SB

56

<TARGET><BILL>SB 56</BILL><SUBJECT>SB
56</SUBJECT><COMM>SFIN28</COMM></TARGET>

SENATE FINANCE COMMITTEE REPORT

DATE: 3/11/13

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered SENATE BILL NO. 56

SB 56-RECLASSIFYING CERTAIN DRUG OFFENSES

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

and recommends:

[ ] be **replaced** with **CS** _____ (_____) *[ ] Same Title [ ] New Title*

[X] adopt **previous CS** SB 56 (JUD) *[X] Same Title [ ] New Title*

[ ] attached amendment(s)

[ ] adopt _____Letter of Intent

[ ] further referral to _____Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
LAW		X		

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
CRT			X	7
COR			X	5
DPS			X	4
DPS			X	3
ADM			X	2
ADM			X	1

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Hoffman	✓			
Anna L. Fairclough	FAIRCLOUGH			✓	
Phil Bishop	BISHOP			✓	
	BEFORE				✓
	Dunleavy			✓	
CO-CHAIR:	Kelly	✓			
CO-CHAIR:	Meyer	✓			

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: SB 56
Fiscal Note Number:
() Publish Date:

Identifier: SB056CS(JUD)-LAW-CRIM-03-12-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: DYSON
Requester: (S) FINANCE

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 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2014**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**
Personal Services	***	***	***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	***	***	***	***	***	***
Fund Source (Operating Only)							
None							
Total	***	***	***	***	***	***	***
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:

This fiscal note reflects the most recent committee substitute as amended.

Prepared By:	Loretta Withington, Division Operations Manager	Phone:	(907)465-5427
Division	Administrative Services Division	Date:	03/12/2013 12:00 AM
Approved By:	Michael C. Geraghty, Attorney General	Date:	03/12/13
	Department of Law		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 56

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). CSSB 56 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.

CSSB 56 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: **CSSB 56(JUD)**
Fiscal Note Number: 7
(S) Publish Date: 3/11/13

Identifier (file name): SB056-ACS-TRC-2-26-13
Title: Relating to Crimes Inv. Controlled Substances
Sponsor: Senator Dyson
Requester:

Dept. Affected: Alaska Court System
Appropriation: Trial Courts
Allocation:
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				
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**	**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 — Phone: 907-463-4736
Division: Alaska Court System — Date/Time: 2/26/13 12:00 PM
Approved by: Nancy Meade for Christine Johnson, Administrative Director — Date: 2/26/2013
Alaska Court System

(Revised 1/15/2013 OMB)

FISCAL NOTE ANALYSIS #7

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 56(JUD)

Analysis

Senate Bill B 56 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 a class C felony, only *if* the defendant has two or more prior convictions within the last five years, (2) possession of more than a specified amount of more pure forms of schedule 1A 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 SB 56.

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, SB 56 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.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSSB 56(JUD)
Fiscal Note Number: 5
(S) Publish Date: 3/11/13

Identifier: SB56-DOC-OC-03-01-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: DYSON
Requester: Senate Judiciary

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 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2014**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**
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							

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	Phone:	(907)465-4641
Division	Department of Corrections - Administrative Services	Date:	03/01/2013 08:00 PM
Approved By:	Leslie Houston, Deputy Commissioner	Date:	03/01/13
	Department of Corrections		

FISCAL NOTE ANALYSIS #5

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 56(JUD)

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: CSSB 56(JUD)
Fiscal Note Number: 4
(S) Publish Date: 3/11/13

Identifier: SB056-DPS-LAB-03-01-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: DYSON
Requester: 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				
OPERATING EXPENDITURES	**FY 2014**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**
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							

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 — Phone: (907)254-1284
Division: Office of the Commissioner — Date: 03/01/2013 03:45 PM
Approved By: Joseph A. Masters, Commissioner — Date: 03/01/13
Department of Public Safety

FISCAL NOTE ANALYSIS #4

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 56(JUD)

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: CSSB 56(JUD)
Fiscal Note Number: 3
(S) Publish Date: 3/11/13

Identifier: SB056-DPS-DET-03-01-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: DYSON
Requester: 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				
OPERATING EXPENDITURES	**FY 2014**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**
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							

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 Phone: (907)254-1284
Division Alaska State Troopers Date: 03/01/2013 03:45 PM
Approved By: Joseph A. Masters, Commissioner Date: 03/01/13
Department of Public Safety

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 56(JUD)

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: CSSB 56(JUD)
Fiscal Note Number: 2
(S) Publish Date: 3/11/13

Identifier: SB056-DOA-PDA-3-01-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: DYSON
Requester: Senate 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 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2014**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**
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							

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:	03/01/2013 09:12 AM
Approved By:	Curtis Thayer, Deputy Commissioner	Date:	03/01/13
	Department of Administration		

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 56(JUD)

Analysis

SB56 reduces to a misdemeanor certain first and second simple drug possession cases. Reducing the number of cases previously charged as a felony will reduce the cost of processing individual cases.

This will reduce the overall growth rate of the Agency's budget. Due to increasing caseloads in the most complex case types, however, the anticipated cost savings is not expected to result in a reduction of the Agency's budget. The Agency, therefore, submits a zero fiscal note.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSSB 56(JUD)
Fiscal Note Number: 1
(S) Publish Date: 3/11/13

Identifier: SB056-DOA-OPA-3-01-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: DYSON
Requester: Senate 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 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2014**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**
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							

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: 03/01/2013 08:00 PM
Approved By: Curtis Thayer, Deputy Commissioner — Date: 03/01/2013
Department of Administration

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 56(JUD)

Analysis

If enacted as filed, SB56 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. There would likely be a substantial reduction in the transactional, fiscal costs associated with charging, trying and incarcerating such offenders, because it is less expensive to bring a misdemeanor case than it is to bring a felony case. The Office of Public Advocacy (OPA) could therefore expect to see a reduction in the cost of providing constitutionally required defense services to such offenders and subsequently submits a zero fiscal note.

SB 56 Public Testimony

Testimony

Walt Monegan – Executive Officer, Alaska Native Justice Center, Former DPS Commissioner and Anchorage PD Chief of Police

Jeff Jesse – Executive Officer, Alaska Mental Health Trust Authority

Rick Allen - Director, Office of Public Advocacy, Former prosecutor and public defender

Answer Questions

Ron Taylor – Deputy Commissioner of Corrections

Matt Gruening

	Work Days	Scheduled Hours	Pay Period Hours	Hours Worked	Variance	OT	Comp Time	Uncompensated Time	Total Comp Time	Used Comp Time	Remaining Comp Time	Used Leave	Leave Balance
TOTALS	**249**		**1,867.50**	**-**									**-**
12/31/2012	10	7.5	75.00	50.50	(24.50)	-	-	-	-	-	-	24.50	5.24
1/15/2013	10	7.5	75.00	16.00	(59.00)	-	-	-	-	-	-	59.00	2.61
1/31/2013	11	7.5	82.50	96.00	13.50	13.50	13.50	-	13.50	-	13.50	-	10.11
2/15/2013	11	7.5	82.50	88.00	5.50	5.50	5.50	-	19.00	-	19.00	-	17.61
2/28/2013	8	7.5	60.00	65.25	5.25	5.25	5.25	-	24.25	-	24.25	-	25.11
3/15/2013	11	7.5	82.50	82.50	-	-	-	-	24.25	-	24.25	-	32.61
3/31/2013	9	7.5	67.50		-	-	-	-	24.25	-	24.25	-	-
4/15/2013	11	7.5	82.50		-	-	-	-	24.25	-	24.25	-	-
4/30/2013	11	7.5	82.50		-	-	-	-	24.25	-	24.25	-	-
5/15/2013	11	7.5	82.50		-	-	-	-	24.25	-	24.25	-	-
5/30/2013	11	7.5	82.50		-	-	-	-	24.25	-	24.25	-	-
6/15/2013	10	7.5	75.00		-	-	-	-	24.25	-	24.25	-	-
6/30/2013	10	7.5	75.00		-	-	-	-	24.25	-	24.25	-	-
7/15/2013	10	7.5	75.00		-	-	-	-	24.25	-	24.25	-	-
7/31/2013	12	7.5	90.00		-	-	-	-	24.25	-	24.25	-	-
8/15/2013	11	7.5	82.50		-	-	-	-	24.25	-	24.25	-	-
8/31/2013	11	7.5	82.50		-	-	-	-	24.25	-	24.25	-	-
9/15/2013	9	7.5	67.50		-	-	-	-	24.25	-	24.25	-	-
9/30/2013	11	7.5	82.50		-	-	-	-	24.25	-	24.25	-	-
10/15/2013	11	7.5	82.50		-	-	-	-	24.25	-	24.25	-	-
10/31/2013	11	7.5	82.50		-	-	-	-	24.25	-	24.25	-	-
11/15/2013	10	7.5	75.00		-	-	-	-	24.25	-	24.25	-	-
11/30/2013	9	7.5	67.50		-	-	-	-	24.25	-	24.25	-	-
12/15/2013	10	7.5	75.00										-

Leave balance on Jan 1:	7.15
Accrual Rate:	7.50

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.

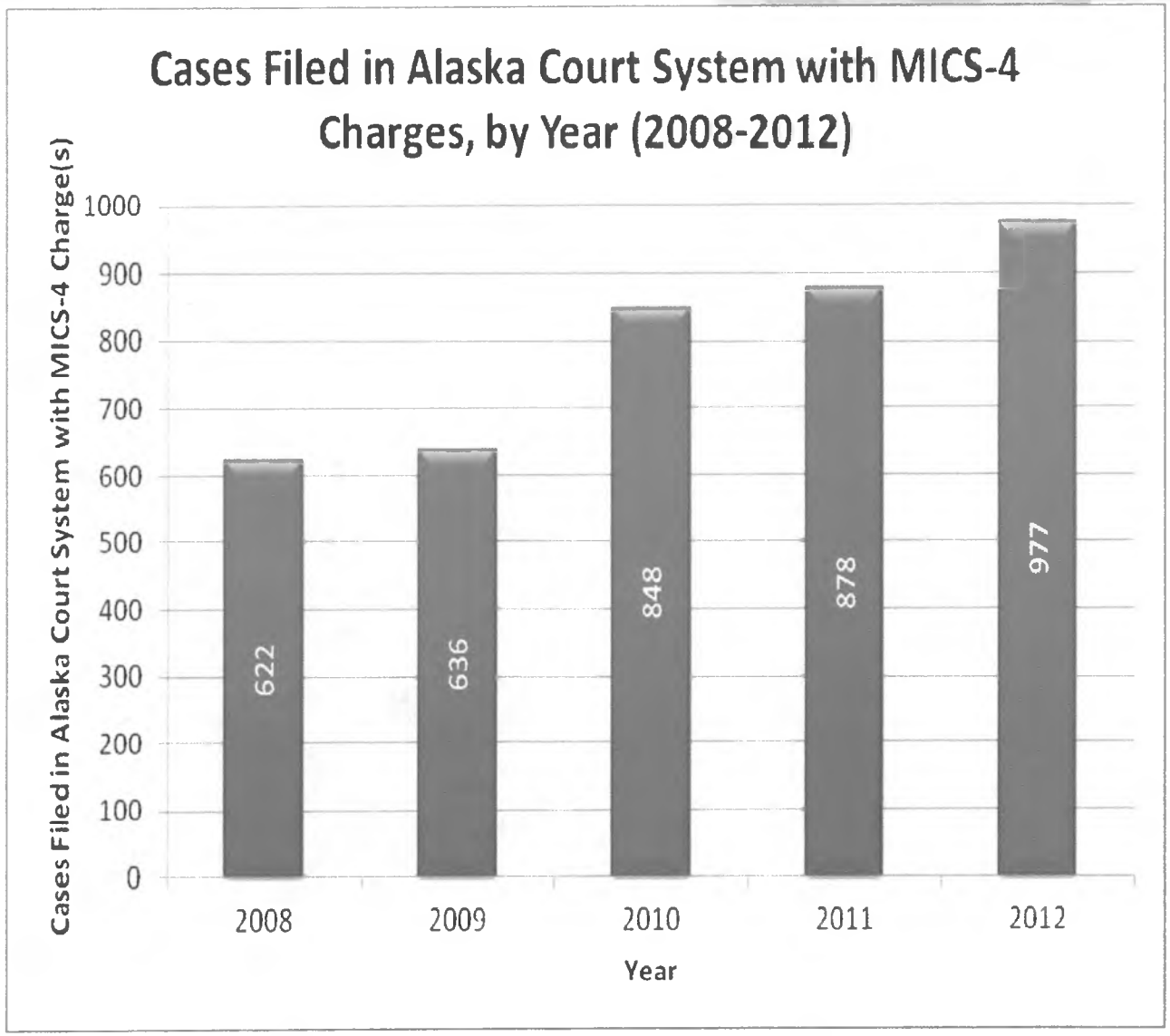
2. A 63% rise in prison admission for drug offenders, particularly felony offenders convicted of possession offenses.

>>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).

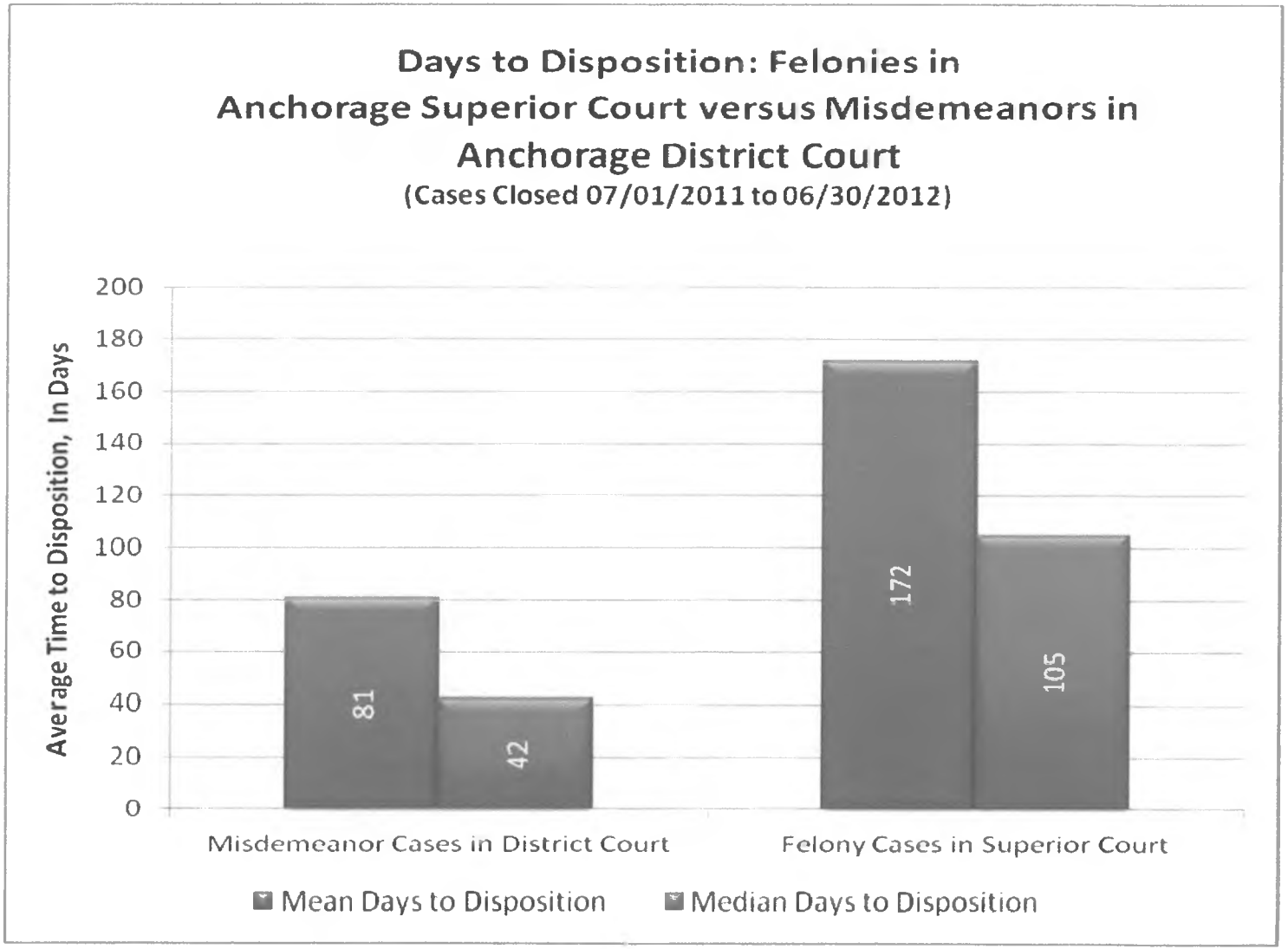


- MICS-4 (Misconduct Involving a Controlled Substance in the 4th Degree) is currently classified as a Class C Felony.

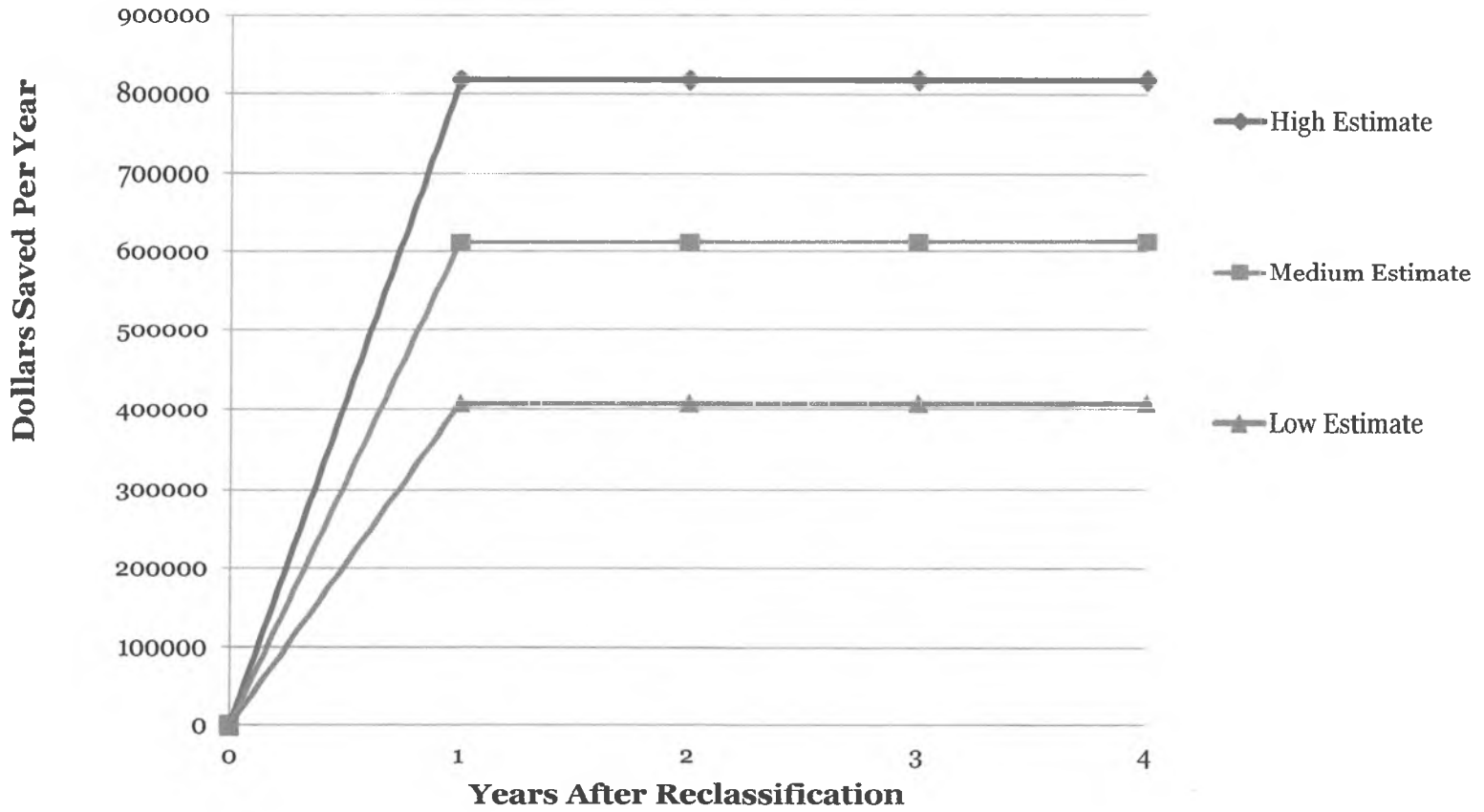
Collateral Consequences from Small-quantity Drug Felonies

- 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.

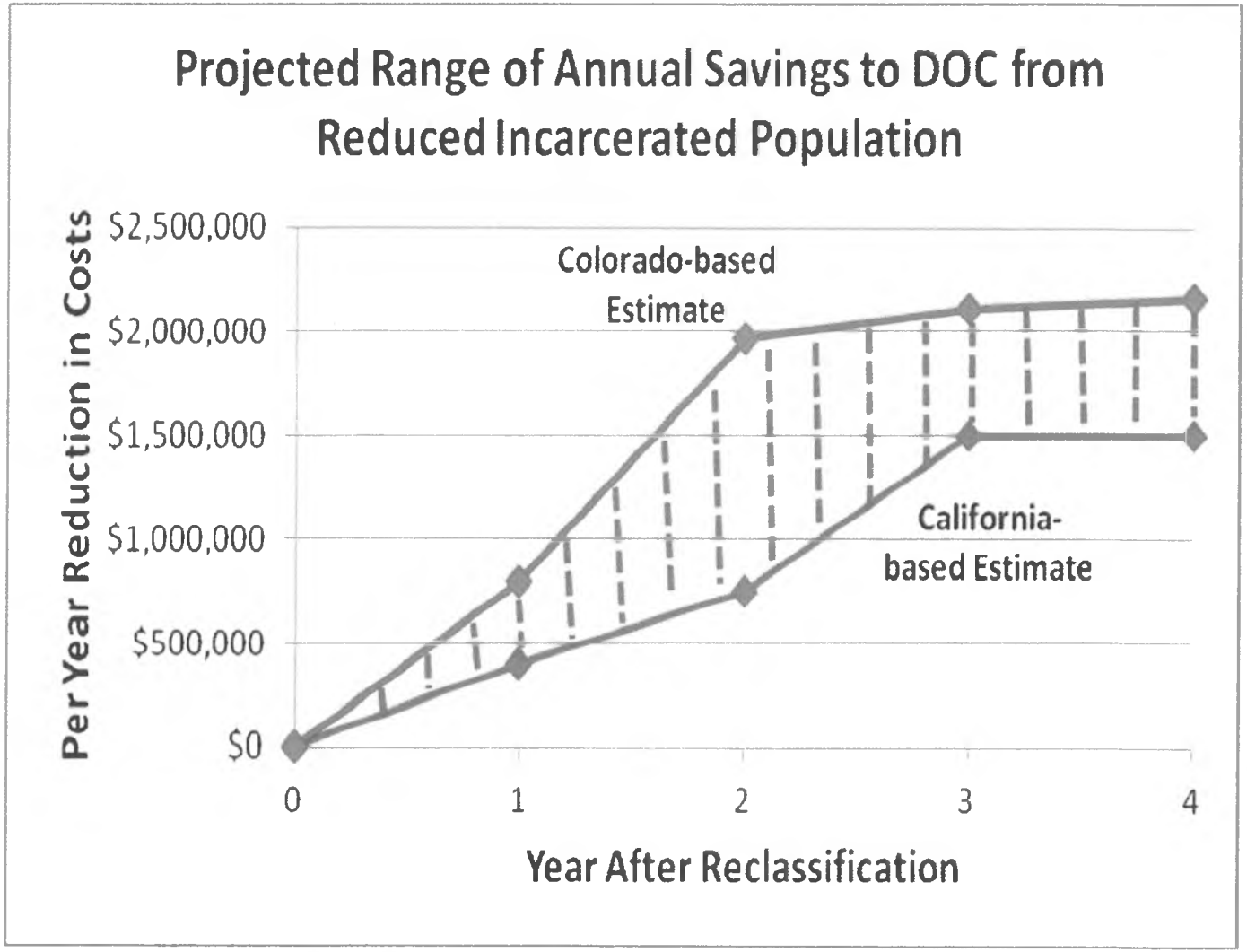
Reduced Legal and Adjudication Costs



Annual Savings from Reduced Legal and Adjudication Costs

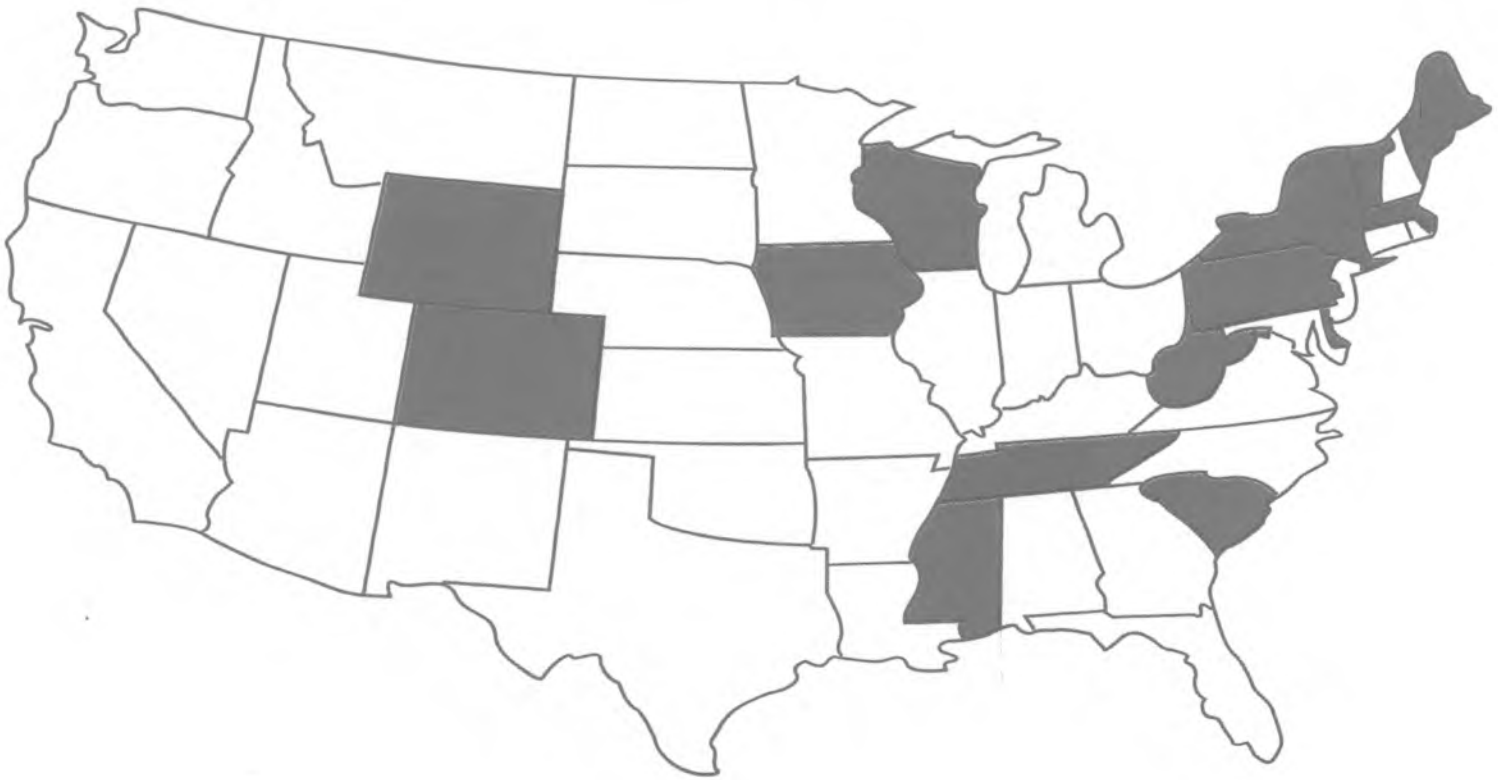


Even Assuming $0 in savings from the Department of Law, projected savings still amount to $408,000, $613,000 or $817,000 per year.



- 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).

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

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:

During Session (January - April): Alaska State Capitol, Room #121 • Juneau, Alaska 99801 • (800) 342-2199 • (907) 465-2199 • (907) 465-3818 FAX
During Interim (May - December): 12641 Old Glenn Highway, Suite 201 • Eagle River, Alaska 99577 • (907) 694-6683 • (907) 694-1015 FAX
Senator_Fred_Dyson@Legis.state.ak.us • www.akrepublicans.org

Limits for "User Quantities" or Analogous Small Amounts of Controlled Substances				
State	Cocaine	Heroin	Methamphetamine	LSD
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

Substance	Alaska (Proposed)	Wyoming (Current)
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. Svobodony

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

[1]Dunbar, 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.

ALASKA STATE LEGISLATURE

SENATOR FRED DYSON
SENATE DISTRICT F

SPONSOR STATEMENT FOR CSSB 56(JUD)

Alaska's prison population is currently growing at one of the fastest rates in the nation. Despite the $250 million Goose Creek Correctional Center, the Department of Corrections estimates that all available prison beds will again be full in 2016. Simultaneously, per inmate incarceration costs have risen from $110/day to $147/day, now equaling more than $50,000/inmate per year. Since 2005, the DOC's operating budget has spiked nearly 94%, from $167M to over $323M. Finally, and perhaps most troubling, Alaska's prison beds are increasingly filled with *non-violent* offenders.

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 felony offenders convicted of non-distributive possession. Reforming our drug policy could reduce this driver of prison growth and save the state millions of dollars. This conclusion is supported by leading justice reform policy groups, recent DOC Dep. Commissioner Carmen Gutierrez, and Legislative Research Services who concur that the fiscal burden of our current drug laws is significant.

SB 56 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. This reclassification preserves a serious criminal penalty for drug possession, but allows first time offenders to avoid the collateral consequences and longer prison sentences of a felony. It also protects law enforcement's ability to aggressively pursue distributors and repeat offenders.

Comparative analysis of states where small quantity possession is already a misdemeanor indicates that reclassification should have minimal impact on public safety. Misdemeanor states actually have slightly *lower* rates of violent crime, property crime and drug use. Finally, this reform will benefit offenders and their families by removing the stigma of a felony conviction, markedly improving employment prospects, professional licensing, and housing opportunities, all variables strongly correlated with decreased alcoholism, domestic violence and recidivism.

Staff contact: Chuck Kopp, (907)465-6580

SENATOR FRED DYSON

SECTION ANALYSIS – CSSB56(JUD)

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.

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.

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Sen.Fred.Dyson@akleg.gov

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.

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[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 filled 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.

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[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-

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[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.

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 misdemeanors, 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

*** 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 would 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		Annual Averages					
Discharge Years (Calendar Year)	Total MICS-4 Discharges	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
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

Substance	**Alaskan Felony Limits**	**Wyoming Felony Limits**[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/controlled pharmaceuticals (IA & IIA)	Any amount	3 grams in "pill or capsule form"

	Alaska Statute	**Wyoming Statute**
"Three Strikes" Language	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

Category	Alaska	Wyoming
Total Corrections Population, 2011	5,957[2]	3,734[3]
Per capita correction populations, 2011, based on U.S. Census estimates	5,597 : 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.ajc.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

Substance	**Alaska**	**Wyoming (Current)**
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"

	Alaska Statute	**Wyoming Statute**
Three Strikes Language	"…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

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

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March 15, 2013

The Honorable Pete Kelly, Co-Chair
The Honorable Kevin Meyer, Co-Chair
The Honorable Anna Fairclough, Vice-Chair
Senate Finance Committee
Alaska State Senate
State Capitol, Room 532
Juneau, AK 99801

via email: Sen.Pete.Kelly@akleg.gov
Sen.Kevin.Meyer@akleg.gov
Sen.Anna.Fairclough@akleg.gov

Re: CS Senate Bill 56 – Adjusting the Grading of Minor Drug Offenses
ACLU Letter of Support

Co-Chair Kelly, Co-Chair Meyer, Vice-Chair Fairclough:

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 our review of the proposed legislation.

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

Overview of CSSB 56 and the Drug Laws

The committee substitute for Senate Bill 56 would alter how drug offenses are categorized and punished. SB 56'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.

The drug offense laws are written in a very elaborate way, which can be hard for a lay person to understand. While as lawmakers you are probably familiar with the structure of the statutes, a brief guide may help other readers. 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. Each offense is called "misconduct involving a controlled substance," (abbreviated "MICS" and pronounced like "mix") and then 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). Those offenses are further abbreviated with the number of their grading; "misconduct involving a controlled substance in the fourth degree" is thus a "MICS 4" (pronounced "mix-four").

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 SB 56, the basic offense of possessing a Schedule IA or Schedule IIA substance would become a misdemeanor. However, SB 56 would make *repeated* drug possession offenses a felony (where the individual has at least two prior drug convictions in the last five years). SB 56 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 SB 56, 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

What's the difference between a felony and a misdemeanor? About four years. Someone convicted of MICS in the fourth degree, a 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, an A misdemeanor, can be sent to prison for a year. AS 12.55.135(a). Since the cost of imprisonment is running almost $50,000 a year in Alaska, the committee will probably be hard-pressed to think of a case, not otherwise covered by SB 56, where the state should spend a quarter-million dollars 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

[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.

convicted was sentenced to a term of incarceration.[2] Of those convicted of a drug possession 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 the substance abuse problem with prison time.

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] Is that how we want to prioritize scarce and expensive criminal justice resources?

Substance abuse is a serious problem in Alaska; no one can deny that. However, the question before the committee is how we *address* the substance abuse problem, not whether it is serious or not. To date, after 40-plus years of the 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 drug problem through the prison system.

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

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

[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 overinclusive. On the other hand, these numbers are also underinclusive, 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.

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 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. 40 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. 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 SB 56 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 hope that the Senate Finance Committee will note our support for SB 56.

Please feel free to contact the undersigned should you require any additional information. Again, we are happy to reply to any questions that may arise either through written or verbal testimony, or to answer informally any questions which 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: The Honorable Mike Dunleavy, Sen.Mike.Dunleavy@akleg.gov
The Honorable Click Bishop, Sen.Click.Bishop@akleg.gov

The Honorable Donald Olson, Sen.Donald.Olson@akleg.gov
The Honorable Lyman Hoffman, Sen.Lyman.Hoffman@akleg.gov

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.

Table of Contents

I. Introduction: Alaska's Prison Population Growth

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

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

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

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

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

II. Drug Policy and Prison Population Growth

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

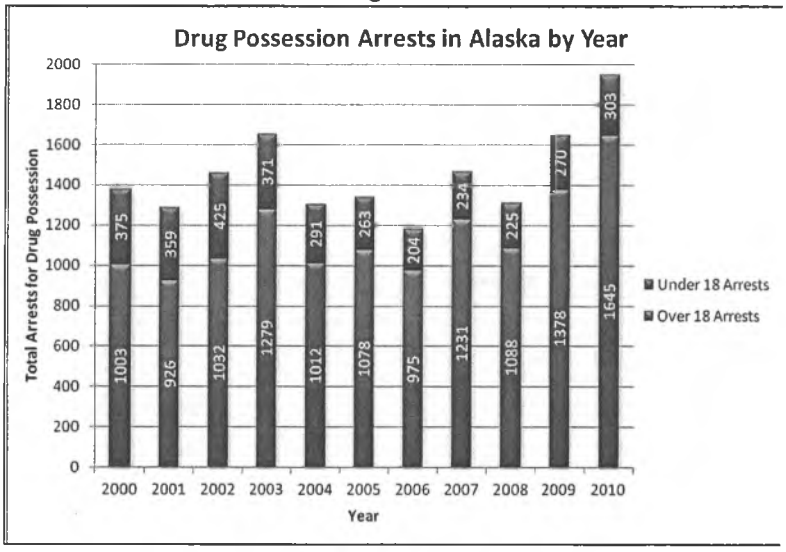
Despite the significant dangers associated with both alcohol and drug use, policy makers have responded to these two challenges in vastly different ways. The criminalization of the possession and sale of the latter has lead to a host of ancillary costs, and is one of the largest contributors to prison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

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

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

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

Figure 1



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

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

Figure 2

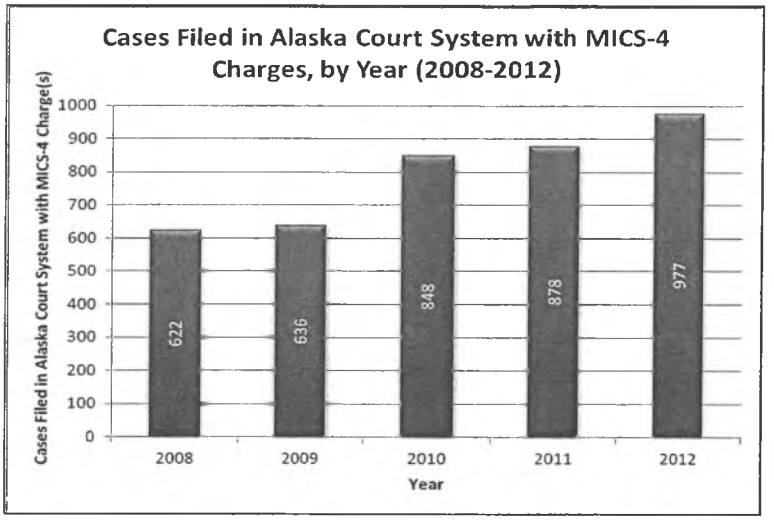
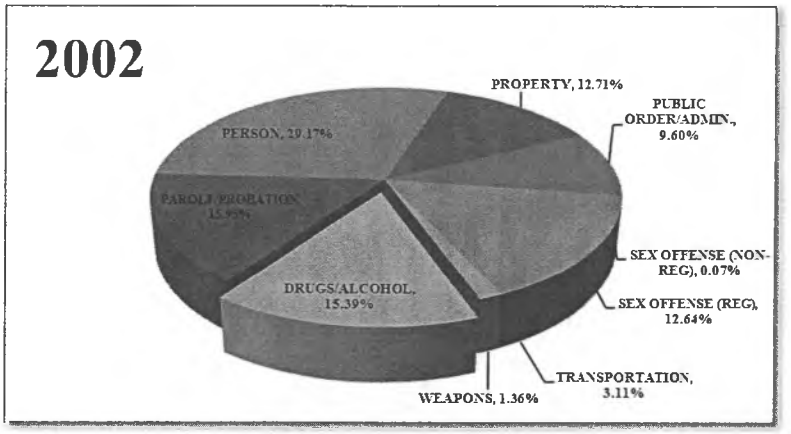
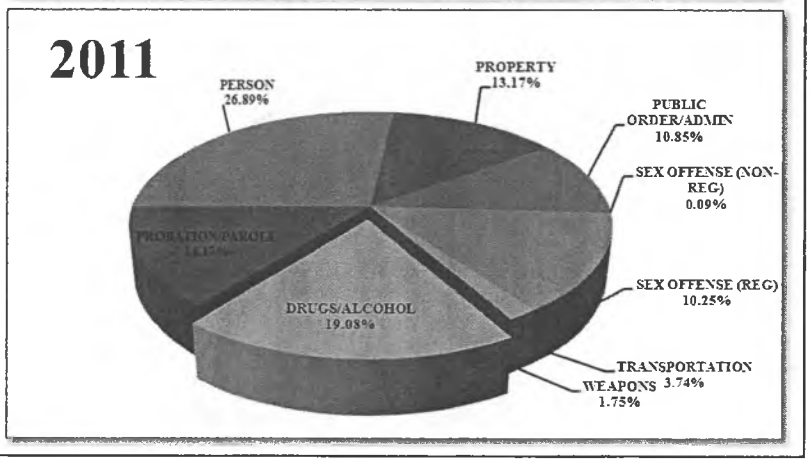


Figure 3: Percent of Standing Offender Population in Alaska Department of Corrections Facilities by Offense Class





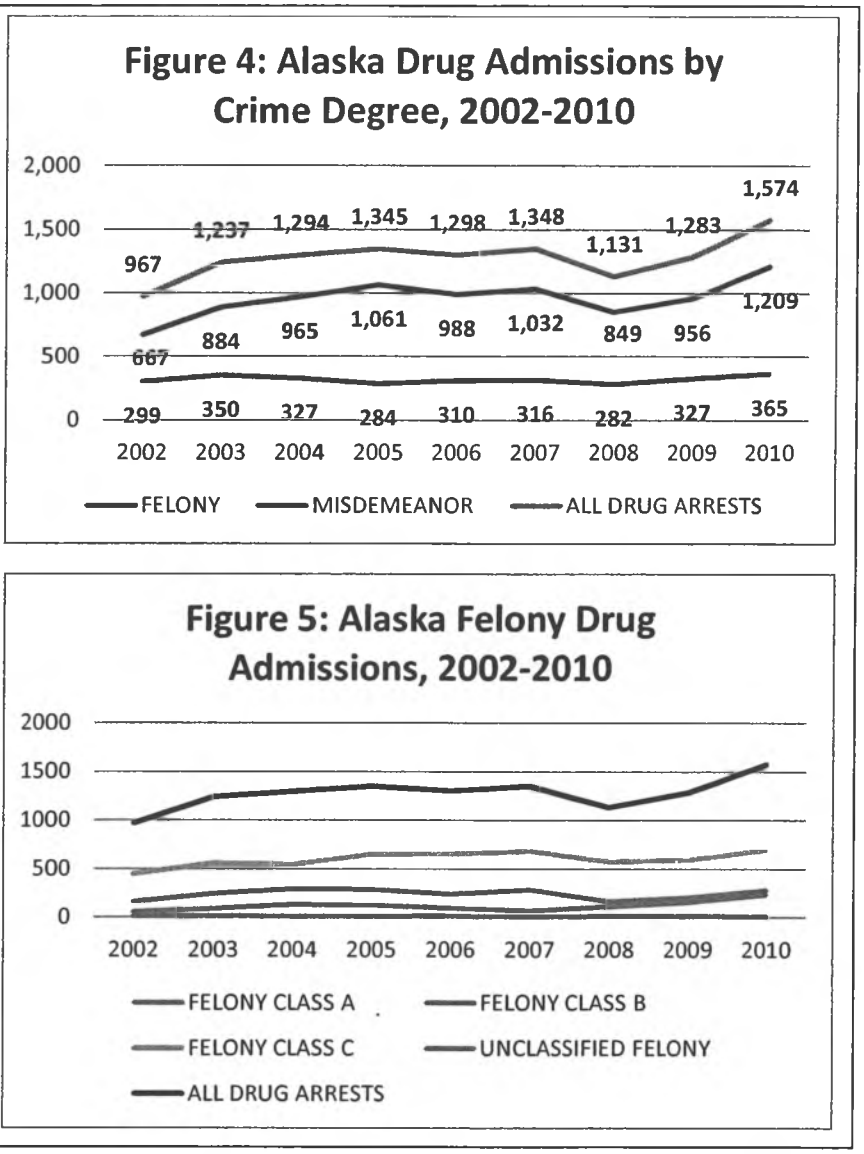
Perhaps unsurprisingly, as the number of drug possession arrests and MICS-4 filings have increased, so too have the number and percentage of inmates serving time in Alaskan prisons on drug offenses. As represented in Figure 3, between 2002 and 2011 the proportion of Alaska's prison population incarcerated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

B. Increase in DOC Population

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

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

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



III. Focusing on Felony Convictions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. The Estimated Budgetary Impact of Reclassification

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

A. Savings from Reduced Incarceration

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

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

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

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

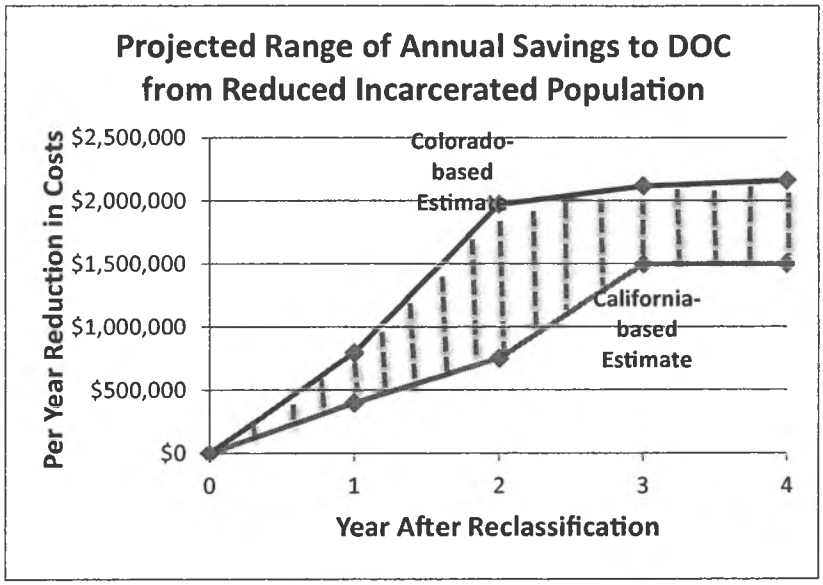
Using these ratios and estimates from the legislative offices of these two states, we can develop a rough picture of the reduction in the incarcerated population for Alaska. Because of differences in the economics, demographics, and legal structure of each of these states, as well as the imperfection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

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

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

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

Figure 8



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

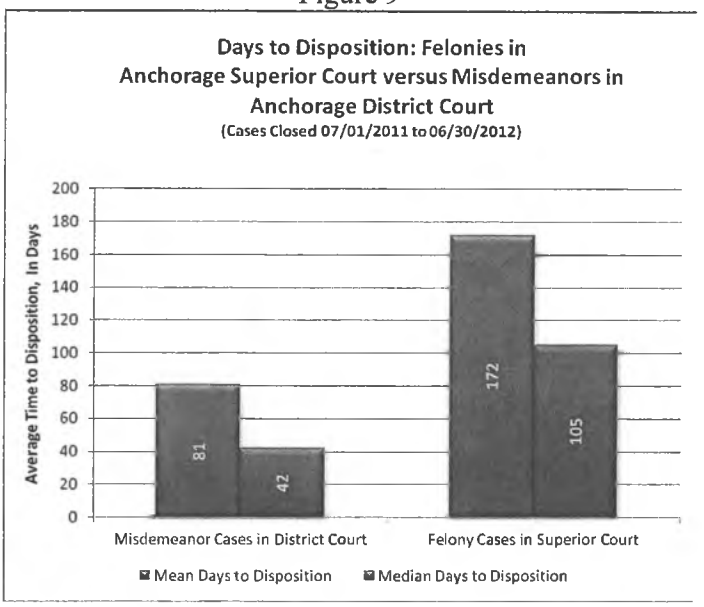
B. <u>Savings from Reduced Costs in Prosecution, Public Defense, and Judicial Processing</u>

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

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

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

Figure 9



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

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

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

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

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

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

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

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

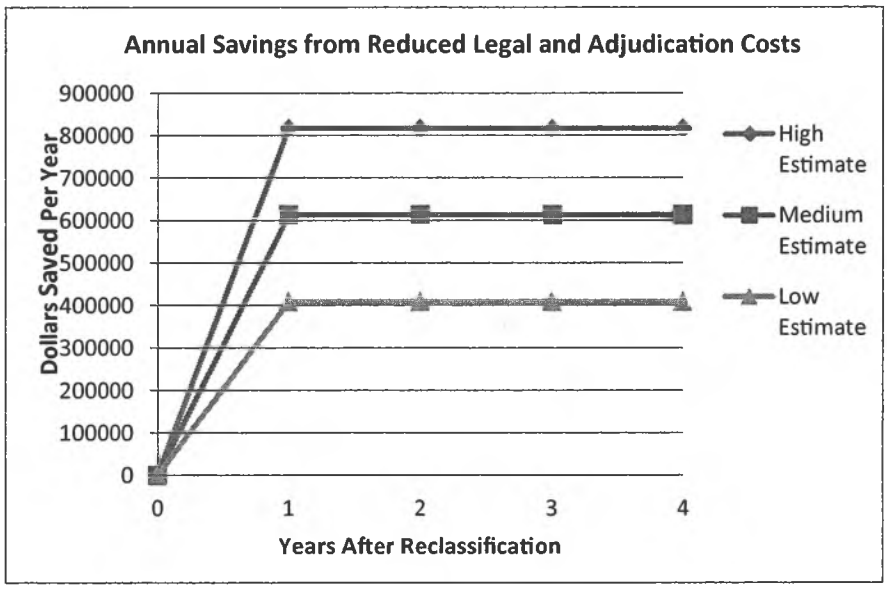
These estimates are quite consistent with an independent estimate of cost savings from the Public Defender's office, which predicted annual savings of approximately $670,500.

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

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

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

Figure 10



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

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

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

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

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

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

D. Possible Sources of Budgetary Increase or Shifting

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

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

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

V. Reclassification's Effect on Public Safety

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

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

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

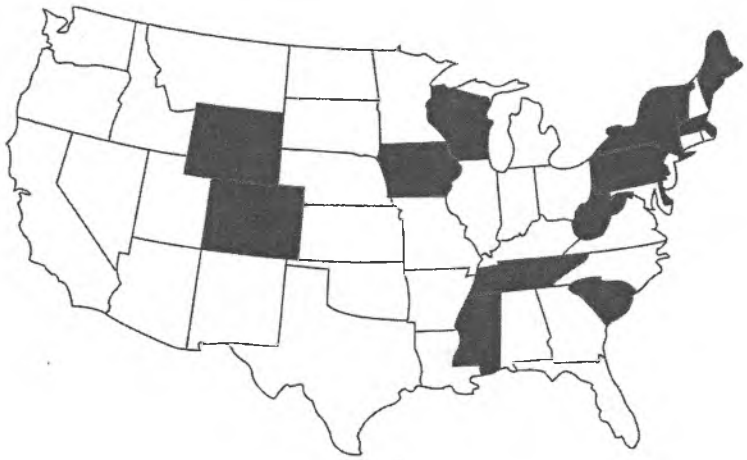


exhibit poorer outcomes on a number of measures that we would expect to observe if misdemeanor classification was causally linked with a large-scale deterioration in public safety; this suggests that reclassification's impact on public safety would not be substantial.

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

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

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

Figure 12

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

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

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

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

VI. Challenges Posed by Reclassification

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

Concerns included:

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

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

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

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

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

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

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

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

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

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

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

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

VII. Policy Approaches to Address Reclassification's Challenges

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

A. Structuring Reclassification Appropriately: Escalating Punishment

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

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

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

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

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

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

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

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

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

B. Expanding Evaluation and Treatment

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

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

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

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

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

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

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

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

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

★★★★★★★★★★

The Promise Of Reinvestment In Alaska

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

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

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

…

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

★★★★★★★★★★

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

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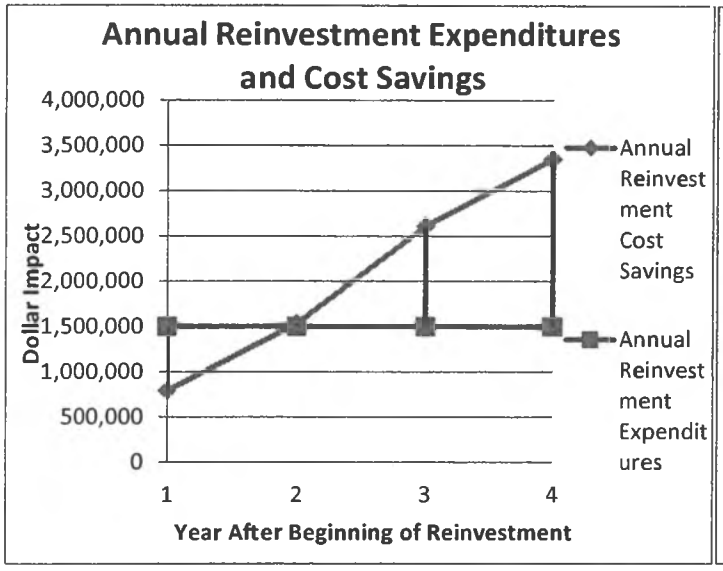
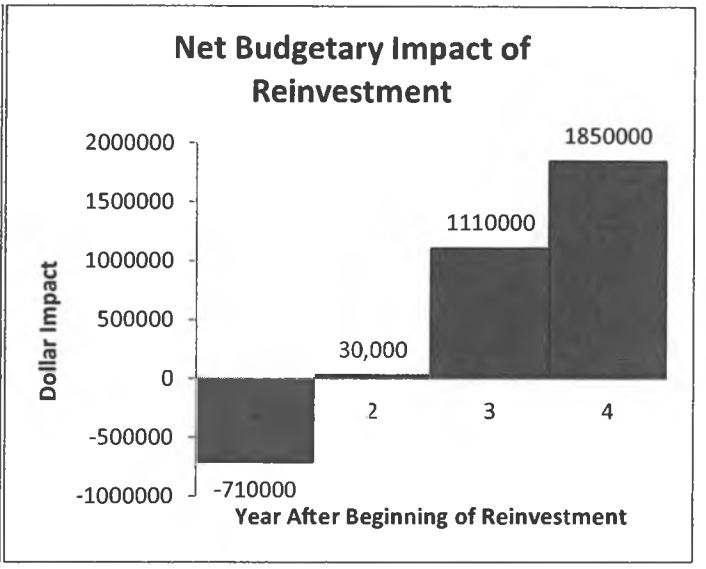
[5] H.B. 10-1352 § 1 (amending COLO. REV. STAT. § 18-18-406(1)(b)).
[6] *Id.* at (1)(b)

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

Figure 13





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

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

C. PACE and "PACE Lite"

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

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

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

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

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

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

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

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

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

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

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

VIII. Conclusion and Recommendations

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

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

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

Recommendations:

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

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

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

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

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