Officer caseloads.
 - Between \$5.77 and \$10.31 million in savings to the State over four years, increasing thereafter (LRS estimates considerably larger).

**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 led 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.**

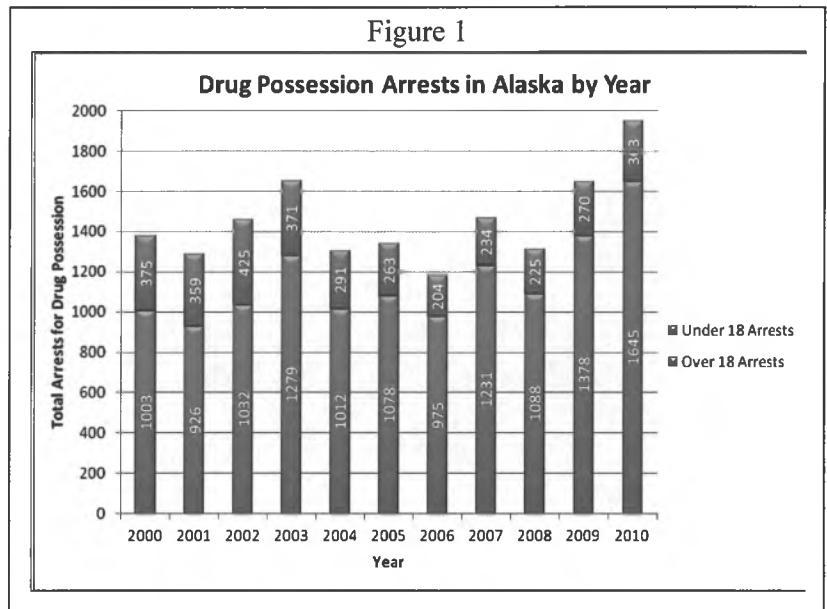
A. Increased Arrests and Charging of “MICS-4” Felony Possession

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.

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.



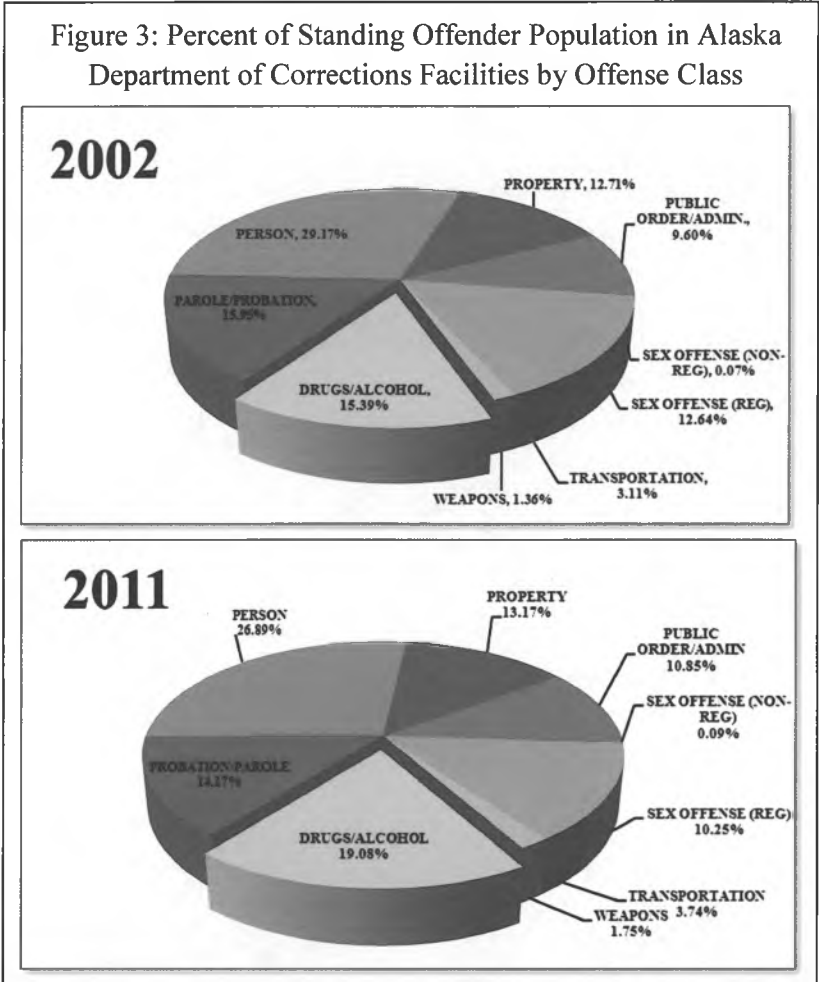
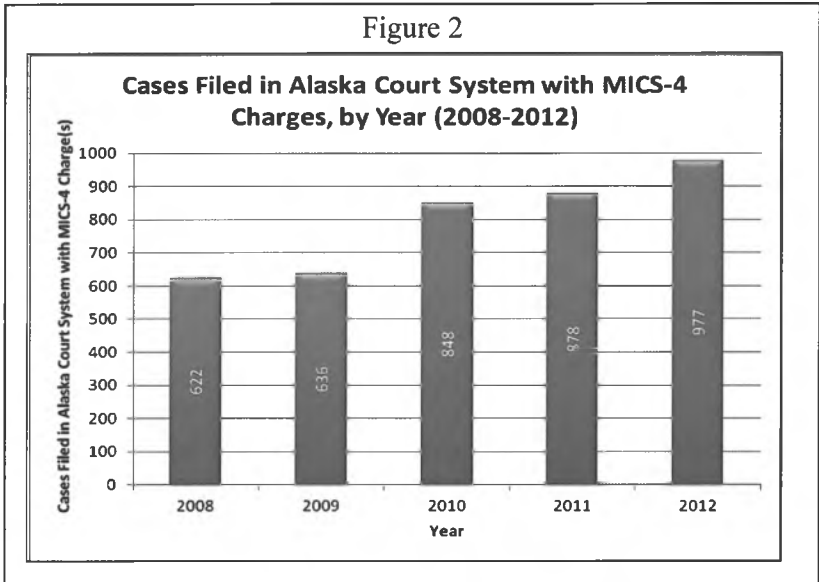
Cross-referencing the MICS-4 data with broader data on felonies from the Court System’s Annual Reports reveals an interesting trend. While the total number of felonies filed grew by 10.9% percent between 2009 and 2011, from 5,821 cases to 6,454 cases, the number of MICS-4’s filed grew at more than three 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.**

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

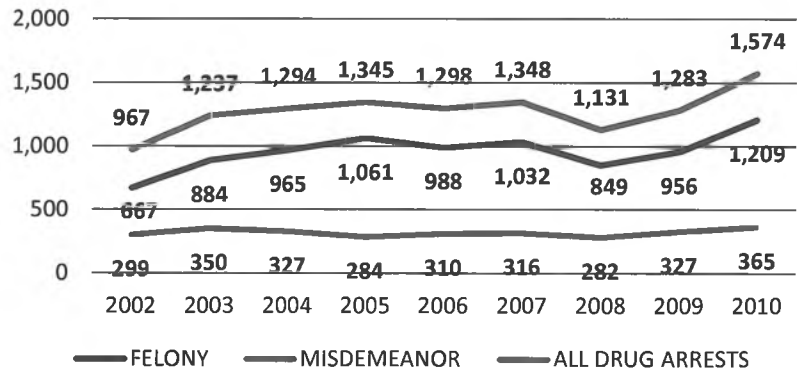
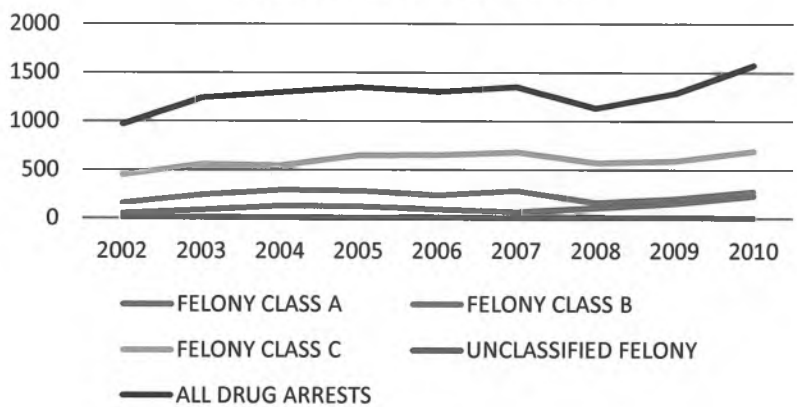


Figure 5: Alaska Felony Drug Admissions, 2002-2010



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. The Collateral Consequences of a Felony: Cascading Effects

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.

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). <i>See also</i> 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.

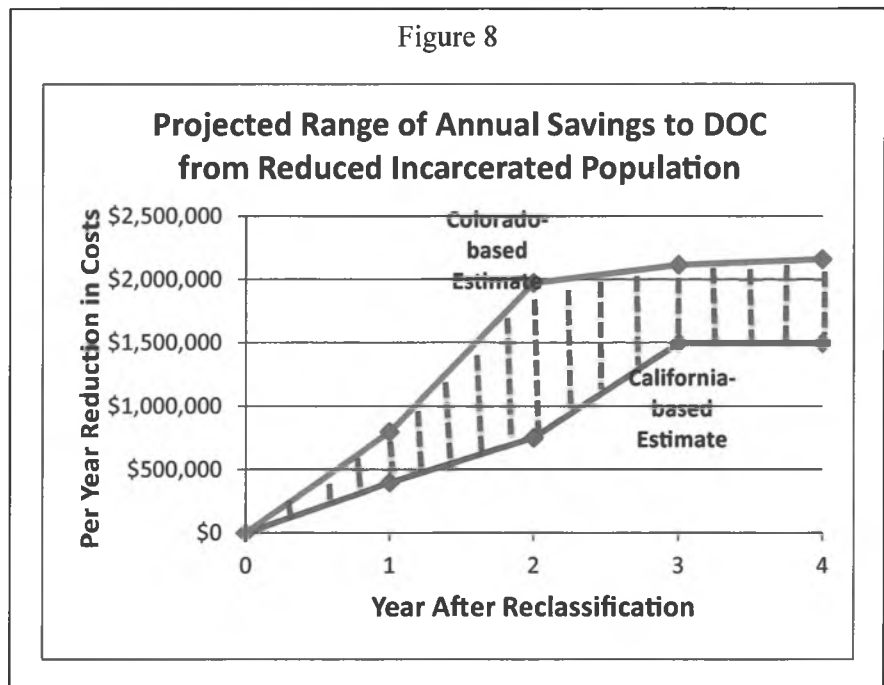
Figure 7: Estimated Annual Prison Reduction in Alaska based on Analogous Projections

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.

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.

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

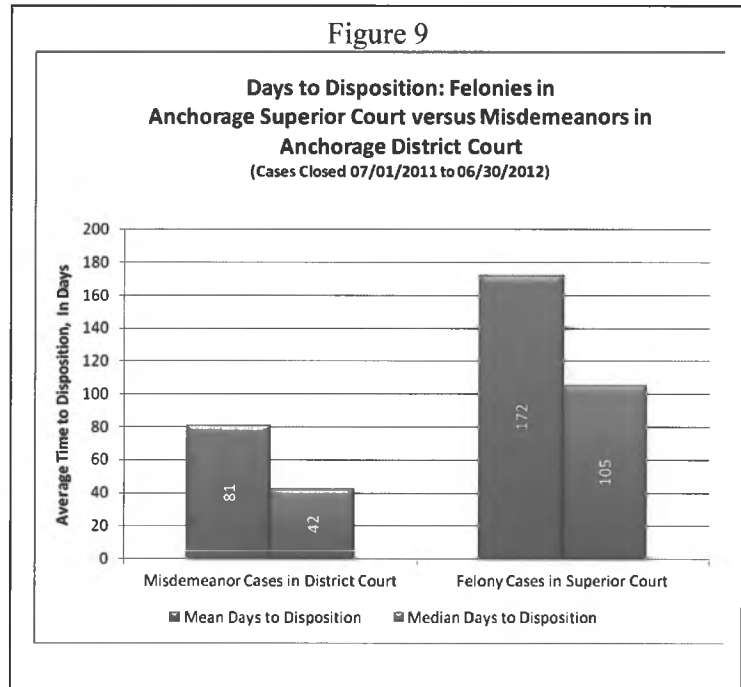
suggest that dropping from a felony to a misdemeanor does not happen. But it is safe to conclude that in at least some cases where higher charges would have been revised down to simple possession, that revision will no longer take place if simple possession is a misdemeanor. Instead, the prosecutors 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:

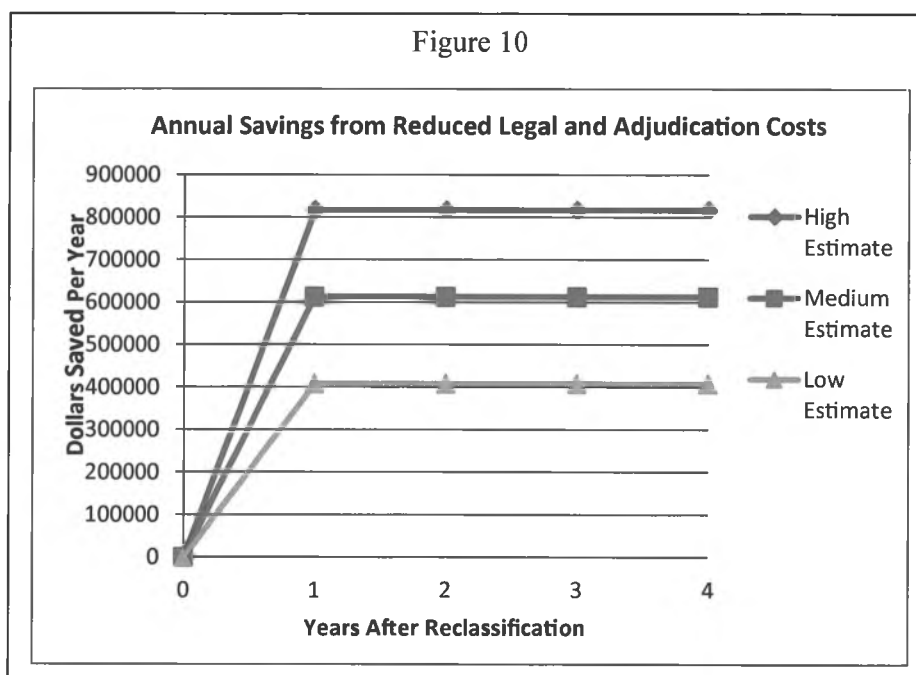
- Low: \$382,000
- Medium: \$574,000
- High: \$764,000

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.





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

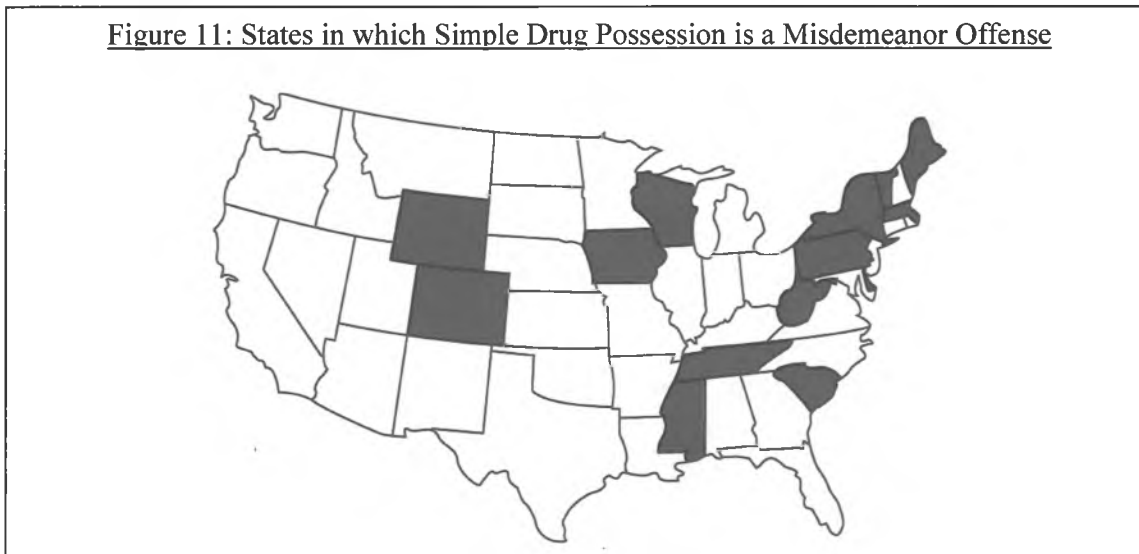


exhibit poorer outcomes on a number of measures that we would expect to observe if misdemeanor classification was causally linked with a large-scale deterioration in public safety; this suggests that reclassification’s impact on public safety would not be substantial.

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 prison³ 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 misdemeanor 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.

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 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 misdemeanor 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.

⁴ See, e.g. Bahr, Stephen J., Paul E. (Lish) Harris, Janalee Hobson 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 Authority (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 health 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. ...”

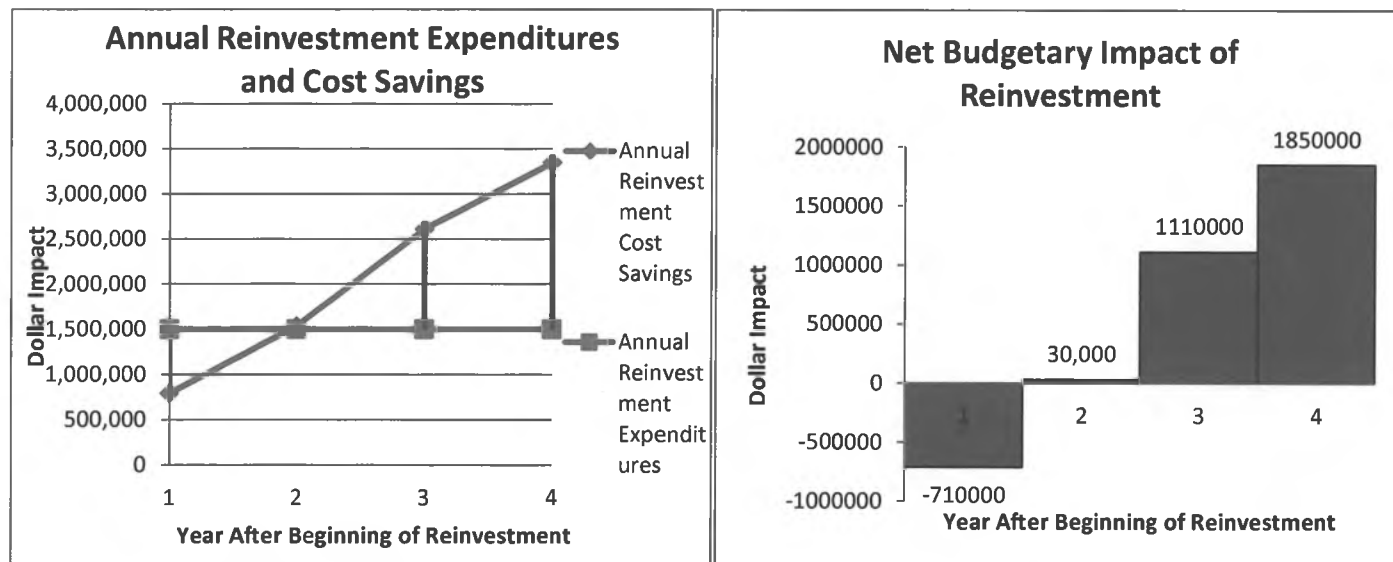
★★★★★★★★★★

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 misdemeanor 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.

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.

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Prison problems: Reduced recidivism would fight against rising costs

Posted: Wednesday, March 27, 2013 12:00 am

Fairbanks Daily News-Miner Editorial

Alaska is facing an incarceration crossroads.

The state has just finished a \$250 million prison outside Wasilla that is expected to cost \$50 million per year to operate.

But the prison population in Alaska is growing at 3 percent per year. If that trend continues, the state's jails will be at full capacity again by 2016.

The budget for the Department of Corrections has been growing at 5.5 percent per year in part because the number of people behind bars has climbed from 4,231 in 2005 to 4,961 in 2012.

The daily cost of keeping an inmate behind bars is now about \$135.

So we either need to start planning now for a new jail, make plans to continue to send prisoners Outside or look at real ways to reduce recidivism.

One of the most intriguing suggestions we've seen is to reclassify the offense of possession of small amounts of illegal drugs as misdemeanors instead of felonies.

There is room for debate as to the quantities of drugs that should lead to simple misdemeanor possession charges, but the legislative review now taking place is warranted.

Drug dealers should continue to face felony charges and law enforcement officers have testified that relaxing drug laws would endanger public safety.

On the other hand, advocates of reclassification say some people picked up for small amounts of drugs would be better candidates for rehabilitation if they are not charged with a felony. The advocates of reclassification say there ought to be a chance for changing behavior before someone is branded as a felon.

Protecting society and recognizing the need for rehabilitation are not necessarily conflicting goals, but they don't always work in unison.

Drug addiction is a serious problem in Alaska that is getting worse. There is no easy solution here.

We need to improve rehabilitation programs and protect public safety, while recognizing that if we don't do something about the growing rate of incarceration in Alaska, we need to get moving now to

build our next prison.

March 19, 2013

Senator Dyson
Alaska State Senate
Juneau, Alaska

RE: SB 56 "An Act relating to certain crimes involving controlled substances; and providing for an effective date."

Dear Senator Dyson:

This letter is in support of SB 56, a bill that reflects a conservative, humane, realistic and practical approach to illegal drug possession and use/addiction in Alaska. I have reviewed the literature and the testimony on both sides before the Senate Finance committee.

I am a lifelong Alaskan who returned home to practice law. For the last twenty-nine years I have maintained a statewide practice, beginning as a public defender in Juneau, Kenai, Anchorage and Palmer, as a federal public defender statewide, and as a sole practitioner since 1994. I have been an active member of the Alaska Bar, serving on the Criminal Rules committee, the Alaska Association of Trial Attorneys, and as a board member and past president of the Alaska Bar Association, where I was also the discipline/ethics liaison.

As an attorney I have witnessed the effects of the drug statutes/penalties on my clients, their families and the justice system. I have experienced the frustration that everyone in the system feels when we are confounded by the persistent lack of funded treatment beds compared to the money spent on hard beds in prisons. That frustration increases with the knowledge that the recidivism rate is still 2/3, despite an overall increase in average prison sentences and Alaskans under Department of Corrections supervision. Those who testified against SB 56 all agreed that the current drug laws are not effective, and "doubling down" with sentence increases would not work to solve the drug problem in Alaska.

In 1982 when the Alaska drug statutes were last revised, 1 in 90 Alaskans was under supervision: in 2009 1 in 36 Alaskans was under DOC supervision, either by incarceration or probation. This is an astounding number of citizens who are stigmatized by felony convictions. The collateral consequences of felony convictions for "any amount" of controlled substance in schedules IA and IIA are devastating: no vote, no jury service, no student loans, severe lack of housing and employment opportunity, travel limitations, loss of family support and incarceration to name but a few.

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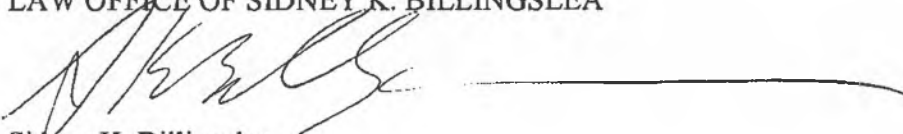
LAW OFFICE OF
Sidney K. Billingslea
ATTORNEY AT LAW

Those who would rely on the judgment of individual prosecutors to sort out who gets labeled a felon for "any amount" are, in my opinion, shifting too much discretion and responsibility onto busy line lawyers and defense attorney skills in advocacy. This leads to a lack of uniformity and predictability in a justice system already viewed as being unfair. It frankly makes no difference (other than the prison time) if a person gets a "deal" for a C felony vs. a B felony or an A felony. The collateral consequences are the same. Plea bargains have been a poor substitute for the changes proposed in your bill. They are simply the tools we have had to make do with in attempting to reach just results for individuals.

SB 56 offers drug offenders an opportunity to get clean and lead productive lives without the crippling setbacks of a felony conviction. We know from our experience with DUI laws that offering opportunities like limited licenses to drive on proof of compliance with treatment and employment reduces other crime – like driving with a suspended license – and promotes rehabilitation. We know that statistically first time DUI offenders typically do not reoffend; it takes three DUIs within 10 years to make a felon. SB 56 has a look back of five years, where a person may be convicted of a felony if he or she commits a third possession after two or more priors in the preceding five years. It is my opinion that these look backs serve to protect the public from an offender whose rehabilitation has failed.

In closing, the data support SB 56. The opponents appear to rely on anecdotes and fear. But even the opponents testified that the current laws do not work. Thank you for your attention.

Very truly yours,
LAW OFFICE OF SIDNEY K. BILLINGSLEA



Sidney K. Billingslea

Carmen L. Gutierrez
529 W 19th Avenue
Anchorage, Alaska 99503
907-301-6650

March 3, 2013

Senator Fred Dyson
State Capital, Room 121
Juneau, Alaska 99801

Re: Senate Bill 56

To the Honorable Senator Dyson,

This letter is written to voice my strong support for Senate Bill 56. Given the importance of this issue to the health and public safety of all Alaskans, I would be present in Juneau to testify personally if it were not for the fact that on the day of the hearing I will be out of the country with no access to phone or internet.

I am a second generation born Alaskan who has lived and worked in Alaska all my life. I was criminal defense attorney for 24 years and then with the Department of Corrections (DOC), first, as Special Assistant to the Commissioner and then as Deputy Commissioner for Prisoner Rehabilitation and Reentry until my recent retirement on December 31, 2012. During my career, I witnessed the destruction of young lives as a result of felony labeling and incarceration that occurred primarily because society decided it was appropriate to use incarceration to punish people we were mad at instead of using expensive prison beds to house people we were afraid of. Because of the State's growing propensity for incarcerating nonviolent offenders, the number of nonviolent incarcerated offenders has increased from 42% in 2002 to 62% in 2011. Furthermore, DOC's annual operating budget has grown consistently over the years. Since 2005, DOC's budget grew from \$166.698.3 to 323.191.7 in 2013. This is an average of more than 5.5% growth each year. DOC's agency operations account for the state's fifth highest user of GF funds exceeded only by the Departments of Health and Social Services, Education and Early Childhood Development, the University of Alaska and Transportation.

As you well know, the number of Alaskans being charged and convicted as felony drug offenders is growing each year. This is illustrated by the following facts:

(1) Incarceration for both misdemeanor and felony drug offenses has increased by 63% since 2002, from 967 admissions to 1,574 in 2010;

(2) during this same period, admissions for felony drug offenses have risen by over 81%; and,
(3) in 2011, 348 admissions for Misconduct Involving a Controlled Substance (possession), a class C felony offense, were for offenders between the ages of 18 to 29 years of age.

Moreover, the average length of stay in prison for a felony offender has increased during the last ten years. In 2002, the average length of stay for a felon was 6.60 years. By 2011, that had grown to 7.20 years.

The increased cost, the increased length of stay and the increased number of offenders being labelled for life convicted felons may be well and fine if our approaches were effective in reducing criminal recidivism. Unfortunately, research shows this is not the case. In November 2011, the Alaska Judicial Council updated its 2007 recidivism study. The updated study reports that Alaska's recidivism rates have not improved. Two out of three Alaskans return to prison for a probation violation and or a new arrest within the first three years of their release. Given these poor outcomes, Alaskans are clearly not receiving good value for the criminal justice dollars spent.

Today, Alaska is at a crossroads. DOC opened the Goose Creek Correctional Center in 2012 at a cost of \$250 million to Alaskans with an annual operating budget of \$50 million. If the state's prison population continues to grow at its current rate of 3% per year, the state's prisons will be operating, yet again, at full capacity by 2016, just three years from now. This creates an inescapable reality; the state must today either start planning to build a new prison at huge cost to Alaskans, recommit to incarcerating out-of-state, or look at proven best practice approaches that more effectively address criminality, reduce recidivism and thereby build healthier, safer Alaskan communities.

I respectfully submit that SB 56, a bill that would reduce from a felony to a Class A Misdemeanor, the simple possession of most controlled substances, is a sound public safety minded strategy. This legislation is very likely to reduce correction costs and most importantly would provide individuals involved in the drug milieu with an opportunity for meaningful rehabilitation. I say "meaningful" because given the escalating penalties proposed in the bill if an individual is not willing to demonstrate an ability to conform their conduct to the law, sanctions will increase and eventually they will earn the lifetime label of "convicted felon". But before a person is labelled a felon for possession, there ought to be an opportunity for meaningful reformation. A growing number of judges in Alaska and across the nation recognize that incarceration is not the best approach to address addiction issues. Whether the perspective in support of SB 56 is more effective rehabilitation or as a way to cut state spending, this bill can only serve to reduce recidivism, cut correctional costs and improve the health and safety of Alaska's communities. Our current practices have certainly not been proven effective in this regard.

Thank you for any consideration you may give my comments and perspective.

Sincerely yours,

Carmen L. Gutierrez



March 26, 2013

The Honorable Doug Isaacson
Alaska State House of Representatives
State Capitol Rm 13
120 4th Street, Mail Stop: 3100
Juneau AK 99801-1182

Dear Representative Isaacson:

I am writing on behalf of the Alaska Peace Officers Association (APOA), regarding House Bill 178, *"An Act relating to certain crimes involving controlled substances; and providing for an effective date"*.

The APOA Legislative Committee recently reviewed this proposed legislation and opposes this bill as it could send the wrong message to criminals and fails to take into consideration any other felonies potentially committed by a person who may have a history of violent behavior. The changes put forth by HB 178 would negate serious criminal activity resulting in a lesser charge which would be a gross injustice.

Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist you in your work for our state.

Sincerely,

John Lucking, Jr.
State President

Cc: Representative Wes Keller



March 22, 2013

**AMERICAN CIVIL
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STUDENT ADVISOR

The Honorable Wes Keller, Chair
The Honorable Bob Lynn, Vice-Chair
House Judiciary Committee
Alaska State House of Representatives
State Capitol
Juneau, AK 99801

via email: Rep.Wes.Keller@akleg.gov
Rep.Bob.Lynn@akleg.gov

Re: House Bill 178 – Reclassifying Certain Drug Offenses
ACLU Letter of Support

Chair Keller, Vice-Chair Lynn:

Thank you for the opportunity to submit written testimony regarding House Bill 178, reclassifying certain drug offenses.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. In that regard, we appreciate the opportunity to provide the Committee with this Letter of Support for the proposed legislation.

We would be happy to work with you or the Committee to answer any questions you might have.

Overview of HB 178 and the Drug Laws

House Bill 178 would alter how drug offenses are categorized and punished. HB 178's most substantial effect would be to change the laws on drug possession so that most drug offense possessions would be misdemeanors,

provided that the offender did not have a substantial history of drug possession offenses and did not possess more than a small amount of drugs.

As the Committee is aware, most drugs are divided into a “schedule” of classifications: most opiate drugs, like heroin or oxycontin, are in Schedule IA; cocaine, most hallucinogens, and PCP are in Schedule IIA; hashish is in Schedule IIIA; most steroids are in Schedule VA; and marijuana is in Schedule VIA. *See* AS 11.71.140 – 190.

The enforcement statutes, AS 11.71.010 – 060, define six categories of drug offenses, designated as “misconduct involving a controlled substance,” (“MICS”), and further labeled as in the first through sixth degrees. Those offenses range in seriousness, with MICS in the first degree being the most serious (selling heroin or cocaine to a child), and MICS in the sixth degree being the least serious (possession of a small amount of marijuana).

Currently, *any* possession of *any* amount of a Schedule IA drug or most Schedule IIA drugs are felony offenses, misconduct involving controlled substances in the fourth degree. AS 11.71.040(a)(3). **Under HB 178, the basic offense of possessing a Schedule IA or Schedule IIA substance would become a misdemeanor.** However, HB 178 would make *repeated* drug possession offenses a felony (where the individual has at least two prior drug convictions in the last five years). HB 178 would also allow felony charges when the individual carries more than 15 vials or tablets of a Schedule IA or IIA drug, more than 3 grams of a Schedule IA or IIA drug, or more than 300 milligrams of heroin or LSD.

Under HB 178, the remaining drug possession offenses involving Schedule IA and IIA drugs would become a misdemeanor – misconduct involving a controlled substance in the fifth degree.

Prosecuting Drug Possession as a Felony Is Expensive and Bad Public Policy

The difference between a sentence for a felony and a misdemeanor conviction is generally about four years. Someone convicted of MICS in the fourth degree, a class C felony, can be sent to prison for up to five years. AS 12.55.125(e). Someone convicted of MICS in the fifth degree, a class A misdemeanor, can be sent to prison for a year. AS 12.55.135(a).

As the cost of imprisoning one incarcerated is almost \$50,000 a year in Alaska, the Committee will note that – absent the revisions proposed in HB 178 - the State would spend \$250,000 to incarcerate someone for mere possession of a small amount of drugs.

Nationwide, 18% of all felony convictions – almost one in five – in state courts in 2004 were for drug possession (not trafficking or sale).¹ In 64% of those drug possession cases, the person convicted was sentenced to a term of incarceration.² Of those convicted of a drug possession

¹ Bureau of Justice Statistics, U.S. Dep’t of Justice, *State Court Sentencing of Convicted Felons 2005*, Table 1.1 available at <http://bjs.gov/content/pub/html/scscf04/tables/scs04101tab.cfm>.

² *Id.*, Table 1.2, available at <http://bjs.gov/content/pub/html/scscf04/tables/scs04102tab.cfm>.

felony and sentenced to incarceration, the average sentence was 23 months.³ As a nation, we are investing enormous resources and wasting the lives of many citizens trying to fight substance abuse – a **community health issue** – through prison time, a **criminal justice “solution.”**

According to the Alaska Department of Corrections’ last census, the largest number of prisoners serving time on drug offenses are those serving time on MICS 4 sentences.⁴ 168 of the 401 prisoners in custody at the time of the last prison census were serving time either on MICS 4 or attempted MICS 4 offenses.⁵ More prisoners were serving time on MICS 4 sentences than for sexual abuse of a minor in the first degree.⁶ It is time for our Legislators to determine if this is – in fact – the best prioritization of scarce and expensive criminal justice resources.

The ACLU recognizes that **substance abuse is a serious problem in Alaska**; no one can deny that. However, the question before the Committee is **how should we address the substance abuse problem?** To date, after 40-plus years of the so-called “War on Drugs,” no state has successfully incarcerated its way out of the substance abuse problem. We do not anticipate that trend changing soon.

Experts in substance abuse treatment and, increasingly, the general public see long-term incarceration of those merely possessing drugs as wasteful, ineffective public policy. **Increased resources for substance abuse treatment programs, treatment courts, and public education are important, useful alternatives to trying to solve the community health problem of drug and substance abuse.**

The core of our criminal justice system has long been to punish acts directly harming other people: murder, assault, rape, robbery, and kidnapping. We punish those acts most severely because they both result in serious harm to others and because they are done out of malice towards others. Those two core concepts, a bad act and a bad mindset, are the elements of a crime. We differentiate between cold-blooded murder and a death in a car accident because we think that only crimes committed with that bad mindset, that malice towards someone else, merit the most serious punishment.

Drug use certainly imposes costs on society, on others, and on families. However, that harm is indirect, in its secondary effects on others. Indirect harms are only rarely punished by the

³ *Id.*, Table 1.3, available at <http://bjs.gov/content/pub/html/scscf04/tables/scs04103tab.cfm>.

⁴ Of course, not *all* MICS 4 offenses involve the simple possession of a Schedule IA or IIA substance, thus the numbers are probably somewhat over inclusive. On the other hand, these numbers are also under inclusive, as the statistics also do not address the large number of prisoners in custody for violating the terms of the probation or parole, who may well contain large numbers of prisoners originally arrested for minor drug offenses.

⁵ Department of Corrections, State of Alaska, 2012 Offender Profile, at 14, available at http://www.correct.state.ak.us/admin/docs/2012Profile07_FINAL.pdf.

⁶ *Id.* at 14, 17.

criminal justice system and rarely punished seriously. More importantly, a drug user does not take drugs specifically intending to hurt his family or disappoint his co-workers or drive up health insurance costs; while he may be aware of these effects generally and be indifferent to them, most people would agree the typical drug user does not use drugs maliciously.

Instead, drug possession laws were enacted with harsh penalties because many people believed that harsh penalties would deter people from using drugs. Forty years later, history has answered that question with a resounding “no.” Harsh drug possession penalties have not been effective in keeping people from using drugs, and virtually no expert in the field of substance abuse would claim that harsh criminal penalties for drug possession has been effective.

In Alaska, we have a terrible substance abuse problem, **despite the fact that we’ve been treating simple drug possession as a felony since the 1980’s.** If we keep doing exactly what we’ve been doing, we should probably expect the same results to continue. Bills like HB 178 that cut correctional costs and make room for better and more effective treatment of substance abuse problems are part of the way to change things for the better.

Building more jails isn’t going to make anybody sober.

Conclusion

We thank the Sponsor for introducing HB 178, and are pleased to advise the House Judiciary Committee of the ACLU’s support for this legislation.

Please feel free to contact the undersigned should you require any additional information. Again, we are happy to reply to any questions that Members of the Committee may have.

Thank you again for the opportunity to share our concerns.

Sincerely,



Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Representative Neal Foster, Rep.Neal.Foster@akleg.gov
Representative Gabrielle LeDoux, Rep.Gabrielle.LeDoux@akleg.gov
Representative Charisse Millett, Rep.Charisse.Millett@akleg.gov
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The New York Times

Expect the World®

March 23, 2013

Shrinking Prisons, Saving Billions

By THE EDITORIAL BOARD

The mandatory sentencing craze that gripped the country four decades ago drove up the state prison population sevenfold — from under 200,000 in the early 1970s to about 1.4 million today — and pushed costs beyond \$50 billion a year. Until recently, it seemed that the numbers would keep growing. But thanks to reforms in more than half the states, the prison census has edged down slightly — by just under 2 percent — since 2009. A new analysis by the Pew Charitable Trusts shows that the decline would have been considerably larger had the other states not been pulling in the opposite direction.

Over the last five years, 29 states have managed to cut their imprisonment rates, 10 of them by double-digit percentages. California, which has been ordered by the Supreme Court to ease extreme prison crowding, led the way with a 17 percent drop, mainly by reducing parole and probation revocations and shifting custody of low-level offenders to counties. Other states reduced prison terms for low-level offenses; diverted some offenders to community supervision; and strengthened parole programs, so that fewer offenders landed back in jail for technical violations like missed appointments or failed drug tests.

Even law-and-order states like Texas, which cut its imprisonment rate by 7 percent, have discovered that they can shrink the prison population without threatening public safety. Investing heavily in drug treatment and community supervision, Texas has avoided nearly \$2 billion in spending on new prisons, while the crime rate has dropped to levels unseen since the 1960s. But even as

the national prison population has declined, 20 other states — including Arizona, Arkansas, Pennsylvania and West Virginia — keep sending more people to prison than need to be there.

In West Virginia, the imprisonment rate rose by 17 percent in the same five-year period. The Council of State Governments Justice Center, a corrections policy group, warns that West Virginia's prison population will grow by an additional 18 percent by 2018 — costing the state nearly \$350 million unless its Legislature adopts a pending reform package that includes expanded drug treatment and a new community supervision system that focuses more closely on high-risk offenders. States that lag in reducing their prison populations should swiftly embrace these kinds of reforms.

Meet The New York Times's Editorial Board.

Distributed by Senator Johnny Ellis



THE
PEW
CENTER ON THE STATES

one in
31

THE LONG REACH OF
AMERICAN CORRECTIONS

MARCH 2009



ABOUT THIS REPORT

The Pew Charitable Trusts applies the power of knowledge to solve today's most challenging problems. The Pew Center on the States identifies and advances effective policy approaches to critical issues facing states.

In 2006, the Pew Center on the States launched the Public Safety Performance Project (PSPP) to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable, and control corrections costs.

PEW CENTER ON THE STATES

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For additional information on the Pew Center on the States and its Public Safety Performance Project, please visit www.pewcenteronthestates.org.

For fact sheets about the size and cost of the correctional populations in each of the states, see the online version of this report at www.pewcenteronthestates.org/publicsafety.

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Executive Summary

States face the worst fiscal crisis in a generation. Shrinking budgets are forcing governors and legislators to examine all areas of public spending for possible savings, even those that have been off limits.

Corrections is a prime target for cuts. Last year it was the fastest expanding major segment of state budgets, and over the past two decades, its growth as a share of state expenditures has been second only to Medicaid. State corrections costs now top \$50 billion annually and consume one in every 15 discretionary dollars.

The remarkable rise in corrections spending wasn't fate or even the natural consequence of spikes in crime. It was the result of state policy choices that sent more people to prison and kept them there

“The fact that so many Americans, including hundreds of thousands who are a threat to no one, are incarcerated means that something is wrong with our criminal justice system and the way we deal with both dangerous criminals and those whose behavior we simply don't like.”

*David Keene, Chairman, American Conservative Union
Personal communication
February 5, 2009*

longer. The sentencing and release laws passed in the 1980s and 1990s put so many more people behind bars that last year the incarcerated

population reached 2.3 million and, for the first time, one in 100 adults was in prison or jail.

The escalation of the prison population has been astonishing, but it hasn't been the largest area of growth in the criminal justice system. That would be probation and parole—the sentenced offenders who are not behind bars.

With far less notice, the number of people on probation or parole has skyrocketed to more than 5 million, up from 1.6 million just 25 years ago. This means that 1 in 45 adults in the United States is now under criminal justice supervision in the community, and that combined with those in prison and jail, a stunning 1 in every 31 adults, or 3.2 percent, is under some form of correctional control. The rates are drastically elevated for men (1 in 18) and blacks (1 in 11) and are even higher in some high-crime inner-city neighborhoods.

Community Corrections: Big Promise, Little Support

Probation and parole, the dominant community corrections programs, have had larger population growth than prisons but far smaller budget growth. Looking at a handful of states that were able to provide long-term spending figures, seven times as many new dollars went to prisons as went to probation and parole. And while fewer than one out of three offenders is behind bars, almost nine out of 10 corrections dollars are spent on prisons.

Incarceration understandably costs more. Prisons must house, feed and provide medical care to the

EXECUTIVE SUMMARY

“...Focus must be placed on locking up the most dangerous people instead of diverting time and money to incarcerate the wrong people.”

U.S. Sen. Jim Webb (D-Va.)
<http://webb.senate.gov>

most dangerous offenders. But the price gap is nevertheless staggering: on average, the daily cost of supervising a probationer in fiscal 2008 was \$3.42; the average daily cost of a prison inmate, \$78.95, is more than 20 times as high.

Community corrections agencies have been further strained by a host of added responsibilities. On top of crushing caseloads, new laws, such as statutes mandating lifetime supervision of some offenders, and expanded roles like sophisticated cyber-crime detection, have created new obligations for departments already stretched thin. The expanded duties are a partial recognition of the role that community corrections plays in protecting public safety, but they have come without sufficient investments in staff, equipment and other support.

Despite the meager funding and ballooning workload, there have been significant advances in community supervision. Sophisticated risk assessment tools now help determine which offenders require the most supervision and what sort of monitoring and services they need. Global positioning systems, rapid-result drug tests and other technology can track offenders' whereabouts and behavior. Offender supervision, treatment and re-entry programs are incorporating solid research on how to cut recidivism. Performance incentives are

increasingly available for both offenders and agencies, and managers are doing a better job tracking new arrests, collection of victim restitution and other key outcomes.

Taken together and implemented well, these approaches can produce double-digit reductions in recidivism and save states money along the way. If policy makers want these results, though, they will have to invest in the overburdened system of community corrections.

Opportunity in Crisis

After an extraordinary, quarter-century expansion of American prisons, one unmistakable policy truth has emerged: We cannot build our way to public safety.

Serious, chronic and violent offenders belong behind bars, for a long time, and the expense of locking them up is justified many times over. But for hundreds of thousands of lower-level inmates, incarceration costs taxpayers far more than it saves in prevented crime. And new national and state research shows that we are well past the point of diminishing returns, where more imprisonment will prevent less and less crime.

With the costs of imprisonment rising and the benefits falling, our ability to keep communities safe depends more than ever upon our ability to better manage the 5 million offenders on probation and parole.

The current budget crisis presents states with an important, perhaps unprecedented opportunity to do so. Rather than trying to weather the economic storm with short-term cost saving measures, policy leaders should see this as a chance to retool their sentencing and corrections



EXECUTIVE SUMMARY

“We have to fundamentally rethink prisons.”

Newt Gingrich
American Enterprise Institute forum
March 27, 2008

systems. If we had stronger community corrections, we wouldn't need to lock up so many people at such a great cost. By redirecting a portion of the dollars currently spent on imprisoning the lowest-risk inmates, we could significantly increase the intensity and quality of supervision and services directed at the same type of offenders in the community.

This is not a call to slash funding for prison operations. Though efficiencies undoubtedly can be wrung from prisons¹—like any other government agency—they must be safe and secure and adequately staffed and equipped. Savings significant enough to truly bolster community supervision can come only from reductions of the inmate population large enough to warrant the closure of entire cellblocks or institutions.

This reinvestment strategy wouldn't put a stop to all new crimes. But it would significantly cut recidivism—both for offenders coming out of prison and those diverted from prison in the first place—and do it at a fraction of the cost of a prison bed.

A number of states are seizing the moment, rethinking old policies and reallocating some correctional dollars. Texas and Kansas are off to a strong start, providing community corrections agencies with more resources and authority, but also giving them incentives and holding them accountable for results. States such as Arizona, Michigan, Pennsylvania and Vermont are now following with innovations of their own.

The bipartisan leadership in these states and the advances in correctional practice deserve more than a passing glance, especially in a fiscal crisis that demands more than ever that taxpayer dollars be wisely spent. Armed with the conviction that our current crime and punishment policies are not delivering satisfactory results, policy makers have a chance to both balance their budgets and deliver better public safety.

America's Surging Correctional Population

Last year, the Pew Center on the States reported that for the first time, more than 1 in every 100 adults in the United States was confined behind bars. That sobering news came as a shock for many Americans and sparked discussions about incarceration and its fiscal and social costs in the media, at universities, in statehouses, and around dinner tables.

For policy makers, the 1 in 100 milestone was a reminder that state policy choices have driven the rise in prison populations. The explosive prison growth of the past 30 years didn't happen by accident, and it wasn't driven primarily by crime rates or broad social and economic forces beyond the reach of state government. It was the direct result of sentencing, release and other correctional policies that determine who goes to prison and how long they stay.²

Community Corrections: Population Growth Exceeds Prisons

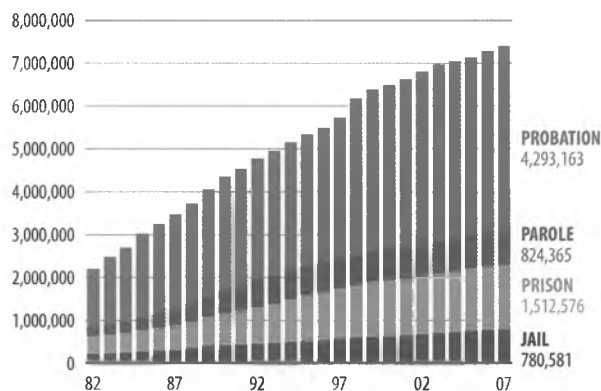
While the 1 in 100 statistic has seeped into the national consciousness, many Americans remain unaware that a much larger number of offenders are not behind bars at all but receive their punishment in the community. The raw numbers illustrate this story in dramatic fashion. During the past quarter-century, the number of prison and jail inmates has grown by 274 percent. The additional 1,680,661 inmates brought the total population in custody to 2.3 million. During the same period, the number under community

supervision grew by a staggering 3,535,660 to a total of 5.1 million. Though the percentage increase of those under community supervision was not as large as the growth of those in custody, the absolute number of probationers and parolees grew by more than twice as much.

In 1982, 72 percent of offenders were managed in the community, with about 28 percent behind bars. At the end of 2007, the most recent year for which figures are available, 31 percent were locked up and 69 percent were on probation or parole. So over the past quarter century, the nation has put 1.6 million more people behind bars, yet prisons and jails still hold roughly the same proportion of offenders and criminal suspects. (See Appendix A-1 for complete figures.)

7 MILLION AND COUNTING

Led by probation, the correctional population has tripled in 25 years.

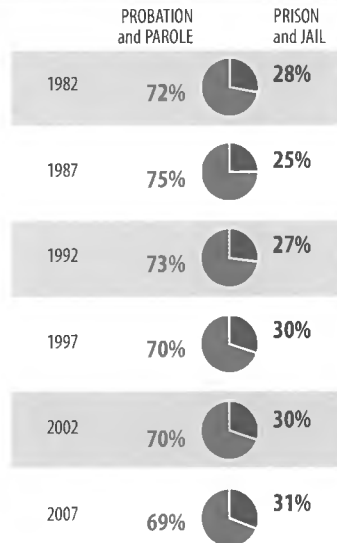


SOURCE: Bureau of Justice Statistics Correctional Surveys available at <http://www.ojp.usdoj.gov/bjs/glance/tables/corr2tab.htm>.
NOTE: Due to offenders with dual status, the sum of these four correctional categories slightly overstates the total correctional population.

AMERICA'S SURGING CORRECTIONAL POPULATION

LESS THAN ONE-THIRD BEHIND BARS

Despite a 274 percent increase in incarceration, the vast majority of offenders under correctional control remain in the community.



SOURCE: Calculation based on data from the Bureau of Justice Statistics Correctional Surveys available at <http://www.ojp.usdoj.gov/bjs/glance/tables/corr2tab.htm>.

Adding up all probationers and parolees, prisoners and jail inmates, you'll find America now has more than 7.3 million adults under some form of correctional control. That whopping figure is more than the populations of Chicago, Philadelphia, San Diego and Dallas put together, and larger than the populations of 38 states and the District of Columbia.³ During Ronald Reagan's first term as president, 1 in every 77 adults was under the control of the correctional system in the United States. Now, 25 years later, it is 1 in 31, or 3.2 percent of all adults.⁴

[For details of each state's correctional population and expenditures, see the state fact sheets included in the online version of this report.]

Who's Under Supervision?

Looking at the numbers through the lenses of race and gender reveals stark differences. Black adults are four times as likely as whites and nearly 2.5 times as likely as Hispanics to be under correctional control. One in 11 black adults—9.2 percent—was under correctional supervision at year end 2007. And although the number of female offenders continues to grow, men of all races are under correctional control at a rate five times that of women.⁵

Geography adds another revealing facet to the picture. In Georgia, 1 in 13 adults is under the correctional system's authority, but in New Hampshire, the figure is just 1 in 88. While Southern states maintain the nation's highest incarceration rates, the addition of probationers and parolees to the mixture casts a spotlight on states that supervise massive numbers of people in the community. The 10 states with the largest number of people in the corrections system include those with reputations for toughness, like Texas and Louisiana, but also Idaho, Ohio and Massachusetts. Similarly,

1 IN 31: DOING THE MATH

ONE

PRISON POPULATION	1,512,576
JAIL POPULATION	780,581
PROBATION POPULATION	4,293,163
+ PAROLE POPULATION	824,365
CORRECTIONAL POPULATION	7,328,200

TWO

ADULT POPULATION	229,030,637
	÷
CORRECTIONAL POPULATION	7,328,200

THREE

ONE IN EVERY 31 U.S. ADULTS IS UNDER CORRECTIONAL CONTROL

SOURCE: Calculation based on data from the Bureau of Justice Statistics "Prisoners at Yearend 2007" as well as "Probation and Parole at Yearend 2007" available at <http://www.ojp.usdoj.gov/bjs> and the U.S. Census State Population Estimates.

NOTE: Probation, parole, jail and prison populations do not sum to total due to offenders with dual status. Prison and jail populations differ from past reports due to method of counting prisoners held in jail.

THE ROLE OF PROBATION AND PAROLE

The public's perception of corrections most commonly centers on prisons and jails—buildings with bars, locked cells and uniformed guards. But far more offenders pay for their crimes through community sanctions, including drug courts, home detention and electronic monitoring, residential facilities with treatment, and day reporting centers.

The centerpiece of community corrections is probation and parole. Offenders placed on probation—derived from the Latin word *probatum*, for “the act of proving”—are typically lower level offenders who are allowed to remain in the community provided they exhibit good behavior and meet other conditions while supervised by a probation officer. With origins in this country dating to the mid-19th century, probation is ordered by a judge and served under threat of more serious sanctions. If a probationer violates conditions governing his or her community release, a judge may impose additional rules or require a term in custody.

Parolees, by contrast, are offenders who have spent time in prison and are released to complete the remainder of their sentence under supervision in the community. Intended in part to smooth a prisoner's transition back to society, parole, which became prevalent at the turn of the 19th century, is sometimes ordered by appointed parole boards, which also craft conditions governing a parolee's release. More often, the date of parole release reflects an offender's original sentence, perhaps shortened by credits for a clean disciplinary record or completion of in-prison programs. In the community, parolees are supervised by a parole officer and subject to similar rules as those on probation. If parolees violate the rules of their release, they too face penalties including re-incarceration.

The most recent numbers, from year end 2007, show that nearly 4.3 million adults are on probation in the United States, with almost half of them having been convicted of felonies. Property and drug charges accounted for more than 50 percent of probationers, followed by driving while intoxicated and other criminal traffic violations (18 percent), violent crimes (17 percent) and other offenses (13 percent).⁶ Parolees, meanwhile, are substantially fewer, with about 824,000 reported at the end of 2007. They also are more likely than probationers to have been convicted of a violent crime (26 percent) or a drug offense (37 percent).⁷

the 10 states with the lowest correctional control rates include rural and northeastern states like Iowa and Maine, but also states with large urban populations, such as New York, and with long sentences for violent offenders like Virginia.

Case Study: Geographic Concentration in Michigan

But even these statewide averages hide extreme geographic concentrations. Michigan, with a correctional control rate of 1 in 27—not far from the national average—provides a useful illustration. Mapping just the 122,165 jail and prison inmates,

AMERICA'S SURGING CORRECTIONAL POPULATION

WHO'S UNDER CORRECTIONAL CONTROL?

Correctional control rates vary drastically across demographic lines.

TOTAL 1 IN 31



WHITE 1 IN 45



WOMEN 1 IN 89



HISPANIC 1 IN 27



MEN 1 IN 18



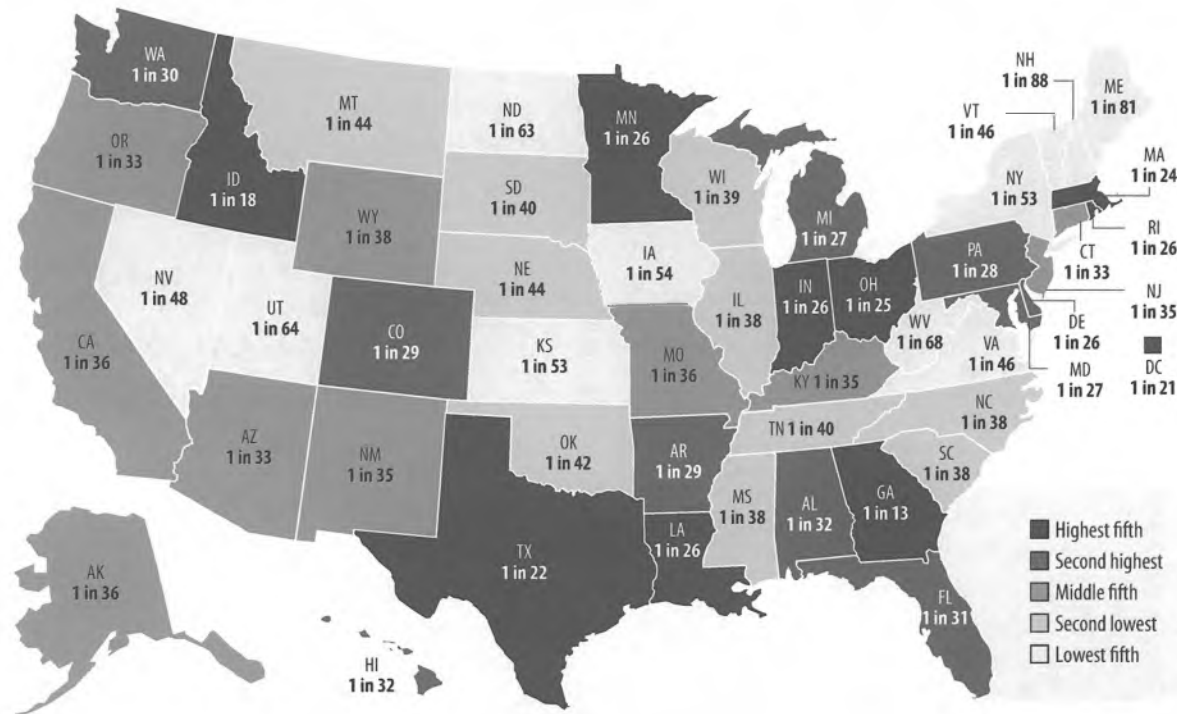
BLACK 1 IN 11



SOURCE: Calculation for year end 2007 based on data from the Bureau of Justice Statistics "Prisons and Jails at Midyear" series as well as "Probation and Parole at Yearend" series available at <http://www.ojp.usdoj.gov/bjs> and the U.S. Census State Population Estimates.

WIDE VARIANCE IN CORRECTIONAL CONTROL

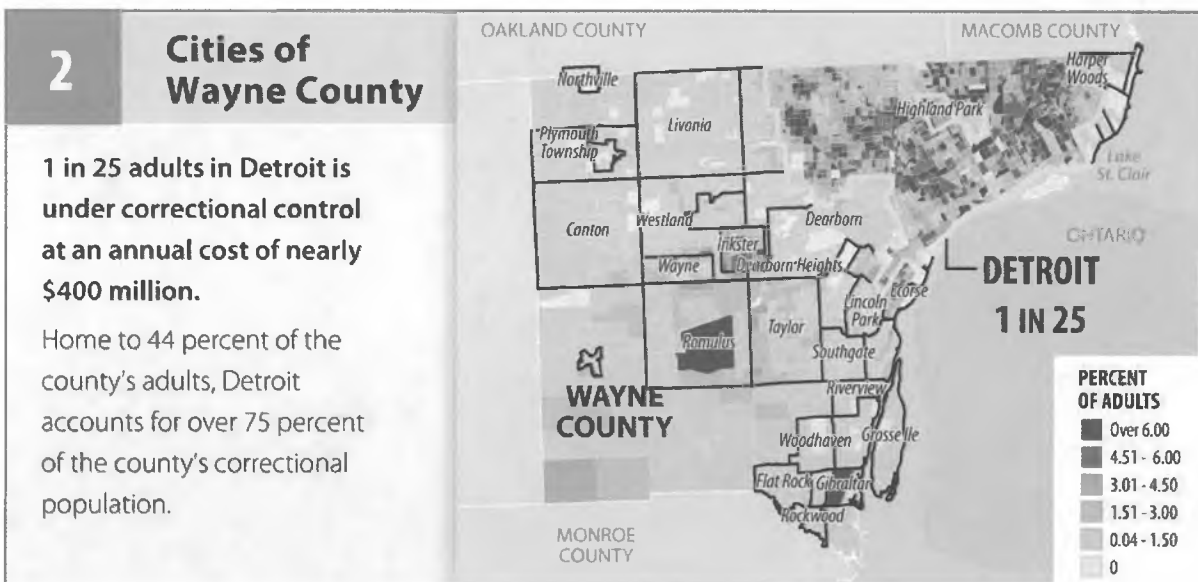
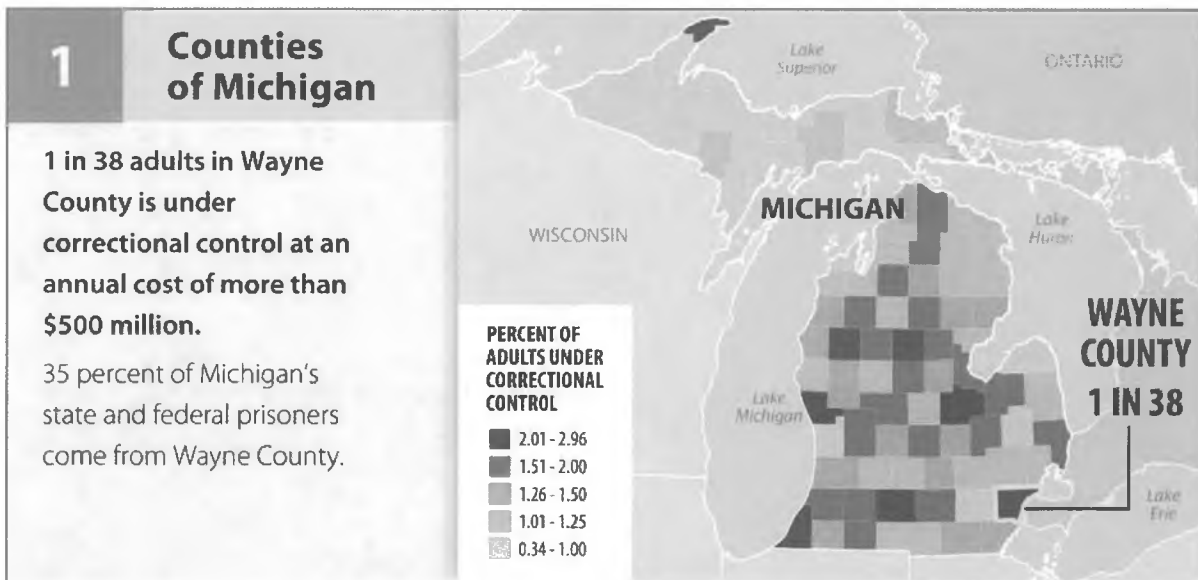
Share of adults under correctional control, year end 2007.



SOURCE: Calculation includes offenders in state and federal jail, prison and community supervision and is based on data from the U.S. Census State Population Estimates, the Bureau of Justice Statistics Correctional Surveys available at <http://www.ojp.usdoj.gov/bjs/glance/tables/corr2tab.htm>, the U.S. Bureau of Prisons, the Administrative Office of U.S. Courts and the Pew Public Safety Performance Project.

CORRECTIONAL CONTROL IN MICHIGAN

Nationally, 1 in 31 adults is under some form of correctional control. But they are not evenly spread across or within states. To illustrate the concentration of correctional populations and costs, the Pew Center on the States partnered with the Justice Mapping Center to map the home address of all adults in jail and prison or under parole or felony probation supervision in one state. Michigan was selected because its correctional indicators are near the national averages and data were available. Excluding misdemeanor and other lower-level probationers, these mapped populations account for 122,165 of the state's 278,805 adults who are behind bars or supervised in the community.



AMERICA'S SURGING CORRECTIONAL POPULATION

GEOGRAPHIES OF CORRECTIONAL CONTROL

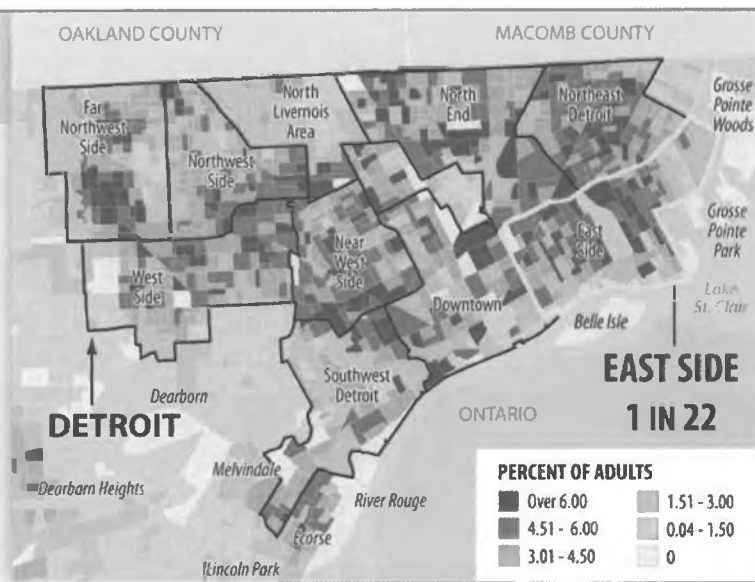
	INCARCERATED POPULATION	COMMUNITY SUPERVISED POPULATION	TOTAL CORRECTIONAL POPULATION	PERCENT OF ADULTS	CORRECTIONAL CONTROL RATE	ANNUAL CORRECTIONS COST (IN MILLIONS)
Wayne County	14,643	22,624	37,267	2.6	1 in 38	\$546.9
Detroit	10,882	13,390	24,272	4.1	1 in 25	\$393.0
East Side	1,269	1,646	2,915	4.5	1 in 22	\$46.1
Brewer Park	78	104	182	6.3	1 in 16	\$2.9

NOTES: Based on data from the Michigan Department of Corrections, the Wayne County Sheriff's Office, the Federal Bureau of Prisons, the Administrative Office of U.S. Courts, the U.S. Census and the Pew Center on the States. The difference between Michigan's true correctional control rate of 1 in 27 and the rate of 1 in 61 reflected in these maps is due to the exclusion of approximately 157,000 misdemeanor probationer residences.

3 Neighborhoods of Detroit

1 in 22 adults in the East Side of Detroit is under correctional control at an annual cost of over \$45 million.

Of the 65,108 residents age 18 or older, 2,915 are behind bars or under community supervision.



4 Blocks of East Side

1 in 16 adults in the blocks surrounding Brewer Park is under correctional control at an annual cost of over \$2.9 million.

In one group of blocks, 1 in 7 male adults is behind bars or under community supervision.



AN EVEN WIDER NET?

Probation, parole, jail and prison population data, as used in this report, are provided voluntarily by state agencies and account for the vast majority of supervised offenders in the United States. There are, however, many others involved in our fragmented correctional system for whom there are no reliable state-by-state data.

In particular, recent research points to a hidden population supervised pre-trial, by drug courts or alternative sentencing units, and other specialized programs. The National Criminal Justice Treatment Practices Survey of 2005⁸ sampled agencies representing 72 counties and estimated that nationwide as many as one million offenders were under correctional supervision but not included in conventional probation and parole counts.

Additionally, there are well over 100,000 offenders in prisons of the U.S. territories, Immigration and Customs Enforcement facilities and juvenile residential placements.⁹ These offenders also are not typically included in incarceration rate calculations.

parolees and felony probationers—excluding nearly 157,000 non-felon probationers—reduces the figures considerably, to only 1 in 61 adults across the Wolverine State.¹⁰ In Wayne County (the state's most populous county), however, the figure is 1 in 38 and in Detroit it is 1 in 25. Further investigation reveals that in the East Side, 1 in 22 adults are under correctional authority. And in the blocks around Brewer Park, the number is a startling 1 in 16 and would be even higher with a count of non-felon probationers.

These disturbing patterns are repeated in most major metropolitan areas of the United States. While people must be held to account for their crimes, a number of researchers have shown the dire consequences of such a high geographic

concentration of people in the corrections system. Because offenders from high-incarceration areas also fulfill the roles of family members, neighbors, economic consumers and producers, removing them from the community can result in a wide range of costly side effects, from family disruption and neighborhood destabilization to depressed wages and even increased AIDS infection rates.¹¹

Policy makers must consider these implications, along with the budgetary cost of the corrections system itself, in crafting fiscally responsible crime control strategies. This includes deployment of probation and parole officers to the hardest-hit neighborhoods, where they, like community police officers, can be more effective.

Prisons: 32% of the Growth, 88% of the Cost

State correctional budgets spiked along with their offender populations in recent years. In FY2008, states are estimated to have spent more than \$47 billion of general funds on corrections, a 20-year jump of 303 percent.¹² Add in another \$4 billion in state special funds and bonds, and about \$900 million from the federal government, and total state spending for corrections is estimated to top \$52 billion.¹³ (See Appendix A-2 for additional cost information.)

This growth rate outpaced budget increases for nearly all other essential government services tracked over the same period, from elementary and secondary education (205 percent) to transportation (82 percent), higher education (125 percent) and public assistance (9 percent). Only Medicaid spending grew faster than spending on corrections, increasing 492 percent in the last two decades.¹⁴ As a share of total state general fund spending, corrections has grown from 5.2 percent in 1988 to 6.9 percent today.¹⁵ For all levels of government, total corrections spending has reached an estimated \$68 billion, an increase of 336 percent since 1986.¹⁶

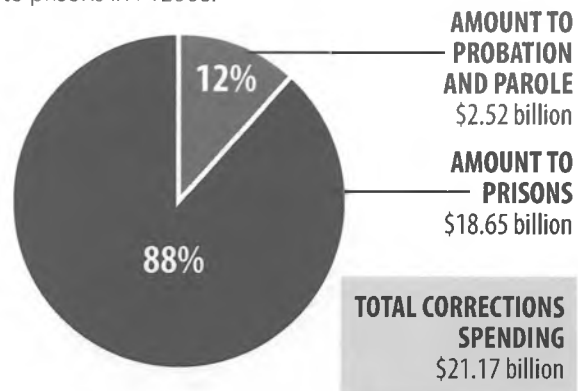
To get a better picture of how states have invested their corrections dollars, the Pew Center on the States and several partners recently completed the first national survey of corrections spending by function in the past seven years.¹⁷ Thirty-four states, accounting for 58 percent of total state correctional populations,¹⁸ made complete data available while the others did not.

The largest beneficiaries of those mushrooming budgets, by far, have been prisons. For the most part, probation, parole and other programs that manage offenders outside prisons and jails have scrambled for funds needed to keep pace with expanding caseloads of offenders with increasingly complex and demanding problems.

In FY2008, these 34 states spent \$18.65 billion on prisons but just \$2.52 billion on probation and parole, a ratio of more than seven to one. Viewed over time, the spending gap looks just as substantial. For eight geographically diverse states¹⁹ that were able to provide data for the past 25 years, 88 percent of the increase in corrections spending was directed toward prisons, which now consume nearly nine out of every ten state corrections dollars.

PRISONS DOMINATE SPENDING

Across 34 states, nearly 9 of 10 correctional dollars went to prisons in FY2008.

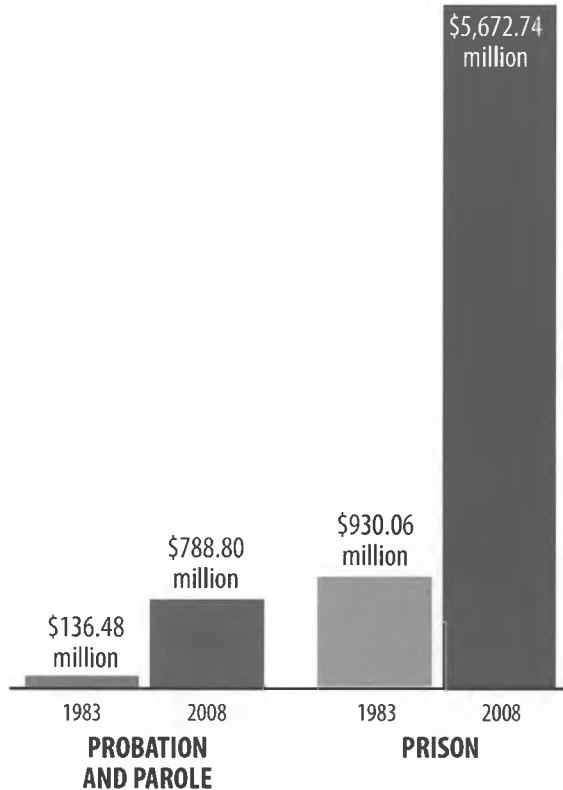


SOURCES: Spending figures were collected from AR, AL, AK, CO, DE, GA, ID, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NC, ND, NE, NH, NM, NY, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA and WY.

PRISONS: 32% OF THE GROWTH, 88% OF THE COST

EXPLOSIVE GROWTH IN PRISON SPENDING

Across 8 states, 88 percent of additional corrections spending since FY1983 has gone to prisons.



SOURCES: Only eight states could provide 25-year spending histories (AL, GA, LA, MO, MT, NY, OR and WY).

So while the incarcerated population has added only half as many offenders as community supervision over the last quarter century, if the survey states are representative of the nation, prisons have received almost 90 percent of the new funding.

Community Corrections Far Less Expensive

Society should expect to pay more to punish its most serious and violent offenders by removing them from our communities. Not surprisingly, then, it's more expensive to house and feed an offender in a facility watched around-the-clock

by guards than it is to monitor him or her in the community. Prisons and jails also are buildings that need to be cooled, heated and lighted, equipped with security, and continually cleaned and maintained.

The difference in cost between institutional and community corrections, however, is huge. While there is wide variance among states, in 2008 prisons cost our 33 surveyed states an average of about \$79 per inmate per day—or almost \$29,000 per year. In contrast, the average daily costs for managing an offender in the community in these states ranged from \$3.42 per day for probationers to \$7.47 per day for parolees or about \$1,250 to \$2,750 a year, respectively.

Another reason community corrections costs less is that offenders are often required to pay a substantial share of the tab. In Colorado, for instance, probationers under the authority of the state pay a \$50 per month supervision fee, and some drug and sex offenders pay a surcharge on top of that. Ninety-four percent of the funding for treatment services provided by the court is covered by these probationer fees as are 5.5 percent of all staffing costs.²⁰ Additionally, offenders ineligible for probation but diverted from prison to residential community corrections beds paid \$11.75 million toward their own housing, meals and treatment, nearly \$900,000 in child support, and over \$1.2 million in state taxes and over \$3 million in federal taxes in fiscal year 2007.²¹ See chart, next page, for Colorado spending details.

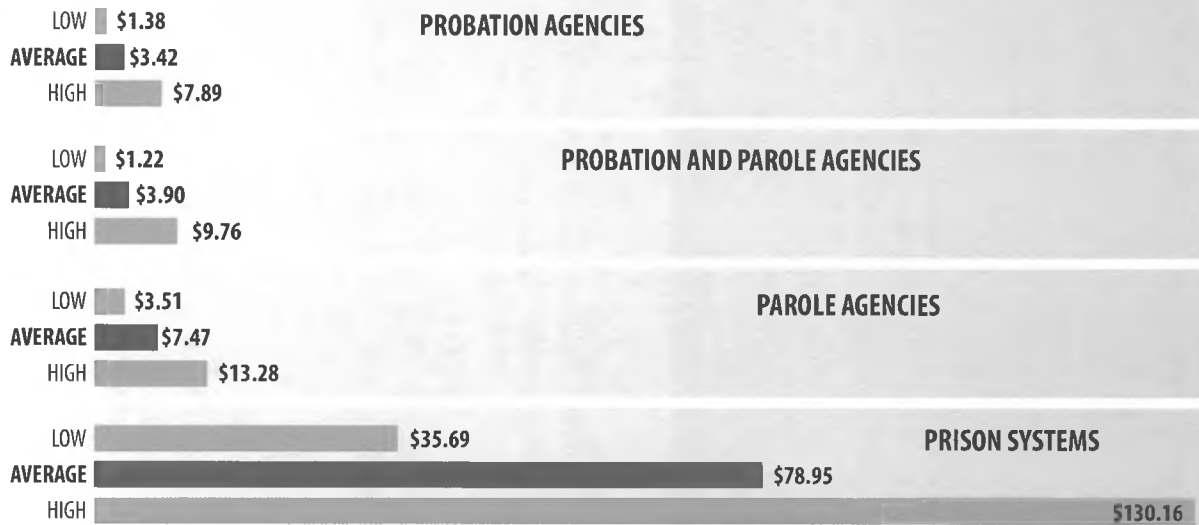
Probation and Parole Stretched Thin

Managing offenders in the community, when done well, produces appreciable costs savings and public safety outcomes. However, the funding

PRISONS: 32% OF THE GROWTH, 88% OF THE COST

STATE DAILY COSTS PER OFFENDER

1 day in prison costs more than 10 days on parole or 22 days on probation.



SOURCES: Spending figures were collected from AR, AL, AK, CO, DE, GA, ID, IA, KY, LA, MA, ME, MD, MI, MN, MS, MO, MT, NC, ND, NE, NH, NM, NY, OK, OR, PA, RI, SD, TN, TX, VT, VA and WY.
 NOTE: Caution should be used in making interstate comparisons since a wide variety of factors beyond agency performance or efficiency can account for daily cost differences. Some states have separate probation and parole agencies while others have combined them.

struggle has stretched probation and parole staffing woefully thin, leading to inflated caseloads with a high ratio of offenders to officers. The average probation officer now has about 100 offenders on his or her caseload; parole tends to be slightly lower, at about 60 offenders per officer.²² Agencies often put higher risk and high stakes cases on priority caseloads.

That's a logical compromise but one which leaves many other offenders without supervision or services adequate to prevent a relapse into destructive behavior, including committing new crimes.

The low priority of probation and parole has forced officers in some regions to do without important and sometimes basic tools of the trade.

DAILY COST DETAILS: COLORADO

Per offender per day costs vary substantially both between and within supervision categories.



SOURCE: Colorado Commission on Criminal and Juvenile Justice, "2008 Annual Report" and Colorado Department of Corrections. All figures fiscal year 2007.

PRISONS: 32% OF THE GROWTH, 88% OF THE COST

trade. In Cook County (Chicago), Illinois, for example, probation officers don't have personal computers to help them perform everyday case work, exchange information with other agencies or investigate criminal histories.²³ By contrast, many parole officers in California have handheld PDAs, a convenience that allows them to access files and accomplish other tasks from the field.²⁴

Beyond often lacking the basic resources and technology, community corrections agencies have been assigned a widening array of responsibilities, often without the funds to carry them out. Over the past decade or so, for example, an explosion of well-intentioned laws governing the supervision of sex offenders has created a multitude of new duties, or expanded existing ones, for probation and parole departments. The new responsibilities include conducting DNA testing, mental health screening and risk assessments for sex offenders, as well as continual registration checks of their address and work status. These are vital public safety tasks, but they are too seldom backed up with the resources to conduct them and are further watering down supervision across the board.

To make matters worse, the economic situation this year is forcing states to consider cutting back on what limited resources community corrections agencies do have. In Sacramento County, California, 76 probation officer positions—9 percent of the

“Currently, we spend next to nothing on community-based corrections. We get what we pay for.”

*Prof. John J. DiIulio, Jr.
The Wall Street Journal
March 12, 1999*

total force—are on the chopping block. In Washington State, half of all taxpayer-supported drug treatment beds are slated for elimination. And in Florida, the two streams converge as lawmakers consider cutting both \$3 million in drug treatment slots and 66 probation officer positions. Across the nation, tight budgets are jeopardizing the basics of community supervision: caseloads, services and day-to-day resources.

Without adequate resources and authority, community supervision agencies are hard-pressed to fulfill their traditional case management workloads, let alone adequately handle their new responsibilities. The huge increase in corrections spending has favored prisons over probation and parole by nearly nine to one. Supervising 1 in 45 adults and holding them accountable to victims will require that funding gap to narrow. The sheer scale of community supervision obliges policy makers to recognize the major role of probation and parole agencies in helping states protect public safety and control public spending.

CASE STUDY: POLICY CHOICES PUT BLUEGRASS STATE IN A BIND

A variety of factors influence the size and cost of the corrections system. Crime and a rising resident population of a state certainly play a role, but studies show correctional policies and practices that determine who is sent to prison and how long they stay—from sentencing laws such as “three strikes” to the extensive use of prison to punish supervision rule violators—are more decisive factors.²⁵

Kentucky’s experience provides a vivid, if not uncommon, illustration of the consequences of the corrections policy choices that state leaders make.

The Cause

Kentucky’s prison population has surged over the past eight years, jumping by 50 percent to more than 22,000 inmates.²⁶ With the fastest growing prison system in the country, the Bluegrass State could have an incarcerated population of 31,000 within the coming decade.²⁷ The growth has been propelled largely by a series of tough-on-crime measures that began in 1974 with passage of the first version of the state’s “persistent felon law.” The original law required three strikes to trigger “persistent felon” status, but that was cut to two in 1976, and several other measures in the 1990’s elevated misdemeanors to felonies, reclassified offenses as higher level felonies and enhanced the penalties for a variety of crimes.²⁸ Another law extends sentences by not counting time served on parole toward completion of the sentence if a parolee was revoked back to prison. These and other measures have created a desperate need for more prison space and sent the state’s corrections budget rocketing upward.²⁹

“Nobody’s willing to change the laws because everybody wants zero tolerance on everything. But there’s something [that’s] going to have to give.”

*Terry Carl, Kenton County (KY) jailer
Lexington Herald Leader
January 13, 2008*

If Kentucky’s rapid prison growth had led to dramatic decreases in crime, it could be justified on public safety grounds. But it hasn’t. From 1987 to 2007, the state’s imprisonment rate grew nearly 250 percent, from well below the national average (147 per 100,000 residents compared with a U.S. rate of 228) to slightly above the national average (512 versus 506 per 100,000).³⁰ During that time, Kentucky’s violent crime rate fell 13 percent, but the national violent crime rate fell 23 percent. Kentucky’s property crime rate fell 14 percent, also badly trailing the national property crime rate, which fell 34 percent.³¹

The Consequences

With state prisons jam-packed, Kentucky has been forced to pay county jails to house overflow offenders. County officials appreciate the income—and, in fact, have come to rely heavily upon it in recent years. But now their lock-ups, too, have become severely overcrowded, some so much that inmates are

This Case Study continues on page 16

PRISONS: 32% OF THE GROWTH, 88% OF THE COST

Continued from page 15

sleeping on the floor.³² Moreover, the county jails are designed for short, pre-trial stays, and are less well-equipped than prisons to provide the drug treatment, mental health care and other services designed to reduce the risk of recidivism. Kentucky's jails now hold about 20,000 people—putting them 10 percent beyond their intended capacity—but a recent count showed only 400 slots in treatment programs.³³ The prison system, meanwhile, holds about 15,000 inmates³⁴ and has about 1,000 treatment beds.³⁵ One jail treatment supervisor, in Kenton County, summed up the dire need for program slots in vivid terms: "I have a waiting list as long as the New York phone book."³⁶

A good share of responsibility for this predicament lies with the state's chronic underinvestment in community corrections. Between fiscal years 2003 and 2008, the state increased annual corrections spending by \$100 million.³⁷ Ninety percent of this additional spending, however, was channeled to prisons, with only 1 in 10 new dollars going to support probation and parole. The evidence in Kentucky suggests that saving pennies on community supervision costs taxpayers dollars in prison expenses: 3,101 of the 17,700 Kentuckians on parole in 2007—1 in every 6—were returned to prison for committing a new crime or breaking the technical rules of release.³⁸ On the street, these parolees cost Kentucky taxpayers under \$10 per day, but behind bars they cost over \$50 per day. A stronger community supervision system could have prevented many of these parolees from returning to prison and at a fraction of the cost.

These troubles would be difficult enough to manage in good economic times. But Kentucky, like other states, faces a fiscal crunch. The state is looking at a projected revenue shortfall of \$1.3 billion over the next 18 months and is bracing for cuts to police and other important government services.³⁹ In late 2008, Kentucky's counties gave the Commonwealth something else to worry about, suing to force the state to cover the cost of housing inmates in county jails before their trial and sentencing.⁴⁰ Now, on top of everything else, the projected tab for the corrections budget this fiscal year is \$521 million, nearly five times the amount spent 20 years ago.⁴¹

More Prison Spending Brings Lower Public Safety Returns

States are facing their worst fiscal crisis in years. With revenues down and public needs rising, policy makers are confronting wrenching budget decisions. Reluctant to raise taxes—at any time but especially when their constituents are financially stressed—lawmakers across the country are locked in bitter battles over where to cut spending and by how much.

All told, analysts forecast a \$312 billion hole in state budgets over the next two years.⁴² This fiscal year alone, 42 states and the District of Columbia are grappling with a combined \$46 billion deficit.⁴³ In response, officials are scavenging for dollars wherever they can, cutting back on everything from government basics—such as how often the grass gets mowed outside the state capitol—to education and services for persons with disabilities and mental illness.

Tennessee Gov. Phil Bredesen has told state department chiefs to prepare for a budget deficit that could hit \$1 billion and has warned that cuts to higher education and health care are on the table. Virginia, meanwhile, already has reduced spending by \$2 billion and is preparing for another round of cuts, including a possible \$400 million reduction in Medicaid. Out West in Washington, state lawmakers are scrambling to plug a \$500 million hole in the current budget and cope with a projected deficit of more than \$5 billion for the next two-year budget cycle. “It will be heartbreaking. We don’t have any money. We simply don’t have any money,” said Rep. Maralyn Chase, a Democrat from Shoreline.⁴⁴

“It’s not about being tough on crime or soft on crime. We are facing a huge economic challenge here. Are we doing the right thing?”

*William Wrenn, NH Commissioner of Corrections
Concord Monitor
January 25, 2009*

Against this grim backdrop, prison spending is deservedly receiving new scrutiny. The central questions: What has our massive investment bought us? How can we curb and reallocate corrections spending in ways that protect public safety and produce better results for taxpayers, offenders and society at large?

These are challenging questions, but they do have answers.

The Myth of the “Average Prisoner”

There is little debate that imprisonment has protected communities from many of the most violent and menacing criminals, and that some offenders should be locked up purely for the sake of punishment. But in casting a wider net for criminals, prisons have snagged many smaller fish. A growing body of research is showing the limits of incarceration as a sanction for these lower level and less frequent lawbreakers, both in terms of its cost-effectiveness and its impact on crime.

MORE PRISON SPENDING BRINGS LOWER PUBLIC SAFETY RETURNS

To understand this, it's important to remember that all offenders aren't the same. They present different threats to public safety, and thus their incarceration pays vastly different dividends. Criminologists long ago demonstrated that imprisonment of the *average* offender serves to avert many crimes that would otherwise carry considerable public cost. But more recent and refined research reveals that measuring the impacts of the average prisoner hides as much as it reveals because offenders—and their crime-related impacts—vary so dramatically.

“What we've done with the laws we passed over the last 20 years is thrown our net out there too widely and picked up too many little fish. We filled our prisons with non-violent, first-time offenders, and with no noticeable increase in public safety.”

*State Sen. Stewart Greenleaf (R-PA)
NCSL Roundtable
September 26, 2008*

One such study, published by the Manhattan Institute, ranked all male inmates entering the Arizona prison system in terms of the harm they created in the year before incarceration. Those at the 80th percentile of harm, the research showed, created almost \$220,000 in social costs. But those at the 50th percentile—the median—inflicted \$25,500 in social costs, while those at the 20th percentile were responsible for just \$3,950 in social costs.⁴⁵ The authors concluded that for Arizona and the two other states they analyzed (New York and New Mexico), incarceration for half of all entering prisoners would cost taxpayers

more than it was worth, in terms of crimes avoided.⁴⁶

The Declining Impact of Incarceration on Crime

Aside from evidence that incarceration doesn't “pay” for all *current* prisoners, there are separate reasons to question its value as a broadly applied correctional tool for the *future*. One is what economists call the law of diminishing returns.

Here, diminishing returns means that the larger the group of offenders scooped up by prisons, the lower the payoff for states in terms of crime reduction.⁴⁷ It certainly pays to remove the most prolific offenders from the streets. But once they are locked up, more incarceration grabs the second and third and tenth tier offenders who are less likely to commit as many crimes. So gradually, the crime-prevention payoff declines. Diminishing doesn't necessarily mean no returns at all, but it does mean that each additional prison cell provides less public safety benefit.

Many states appear to have reached a “tipping point” where additional incarceration will have little if any effect on crime. Washington State, for example, found that the number of crimes committed by its average prisoner dropped from 62 in 1980 to 37 in 1990 and 18 by 2001.⁴⁸ Back in 1980, state researchers found, each prison bed represented a positive benefit-to-cost ratio. But during the 1990s and the first part of this decade, prison expansion captured less and less harmful offenders, leading to a dilution of impact.⁴⁹ Put simply, after 20 years, locking up more drug and property offenders in Washington began to cost more than it was worth.

MORE PRISON SPENDING BRINGS LOWER PUBLIC SAFETY RETURNS

Researchers have conducted similar analyses in other states, such as North Carolina⁵⁰ and Oregon,⁵¹ and reached conclusions of similarly diminishing returns. Indeed, in Washington, from 1980 to 2001, the benefit-to-cost ratio for drug offenders plummeted from \$9.22 to \$0.37. That is, for every one dollar invested in new prison beds for drug offenders, state taxpayers get only 37 cents in averted crime.⁵² An updated analysis from 2006 found that incarceration of offenders convicted of violent offenses remained a positive net benefit, while property and drug offenders offered negative returns.⁵³

More recently, scholars have explored the tipping point concept in incarceration on a 50-state basis. A 2006 study suggests that, after exceeding a threshold in the range of 325 to 430 inmates per

“Bed for bed, prisons become less effective as they fill up.”

Prof. William Spelman, University of Texas
“The Limited Importance of Prison Expansion”
2000

100,000 residents, incarceration fails to reduce crime—and may even increase it.⁵⁴ Imprisonment was more useful, the authors argue, when state incarceration rates hovered around 111 per 100,000 in the 1970s, or around 207 per 100,000 in the 1980s, than when they accelerated to 397 per 100,000 in the 1990s.⁵⁵ Today, of course, the national rate of imprisonment is significantly higher—506 per 100,000.⁵⁶

Three Strikes for Incarceration

The potency of incarceration is further diminished by three other forces, researchers have found. The first, sometimes referred to as the “replacement effect,” applies largely to crimes that occur as part of a market, such as fencing stolen property or, most notably, drug transactions. Once incarcerated, drug dealers tend to be quickly replaced by new dealers and, as during the crack epidemic, the new recruits can be younger and more prone to violence than their predecessors.⁵⁷ Thus while drug dealers no doubt deserve punishment, most leading researchers, and many law enforcement officials, now agree that incarcerating the foot soldiers in drug gangs, not to mention drug users, has a negligible impact on crime.⁵⁸ Moreover, by creating job openings in drug-dealing organizations, it draws more people into criminal lifestyles and may in certain cases exacerbate crime.⁵⁹

Secondly, statistics have long shown that crime is an occupation of the young, so imprisoning offenders beyond the age at which they would have likely given up their criminal ways brings little benefit—but big expenses. As James Q. Wilson, the noted political scientist at Pepperdine University, has written, “Some thugs may mug and murder until the day they die, but they are the exception. Age slows us all down, mugger and victim alike.”⁶⁰

The graying of the nation’s prisons suggests that policy makers have not paid much heed to this well-established criminological fact. Rather, many have embraced longer sentences through broadly defined “three strikes” statutes and parole policies that are hiking up the average age of inmates—and the costs to states of treating their more serious medical conditions.

MORE PRISON SPENDING BRINGS LOWER PUBLIC SAFETY RETURNS

Consider California. Between 1980 and 2007, the average age of California inmates increased from 27 to 37. In 2008, the Golden State's prisons held more than 22,000 offenders over age 50, representing about 13 percent of all adult inmates. That's more than twice the proportion of over-50 convicts in California prisons just a decade earlier.⁶¹

Finally, research has shed important new light on the impact of one of incarceration's most fundamental selling points: deterrence. Today, it is widely agreed that deterrence is more a function of a sanction's certainty and swiftness than its severity. This means that the 36th month of a 3-year prison term costs taxpayers just as much as the first month, but its value as a deterrent is far less. Unfortunately, the corrections system has put more and more of its eggs into the severity basket, spending billions to extend prison terms—for property and drug offenders as well as violent and sex offenders—but doing little to raise the chances that criminals and supervision violators are caught and brought quickly to justice.

Prisons Reconsidered

This is not to say that prisons haven't reduced crime. One widely respected expert, William Spelman of the University of Texas, concluded that prison growth over the 25-year period ending in 1997 reduced the violent crime rate by roughly 35 percent.⁶² Imprisonment, he asserted further, was responsible for about one-quarter of the significant drop in violent crime during the

“Very large increases in the prison population can produce only modest reductions in crime rates.”

*Prof. James Q. Wilson
The Public Interest
Fall 1994*

1990s.⁶³ More recently, however, another expert, Bruce Western of Harvard University, estimated that only 10 percent of that decade's decline in crime was due to increased incarceration.⁶⁴

The disparities underscore the fact that estimates by researchers in this field vary wildly and are highly sensitive to statistical techniques and modeling assumptions.⁶⁵ Whatever level of crime reduction was achieved is worth applauding. What cannot be overlooked, however, is that even the statistical models most generous to prisons find that most of the crime drop was attributable to forces other than incarceration. These include a strengthening economy, aging drug epidemics and changes in law enforcement, including the expansion of police forces and the adoption of new policing strategies.⁶⁶

The questionable value of prisons as a deterrent, combined with other factors that reduce incarceration's effectiveness and overshadowed by a constellation of factors that drive and suppress crime rates, add up to an often overlooked truth: states can carefully reduce incarceration and still protect—and even improve—public safety.

MORE PRISON SPENDING BRINGS LOWER PUBLIC SAFETY RETURNS

NY CUTS CRIME AND INCARCERATION

Between 1997 and 2007, New York State bucked the national trend in prison growth while leading all states in the violent crime decline.



SOURCE: The Bureau of Justice Statistics "Prisons at Yearend" series and the Federal Bureau of Investigation Uniform Crime Reports.

New York has demonstrated this point in dramatic terms. Between 1997 and 2007, New York experienced both the greatest *decrease* in violent crime and, simultaneously, the greatest *decrease* in prison population and incarceration rate of any state in the country. During that decade, the national prison population grew by more than 350,000 inmates, a 28 percent jump that corresponded to a 14 percent increase in the national incarceration rate. Over the same time period, New York's prison population declined by almost 6,500 inmates, a 9.4 percent dip that amounted to a 15 percent drop in the incarceration rate.⁶⁷ To the surprise of many at the time, New York's violent crime rate fell a remarkable 40 percent during the decade, while the national violent crime rate dropped by a much smaller measure, 24 percent. In terms of crime and prison contraction, New York led all regions of the country and every individual state.⁶⁸

Community Corrections: A Strategy for Safety and Savings

Building more prisons is not a cost-effective path to greater public safety. But even if states wanted to add new cells, they will be hard-pressed over the next few budget cycles to find the money to build them.

“We are never going to build our way out of there being crime. We don’t want to put that many people in jail, and we can’t afford to.”

*Chief District Court Judge Joseph Turner, Guilford County, NC
Greensboro News and Record
January 25, 2009*

Policy makers must confront the reality that, for the foreseeable future, roughly seven out of every ten offenders will continue to serve all or part of their sentences in the community. Ensuring public safety and balancing a budget, then, require states to strengthen badly neglected community corrections systems, so they can become credible options for more of the lowest risk offenders who otherwise would be in prison. This means states must take a harder look at which offenders should be locked up and which can be managed effectively in the community. It means they must give community corrections agencies the tools and incentives they need to do their jobs effectively and hold them accountable for implementing the supervision strategies that reflect the wisdom gathered through a quarter-century of research on recidivism reduction.

Some states, such as Kansas, Texas and Arizona, are already well underway. To help spread news of their good work and share other useful approaches, the Pew Center on the States in 2008 brought together leading policy makers, correctional practitioners and researchers to identify ways to help corrections agencies adopt the most effective research-based practices. From those discussions came the “Policy Framework to Strengthen Community Corrections.” The framework includes measures that provide incentives for offenders to stay crime- and drug-free and fiscal incentives for agencies to improve their success rates—both strategies that can create new resources for community corrections agencies without requiring new appropriations. A detailed menu of policy options, including suggested language for legislation, executive orders or court rules, is available at www.pewcenteronthestates.org/publicsafety.⁶⁹

“Every time we keep a released inmate from re-offending, we keep an innocent person from becoming a victim, and we save taxpayer dollars.”

*CO Gov. Bill Ritter
State of the State Address
January 10, 2008.*

Since its inception, the guiding philosophy of community corrections has bounced back and forth between law enforcement and social work. The hallmark of the new approaches is that they

create a blend of the two strategies that focuses on a primary mission—preventing crime—and that is far more potent than either punishment or treatment by themselves. The key components of this 21st century corrections system are detailed in the pages that follow.

A FRAMEWORK FOR LESS CRIME AT LOWER COST

- 1 Sort Offenders By Risk to Public Safety
- 2 Base Intervention Programs on Science
- 3 Harness Technology
- 4 Impose Swift and Certain Sanctions
- 5 Create Incentives for Success
- 6 Measure Progress

1 Sort Offenders by Risk to Public Safety

A pivotal starting point for community corrections is the ability to sort offenders by risk—that is, to accurately separate those who are more likely to cause great harm from those who may cause relatively little harm. For decades, that sensitive and crucial task was left to the educated hunches of prosecutors, judges and probation or parole officers. Fortunately, a new generation of risk assessment tools can now help officials more accurately predict not only how likely a person is to commit a new offense but also whether that offense will be a violent one.⁷⁰

While risk tools vary in terms of what they evaluate, and how much they cost to administer, they generally rely on a checklist of factors that allow clinicians to establish a risk score for individual offenders. These include “static” factors that don’t

change, such as an offender’s age at the time of first arrest, as well as “dynamic” factors, changeable characteristics such as an offender’s living situation or current drug use. The risk score then can be compared with other offenders and used to guide decisions about whether a particular offender should go to prison, what level of community supervision is the best fit, and which interventions will target the attitudes and behaviors that drive that specific offender’s criminal activity.

Virginia uses a risk assessment instrument for felony theft, fraud and drug offenders who would otherwise be sent to prison under the state’s sentencing guidelines. Defendants whose assessment scores are low, based on elements of the crimes and individual characteristics, are steered away from prison. In 2008, more than 1,400 of these offenders were sentenced to community corrections in lieu of prison.⁷¹ A separate assessment for certain sex offenders is used to find the highest risk cases and double or triple their terms behind bars.⁷²

Despite significant advances in risk assessment, the science is still evolving and will always amount to risk management, not risk elimination. Such evaluations are not fool-proof, reflecting instead the best estimate of what a given person will do. But simple logic dictates that aside from locking all offenders behind bars forever, it is impossible to guarantee they will remain crime-free.

2 Base Intervention Programs on Science

Along with establishing a sophisticated system for sorting offenders, states must ensure their community corrections options are rooted in today’s robust body of research. While states may

take different paths toward this goal, they should always develop and implement policies based on the best available science. Evidence-based programs should identify desired outcomes for offenders and include a means for measuring progress. Moderate and high risk offenders should have an individual case plan based on their risk assessment, and they should be assigned to programs targeting their unique behaviors and needs.

Supervision agencies should concentrate their resources on higher-risk people, times and places. Risk assessment instruments can help identify the individuals who need higher intensity supervision and services. Greater attention also should be paid to offenders who have just been released, the times when research shows they are most likely to fail. Citing a study of over 240,000 offenders released from prison in 13 states, the National Research Council reported that the probability of arrest is twice as high in the first month of supervision as in the 15th month.⁷³

Finally, as the maps of Michigan attest, supervision and services should be located in the neighborhoods where offenders live. Too often, monitoring and resources are located far from these high-stakes neighborhoods, impeding both control and rehabilitation.

Agencies striving for better performance are delivering front-loaded resources to their riskiest cases in the neighborhoods where the offenders live. When rooted in these and other evidence-based principles, community corrections programs can deliver encouraging results.

The implementation of evidence-based practices results in an average decrease in crime of between

10 percent and 20 percent, whereas programs that are not evidence-based tend to see no decrease and even a slight increase in crime.⁷⁴ Interventions that follow all evidence-based practices can achieve recidivism reductions of 30 percent.⁷⁵

“The [evidence based practices] law is intended to focus our funding on services that work and get the greatest return on our investment.”

*OR Gov. Ted Kulongoski
governor.oregon.gov
November 29, 2007*

In one widely cited 2006 review of more than 550 program evaluations, the Washington State Institute for Public Policy found that a moderate-to-aggressive investment in evidence-based programs would save state taxpayers \$2 billion, avert prison construction and reduce the crime rate.⁷⁶ Some states were already believers, like Oregon. In 2003, Oregon’s legislature required that by the 2005 biennium, one-quarter of all program funding for youth and adult offenders go to interventions that were evidence-based. By the 2007 biennium, half of those dollars were to be spent on evidence-based programs, and by the 2009 biennium, lawmakers directed that 75 percent of funding be used for interventions that are evidence-based.

3 Harness Technology

One supervision technique that is playing an increasingly important role in many community corrections programs wasn’t even around 20 years ago—electronic monitoring. Although conceived as a correctional strategy in the 1960s, electronic monitoring of offenders did not become a reality until the 1980s.⁷⁷

COMMUNITY CORRECTIONS: A STRATEGY FOR SAFETY AND SAVINGS

With dramatic advances in technology, affordable electronic monitoring today allows officials to conduct “active” monitoring, in which an offender wears a transmitter, usually in the form of an ankle bracelet, that sends a continuous location tracking signal to a monitoring center. In recent years, such monitoring has evolved to include the use of Global Positioning Satellite technology—first developed by the Department of Defense in the 1970s—to give supervision agents increasingly detailed information about an offender’s whereabouts.⁷⁶ In certain cases, for instance, a supervisor may be alerted if an offender violates his parole or probation by going to a location where he is prohibited by his supervision conditions. While an alert may not prevent a crime, the knowledge that law enforcement has such tracking ability can be a deterrent. “We can’t be on their doorstep 24/7, but GPS is a way for us to monitor location and compliance of someone in the community,” said Chief U.S. Probation Officer Ken Young. “We can, with reasonable certainty, know where someone is or has been.”⁷⁹

Florida is among those states that have used electronic monitoring extensively and with positive results. In the early 1980s, Florida launched a home confinement program for drug, property and other offenders dubbed “community control.” Later that decade, the state began using radio frequency tracking of certain offenders in the program, and by the 1990s, Florida had added GPS monitoring to its list of options for those on community control.

A study of more than 75,000 offenders who passed through the program between 1998 and 2002 found that, after controlling for offender risk, those assigned to either form of electronic monitoring were significantly less likely to

reoffend or abscond.⁸⁰ On the minus side, electronic monitoring’s overall record in reducing recidivism is mixed, and it places significant new demands on supervisory agents. Nevertheless, the tool is becoming more commonly used as an alternative sanction for some offenders and as an adjunct to traditional community supervision practices for others.⁸¹

Technology also is changing the way in which offenders are monitored for drug and alcohol use. Some agencies subject offenders to random tests for alcohol through breathalyzer equipment in their homes. “Ignition interlocks” installed in a vehicle prevent a person from starting the engine if alcohol is detected in his system. The driver must blow in the device and pass a breath test before the vehicle will start. Other agencies equip offenders with ankle bracelets that can detect the offender’s blood alcohol level as ethanol vapor migrates through the skin.

Technology offers policy makers a spectrum of options that are more intense than traditional face-to-face community supervision yet far cheaper than incarceration. Tracking devices and sensors allow probation and parole officers to monitor offenders’ whereabouts and behavior in ways that could hardly have been imagined when the prison boom began. But if states are going to make full use of these advances, they must back the technology with adequate resources and policies to respond when offenders are caught breaking the rules.

4 Impose Swift and Certain Sanctions for Violations

In building stronger community corrections systems, states should be mindful that punishment imposed on offenders who break

the rules of their supervision must be swift, certain and proportionate. If applied in that way, sanctions can stop misbehavior early in the game, thereby reducing the odds that parolees and probationers will commit more serious violations and land in an expensive prison cell.

But making *swift, certain and proportionate* a reality is a challenge in many of today's underfunded, understaffed probation and parole agencies. Officers struggle with high caseloads, a lack of suitable community sanctions, and cumbersome administrative hurdles as they try to hold violators accountable. As a result, they often delay pursuing violations before a court or parole board until an offender has committed a significant number of transgressions, at which point revocation to prison becomes the likely penalty.

To remedy this problem, probation and parole agencies need an array of graduated sanctions, as well as clear authority to impose them. A typical continuum ranges from community service programs on one end to more restrictive options such as day reporting centers and even secure residential treatment facilities on the other. To maximize the certainty and swiftness of the sanctions, states should provide parole and probation agencies the authority to move offenders up and down the ladder of sanction programs—even including short stays in jail—without first requiring a time-consuming trip back to court.

Georgia has taken this very step, through a successful program called Probation Options Management. It allows chief probation officers or hearing officers within the Georgia Department of Corrections to impose

administrative sanctions on violators in certain circumstances. An evaluation of the program shows it reduced by 70 percent the average number of days offenders spent in jail awaiting court disposition of their violations cases,⁸² saving local jails \$1.1 million.⁸³ The program also drastically reduced the amount of time probation officers spent waiting in courthouses for violations cases to be heard, thus freeing up hours that could be spent on actual supervision of offenders.⁸⁴

5 Create Incentives for Success

An effective community corrections framework needs three other staples: incentives for offenders to change their behavior, a payoff for agencies that succeed and a system for measuring their results.

The first of these boils down to a fundamental principle of psychology: When it comes to motivating people to change their behavior, carrots work better than sticks.⁸⁵ The prevailing philosophy of many community supervision agencies is the opposite—to try to catch offenders doing something wrong. But many agencies, led by drug courts, are now learning how to use the carrot of positive reinforcement to keep offenders on the straight and narrow.

What kind of carrots? A variety of approaches are now afoot, from graduation ceremonies to gift certificates from local businesses and removal of restrictions such as curfews. Some states are starting to push even further, telling probationers and parolees that they can earn time off their sentences if they comply with all of their terms of supervision.

Carrots can work for correctional managers, too. If community corrections agencies succeed in

“HOPE” FOR IMPROVEMENT IN HAWAII

With prisons overflowing and correctional budgets straining state finances, probation—allowing lower-risk offenders to undergo community supervision provided they meet certain conditions—is playing an increasingly vital role in our nation’s criminal justice system. But all too often, the practice of probation yields disappointing results.

The Challenge

Probation officers are faced with overwhelming caseloads, outdated technology and cumbersome court processes for sanctioning violators. As a result, they often are unable to detect when their charges break the rules or respond with meaningful penalties when they do. Some probationers, convinced that slip-ups won’t bring immediate consequences, rack up pages of violations for failed drug tests, missed appointments and other transgressions. Then, at some arbitrary point when they are eventually brought back to court for a violation hearing, many offenders receive society’s most expensive punishment—a stay in prison. This approach defies what research and common sense tell us about effective deterrence and behavior change: punishment is far more effective if it is swift, certain and proportionate than delayed, unpredictable and severe.

Such was the case in Hawaii until 2004, when Circuit Court Judge Steven Alm decided to create Hawaii’s Opportunity Probation with Enforcement, or HOPE. The Oahu program involves close partnerships with prosecutors and defense counsel, police, wardens, and treatment providers, and it is delivering encouraging results.

HOPE notifies probationers that the old rules remain in place but will now be enforced. That means failures to comply with frequent but random drug tests, office visits and treatment requirements are met with immediate sanctions, typically a few days in jail, time that is served over the weekend for probationers with legitimate jobs. Those who cannot abstain from drugs are placed in residential treatment.

The Results

Preliminary results of a randomized controlled trial found that HOPE participants were less than half as likely to test positive for drugs (11 percent versus 26 percent) or miss appointments (5 percent versus 12 percent). Early results from a matched comparison group study were even more promising. Arrest rates for HOPE probationers were three times lower than for the comparison group, and they experienced significantly lower revocation rates as well (9 percent versus 31 percent).⁶⁶

This is deterrence in action: a credible threat, combined with resources for those who want to change, averts both the offending behavior and the need for and cost of punishment.

“Our offenders know that if they use drugs today, they will go to jail tomorrow,” Judge Alm says. “That means something.”

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thinning the throng of offenders sent back to prison for new crimes or rule violations, states reap savings by avoiding prison costs. Those savings should, in turn, be shared with the successful community supervision agencies, which can use these funds to expand their success. This redirection of dollars can allow states to strengthen their overall community corrections product without the need to appropriate new funds.

Among the states that have embraced performance incentives, Arizona is a recent standout. As often happens, Arizona's initiative was sparked by a high crime rate and a prison population explosion that was draining taxpayer dollars. From 1997 to 2007, the state inmate count grew 60 percent, from 23,484 to 37,746, leading to a doubling of the corrections budget.⁸⁷ Projections forecast another 50 percent jump in the prison population by 2017, at an estimated cost to state taxpayers of \$2-3 billion.⁸⁸ Despite the prison growth, the state still had the highest crime rate in the nation. State Rep. Bill Konopnicki, a Republican from Safford who pushed for reforms along with Republican State Sen. John Huppenthal of Chandler, painted a gloomy picture of the prospects: "If we decide to do nothing, we are in effect committing an additional one billion dollars in state tax dollars to grow our prison system."⁸⁹

Instead, Arizona last year adopted the Safe Communities Act (SB 1476), a sweeping bill that creates performance incentives for both offenders and the county-based probation supervision system. One part of the law gives probationers an incentive to pay court-ordered restitution, complete community service assignments and comply with their other conditions of supervision. For every month that an offender complies with the terms of supervision, the legislation authorizes the courts

to reduce the length of probation by up to 20 days. Slip-ups result in a loss of the earned time.

Under a second part of the bill, signed in June by then-Gov. Janet Napolitano, counties that reduce recidivism are awarded 40 percent of the money the state saves by not having to house repeat offenders and probation rule violators in its prisons. The refund is then used by counties to improve victims' services and expand access to drug treatment and other recidivism-reducing programs. Projections show that if counties reduce probation revocations by 10 percent, the state could save nearly \$10 million, with 40 percent of that amount returned to the local level.

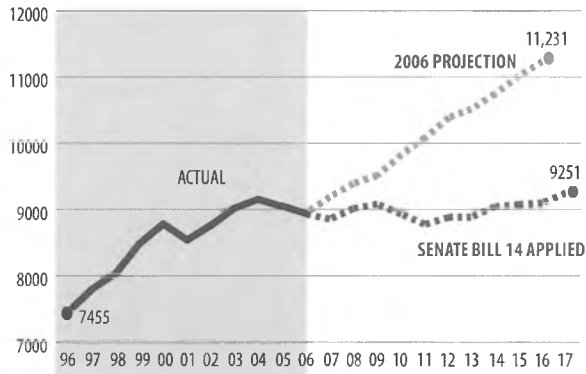
Faced with a spiking prison population and high rates of failure by community-based offenders, Kansas is another state that has taken performance incentive funding to heart. After recognizing that about two-thirds of all prison admissions were probation and parole rules breakers, and that more than half of the violators needed substance abuse or mental health treatment, Kansas took action. Under SB 14, passed in 2007, the state provides \$4 million annually in performance-based grants

"We were faced with spending millions of dollars on new prisons to house the expanding population. Instead, we developed bipartisan legislation that resulted in treatment programs for nonviolent drug offenders and innovative and collaborative release efforts for inmates returning to their communities."

*KS Gov. Kathleen Sebelius
State of the State Address
January 12, 2009*

KANSAS PRISON POPULATION TREND

Senate Bill 14 passed in 2007 and was projected to avert the need for more prisons for 10 years.



SOURCE: Kansas Sentencing Commission
 NOTE: For more information about the Kansas reforms, visit the Kansas page at www.pewpublicsafety.org

to community corrections programs that increase probationer and parolee success rates by 20 percent. The grant money goes hand-in-hand with efforts to train supervision staff in evidence-based practices for effectively managing offenders in the community.⁹⁰

Only a couple of years have passed, but Kansas is already reporting noticeable results. Overall, the state's prison population dropped 3.6 percent between midyear 2007 and year end 2008. A primary contributor to this drop is a 7 percent reduction in FY2008 of the number of probationers sent to prison for condition violations (the top source of prison admissions in FY2007). Prison admissions of parolees for rule violations (down 2.2 percent since FY2003) and new crimes (down 47 percent since FY2003), as well as parole absconding rates (under 4 percent of the entire caseload), are at or near all-time lows.⁹¹

Will the gains hold? Budget woes and other forces are putting them to the test. Recently, Kansas legislators adopted sentence enhancements that are fueling projections for a 10 percent growth in the prison population over the next decade. At the same time, budget cuts threaten the very reforms and incentives that served to reduce the inmate population pressure and put Kansas on stable footing.

6 Measure Progress

Incentives, evidence-based programs and offender sorting all should produce better results—less crime, fewer victims, and more room in state budgets for other pressing priorities. But even the best designed systems must be held accountable through a method for measuring progress. Just as law enforcement has shifted from simply counting arrests to measuring and accepting responsibility for reducing crime, corrections also needs to evaluate outcomes of its work.

An admirable standard for public safety performance measurement was set in the mid-1990s by the New York City Police Department's Compstat program. Short for "compare statistics," Compstat involves the continuous evaluation of agency performance through live, ongoing audits. Information on crimes, arrests and other critical measures is distributed to managers department-wide, then reviewed in weekly sessions where unit commanders are called before their leaders to explain crime trends as well as their strategic and tactical responses. This combination of real-time data and transparent, immediate feedback created incentives to adopt practices that better protect the public. The ultimate payoff: Compstat and better crime analysis helped New York City reduce crime.⁹²



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Momentum is building to adapt Compstat's core principles—accurate and timely intelligence; deployment of resources where they are most needed; effective tactics; and relentless follow-up and assessment—to the community corrections field.⁹³ The overall goal is to lower recidivism rates among probationers and parolees, but other key performance measures include employment, substance abuse and payment of victim restitution rates. Another yardstick would track whether supervised offenders are successfully discharged at the end of their supervision term.

Agencies in several states, including Maryland, New York and Georgia, have adopted Compstat-like systems and are beginning to show promising outcomes. The rate at which offenders successfully complete their parole terms in Georgia, for example, has risen by four percentage points under the new approach. It may not sound like much, but each percentage point is estimated to save the state \$6 million to \$7 million in reduced incarceration costs.⁹⁴

A Rare Moment in Time

The revelation last year that 1 in 100 adults is behind bars led to action in some states as political leaders took a fresh look at sentencing and correctional policies with an eye toward better balancing public safety, offender accountability and the realities of tight budgets.

Today, economic crisis is again changing the game. States are in dire fiscal shape, slashing programs and services in ways that will exact a considerable human toll. To balance their budgets, many will have to slow prison growth or even shutter entire institutions. Community corrections programs, already strained from years of neglect, will be asked, once again, to do more with less.

But tight budgets can inspire better policy making and a heightened vigilance to ensure every tax dollar delivers maximum value for the public. Such is the case today with respect to the massive, expensive and underperforming correctional system in America.

Research and experience have led practitioners, analysts and policy makers to develop a set of sentencing and correctional principles that meet that challenge. With adequate resources and authority, courts and community corrections professionals can determine which offenders should be in prison and for how long. With new supervision strategies and technologies, the lower-risk offenders can be managed safely and held accountable in the community, at lower cost and with better results than incarceration achieves.

“We won’t get true public safety and protection for crime victims until we invest in community corrections – because most offenders are not behind bars, but living as our neighbors.”

*Anne Seymour, National Crime Victim Advocate
Personal Communication
2009*

These efforts need to be strengthened, not scaled back. Cutting them may appear to save a few dollars, but it won’t. It will fuel the cycle of more crime, more victims, more arrests, more prosecutions and still more imprisonment.

Better performance in community corrections can cut crime and avert the need not only for new prisons but even for some we already have. And the accrued savings, if used to reinforce probation and parole, support early-intervention strategies, or shore up the high-stakes neighborhoods where prisoners come from and return to, can generate even further reductions in crime and incarceration.

Some states are putting research into action and carefully modernizing their correctional playbooks. Others should follow suit. Meaningful progress will take time, and will require focus and determination from state leaders. But doing nothing is unacceptable. Continuing down the same path is an affront to taxpayers who rightly expect government to learn from its failings and build upon its success.

Endnotes

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- 2 Evidence on the causes of prison growth from 1980 until 1996 points almost entirely to sentencing and corrections policies. According to a seminal article on the issue, the rise in incarceration of non-drug offenders, who constitute the vast majority of the prison population, was due entirely to a higher probability of incarceration after an arrest and an increase in time-served after commitment to a penal institution. Cited in Alfred Blumstein and Allen J. Beck, "Population Growth in U.S. Prisons, 1980-1996," *Prisons* (1999).
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- 4 Glaze, Lauren E. and Thomas P. Bonczar, 2007 Statistical Tables, *Probation and Parole in the United States* (Washington, D.C.: Bureau of Justice Statistics, Dec. 2008). Available online at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ppus07st.pdf>.
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- 8 Taxman, Faye S., Douglas W. Young, Brian Wiersema, Anne Rhodes, and Suzanne Mitchell, "The National Criminal Justice Treatment Practices Survey: Multilevel Survey Methods and Procedures," *Journal of Substance Abuse Treatment*, 32 (3), (April 2007).
- 9 West, Heather C., and William J. Sabol, *Prisoners in 2007*, U.S. Department of Justice, Bureau of Justice Statistics (Washington, D.C.: Dec. 2008). Available online at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p07.pdf>.
- 10 One in 27 Michiganders are under correctional control but, for mapping purposes, The Pew Center on the States and partner, the Justice Mapping Center, were only able to secure residential information for 122,165 of the 278,805 supervised offenders in the state. In particular, due to the state's structure for misdemeanor probationers, we were unable to gather geographic information for a large portion of the state's overall probationer population. Misdemeanor offenses are those that typically result either in fines, community supervision, or short-term stays in local or county jails. Felony offenses, by contrast, can result in prison stays exceeding one year, in addition to all the sanctions open to misdemeanants.
- 11 On neighborhood destabilization, see Todd R. Clear and Dina R. Rose, "When Neighbors Go to Jail: Impact on Attitudes About Formal and Informal Social Control." Summary of a presentation at the U.S. Department of Justice, National Institute of Justice, July 1999. On decreased wage growth, see Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation, 2006). On incarceration and AIDS infection rates, see Rucker Johnson and Steven Raphael, "The effects of male incarceration dynamics on AIDS infection rates among African-American women and men," *Journal of Law and Economics* [forthcoming]; available online at <http://gsppi.berkeley.edu/faculty/sraphael/aids-paper-july-2007.pdf>.
- 12 Analysis based on National Association of State Budget Officers, "State Expenditure Report" series. Available online at <http://www.nasbo.org/publications.php>. Budget figures throughout this report are not adjusted for inflation.
- 13 Ibid.
- 14 Ibid.
- 15 Ibid.
- 16 Bureau of Justice Statistics, "Direct expenditures by criminal justice function, 1982-2006." Available online at <http://ojp.usdoj.gov/bjs/glance/tables/exptyptab.htm>.
- 17 While organizations such as the National Association of State Budget Officers and the National Conference of State Legislatures annually conduct surveys of state expenditures, they do not distinguish between spending on prisons, probation and parole when measuring corrections expenditures. The most recent known similar survey was conducted by the Criminal Justice Institute in 2002. The lead partner for this fiscal year 2008 survey was the American Probation and Parole Association, and other partners included the Crime and Justice Institute, the Council of State Governments Justice Center, the National Center of State Courts, the National Governors Association and the Vera Institute of Justice.
- 18 They are AR, AL, AK, CO, DE, GA, ID, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NC, ND, NH, NM, NY, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA and WY.
- 19 They are LA, WY, AL, MO, MT, GA, OR and NY.
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Methodology Notes

Overview: This report analyzed prison, jail, parole and probation populations individually and as a share of the total adult population both on a national and a state level. Trends over time in these corrections populations and as a share of the adult population were expressed in a 25-year span of year end figures, beginning with year end 1982 and ending at year end 2007. These year end data were derived through a variety of methods explained below.

National Corrections Populations: Data from the Bureau of Justice Statistics (BJS) Correctional Surveys (available at www.ojp.usdoj.gov/bjs/glance/tables/corr2tab.htm) were used for all national-level correctional population figures. These include national prison, jail, probation and parole population figures. Where national corrections populations are expressed as a rate, such as "1 in 31," they have been combined with adult resident population data from the U.S. Census.

Adult Population: U.S. adult resident population figures were derived nationally and for each state from midyear data prepared by the U.S. Census Bureau, State Population Estimates, going back to midyear 1981. These midyear census figures were then averaged to create year end figures which were used for all calculations throughout this report. The rate of growth for midyears 2006 to 2007 was applied to midyear 2007 figures to derive projected midyear 2008 figures; these were then averaged with the midyear 2007 figures to estimate year end figures for 2007.

State Corrections Populations: A variety of sources were compiled to generate the different components of the total corrections population: prisoners, jail inmates, probationers and parolees. The different data sources for each component are described below. Additionally, the methods used to compensate and adjust for missing data are discussed.

Prison Inmates: State prison figures used throughout the report include BJS year end state prison counts as well as year end counts and estimates of federal inmates by state of reported residence from the Federal Bureau of Prisons (BOP). The prison inmate figures in this report exclude state prisoners held in local jails; they have been counted as part of the jail population as described in the section on jail inmates.

State prison counts as reported to BJS are conventionally calculated using only those inmates held under state jurisdiction or custody. Nationally, this method excludes nearly 200,000 inmates who are held in the federal prison system and leads to state imprisonment figures that, purely due to state-federal jurisdictional boundaries, are lower than corresponding national figures. In order to provide a more complete account of prisoners by state, federal inmates were added back into each state's BJS-reported counts. Overall, this adjustment allows, for example, BOP prisoners from Wisconsin to be counted as Wisconsin prisoners. This was done using BOP data.

The BOP provided year end counts of federal inmates by state of reported residence for the years 1999 through 2007. These counts were used in this report, and were also used to estimate

year end counts used in this report for the years 1982 through 1998. BOP does not have home-state addresses for all inmates. As a percentage of the total BOP population, the number with a reported home state residence hovers around 83 percent from 1999 to 2003, and climbs steadily to 88 percent from 2004 to 2007. To conservatively estimate the total number of BOP inmates that came from all states for the years 1982 to 1998, the 1999 to 2003 "83 percent" average was applied to the total BOP population reported for each of those years. Then, each state's 1999 to 2003 average share of BOP inmates was applied to the estimated "83 percent" count for each year in the 1982 to 1998 period. This gave a rough estimate of the number of federal prisoners from each state for the years 1982 to 1998 which allowed the state level prison population estimates to better reflect the actual prison population.

Jail Inmates: State jail figures are based largely on BJS surveys of jail inmates conducted in February 1978 and at midyears 1983, 1988, 1993, 1999 and 2005. Since statewide jail counts are not available in the intervening years, a straight-line estimation was applied to obtain jail populations for each of those years, and to adjust all figures to year end counts. This method provided the jail population estimates from 1982 to 2006. To this data set was added year end 2007 state jail counts derived from survey data wherever available and estimates where states wouldn't or couldn't respond to the survey questions.

While BJS was able to provide an estimated national year end 2007 jail population, individual figures for each state were not available. The year end 2007 state jail counts used in this report include a combination of counts reported to JFA Associates by 22 states and Washington D.C. and estimations for 23 states. Five states with unified jail and prison systems (CT, VT, RI, DE and HI) were assigned year end 2007 jail populations of zero, consistent with BJS's reporting in all previous years when these states' jail inmates were counted in their reported prison populations. Though often considered a unified system state, Alaska has a small local jail population and was therefore included in the estimation process.

JFA Associates surveyed all 50 states and DC and received jail population counts from 23 of them. All told, JFA reported jail populations for CA, DC, FL, IN, KY, LA, ME, MD, MA, MI, MN, NJ, NM, NY, OH, PA, SC, TN, TX, VA, WA, WV and WI totaling nearly 547,000 inmates, representing 70 percent of BJS's reported 2007 national jail population. For the remaining 23 states, a year end 2007 jail population was estimated by applying the rate of growth experienced by the 22 respondent states between midyear 2005 and year end 2007 to the midyear 2005 population of the 23 estimated states. The rate, 1.7 percent, appears to be a conservative growth estimate, as BJS recently reported a 1.9 percent rate of growth for jails nationally from midyear 2006 to midyear 2007.¹

To avoid double-counting of prisoners, a count or estimate of prisoners held in local jails was subtracted from each state's jurisdictional prisoner count. BJS provided these data from

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1999 to 2007; these counts were used in this report, and were also used to estimate year end counts used in this report for the remaining years, 1982 to 1998. The average percent of inmates who would have been double-counted (by state) during the years from 1999 to 2005 was applied to the total jail and prison count of each state for all years before 1999. For 11 states, the average was zero and most states were relatively consistent. The modeling is based on counts from 1999 to 2005 because this is the period for which BJS state-by-state data, or imputed jail populations are available.

Probationers and Parolees: State probation and parole figures include BJS year end counts as well as counts from the Administrative Office of the U.S. Courts (AOC). As with the U.S. Census data, the AOC data were midyear counts, which were averaged to create year end estimates for the purposes of this report. Similar to the how federal prisoners are conventionally absent from state prison counts, state probation and parole statistics typically ignore offenders in the states under supervision in the community by federal authorities. The AOC provided counts by state of community supervision offenders under federal jurisdiction for the entire 25-year period from 1982 to 2007. For counting purposes, the federal definitions “judge probation,” “magistrate judge probation” and “pretrial diversion” were combined to form a single federal probation category. A single federal parole category was constructed out of the various federal forms of post-prison supervision—“term of supervised release,” “parole,” “mandatory release,” “military parole” and “special parole.” These federal probation and parole categories were added to each state’s BJS-reported probation and parole counts, respectively, to obtain total statewide probation and parole counts.

Complicating issues: There were numerous data challenges that make it difficult to provide an accurate state level count. These include problems with double counting, shifting definitions and missing data on the community corrections population. These issues and the steps taken to deal with them are presented below.

Double-counting: Offenders involved with more than one criminal justice agency could be double-counted and artificially inflate most measures of correctional control. For example, an offender on probation or parole might be imprisoned or jailed but not removed from the probation or parole rolls. BJS has used increasingly sophisticated measures to avoid double-counting. In its most recent such release of data, BJS adjusted for possible overlap between probation, parole, prison and jail counts. Its adjusted total correctional population amounts to a 1.11% reduction in the sum of the separate probation, parole, prison and jail counts. Pew could not perform such adjustments for the 50-states with available data. This could lead to overestimates, a risk that could affect states like Georgia that have many agencies, some privatized, handling large corrections populations. In Georgia’s case, there are concerns that some individuals on probation in multiple jurisdictions might be counted separately for each jurisdiction and that private agencies report counts of cases under supervision rather than individual offenders.

Change in counting definition: In 1998, BJS revised the probation survey used in its population counts to include more reporting agencies. In states like Georgia and Idaho, this revision expanded counts to include court-based populations, often of

misdemeanants. One consequence is that these additional reporting agencies increase the risk of double-counting, discussed above. Unfortunately, due to the limited data on the specifics of these additional groups included in the updated probation and parole statistics, it is impossible to determine the degree to which the additional reporting agencies are correcting previous underestimates of the correctional population and the degree to which the additional agencies are contributing to overestimates of that population.

Share of correctional population in institutional versus community settings: Double-counting of offenders with multiple criminal justice statuses and the change in counting rules would tend artificially to inflate the share of the correctional population that is under supervision in the community. However, as noted in the sidebar, “An Even Wider Net?,” there may be a large number of offenders in pre-trial supervision programs, drug courts or other court-based alternative sentencing units, and other specialized programs who are not picked up in conventional probation or parole counts. These populations have likely increased over time, especially due to the proliferation of drug courts. These various counting issues offset each other to some unknown degree. A more precise estimate of the community supervision population, and therefore its share of the total correctional population, will be identified only when more extensive and detailed surveys are designed and conducted.

Spending Figures: To collect current and past prison, probation and parole spending figures from all states, the Pew Center on the States partnered with the American Probation and Parole Association (APPA). APPA designed a survey and coordinated data collection with partner organizations including the Crime and Justice Institute, the Council of State Governments Justice Center, the National Governors Association and the Vera Institute of Justice. Forty-five states completed at least a portion of the survey and 34 provided data on probation, parole and prison expenditures for both FY08 and at least one baseline fiscal year. Analysis of these data, performed both by APPA and Pew, forms the basis of the fiscal analyses included in this report and the state fact sheets.

The APPA survey asked for total fiscal year expenditures as well as per diem costs for administering probation, parole and prison supervision and services. While respondents were asked to exclude capital costs, they were requested to include costs for personnel, operations, treatment and an undefined “other” category. Respondents were asked for this information both in FY2008 and an historical baseline as far back as FY1983 (or in five-year increments from that point forward).

For states that were unable to complete the APPA survey, statistics were gathered from the National Association of State Budget Officers (NASBO) State Expenditure Reports. These reports contain an impressive scope of state spending information, going back more than 20 years. The corrections spending figures they contain, however, do not distinguish between corrections expenditures including probation, parole and prison.

Throughout the report, spending figures have not been adjusted for inflation.

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Jurisdictional Notes

Within the 50 states and the District of Columbia there are hundreds of prison, probation and parole agencies (in addition to many more jails and community corrections agencies) operating with different population and budget counting rules. The following notes are provided to explain some of these differences and to account for many of the idiosyncrasies in the reported data. The notes are based on reports collected by the Bureau of Justice Statistics (BJS) and the American Probation and Parole Association, as well as direct contacts with state officials, but they are not a complete description of all counting issues.

Alabama: Probation and parole spending figures include all probationers under the Department of Corrections, but do not include some offenders sentenced to community supervision. Rental costs are included in operating costs. Treatment services were not provided internally in 1983. Most prison treatment services are now provided by the DOC internally. Mental health treatment is contracted out to private companies. These costs are grouped under professional services that include health care services, leased bed contracts, and all treatment programs.

Alaska: Though the state's prison system manages most jail inmates, BJS reports that there are several dozen jail inmates in local jails throughout the state. A state jail population was therefore estimated for Alaska (see Methodology Notes).

Arkansas: In 2008, the Department of Community Corrections operated community corrections beds and probation and parole. As opposed to later years, some probation and parole costs were included in prison costs in 1984.

Colorado: Per diem costs for Colorado prisons are weighted to include both state and privately managed facilities. Probation figures do not cover all expenditures excluding, for example, grants for pilot programs and victim services. In all reported years, costs cover only those probationers in the state courts as well as from the District Court of Denver, but exclude probationers from the City or County of Denver and the approximately 20,000 probationers in Colorado supervised by private agencies funded through offender supervision fees. Probation figures were adjusted by survey respondent to account for differences in funds received from the collection of drug offender assessment fees, which were collected in 2008 but not 2003.

District of Columbia: Tracking correctional populations in the District is complicated by the transfer to federal custody of all District prisoners as a result of the 1997 Revitalization Act. For this report, District probationers, parolees and jail inmates were counted as described in the methodology section. The District's prisoner count consists of BJS-reported figures for the period 1982-2000, of BOP-reported Superior Court sentenced prisoners for the period 2002-2007, and of an average of the BJS 2000 figure and the BOP 2002 figure for the year 2001. Because the 2002-2007 BOP figures would have overlapped with the BOP data on prisoners by reported home state address (see Methodology Notes), this latter category of

inmates was excluded from DC's prisoner calculation. Also excluded from the District's counts are Federal District Court sentenced prisoners in the BOP and an anomalous figure reported to the BJS of prisoners held in local jails in 2000.

Georgia: The budget total for 1983 did not provide a specific subcategory total for parole supervision or other agency functions. A close approximation of the supervision portion of the budget was calculated by the respondent by determining parole supervision's share of the 2008 budget (69 percent) and applying it to the 1983 total. Figures for parole in 2008 include funds for GPS monitoring, not included in the 1983 budget. Georgia's probation population appears to be inflated both by a number of local ordinance violators under the jurisdiction of the state courts and by counts by private probation providers that reflect probation cases rather than probationers. This means that some probationers with multiple convictions may be counted more than once. The population count also may include a number of people whose probation terms have ended but for whom there are outstanding warrants.

Hawaii: For 1998, the total budget expenditure for probation includes payroll costs but does not include fringe benefits. Hawaii maintains a unified state jail and prison system and, per reporting to the BJS, has in this report a single figure for its incarcerated population.

Illinois: Illinois does not have a reported parole population in the BJS parole survey of 2006. For this report, this void was filled by a straight-line average of the state's 2005 and 2007 figures.

Louisiana: Probation and parole expenditure figures include offender fees.

Maine: Maine does not have a reported parole population in the BJS parole survey from 1985-1990. For this report, this void was filled by a straight-line average of the state's 1984 and 1991 figures.

Maryland: Treatment programs such as the Substance Abusing Offender Program and the Urinalysis and Treatment Program did not exist in 1988 but are reflected in the 2008 expenditure figures. Prison treatment costs include medical services, which in 1988 were approximately \$15.3 million across the Division of Corrections. In 2008, these costs were contracted out and totaled approximately \$107.2 million in expenditures, all falling under contractual services.

Michigan: Maps of Michigan's correctional population were prepared by the Justice Mapping Center, Inc. (www.justicemapping.org). Geographic data on standing populations of the state's prisoners (as of May 20, 2008), parolees (as of May 28, 2008) and probationers (as of July 15, 2008) was provided by the Michigan Department of Corrections; on the state's county jail inmates (average daily populations for 2007) by the JPIS report from the Michigan Department of Corrections and by the Wayne County Sheriff's office; on the state's federal prisoners by the Bureau

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of Prisons (as of December 21, 2008); and on the state's community supervised, federal custody offenders by the Eastern and Western Districts of Michigan, Administrative Office of U.S. Courts (as of January 7, 2009). The 2008 prison costs include juveniles adjudicated as an adult or youthful trainee, which was not the case in 1998. Michigan's figure for corrections' share of general fund spending (22 percent in FY2008) is not comparable with similar figures from other states, because in 1994, Michigan separated its K-12 education system into a different fund.

Minnesota: Prison costs only include prisons operated by the Department of Corrections and contracted facilities, and exclude private prison costs in Minnesota. Probation and parole figures were provided by the respondent from the Department of Corrections that is in charge of probation and parole supervision for 55 of Minnesota's 87 counties. This respondent was able to provide budget subsidy totals provided by the state legislature through the Minnesota Community Corrections Act. This figure excludes local funding of probation and parole but does capture a large portion of probation and parole spending in Minnesota, and it is consistent across reported time periods.

Missouri: Prison costs include juveniles sentenced as adults. All personnel costs exclude fringe benefits which are paid separately for all state employees. In 2007 and 2008, the State Office of Administration assumed control of budgets for maintenance functions and information systems from other state agencies. Missouri officials made adjustments to the 2008 per offender costs to account for this difference. Probation and parole costs in 2008 include two additional community release centers and six community supervision centers (totaling \$13,035,480).

Montana: Probation and parole spending in 1983 included 37 prerelease beds and juvenile aftercare, both of which were removed from the budget by 2008. Personnel costs in 1983 were included in operating costs, but by 2008 they became a separate line item included in the overall budget. In 1983, the alcohol and drug abuse treatment programs had separate budgets from probation and parole, all of which fell under the Department of Institutions. In 2008, probation and parole budgets included all community corrections alcohol and drug programs. The state's survey respondent reported that there were broad changes in budgeting as certain costs were added to probation and parole spending and others were moved to other agencies including, for example, the removal of probation and parole costs for juvenile supervision.

New York: All personnel figures exclude fringe benefits such as health insurance and retirement benefits. These costs are handled in a different fund. Local assistance funds are included for parole and probation figures in 2008, but only probation in 1983. Prison budgets include \$300 million in capital costs for 2008 and \$75.3 million in capital costs in 1983.

North Dakota: Probation and parole budgets for both reported time periods are included in a Field Services category which includes the five divisions of administration, victim services, interstate compact, security and supervision, and treatment.

Ohio: Prison costs exclude non-expense items (e.g., transfers) and capital costs. 1983 figures include two-thirds of central office costs. On July 1, 2007, Ohio implemented a

new accounting system, the Ohio Administrative Knowledge System (OAKS), which brought about some changes to accounting categories, but the state's survey respondent indicated that this shift should not affect survey responses. Reported parole figures are from the Parole and Community Services division which is the parent agency for Adult Parole Authority. These figures include some probation costs for mostly rural portions of the state.

Oklahoma: Oklahoma's 2007 probation figure is missing from the annual BJS report. For this report, this void was filled by applying the 2005-2006 rate of growth (which was negative) to the year end 2006 figure.

Oregon: Probation and parole budgets in 1983 included misdemeanors that are not included in 2008 probation and parole figures. In 1983, probation and parole offices were operated by the state, and in 2008 all but two jurisdictions were operated by counties through state funding received as an intergovernmental block grant. This change gives the counties more flexibility in allocating the funds. Probation and parole costs were separated by the survey respondent.

Pennsylvania: According to state sentencing laws, inmates with maximum sentences of less than two years are subject to the courts' paroling authority and are typically supervised by county adult probation departments. Data for these jurisdictions are included in the state's figures. The state's survey respondent indicated that, on average, approximately 15-19 percent of the supervised population is comprised of these special probation referrals from the courts. Pennsylvania probation figures are for the supervision of probationers by county adult probation departments.

Rhode Island: The total adult prison spending amount does not include administration costs such as finance, human resources, and information technology charges. Earlier probation and parole budget figures do not include expenditures for electronic monitoring. Rhode Island maintains a unified state jail and prison system and, per reporting to the BJS, has in this report a single figure for its incarcerated population.

Texas: All personnel figures exclude employee benefits, which are budgeted through other state agencies. All prison figures exclude inmates held in private prisons.

Vermont: In 1994, the prison budget did not allocate central administration and management costs to facilities, and all treatment costs were centrally administered. In 2008, such prison costs are included. The state's survey respondent noted that Vermont moved in 1999 toward private prison facilities, and these costs are not included. Probation and parole costs were separated by the state's survey respondent. Vermont maintains a unified state jail and prison system and, per reporting to the BJS, has in this report a single figure for its incarcerated population.

Wyoming: The 1983 probation and parole cost figures include juveniles placed under supervision by the court. Probation and parole treatment costs for 2008, but not 1983, include substance abuse assessments, cognitive behavioral programming, and supportive services associated with drug courts. The prison costs for 2008 have increased due to private sector charges for medical and mental health services. Wyoming total correctional cost figures were reported by the state Legislative Service Office, January 2009.

TABLE A-1

National Correctional Populations, 1982-2007

	Rate of Correctional Control: 1 in X	Total Correctional Population	Probation	Parole	Jail	Prison
2007	31	7,328,200	4,293,163	824,365	780,581	1,512,576
2006	31	7,211,400	4,237,023	798,202	766,010	1,492,973
2005	32	7,051,900	4,166,757	780,616	747,529	1,448,344
2004	32	6,995,100	4,143,792	771,852	713,990	1,421,345
2003	32	6,924,500	4,120,012	769,925	691,301	1,390,279
2002	32	6,758,800	4,024,067	750,934	665,475	1,367,547
2001	32	6,581,700	3,931,731	732,333	631,240	1,330,007
2000	33	6,445,100	3,826,209	723,898	621,149	1,316,333
1999	33	6,340,800	3,779,922	714,457	605,943	1,287,172
1998	33	6,134,200	3,670,441	696,385	592,462	1,224,469
1997	35	5,734,900	3,296,513	694,787	567,079	1,176,564
1996	36	5,490,700	3,164,996	679,733	518,492	1,127,528
1995	37	5,342,900	3,077,861	679,421	507,044	1,078,542
1994	38	5,148,000	2,981,022	690,371	486,474	990,147
1993	39	4,948,300	2,903,061	676,100	459,804	909,381
1992	40	4,765,400	2,811,611	658,601	444,584	850,566
1991	41	4,537,900	2,728,472	590,442	426,479	792,535
1990	43	4,350,300	2,670,234	531,407	405,320	743,382
1989	45	4,057,800	2,522,125	456,803	395,553	683,367
1988	49	3,715,800	2,356,483	407,977	343,569	607,766
1987	52	3,461,400	2,247,158	355,505	295,873	562,814
1986	55	3,241,100	2,114,621	325,638	274,444	526,436
1985	59	3,013,100	1,968,712	300,203	256,615	487,593
1984	65	2,690,700	1,740,948	266,992	234,500	448,264
1983	70	2,476,800	1,582,947	246,440	223,551	423,898
1982	77	2,194,400	1,357,264	224,604	209,582	402,914

See methodology and state notes sections for definitions and exceptions.

Sources include the Bureau of Justice Statistics (correctional populations) and the Pew Center on the States (1 in X figures, based upon analysis of data from the U.S. Census State Population Estimates and Bureau of Justice Statistics).

Total correctional population counts are not equal to the sum of probation, parole, jail and prison counts due to offenders with dual status.

TABLE A-2

State and National Correctional Spending

	FY2008 Total General Fund Corrections Spending, in millions	FY2008 Corrections as a Percent of State General Fund Spending		State General Fund Corrections Spending, in millions	Corrections as a Percent of State General Fund Spending
Alabama	\$420	2.5%	2008	\$47,335	6.9%
Alaska	\$240	4.7%	2007	\$43,904	6.7%
Arizona	\$951	9.5%	2006	\$40,078	6.7%
Arkansas	\$348	8.0%	2005	\$38,239	6.9%
California	\$9,657	9.3%	2004	\$35,744	7.0%
Colorado	\$625	8.6%	2003	\$35,285	7.2%
Connecticut	\$699	4.3%	2002	\$34,364	6.9%
Delaware	\$200	6.1%	2001	\$33,571	6.9%
District of Columbia	n/a	n/a	2000	\$32,195	7.1%
Florida	\$2,819	10.0%	1999	\$29,733	7.1%
Georgia	\$1,100	5.9%	1998	\$27,021	6.9%
Hawaii	\$228	4.3%	1997	\$25,440	6.8%
Idaho	\$207	7.3%	1996	\$24,847	6.9%
Illinois	\$1,363	6.1%	1995	\$23,251	6.7%
Indiana	\$669	5.3%	1994	\$20,062	6.2%
Iowa	\$353	6.0%	1993	\$17,435	5.7%
Kansas	\$341	5.6%	1992	\$16,504	5.6%
Kentucky	\$521	5.5%	1991	\$15,890	5.7%
Louisiana	\$625	6.4%	1990	\$14,453	5.5%
Maine	\$153	4.9%	1989	\$12,887	5.3%
Maryland	\$1,192	8.2%	1988	\$11,744	5.2%
Massachusetts	\$1,250	4.6%			
Michigan ¹	\$2,178	22.0%			
Minnesota	\$460	2.6%			
Mississippi	\$266	6.4%			
Missouri	\$575	6.8%			
Montana	\$169	8.6%			
Nebraska	\$179	5.1%			
Nevada	\$253	7.9%			
New Hampshire	\$101	6.8%			
New Jersey	\$1,581	4.8%			
New Mexico	\$277	4.6%			
New York	\$2,871	5.4%			
North Carolina	\$1,254	6.2%			
North Dakota	\$65	5.4%			
Ohio	\$1,794	7.3%			
Oklahoma	\$491	7.0%			
Oregon	\$763	10.6%			
Pennsylvania	\$1,836	6.7%			
Rhode Island	\$185	5.5%			
South Carolina	\$487	6.6%			
South Dakota	\$81	7.1%			
Tennessee	\$675	5.5%			
Texas	\$2,958	6.8%			
Utah	\$330	5.7%			
Vermont	\$116	9.4%			
Virginia	\$1,254	7.6%			
Washington	\$917	6.3%			
West Virginia	\$181	4.7%			
Wisconsin	\$1,076	8.0%			
Wyoming ²	\$103	5.7%			

All cost figures from the National Association of State Budget Officers, State Expenditure Reports. FY2008 figures are estimates.

¹On Michigan corrections' share of general fund spending, see state notes.

²Wyoming cost figures reported by State Legislative Service Office, January 2009.

TABLE A-3

State Correctional Populations, Year End 2007

	Rate of Correctional Control: 1 in X	Total Correctional Population	Probation	Parole	Jail	Prison	Federal Prisoners and Community-Supervised Offenders
Alabama	32	108,843	51,745	7,790	15,401	27,816	6,091
Alaska	36	14,005	6,416	1,544	66	5,167	812
Arizona	33	144,221	76,830	6,807	15,743	37,700	7,141
Arkansas	29	73,193	31,676	19,388	6,229	13,307	2,593
California	36	755,256	353,969	123,764	82,662	171,500	23,361
Colorado	29	128,186	77,635	11,086	13,871	22,666	2,928
Connecticut	33	82,655	57,493	2,177	0	20,924	2,061
Delaware	26	25,082	16,696	535	0	7,276	575
District of Columbia	21	22,892	6,485	5,569	2,900	6,606	1,332
Florida	31	462,435	274,079	4,654	64,547	97,072	22,083
Georgia	13	562,763	435,361	23,111	45,732	49,337	9,222
Hawaii	32	31,620	19,426	2,110	0	5,978	4,106
Idaho	18	63,231	48,663	3,114	3,852	6,744	858
Illinois	38	252,776	142,790	33,354	20,408	45,215	11,009
Indiana	26	181,459	126,562	10,362	15,540	25,130	3,865
Iowa	54	42,294	22,776	3,546	3,699	8,732	3,541
Kansas	53	39,275	16,131	4,842	7,022	8,696	2,584
Kentucky	35	91,993	42,510	12,741	18,337	14,545	3,860
Louisiana	26	122,207	39,006	24,085	33,627	20,461	5,028
Maine	81	12,852	7,853	32	1,838	2,222	907
Maryland	27	156,776	98,470	13,856	13,632	23,282	7,536
Massachusetts	24	206,241	175,419	3,209	13,394	11,300	2,919
Michigan	27	278,805	182,706	21,131	18,100	50,190	6,678
Minnesota	26	152,319	127,797	4,744	8,085	8,950	2,743
Mississippi	38	56,208	21,623	2,015	11,617	17,479	3,474
Missouri	36	125,613	56,240	19,849	10,639	29,857	9,028
Montana	44	16,997	9,106	966	2,304	2,940	1,681
Nebraska	44	30,195	18,910	800	3,151	4,505	2,829
Nevada	48	40,172	13,461	3,653	7,231	13,245	2,582
New Hampshire	88	11,628	4,650	1,653	1,757	2,891	677
New Jersey	35	191,473	126,390	15,043	19,627	25,359	5,054
New Mexico	35	42,197	20,774	3,527	8,345	6,350	3,201
New York	53	282,215	119,963	53,669	28,400	62,602	17,581
North Carolina	38	181,435	111,446	3,311	17,464	37,970	11,244
North Dakota	63	7,885	4,468	342	960	1,368	747
Ohio	25	351,879	254,898	17,575	20,560	50,731	8,115
Oklahoma	42	65,720	26,038	2,349	9,748	23,957	3,628
Oregon	33	89,589	43,732	22,658	6,661	13,925	2,613
Pennsylvania	28	346,268	176,987	78,107	35,347	45,969	9,858
Rhode Island	26	31,250	26,137	462	0	4,018	633
South Carolina	38	88,352	42,721	2,433	13,137	23,862	6,199
South Dakota	40	15,211	5,870	2,812	1,456	3,256	1,817
Tennessee	40	117,428	56,179	10,496	23,590	19,248	7,915
Texas	22	797,254	434,309	101,748	67,885	159,016	34,296
Utah	64	29,023	10,829	3,597	6,854	5,223	2,520
Vermont	46	10,622	7,059	936	0	2,145	482
Virginia	46	129,681	51,954	6,850	27,583	32,972	10,322
Washington	30	165,725	118,885	13,017	12,137	17,410	4,276
West Virginia	68	21,065	7,890	1,830	3,628	4,907	2,810
Wisconsin	39	110,642	53,230	16,986	13,931	23,028	3,467
Wyoming	38	10,631	5,358	706	1,577	2,028	962

See methodology and state notes for definitions and exceptions.

Sources include the Bureau of Justice Statistics (probation, parole and prison populations, December 31, 2007), the Federal Bureau of Prisons, the Administrative Office of U.S. Courts and the Pew Center on the States (jail populations and 1 in X figures, based upon analysis of data from the U.S. Census State Population Estimates and Bureau of Justice Statistics). Total correctional population figures may exceed total correctional population due to offenders with dual status.

TABLE A-4

Adult Incarceration Rates (Jail and Prison)

	2007			1982		Growth in Incarceration Rate, 1982-2007
	Rank	1 in X	Percent of Adults	1 in X	Percent of Adults	
District of Columbia	1	50	2.00%	74	1.35%	48%
Louisiana	2	55	1.81%	205	0.49%	272%
Mississippi	3	69	1.44%	247	0.41%	256%
Georgia	4	70	1.42%	169	0.59%	141%
Texas	5	71	1.41%	215	0.47%	203%
Alabama	6	75	1.33%	208	0.48%	176%
Oklahoma	7	76	1.32%	275	0.36%	263%
Florida	8	82	1.22%	186	0.54%	127%
South Carolina	9	83	1.21%	190	0.53%	131%
Arizona	10	83	1.21%	226	0.44%	173%
Delaware	11	88	1.14%	209	0.48%	139%
Alaska	12	88	1.14%	224	0.45%	154%
Virginia	13	89	1.13%	270	0.37%	205%
Nevada	14	89	1.13%	171	0.58%	93%
New Mexico	15	90	1.11%	298	0.34%	232%
Kentucky	16	92	1.08%	391	0.26%	324%
Wyoming	17	94	1.06%	330	0.30%	252%
Colorado	18	97	1.03%	394	0.25%	307%
Missouri	19	97	1.03%	308	0.32%	217%
Tennessee	20	98	1.02%	272	0.37%	176%
Idaho	21	100	1.00%	415	0.24%	314%
Arkansas	22	102	0.98%	309	0.32%	204%
California	23	102	0.98%	243	0.41%	137%
Maryland	24	103	0.97%	191	0.52%	86%
South Dakota	25	104	0.96%	401	0.25%	285%
Michigan	26	105	0.95%	283	0.35%	169%
Hawaii	27	108	0.92%	448	0.22%	314%
Wisconsin	28	109	0.92%	437	0.23%	300%
North Carolina	29	110	0.91%	211	0.47%	93%
Indiana	30	111	0.90%	327	0.31%	195%
Pennsylvania	31	111	0.90%	420	0.24%	280%
Ohio	32	115	0.87%	314	0.32%	173%
Montana	33	118	0.85%	457	0.22%	287%
Kansas	34	120	0.84%	386	0.26%	223%
Connecticut	35	121	0.82%	446	0.22%	267%
Oregon	36	132	0.76%	303	0.33%	130%
Illinois	37	133	0.75%	348	0.29%	162%
Utah	38	136	0.74%	486	0.21%	258%
New Jersey	39	140	0.72%	408	0.24%	192%
West Virginia	40	140	0.71%	564	0.18%	303%
Nebraska	41	143	0.70%	424	0.24%	197%
New York	42	148	0.68%	294	0.34%	99%
Iowa	43	154	0.65%	533	0.19%	247%
Washington	44	155	0.64%	312	0.32%	101%
North Dakota	45	179	0.56%	817	0.12%	357%
Rhode Island	46	187	0.53%	662	0.15%	254%
Massachusetts	47	190	0.53%	572	0.17%	200%
New Hampshire	48	204	0.49%	740	0.14%	264%
Vermont	49	204	0.49%	587	0.17%	188%
Minnesota	50	211	0.47%	726	0.14%	243%
Maine	51	226	0.44%	488	0.20%	116%

Calculations based on data from the U.S. Census State Population Estimates, the Bureau of Justice Statistics Correctional Surveys, the U.S. Bureau of Prisons and the Pew Public Safety Performance Project. See methodology notes for details.

TABLE A-5

Adult Community Supervision Rates (Probation and Parole)

	2007			1982		Growth in Supervision Rate, 1982-2007
	Rank	1 in X	Percent of Adults	1 in X	Percent of Adults	
Georgia	1	15	6.50%	48	2.09%	212%
Idaho	2	21	4.71%	186	0.54%	775%
Massachusetts	3	28	3.58%	163	0.61%	483%
Minnesota	4	30	3.37%	114	0.88%	284%
Rhode Island	5	31	3.26%	104	0.96%	238%
Ohio	6	32	3.16%	183	0.55%	479%
Texas	7	32	3.14%	52	1.92%	64%
Indiana	8	35	2.89%	158	0.63%	356%
District of Columbia	9	35	2.82%	43	2.34%	20%
Michigan	10	37	2.70%	179	0.56%	384%
Maryland	11	37	2.69%	53	1.90%	42%
Washington	12	37	2.68%	49	2.04%	32%
Pennsylvania	13	37	2.68%	129	0.78%	245%
Delaware	14	38	2.63%	82	1.22%	117%
Arkansas	15	41	2.43%	238	0.42%	476%
Colorado	16	41	2.42%	137	0.73%	232%
Oregon	17	43	2.32%	97	1.03%	125%
Connecticut	18	44	2.25%	68	1.47%	53%
Hawaii	19	45	2.23%	112	0.89%	149%
New Jersey	20	46	2.17%	111	0.90%	141%
Louisiana	21	48	2.07%	129	0.78%	166%
Florida	22	50	2.00%	124	0.81%	148%
Illinois	23	54	1.86%	109	0.92%	102%
Arizona	24	55	1.83%	121	0.82%	122%
California	25	56	1.79%	96	1.04%	71%
Missouri	26	56	1.78%	142	0.70%	153%
Alabama	27	57	1.76%	158	0.63%	178%
Kentucky	28	57	1.74%	141	0.71%	146%
New Mexico	29	58	1.73%	170	0.59%	194%
North Carolina	30	58	1.71%	84	1.20%	43%
Vermont	31	60	1.67%	83	1.20%	39%
Wisconsin	32	60	1.66%	149	0.67%	146%
Alaska	33	61	1.63%	151	0.66%	147%
Wyoming	34	63	1.59%	208	0.48%	231%
Nebraska	35	64	1.56%	109	0.91%	71%
South Dakota	36	64	1.56%	192	0.52%	200%
Tennessee	37	68	1.47%	228	0.44%	236%
Montana	38	70	1.44%	172	0.58%	148%
South Carolina	39	71	1.40%	110	0.91%	54%
New York	40	82	1.22%	135	0.74%	64%
Iowa	41	83	1.20%	175	0.57%	110%
Mississippi	42	86	1.17%	183	0.55%	113%
Oklahoma	43	92	1.09%	135	0.74%	47%
Virginia	44	94	1.06%	180	0.55%	91%
Kansas	45	96	1.04%	112	0.89%	17%
North Dakota	46	98	1.02%	327	0.31%	235%
Nevada	47	106	0.95%	107	0.94%	1%
Utah	48	120	0.83%	100	1.00%	-17%
Maine	49	126	0.79%	253	0.40%	100%
West Virginia	50	131	0.76%	376	0.27%	186%
New Hampshire	51	155	0.64%	246	0.41%	58%

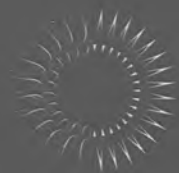
Calculations based on data from the U.S. Census State Population Estimates, the Bureau of Justice Statistics Correctional Surveys, the Administrative Office of U.S. Courts and the Pew Public Safety Performance Project. See methodology notes for details. Population changes between 1982 and 2007 result both from changes in the true supervised populations and changes in survey instruments. In particular, the Bureau of Justice Statistics amended the annual probation survey to include probationers under local jurisdiction (i.e. not under state jurisdiction). This change in definition may, for some states, result in an artificially inflated growth figure.

TABLE A-6

Adult Correctional Control Rates (Jail, Prison, Probation and Parole)

	2007			1982		Growth in Control Rate, 1982-2007
	Rank	1 in X	Percent of Adults	1 in X	Percent of Adults	
Georgia	1	13	7.92%	37	2.68%	196%
Idaho	2	18	5.71%	128	0.78%	633%
District of Columbia	3	21	4.82%	27	3.69%	31%
Texas	4	22	4.56%	42	2.38%	91%
Massachusetts	5	24	4.10%	127	0.79%	420%
Ohio	6	25	4.03%	116	0.86%	366%
Louisiana	7	26	3.89%	79	1.27%	207%
Minnesota	8	26	3.85%	98	1.02%	278%
Indiana	9	26	3.80%	106	0.94%	304%
Rhode Island	10	26	3.79%	90	1.11%	241%
Delaware	11	26	3.77%	59	1.69%	123%
Maryland	12	27	3.67%	41	2.42%	51%
Michigan	13	27	3.65%	110	0.91%	301%
Pennsylvania	14	28	3.58%	99	1.01%	253%
Colorado	15	29	3.46%	102	0.98%	251%
Arkansas	16	29	3.41%	134	0.74%	358%
Washington	17	30	3.33%	42	2.36%	41%
Florida	18	31	3.22%	74	1.34%	140%
Hawaii	19	32	3.15%	90	1.12%	182%
Alabama	20	32	3.09%	90	1.11%	177%
Oregon	21	33	3.08%	74	1.36%	126%
Connecticut	22	33	3.07%	59	1.69%	82%
Arizona	23	33	3.03%	79	1.27%	140%
New Jersey	24	35	2.88%	87	1.14%	152%
New Mexico	25	35	2.85%	108	0.92%	208%
Kentucky	26	35	2.83%	104	0.97%	193%
Missouri	27	36	2.81%	97	1.03%	173%
Alaska	28	36	2.77%	90	1.11%	150%
California	29	36	2.76%	69	1.46%	90%
Wyoming	30	38	2.65%	128	0.78%	239%
North Carolina	31	38	2.62%	60	1.67%	57%
South Carolina	32	38	2.61%	70	1.44%	82%
Mississippi	33	38	2.61%	105	0.95%	174%
Illinois	34	38	2.61%	83	1.21%	116%
Wisconsin	35	39	2.57%	111	0.90%	185%
South Dakota	36	40	2.52%	130	0.77%	228%
Tennessee	37	40	2.49%	124	0.81%	208%
Oklahoma	38	42	2.41%	90	1.11%	117%
Montana	39	44	2.28%	125	0.80%	186%
Nebraska	40	44	2.26%	87	1.15%	97%
Virginia	41	46	2.19%	108	0.92%	137%
Vermont	42	46	2.16%	73	1.37%	58%
Nevada	43	48	2.07%	66	1.52%	36%
New York	44	53	1.89%	93	1.08%	75%
Kansas	45	53	1.88%	87	1.15%	63%
Iowa	46	54	1.85%	132	0.76%	144%
North Dakota	47	63	1.58%	234	0.43%	270%
Utah	48	64	1.57%	83	1.21%	30%
West Virginia	49	68	1.48%	226	0.44%	233%
Maine	50	81	1.23%	167	0.60%	106%
New Hampshire	51	88	1.14%	184	0.54%	109%

Calculations based on data from the U.S. Census State Population Estimates, the Bureau of Justice Statistics Correctional Surveys, the U.S. Bureau of Prisons, the Administrative Office of U.S. Courts and the Pew Public Safety Performance Project. See methodology notes for details.
Population changes between 1982 and 2007 result both from changes in the true supervised populations and changes in survey instruments. In particular, the Bureau of Justice Statistics amended the annual probation survey to include probationers under local jurisdiction (i.e. not under state jurisdiction). This change in definition may, for some states, result in an artificially inflated growth figure.



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**Advisory Board on Alcoholism
and Drug Abuse**



Alaska Mental Health Board

**ALASKA MENTAL HEALTH BOARD
ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE**
431 NORTH FRANKLIN STREET, SUITE 200
JUNEAU, ALASKA 99801
(907) 465-8920

April 3, 2013

Representative Doug Isaacson
Alaska State Capitol
Juneau, Alaska 99801

Re: HB 178 — Certain Crimes Involving Controlled Substances

Dear Representative Isaacson,

The Advisory Board on Alcoholism and Drug Abuse and Alaska Mental Health Board support HB 178 reducing the penalty for first offenses involving possession of small amounts Schedule IIA controlled substances. There is ample research showing that traditional justice responses – jail and probation – for these types of offenses are less effective than community-based responses. HB 178 protects our communities by ensuring an appropriate justice response while reserving prison space for more serious offenders.

Long jail sentences for first time offenders have not been shown to improve public safety or decrease the incidence of drug crimes. They do increase the costs to the justice and corrections systems and to communities and families as a result of diminished economic and employment opportunities for returning offenders. What have proven effective in Alaska and nationally is community-based probation, education, treatment, and accountability programs. For example, participants in the Anchorage Wellness Court for misdemeanor alcohol offenses have shown to be less likely to reoffend than offenders subject to traditional sentencing responses.¹

By making first offenses involving possession of Schedule IIA controlled substances a Class A Misdemeanor, HB 178 preserves the courts' discretion to impose a jail sentence where appropriate, while also offering opportunities for effective community-based responses — participation in education and treatment programs, alcohol/drug testing, and community work service — through probation. Courts and communities have the chance, with HB 178, to use the conditions of probation available for misdemeanor offenses as opportunities for intervention and targeted prevention to divert first offenders from potential addiction and promote healthier choices.

The Boards appreciate your work on behalf of Alaskans.

Sincerely,

Michael Kerosky, Chairman
Advisory Board on Alcoholism and Drug Abuse

Brenda Moore, Chairperson
Alaska Mental Health Board

¹ *Impact and Cost-Benefit Analysis of the Anchorage Wellness Court*, Urban Institute Justice Policy Center (2008) available online at http://www.urban.org/UploadedPDF/411746_anchorage_wellness.pdf.

April 03, 2013
Sen. Fred Dyson
SB 56

Senator Dyson,

I applaud someone taking the initiative to address a DOC that is bursting at the seams due to incarceration of non-violent criminals. The re-classification of certain crimes will enhance Corrections ability to focus on those individuals truly in need of incarceration and lesson the burden to the taxpayer. An additional step now utilized by most states is an expunction statute which allows felons that have not committed physical violent crimes to have their records expunged.

In doing so, there is a dramatic reduction in recidivism by these felons who are now enabled to secure work and not hindered by their non-violent felony record. The selection of those who would be applicable to expunction of course would be for non-physical violent first time felons that have successfully completed probation and have no re-occurring criminal issues. This often targets individuals that have no history of criminal activity and had a one-time error in judgment that will most likely never be repeated.

If interested, you might look at the State of Oregon's expunction statute given; it is within the same Supreme Court judicial district. I wish you luck in your endeavor.

Sincerely,

Mike Moore
Retired Law Enforcement & Corrections Officer