

SEX OFFENSES

A Report to the Alaska State Legislature

April 5, 2019

An overview on the data, research, law and policies relating to sex offenses in Alaska.

The Alaska Criminal Justice Commission
<http://www.ajc.state.ak.us/alaska-criminal-justice-commission>

The Alaska Criminal Justice Commission

Created by the Alaska State Legislature in 2014, the Alaska Criminal Justice Commission reviews Alaska's criminal justice laws with the goals of reducing recidivism and improving cost-effectiveness within the criminal justice system.

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I. Introduction

Alaska has long had a significant problem with sexual assault, sexual abuse, and other sex offenses, and has frequently had the worst rate of sexual assault in the nation. The statistics are grim:

- According to available data, around **one-third** of women in Alaska have experienced sexual assault, while less than one-fifth of women nationwide have experienced sexual assault.¹
- In the decade between 2006 and 2016, Alaska's reported rape rate was the **highest in the country** in each of those years, save for one.²
- Alaska Native women are disproportionately affected by sexual violence. Among felony-level sex offense cases reported to Alaska law enforcement in 2017, **Alaska Native women and girls comprised 42% of all victims**.³
- **The vast majority** of felony sex offenses are committed by someone known to the victim, and most offenses go **unreported**.⁴

However, the picture is not entirely bleak. Recent data suggest that victimization is decreasing and reporting is increasing. These trends coincide with a concerted statewide effort to provide preventative programming and trauma-informed approaches to sexual victimization.

¹ University of Alaska Anchorage Justice Center, *Alaska Statewide: 2015 Alaska Victimization Survey* (2016), <https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/research/alaska-victimization-survey/alaska.cshtml> [hereinafter *2015 AVS*]; Dean G. Kilpatrick, et al., *Drug-facilitated, Incapacitated, and Forcible Rape: A National Study*, National Crime Victims Research & Treatment Center (February 2007), 2, available at: <https://www.ncjrs.gov/pdffiles1/nij/grants/219181.pdf>. "Sexual assault" in this context means the women surveyed responded that someone had subjected them to drug-facilitated, incapacitated, or forcible penetration or attempted penetration.

² Council of State Governments Justice Center, *50-State Data on Public Safety, ALASKA WORKBOOK: Analyses to Inform Public Safety Strategies*, Council of State Governments (March 2018), 9 [hereinafter *CSG 50-State Data*].

³ Christen L. Spears, *2017 Felony Level Sex Offenses: Crime in Alaska Supplemental Report*, Alaska Department of Public Safety (August 2018), 14, available at: <https://dps.alaska.gov/getmedia/3b17e19d-f7e4-4c33-8986-59a68a8f957c/2017-Felony-Level-Sex-Offenses-LOCKED>.

⁴ *Id.* at 16-18; and see Jennifer L. Truman & Rachel E. Morgan, *Criminal Victimization, 2015*, Bureau of Justice Statistics (October 2016), 6, available at <https://www.bjs.gov/content/pub/pdf/cv15.pdf>.

Since the Alaska Legislature last took an intensive look at sex offenses in 2006, new research has been published concerning sex offender treatment and recidivism (the rate at which people convicted of a crime are rearrested, reconvicted, or returned to prison). Data on the recidivism rates for Alaskans released from prison after serving time for a sex offense shows that their recidivism rates are relatively low compared to Alaskans convicted of other offenses.⁵

Treatment and containment programs for sex offenders were once thought to be ineffective, and many believed that sex offenders released from prison remained at high risk for reoffending. Recent research indicates that this is not always the case.⁶ Those who have completed treatment with Alaska's Department of Corrections have a five-year recidivism rate of 22% for all offenses and 3% for sex offenses—compared to the general three-year recidivism rate of 63% for all people leaving DOC custody.⁷

Though treatment programs and containment programs for people who commit sex crimes can be effective in reducing their risk to the public, many sex crimes are never reported to law enforcement, and therefore many people who commit sex crimes are not prosecuted or convicted for these crimes. People who are not convicted cannot be ordered to treatment and supervision, and thus the prospect that they will participate in treatment is greatly diminished.

Alaska faces significant challenges in addressing the epidemic of sexual violence. People in rural Alaska often face particular difficulty reporting sexual assault and child sexual abuse. If a victim wishes to have evidence collected via a SART (sexual assault response team) exam, and does not live on the road system, the victim must be transported to a hub community for the exam, which can compound the victim's trauma.⁸ In many cases, the investigation needed to

⁵ Brad A. Myrstol, Marny Rivera, & Khristy L. Parker. *Alaska Sex Offender Recidivism and Case Processing Study: Final Report*. Alaska Justice Statistical Analysis Center (2016), 10, available at: <https://scholarworks.alaska.edu/handle/11122/7342> [hereinafter *Alaska Sex Offender Recidivism and Case Processing Study*].

⁶ See R. Karl Hanson et al., *Reductions in Risk Based on Time Offense-Free in the Community: Once a Sexual Offender, Not Always a Sexual Offender*. 24(1) *Psychology, Public Policy, and Law* 48, 58 (2018) available at <https://www.apa.org/pubs/journals/features/law-law0000135.pdf>.

⁷ Alaska Department of Corrections, *Alaska Department of Corrections Sex Offender Management Programming* (January 2018), 3 [hereinafter *DOC White Paper* (2018)]. Recidivism rates reflect the reconviction rate within five years of leaving DOC custody for a cohort of people released between 2011-2014.

⁸ Travel is paid for by the state.

gather the evidence required to arrest and charge someone for a sex crime can take time, and in small villages this is a particularly arduous period for the victim, who must see the person who sexually assaulted them on a regular basis. In villages without a law enforcement presence, there may not be any way to enforce a protective order. For many rural Alaskans, justice can seem remote and far removed from their reality.

The following report presents data on sex offenses and how sex offense cases are processed, explains the sentencing laws for sex offenses, provides an overview of sex offender treatment and reentry, and takes a look at the challenges victims face and the services available to them.

The Alaska Criminal Justice Commission prepared this report pursuant to AS 44.19.645.⁹

⁹ The applicable provision in AS 44.19.645 reads:

"(c) The commission shall

....

(4) appoint a working group to review and analyze sexual offense statutes and report to the legislature if there are circumstances under which victims' rights, public safety, and the rehabilitation of offenders are better served by changing existing laws; the working group shall consult with the office of victims' rights in developing the report; the commission shall deliver the report to the senate secretary and the chief clerk of the house of representatives and notify the legislature that the report is available; the commission may include in the working group people representing a variety of viewpoints who are not members of the commission."

A Note on Terminology

Person-first language. The Commission has resolved to use “person-first” language whenever possible, and this report attempts to follow that resolution. In that spirit, this report will avoid using the terms “offender” and “victim” where possible. In some cases, however, the report will use the terms “suspect,” “arrestee,” “defendant,” and “victim” as they pertain to a person’s legal status in a criminal investigation or criminal court case. These are terms that have been used by the legislature and are often used in statute, and the report may need to use these terms to ensure comprehension and continuity with previous legislative work. The report may also use labels rather than person-first language if labels are absolutely necessary for clarity.

Definitions. The term “sexual violence” is used throughout this report to refer to all acts of violence that are sexual in nature and that may or may not be legally considered a crime in Alaska. The term “sex offense” typically refers to a crime or conduct that would be considered a crime in Alaska. The term “sexual assault” typically refers to serious criminal conduct against an adult while the term “sexual abuse of a minor” typically refers to serious criminal conduct against a child. Alaska does not use the term “rape” in its criminal code, but the FBI does use the term as part of its data collection duties.

II. Data on Sex Offenses

The following sections compile the available data on sex offenses in Alaska, and compare Alaska data with available national data. These sections summarize a variety of studies that have been conducted in Alaska. Some of the data has been collected directly by the Commission as part of its mandate to monitor the implementation of criminal justice reform. Because the information contained in these sections comes from a variety of sources, direct comparisons between data sets contained in these sources are not always possible. Different data sets use different research parameters and different definitions. Therefore any comparison between different data sets always comes with a caveat. Broadly speaking, however, it is apparent that the incidence of sexual assault and abuse in Alaska is quite high, that a small percentage of incidents of sexual assault and abuse are reported to law enforcement, and that many reports of sexual assault and abuse do not lead to a conviction.

A. Victimization in Alaska

It is impossible to know exactly how many incidents of sexual assault and sexual abuse occur in Alaska every year. Two sources of data provide a sense of the magnitude of the problem: a survey of a sample of adult women in Alaska regarding their experiences, and the number of incidents reported to law enforcement.

Data Sources: Victimization

- The Alaska Victimization Surveys. Based on telephone interviews of adult women in Alaska; uses detailed event-specific questions; answers are collected anonymously.
- The Department of Public Safety (DPS) Supplemental Report on Sex Offenses. Based on data provided from law enforcement agencies across Alaska regarding reports of sex offenses to those agencies. Provides regional and demographic information.
- The FBI Uniform Crime Report (UCR). Compiled by the FBI based on data sent by state law enforcement agencies; includes data from Alaska based on the data provided to DPS by law enforcement agencies. Uses a different definition of “rape” than is used in Alaska. Allows comparison to other states.

1. Victimization Survey¹⁰

The Alaska Victimization Surveys (AVS) are conducted by the University of Alaska Anchorage Justice Center (UAA Justice Center) on behalf of the Council on Domestic Violence and Sexual Assault (CDVSA). Statewide surveys were conducted in 2010 and 2015 of a random sample of adult women in Alaska. The results were analyzed by the UAA Justice Center to provide an estimate of how many adult women in Alaska have been a victim of sexual violence, intimate partner violence, or both. The survey excluded children, non-English speaking women, women who did not have access to a phone, and men.

In 2010, 37% of the women surveyed had experienced sexual violence in their lifetime, and 4.3% of the women surveyed experienced sexual violence within the previous year. In 2015, 33% of the women surveyed had experienced sexual violence in their lifetime, and 2.9% of the women surveyed experienced sexual violence within the previous year.¹¹ Using Department of Labor population estimates, 2.9% of adult women in Alaska equates to about 7,136 individuals in 2015.

One third of women in Alaska have reported experiencing sexual violence in their lifetime.

Intimate Partner Violence and Sexual Violence in the State of Alaska: Key Results from the 2015 Alaska Victimization Survey

Stated differently, per the AVS data, an estimated 3,598 fewer women in Alaska experienced sexual violence (past year) in 2015 than in 2010.¹² While, the rates of sexual victimization in Alaska remain unacceptably high, it is important to note that according to the AVS, the rates did decline between 2010 and 2015. Moving forward, in order to develop meaningful policy recommendations, it is imperative to understand the positive factors that contributed to or influenced the decline in past year victimization rates.

It is also important to note that the AVS does not reveal the full extent of the sexual violence that occurs in Alaska each year. As noted above, the survey excluded children, men, and some women.

¹⁰ Unless otherwise noted, data in this section comes from the *2015 Alaska Victimization Survey (2015 AVS, supra note 1)*. For more information on this survey, consult Appendix B.

¹¹ In this context, “sexual violence” refers to actual or attempted vaginal, anal, or oral penetration. Consult Appendix B for more information.

¹² In April 2010, the estimated number of women in Alaska aged 18 and older was 249,631. In July 2015, the estimated number of women in Alaska aged 18 and older was 264,093. Population estimates are calculated by the Alaska Department of Labor and Workforce Development and are available at <http://live.laborstats.alaska.gov/pop/>.

People in these excluded populations also experience sexual violence. Also, the survey only revealed the number of victims, not the number of incidents. Thus while an estimated 7,136 women in Alaska experienced sexual violence in 2015, the number of incidents involving sexual violence was most likely higher than that.

Additionally, while some of the women who were surveyed felt comfortable revealing their past victimization, some women may not have felt comfortable revealing information to the survey-takers—and therefore the actual rate of victimization may be higher. The survey attempted to counter the survey-takers' natural reluctance to disclose this information by asking very detailed, behaviorally-specific questions, and by avoiding using legal definitions or labels.¹³

As the sections below explain, not all incidents of sexual assault are reported, investigated, or prosecuted, and not all prosecutions result in a conviction. Of the 33% of Alaska women who have been a victim of sexual violence, many have not seen the prosecution or conviction of the person who attacked them.

2. Reports to Law Enforcement

The Department of Public Safety (DPS) collects data on all felony-level sex offenses reported to state and municipal law enforcement throughout Alaska.¹⁴ This data reflects the extent to which these offenses are reported to law enforcement, and to some extent, reflects the scale of offending and allows for comparison between geographic areas. However, it is not an accurate tally of how many offenses actually occur in Alaska in a given year. This data excludes misdemeanor sex offenses,¹⁵ and many sex offenses are not reported to law enforcement.¹⁶ An increase or decrease in reporting does

¹³ For example, one question was "When you were alcohol or drug intoxicated and unable to consent, has anyone had vaginal sex with you?" Consult the survey's explanatory PowerPoint presentation, available at: <https://scholarworks.alaska.edu/bitstream/handle/11122/8104/avs-alaska-statewide-2015.handout.1103.051b.pdf> and Appendix B. Victimization surveys rely on a victim's subjective self-report of sexual violence and abuse. Thus, although a victim may report an incident of sexual violence through the survey, the underlying conduct of the purported incident may not equate to a crime under Alaska law.

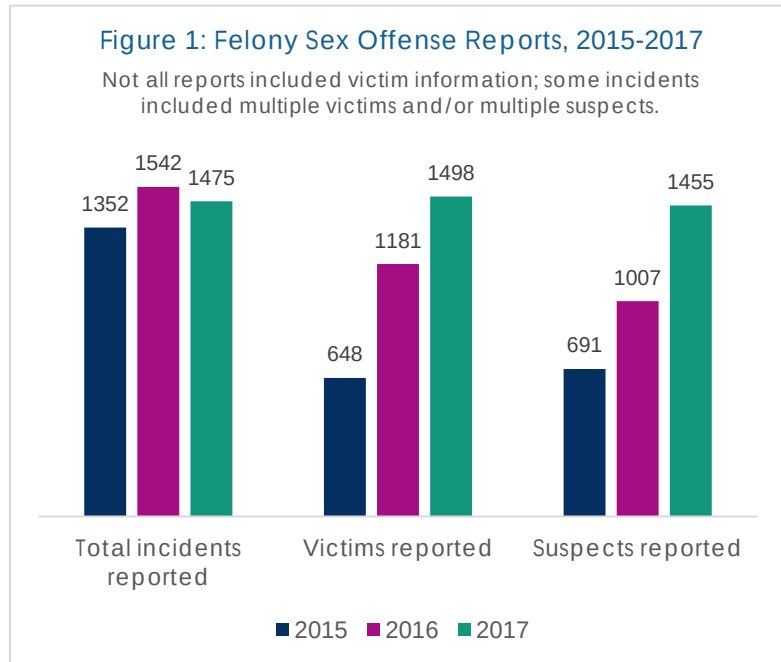
¹⁴ DPS is required to collect this data pursuant to AS 12.63.130. DPS also sends information to the FBI under the Uniform Crime Reporting Program. The FBI data is compiled for Alaska, but DPS's own database provides a greater level of detail.

¹⁵ Misdemeanor sex offenses include Sexual Assault in the 4th Degree, Sexual Abuse of a Minor in the 4th Degree, Indecent Exposure in the 2nd, Sending an Explicit image to a Minor, Indecent viewing or Photography of Adults, Prostitution, Sex Trafficking in the 4th Degree.

¹⁶ See Truman & Morgan, *supra* note 4. In 2015, an estimated 32.5% of rape and sexual assault incidents were reported to law enforcement nationwide. There are not any studies estimating the percentage of incidents reported to law enforcement in Alaska.

not necessarily equate to an increase or decrease in victimization. To truly track and monitor victimization rates, the Alaska Victimization Survey (or AVS, see section 1 above) should be replicated every five years.

In 2017, a total of 1,475 felony-level incidents were reported to law enforcement. In 2016, the number was 1,542, meaning there was a 4% decrease in reported felony-level sex offenses from 2016 to 2017. However, there was an increase in the number of reported victims, from 1,181 victims in 2016 to 1,498 victims in 2017, marking a 27% increase. The 1,475 reported incidents in 2017 involved 1,455 suspects.¹⁷



Source: 2017 Felony Level Sex Offenses: Crime in Alaska Supplemental Report, Department of Public Safety, August 2018

The number of sex offense incidents collected in the DPS data cannot be directly compared to the number of women who reported experiencing sexual violence in the AVS, in part because the survey included only adult women while the DPS data also includes male and child victims. Nevertheless, it is striking that an estimated 7,136 adult women experienced sexual violence in 2015, while only 1,352 total felony sex offense incidents (including those involving men and children) were reported to law enforcement in that same year.¹⁸ Based on the prevalence of incidents of sexual violence identified in the victimization survey, it is logical to assume that **many incidents of sexual assault and abuse go unreported to law enforcement in Alaska.**

Stakeholders who provided input for this report had varied theories as to the barriers to reporting, suggesting that victim responses to sexual violence are themselves quite varied. Some may want to see the person who attacked them imprisoned for a long time; others might want the conduct to cease but not have a strong opinion on whether the person is incarcerated. Some victims might not

¹⁷ Spears, *2017 Felony Level Sex Offenses*, *supra* note 3, at 4.

¹⁸ *Id.*

come forward in order to protect the person who attacked them, while others might feel social pressure not to report, perhaps because of the attacker's standing in the family or in the community.

Though there are national studies that have looked at the reasons people do not report sexual violence, there are not yet any Alaska-specific studies on this topic. A study of University of Alaska students' disclosures of sexual misconduct and assault showed that **while a majority of students who experienced sexual violence disclosed these incidents to someone else, it was highly unlikely they disclosed these incidents to university representatives or law enforcement authorities.** This suggests that student victims in particular feel more comfortable approaching a friend rather than an authority figure and may suggest a perceived futility in approaching an authority figure.¹⁹ One national study found that victims often chose not to report because they viewed it as a "personal matter" or they feared reprisal.²⁰ The closer the relationship between the victim and the attacker, the less likely it was that the victim would report to the police.²¹

As of this writing, researchers at UAA are working in collaboration with DPS to assess victim perspectives on the justice system. This may shed light on the reason many incidents go unreported in Alaska, but that is not the focus of the study. Given the disparity between the apparent number of people victimized and the incidents reported to law enforcement, this topic warrants further study.

It is also notable that according to the AVS, the estimated number of adult women victims decreased between 2010 and 2015, while according to the DPS data, the number of reported incidents increased between 2015 and 2016, and the number of victims increased between 2016 and 2017.²² Again, these data are not directly comparable, but **the differing trends may indicate a decreased rate of actual victimization and an increased rate of reporting.**

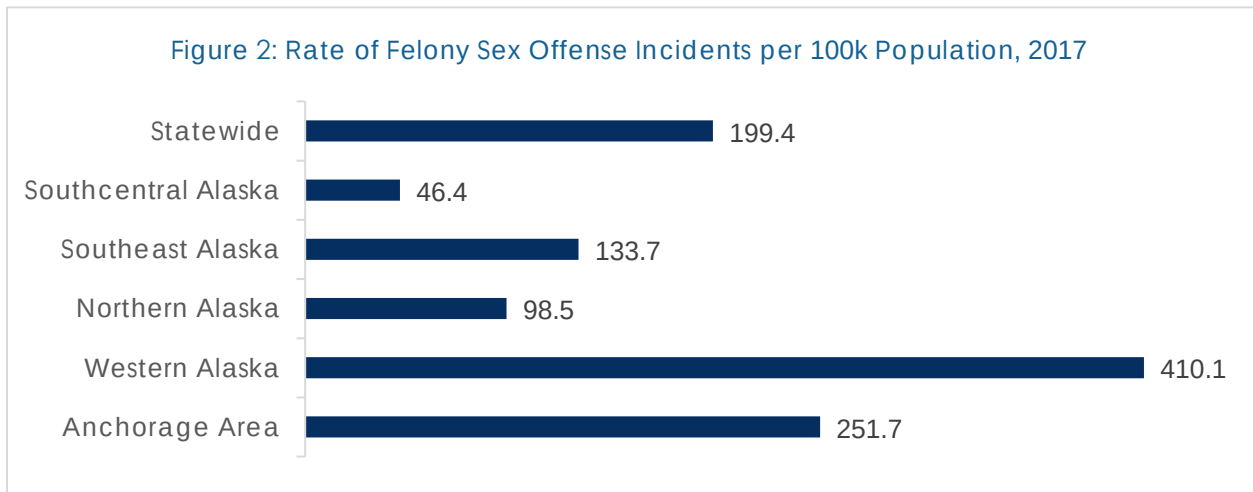
¹⁹ Brad A. Myrstell & Lindsey Blumenstein., *University of Alaska Students' Disclosures of Sexual Misconduct and Sexual Assault Victimization*. 33(1) Alaska Justice Forum 1, 16 (Spring 2016), available at <https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/alaska-justice-forum/33/1spring2016/a-ua-student-disclosures.cshtml>.

²⁰ Callie Marie Rennison., *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice (August 2002), 3, available at <https://www.bjs.gov/content/pub/pdf/rsarp00.pdf>.

²¹ *Id.*

²² Spears, *2017 Felony Level Sex Offenses Supplemental Report*, *supra* note 3, at 4.

It is also important to recognize that while sexual violence affects many Alaskans, it does not affect Alaskans equally. There are geographic and ethnic disparities in the rates of sex offenses reported to law enforcement. For example, though the Anchorage area had the highest total number of incidents reported (around 50% of all incidents reported statewide), the number of incidents per 100,000 people was much higher in Western Alaska; that rate was 106% greater than the statewide rate in 2017.



Source: 2017 Felony Level Sex Offenses: Crime in Alaska Supplemental Report, Department of Public Safety, August 2018

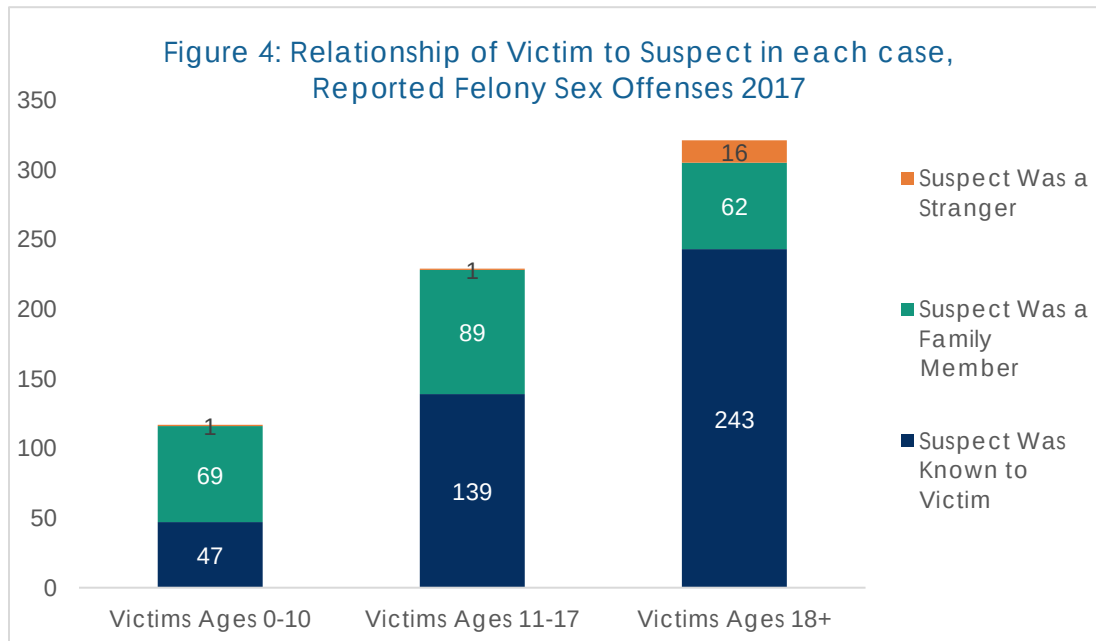
Statewide, victims of felony sex offenses reported to DPS were 46% Alaska Native, and 89% female. 47% of victims were juveniles. 88% of sex offenses did not involve a weapon and 76% of all offenses occurred in a residence.

Figure 3: Victim profiles as reported to law enforcement, 2017

- 46% Alaska Native
- 89% female
- 97% knew their assailant
- 47% juveniles

Source: 2017 Felony Level Sex Offenses: Crime in Alaska Supplemental Report, Department of Public Safety, August 2018

The Department of Public Safety also collects data on the relationship between a victim and a suspect in a reported sex offense incident. In 97% of reported felony sex offense incidents, the victim knew the suspect. Figure 4 below shows the number of reported incidents for which the relationship (or lack thereof) between the victim and suspect was known. Overall, only 2.4% of incidents involved a suspect who was a total stranger to the victim. For victims under age 18, only 0.3% of incidents involved a total stranger.²³



Source: 2017 Felony Level Sex Offenses: Crime in Alaska Supplemental Report, Department of Public Safety, August 2018

Subsection B(8) below has more information on the characteristics of sex offense cases in Alaska.

3. Alaska compared to the rest of the United States

Many of the data points reported above may be compared, to some extent, to national data points. Though there are limitations to our ability to compare national studies to Alaska studies, it is clear that sexual violence in Alaska is much worse than elsewhere in the United States.

There are a number of different national victimization studies, each of which uses different techniques, producing slightly different results. The study that is most directly comparable to the Alaska Victimization Survey is a 2007 study by Kilpatrick, *et al.* which collected interviews from a sample

²³ Spears, 2017 Felony Level Sex Offenses, *supra* note 3, at 4, 16-18.

of adult women nationwide.²⁴ According to that study, approximately 18% of women nationwide have reported being raped at some point in their lifetime, while 33% of women in Alaska have experienced sexual violence in their lifetime. Asked about victimization in the past year (in 2006), 0.9% of women nationwide reported being raped.²⁵ Asked about victimization in the past year (in 2015), 2.9% of women in Alaska reported experiencing sexual violence.

The federal Bureau of Justice Statistics also conducts the National Crime Victimization Survey (NCVS), which collects information on crimes against persons age 12 or older from a sample of U.S. households. This is a broader sample than either the 2007 Kilpatrick et al. study or the Alaska Victimization Survey, because it includes children and men, so the NCVS is not directly comparable to either. However, sexual victimization affects all people regardless of age or gender, and it is important to get a sense of the scope of the problem of sexual violence. The NCVS survey in 2016 found that 11 of every 1,000 people age 12 or older were victims of sexual violence in 2016. (In other words, 0.11% of all people age 12 or older.)²⁶ This victimization rate is lower than the rate for adult women alone (compare to 0.9% of adult women nationwide in 2006 and 2.9% of adult women in Alaska in 2015), which might indicate that men have a much lower rate of sexual victimization. However, it is likely that victimization of men is significantly underreported, even in victimization surveys.²⁷

The National Intimate Partner and Sexual Violence Survey (NISVIS), published by the Centers for Disease Control, reported that in 2015, 43.6% of women experienced some form of contact sexual violence in their lifetime with 4.7% of women experiencing this violence in the 12 months preceding the survey; 21.3% of women reported an attempted or completed rape in their lifetime.²⁸ Of men, 24.8% experienced some form of contact sexual violence in their lifetime with 3% of men experiencing this violence in the 12 months preceding the survey; 7.1% of men reported an attempted or completed

²⁴ Kilpatrick, et al. (2007), *supra* note 1, at 2. This study uses the word “rape,” while the Alaska Victimization Survey does not.

²⁵ *Id.*

²⁶ Rachel E. Morgan & Grace Kena, *Criminal Victimization, 2016: Revised*, US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (December 2017), 2, available at: <https://www.bjs.gov/content/pub/pdf/cv16.pdf>.

²⁷ See Lara Stemple & Ilan Meyer, *The Sexual Victimization of Men in America: New Data Challenge Old Assumptions*, American Journal of 104(6) Public Health e19 (June 2014).

²⁸ Sharon G. Smith et al., *The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief*, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (May 2018), 2. These numbers are slightly different than the number given in the Kilpatrick et al. study; the two studies use different methodology.

rape in their lifetime.²⁹ There are not any studies specific to Alaska that ask men about their lifetime or past-year victimization.

**Rape incidents per every 100,000 people
reported to law enforcement in 2017**

Nationwide: 41.7

Alaska: 116.7

FBI, *Crime in the United States 2017*

For reported sex offenses, the FBI requires all law enforcement agencies to keep the same data nationwide, so the national data may be compared directly to Alaska's data. Like the victimization rate, the reported incident rate in Alaska is higher than the nationwide rate. In Alaska in 2017, the number of rape incidents reported to law enforcement was 863, or 116.7 incidents per every 100,000 people—a rate that is almost twice that of any other state.³⁰ (Note also that 116.7 was the statewide average.) The national average was 41.7 rape incidents reported per every 100,000 people, meaning that Alaska's rate was over twice that of the national average.³¹

Note the number of incidents in this statistic (863) is different from the number of reported sex offense incidents in the section above (1,475). 1,475 was the total number of felony sex offense incidents (including sexual assault and sexual abuse of a minor) in 2017, while 863 was the number of incidents that met the FBI's definition of rape.³²

The high rate of sexual assault in Alaska compared to the rest of the country is not new. In the decade between 2006 and 2016, Alaska's reported rape rate was the highest in the country in each of those years, save for one.³³

²⁹ *Id.*

³⁰ FBI, *Crime in the United States 2016*; state-specific data available at: <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/tables/table-3>.

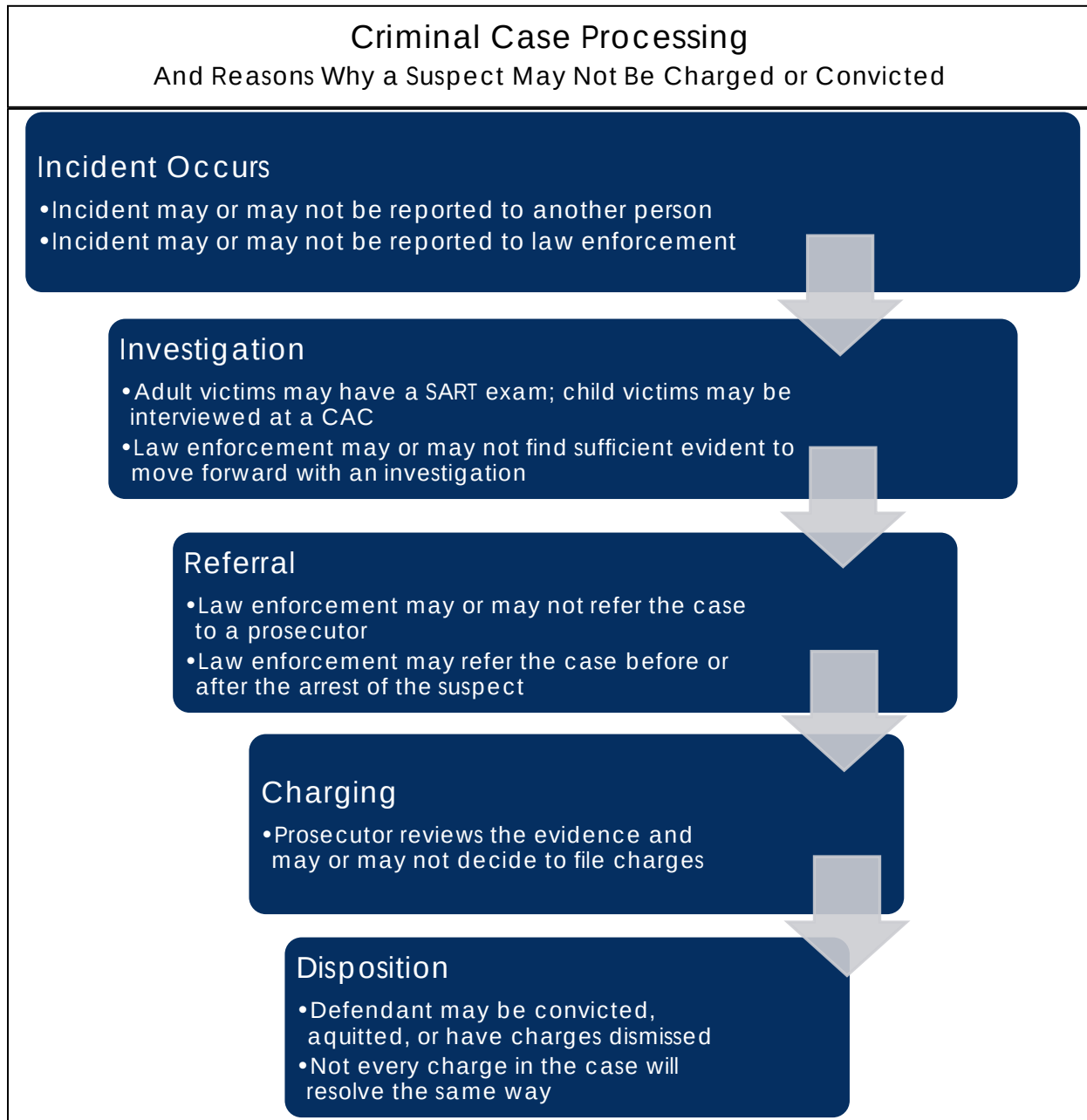
³¹ FBI, *Crime in the United States, 2017*; nationwide data available at: <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-1>.

³² The FBI defines rape as "penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim." See FBI, *2017 Crime in the United States: Rape*, at <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/rape>.

³³ *CSG 50-State Data*, *supra* note 2, at 9.

B. Criminal sex offense case processing in Alaska

The following sections track the life of a criminal sex offense case from start to finish. As noted above, only a fraction of incidents of sex offenses are ever reported to law enforcement. Of the incidents that are reported, attrition occurs at every stage of the process with the result that a significant number do not result in any criminal conviction for a variety of complex reasons.

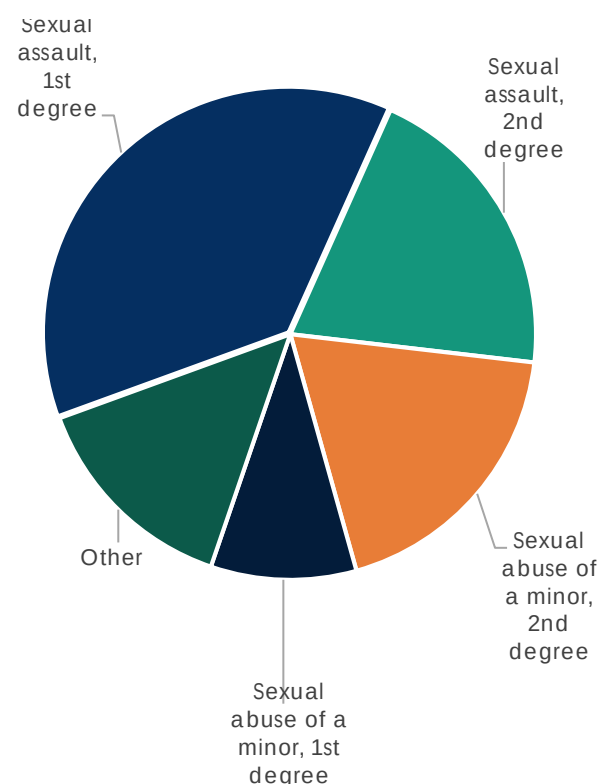


1. Reports to Law Enforcement by Count/Statute Violation

In addition to the total number of reported incidents, DPS also keeps a tally of the number, or “counts” of potential statute violations for each reported incident. This number is not the same as reported incidents, because one reported incident may involve multiple counts and multiple potential statute violations. In other words, in 2017, there were 1,475 incidents reported, and those incidents involved a total of 2,035 counts.³⁴ The DPS data on statute violation counts reported to Alaska law enforcement agencies in 2017 is listed in the table below.

Statute	Crime	Count
AS 11.41.410	Sexual assault, 1 st degree	758
AS 11.41.420	Sexual assault, 2 nd degree	410
AS 11.41.436	Sexual abuse of a minor, 2 nd degree	383
AS 11.41.434	Sexual abuse of a minor, 1 st degree	195
AS 11.41.425	Sexual assault, 3 rd degree	79
AS 11.61.127	Child pornography, possession	63
AS 11.41.438	Sexual abuse of a minor, 3 rd degree	39
AS 11.41.452	Online enticement of a minor	24
AS 11.41.450	Incest	16
AS 11.41.458	Indecent exposure, 1 st degree	15
AS 11.61.128	Distribute indecent material to a minor	14
AS 11.61.125	Child pornography, distribution	11
AS 11.41.300	Kidnapping	9
AS 11.66.100	Prostitution	6
AS 11.41.455	Unlawful exploitation of a minor	6
AS 11.66.130	Sex trafficking, 3 rd degree	6
AS 11.66.110	Sex trafficking, 1 st degree	1
Total		2,035

Figure 5: Felony Sex Offense Reports to Law Enforcement 2017: Statute Violation Counts



Source: 2017 Felony Level Sex Offenses: Crime in Alaska Supplemental Report, Department of Public Safety, August 2018.

³⁴ Spears, 2017 Felony Level Sex Offenses, *supra* note 3, at 2, 16.

Out of all reported counts, 30% were sexual abuse of a minor and 61% were sexual assault.³⁵ The most common statute violations reported to law enforcement were sexual assault in the first and second degrees and sexual abuse of a minor in the first and second degrees. Figure 5 above depicts this same information in visual form.

Data Sources: Case Processing

There are two studies conducted by researchers at the Alaska Justice Statistical Analysis Center at UAA that looked at how sex offense cases are processed.

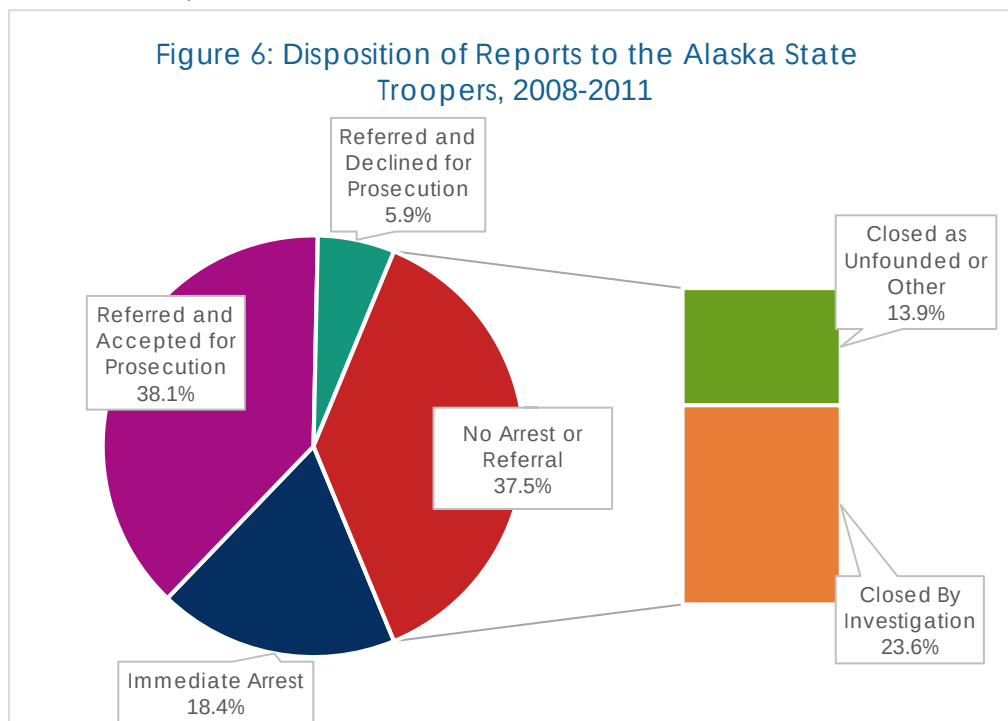
- The Alaska Domestic Violence and Sexual Assault Case Processing Project (referred to here as the AST Report Study) studied what happens after someone makes a report to the Alaska State Troopers. Among other things, it looked at:
 - Every report of a sex offense made to AST (not any other agency) from 2008 to 2011;
 - How each report was resolved: whether the suspect was arrested or referred for prosecution and if so, whether the suspect was convicted.
- The Alaska Sex Offender Recidivism and Case Processing Study (referred to here as the All-Alaska Arrest Study) studied what happens after a person is arrested on suspicion of committing a sex offense. Among other things, it looked at:
 - All arrests made for a sex offense by all law enforcement agencies in Alaska from 2008 to 2011;
 - Whether the arrest led to charges and a conviction.

³⁵ Spears, *2017 Felony Level Sex Offenses*, *supra* note 3, at 20.

2. From Report to Referral or Arrest

Once an incident is reported, it may or may not lead to an arrest and may or may not become a criminal case. Sometimes, law enforcement officers will arrest the subject of an investigation and refer the arrestee for prosecution; other times, law enforcement officers will refer the subject for prosecution, and later arrest the subject if the prosecutor thinks charges are warranted.

The Alaska Domestic Violence and Sexual Assault Case Processing Project (the AST Report Study) looked at the outcomes of all reports to the Alaska State Troopers for a four-year period; it did not include reports to municipal law enforcement authorities such as the Anchorage Police Department.³⁶ (Note that cases reported to the Anchorage Police Department account for roughly half of all reports of felony sex offenses in Alaska.³⁷) Of all the cases reported to AST from 2008 to 2011, **18.4% resulted in immediate arrest**.³⁸ Once a suspect is arrested, that person may or may not be charged with an offense; the section below discusses this further.



Source: Myr Stol, B. A. & Parker, K. L., Alaska Domestic Violence and Sexual Assault Case Processing Project. University of Alaska Anchorage, Alaska Justice Statistical Analysis Center, 2015

³⁶ Brad A. Myr Stol & Khristy L. Parker., *Alaska Domestic Violence and Sexual Assault Case Processing Project*, University of Alaska Anchorage, Alaska Justice Statistical Analysis Center (July 2015) [hereinafter *Alaska Domestic Violence and Sexual Assault Case Processing Project*].

³⁷ Spears, *2017 Felony Level Sex Offenses*, *supra* note 3, at 11.

³⁸ *Alaska Domestic Violence and Sexual Assault Case Processing Project*, *supra* note 36, at 8.

If law enforcement officers do not arrest a suspect immediately after receiving a report, they may then refer the case for prosecution to either the Department of Law or the Division of Juvenile Justice, depending on the age of the suspect. Of all reports in the AST Report Study, **38.1% were referred and accepted for prosecution prior to an arrest**. 5.9% of the reported cases did not result in the arrest of a suspect and were referred to either the Department of Law or to the Division of Juvenile Justice, but were declined for prosecution.³⁹

In total, 62.4% of the reports to AST resulted in a referral for prosecution or an arrest.⁴⁰ Conversely, 37.5% of reports to AST were not referred for prosecution and did not result in arrest. 23.6% of cases were closed at the conclusion of an investigation. The “closed by investigation” designation is used by AST in those cases in which AST has concluded an investigation determined that there was insufficient evidence to move forward.⁴¹ An additional 8.8% of cases were closed as unfounded, meaning that AST determined that the initial complaint was false or baseless.⁴² Finally, 5.1% were closed for another reason, such as the death of the suspect, or AST determined that no further action was necessary.⁴³

3. From Referral or Arrest to Criminal Charging

Once a case is referred to a prosecuting authority (the Department of Law, the Department of Juvenile Justice, or a municipal prosecutor), a prosecutor then decides whether to accept the case. A prosecutor may decline a case (or dismiss the case, if a law enforcement agency filed charges) if there does not appear to be enough evidence to convict the suspect beyond a reasonable doubt. Of all sex offense cases referred by AST to the Department of Law from 2008-2011, whether referred before or after arrest, the Department of Law accepted 41% for prosecution.⁴⁴

Once a suspect is arrested, however, it is likely that person will be prosecuted. The Alaska Sex Offender Recidivism and Case Processing Study (the All-Alaska Arrest Study) looked at all sex offense

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 8-9.

⁴² *Id.*

⁴³ *Id.* at 8-9.

⁴⁴ *Id.* at 47. Referrals to the Division of Juvenile Justice or to municipal prosecutors are not included. However, the Department of Law receives the vast majority of all referrals, because 86% of all suspects are 18 or older (see Spears, *supra*, at p14), and because most sex offenses are felonies, and municipalities do not prosecute felonies.

arrests made by all law enforcement agencies across Alaska from 2008 to 2011. It showed that 97.1% of these arrests lead to prosecution.⁴⁵ This statistic is different from—and not directly comparable to—the referral data above, because it includes all law enforcement authorities in Alaska (AST and municipal law enforcement), and includes only cases that began with an arrest.⁴⁶ Cases that begin with an arrest are more likely to lead to prosecution because in order to make an arrest, a law enforcement officer must have probable cause to believe that a crime was committed.⁴⁷ Probable cause is also necessary for criminal charging.

4. From Charge to Conviction

Oftentimes, defendants have multiple sex offense charges in one case. Many of the charges are dismissed in the resolution of the case. This may be because the prosecutor does not have enough evidence for the charge, or the charge is consolidated or dropped as a result of a plea agreement, or the defendant is acquitted. The All-Alaska Arrest Study looked at all people arrested (by any agency) for a sex offense in Alaska from 2008-2011. Of this sample, **68.9% of the cases resulted in conviction but only 28.0% of the charges resulted in conviction.**⁴⁸ In other words, it was likely that a defendant who was arrested for a sex offense would eventually be convicted of a crime, but not of every charge in a given case.

Defendants who are indicted on serious sex offense charges are frequently convicted of less serious charges. This may be a matter of the strength of the evidence in the case, and/or the result of a plea bargain.⁴⁹

⁴⁵ *Alaska Sex Offender Recidivism and Case Processing Study*, *supra* note 5, at 40-41.

⁴⁶ *Id.*

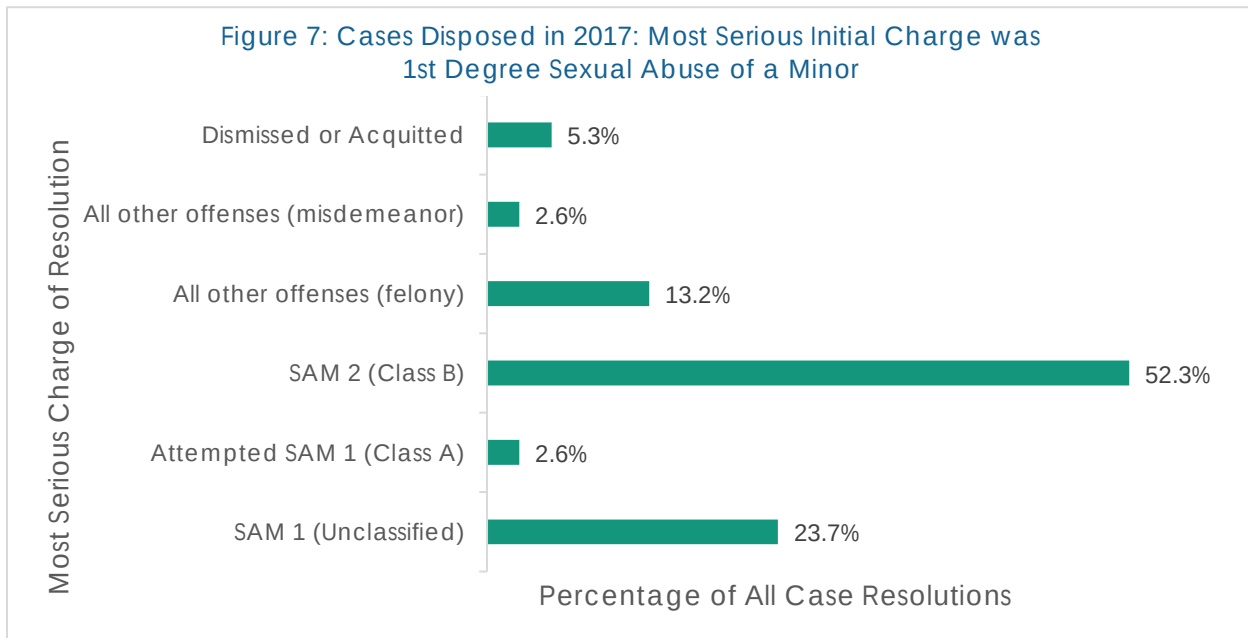
⁴⁷ According to the Department of Law, the fact that an arrest was made does not directly make a case more likely to be prosecuted. It is more likely that the correlation between arrest and prosecution stems from the fact that arrests are made in cases with stronger evidence and where the offender is more dangerous, such as where the offender has an established history of sexual violence. Additionally, many arrests in these types of cases are made following discussion with and/or approval by a prosecuting attorney prior to an arrest being made.

⁴⁸ *Alaska Sex Offender Recidivism and Case Processing Study*, *supra* note 5, at 41-42.

⁴⁹ Per the Department of Law, using the number of initial charges filed and extrapolating any valuable information regarding the resolution rate of sexual offenses is complicated. For example, if a suspect is a multi-generational offender who has committed many sex offenses against multiple child victims over the course of decades, the charges initially filed against that suspect may only represent a small fraction of the incidents of sexual abuse for which the suspect is responsible. Representative counts is a practice routinely followed in jurisdictions where police and prosecutors are working jointly on large cases. It accomplishes the immediate public safety goal of removing the offender from situations where he / she may still pose a serious danger to the public, while preserving the ability

To get a sense of how often this happens, it is possible to track the resolutions of all sex offense charges filed in Alaska in a given period. The Alaska Criminal Justice Commission used data from the Department of Public Safety to identify all cases disposed in 2017 that initially involved a felony sex offense charge. Figures 7 - 10 below look at how cases with at least one serious felony sex offense charge resolved. These offenses—sexual abuse of a minor in the first or second degree, and sexual assault in the first or second degree—represent the most commonly reported offenses (see subsection 1 above). This case resolution data from 2017 may also be compared to similar data from a 1999 felony processing study. Appendix C has more details.

In Figures 7 - 10, the offenses listed in the vertical axis represent the most serious charge for which the defendant was convicted. Cases in the “dismissed or acquitted” category are cases in which the defendant was either acquitted of all remaining charges, all charges were dismissed, or some combination thereof—meaning there was no conviction in the case. (Note: in these charts, the acronym “SAM” refers to the offense of sexual abuse of a minor.)



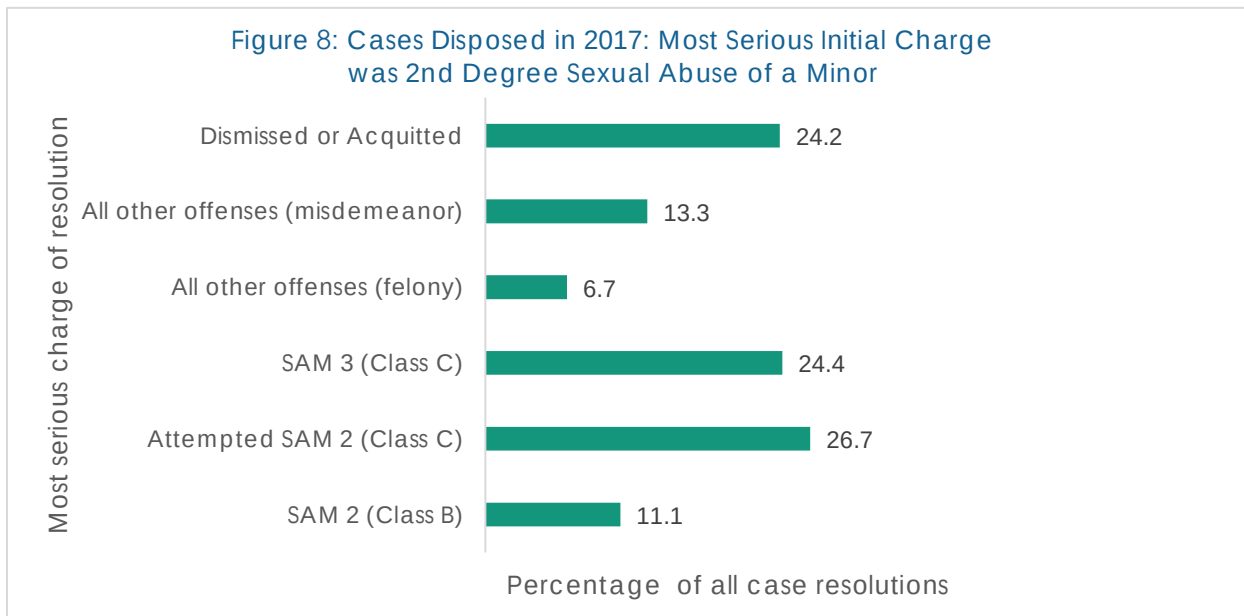
Source: Alaska Court System

For cases in which the most serious initial charge was first-degree sexual abuse of a minor, fewer than a quarter of those cases resulted in a conviction on that charge, as seen in Figure 7 above. The majority of cases (52.3%) in which the most serious charge was first-degree sexual abuse of a

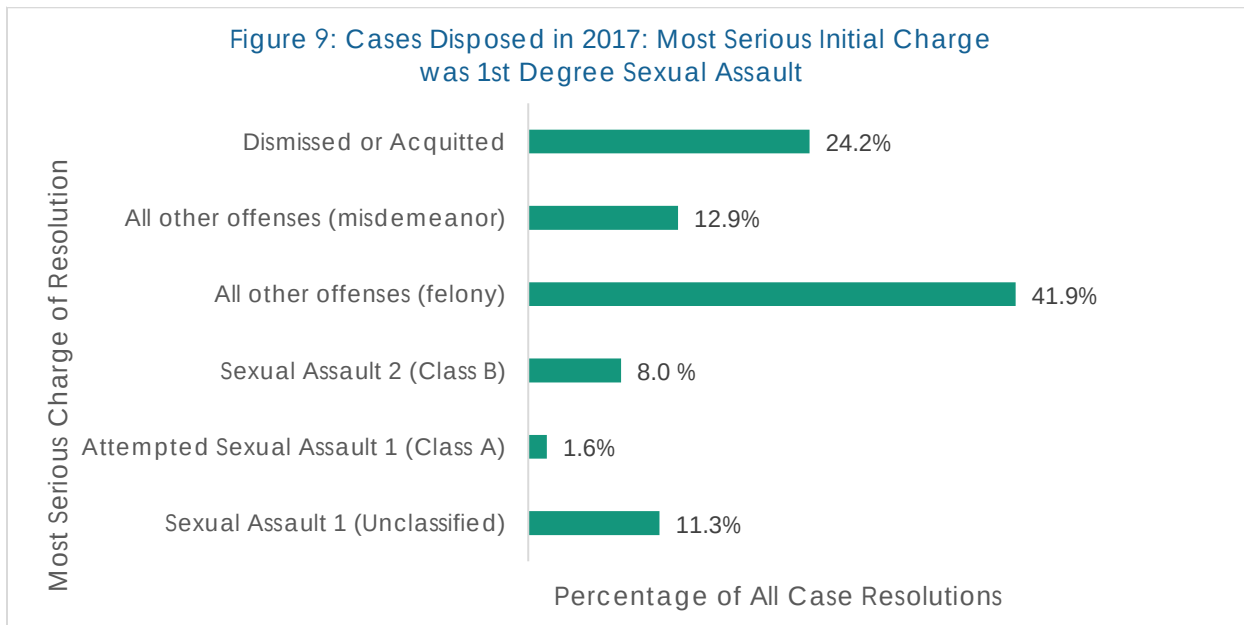
for the prosecution to thoroughly vet the evidence in a case to determine what conduct is provable beyond a reasonable doubt. Thus, the number of initial charges filed may not be a clear indication of the scope of the overall chargeable criminal activity.

minor (an unclassified felony) resolved with a conviction for second-degree sexual abuse of a minor (a Class B felony).

For cases where the most serious initial charge was sexual abuse of a minor in the second degree (a Class B felony), most cases resolved with a conviction for a lesser Class C felony sex crime, as seen in Figure 8 below.

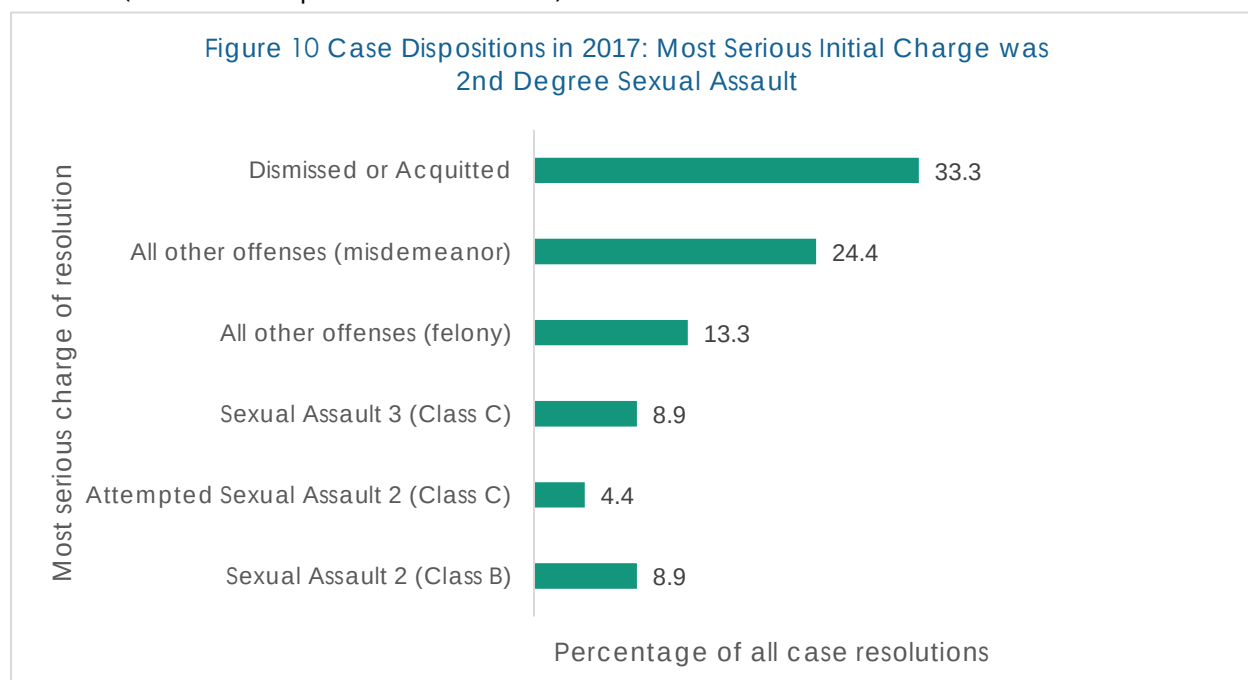


Source: Alaska Court System



Source: Alaska Court System

For cases where the most serious charge was sexual assault in the first degree, only 11.3% resolved with conviction on that charge, as seen in Figure 9 above. An additional 9.6% resolved with conviction of sexual assault in the second degree or attempted sexual assault in the first degree, while 41.9% were resolved with conviction on another lesser felony. Some of these other felonies were sex offenses (such as attempted sexual assault 2) and some were not.



Source: Alaska Court System

Finally, for cases where the most serious initial charge was second-degree sexual assault, one third of the cases resulted in all charges being dismissed or the defendant being acquitted of all charges, as seen in Figure 10 above. The defendant's most serious charge of conviction was a misdemeanor in 24% of the cases.

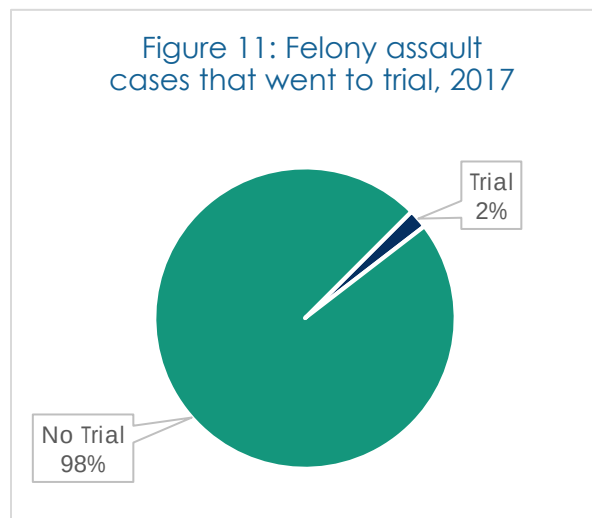
Table 2: Felony Case Dispositions, 2017						
Source: Alaska Court System						
Case type	Number	Trial	Conviction on any charge	All charges dismissed	Acquitted	No True Bill
Felony sex offenses ⁵⁰	220	27 (12.3%)	172 (79.3%)	38 (17.5%)	7 (3.2%)	3 (1.4%)
Felony assault ⁵¹ (non-sex)	1,747	36 (2.1%)	1,315 (75.6%)	417 (23.9%)	8 (0.5%)	7 (0.4%)

⁵⁰ Most common felony sex offenses including first-, second-, and third- degree sexual abuse of a minor; first-, second-, and third-degree sexual assault; unlawful exploitation of a minor; and first-degree indecent exposure.

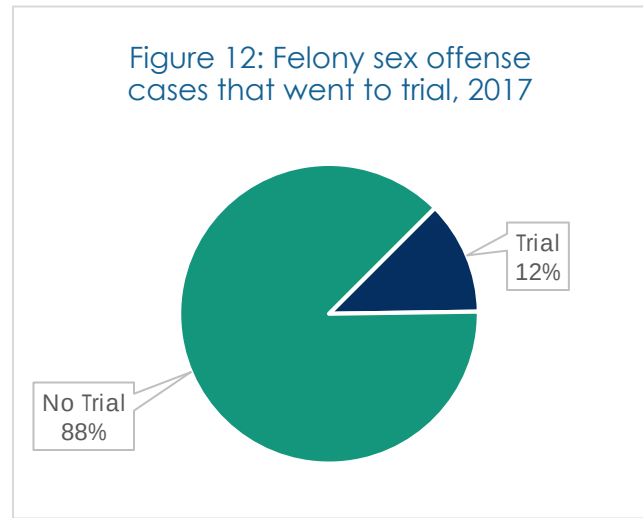
⁵¹ Includes first-, second-, and third-degree assault.

The dismissal/acquittal rates seen in the charts above are not exclusive to sex offenses. Table 2 above compares how felony sex offense cases and felony assault cases were disposed in 2017.

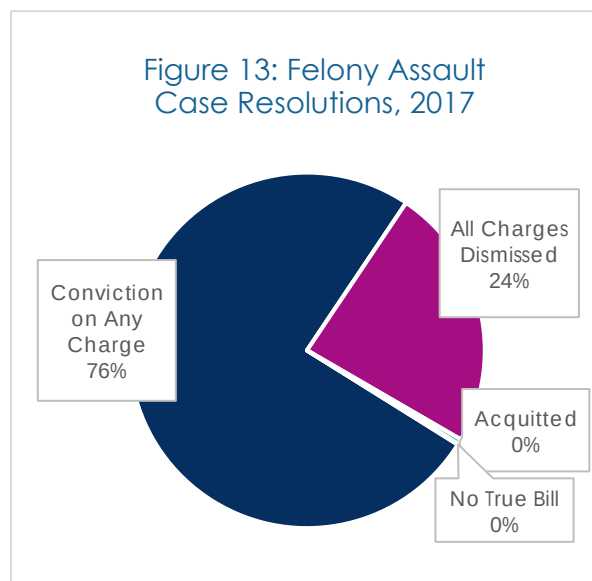
In Table 2 above and in Figures 11-14 below, the “trial” column indicates the number and percentage of cases in each category that went to trial, meaning that a jury was empaneled or a judge began hearing the case (though some defendants in this category might have agreed to a plea deal after the trial started.) “Conviction on any charge” means that the defendant was convicted of at least one charge (any offense). “All charges dismissed” means that either the prosecutor or judge dismissed all charges in the case. “Acquitted” means that the defendant was acquitted by a judge or jury of at least one charge in the case and was not convicted of any other charge (the defendant may have had



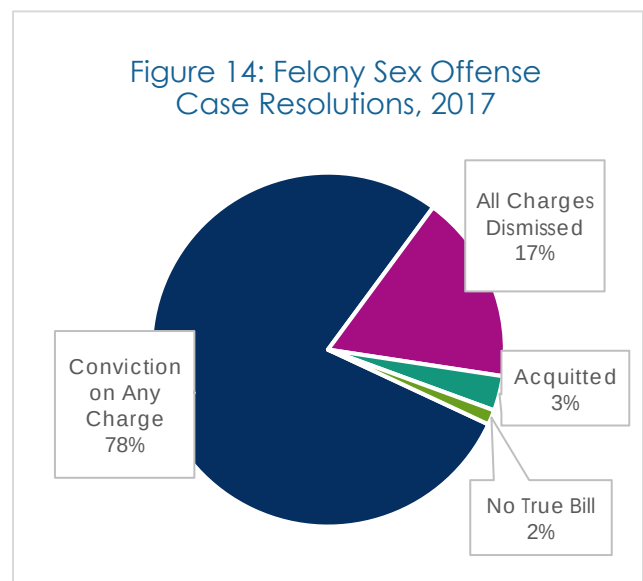
Source: Alaska Court System



Source: Alaska Court System



Source: Alaska Court System



Source: Alaska Court System

other charges that were dismissed at some point in the case). “No True Bill” means a grand jury did not indict the defendant. Figures 11-14 visualize the information in Table 2.

5. Sex Offense Case Processing: Key Takeaways

It may be tempting to read the preceding sections to attempt to connect the data on victimization, reporting, arrest, and conviction. However, due to the way the available data has been collected, it is not possible to directly compare all of the data sources from the sections above.

That said, it is possible to look at certain data points to get a sense of the attrition that occurs in sex offense case processing and how comparatively few cases result in a conviction. The available data allows us to make broad comparisons between data sets for the year 2015. Again, **it is important to note that not all of these data sets can be directly compared**; this summary is meant to give a ballpark estimation. In 2015, an estimated 7,000 women in Alaska experienced sexual violence in the previous year.⁵² It is important to note that this estimate is derived from the Alaska Victimization Survey, which is a survey of experiences, and it is impossible to know how many of the incidents of sexual violence identified by survey respondents would constitute a criminal offense.

In Alaska in 2015:

- 1,352 felony sex offense incidents were reported to law enforcement.⁵³
- There were 225 arrests for a felony sex offense.⁵⁴
- Of those 225 arrests, 159 resulted in a conviction, 119 of which included at least one conviction for a felony sex offense.⁵⁵

The victimization data and the reported incident, arrest, and conviction data do not align because they are comparing different populations. In addition, the data points are not temporally aligned. The victimization survey was conducted between May and August 2015 and it asked about the respondents’ experiences in the year prior to the survey date.⁵⁶ The felony sex offense incidents

⁵² 2015 AVS, *supra* note 1. The survey did not include non-English speakers, women without a phone, men or anyone under age 18; these populations are therefore excluded from the estimate.

⁵³ Spears, 2017 *Felony Level Sex Offenses*, *supra* note 3, at 4. This number does not include reports of misdemeanors. It does include reported crimes against men and children.

⁵⁴ Source: Department of Public Safety.

⁵⁵ *Id.*

⁵⁶ 2015 AVS, *supra* note 1.

reported to law enforcement are those reported in the 2015 calendar year and will necessarily include some offenses that occurred after the victimization survey was conducted.

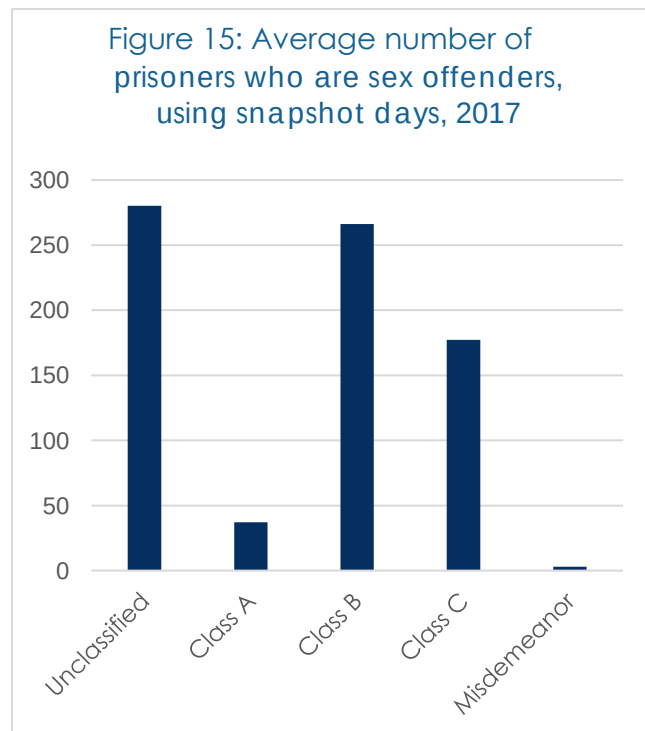
Similarly, the arrests made in 2015 are not necessarily linked to the reports made in 2015; often law enforcement will take some time to build a case against a suspect and several months may elapse between the report and the arrest. Thus someone may have reported an offense in 2015 for which a suspect was not arrested until 2016.

Despite these caveats, however, **it is clear that there is a difference, by an order of magnitude, in the number of sex offense incidents that occur in Alaska every year and the number of people who are held accountable for those incidents;** the number of incidents experienced by victims is in the thousands, while the number of convictions is in the low hundreds. In order to understand this problem more precisely, however, further study is needed; specifically, a large-scale study following the processing of all felony-level sex offense reports from the report through to disposition.

6. Incarceration

If a defendant is convicted of a sex offense, it is likely the defendant will be sentenced to a term of incarceration. In the study of all sex offense arrests made in Alaska from 2008-2011, 68.9% of the cases resulted in conviction and 67.3% resulted in a sentence that included incarceration. Put another way, 97.7% of the cases resulting in a conviction also resulted in a sentence of incarceration.⁵⁷

Figure 15 at right shows the number of prisoners whose most serious crime of conviction was a sex offense on an average snapshot day in 2017.⁵⁸ **Note that there are very few people incarcerated for a Class A**



Source: Alaska Department of Corrections

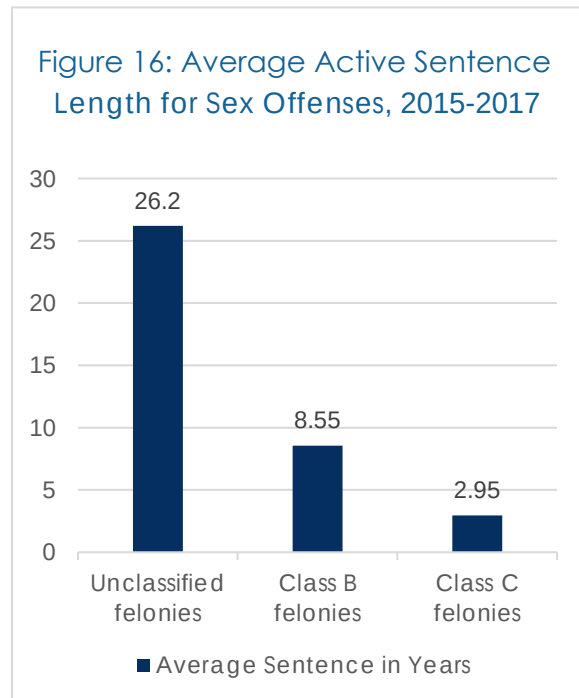
⁵⁷ *Alaska Sex Offender Recidivism and Case Processing Study*, *supra* note 5, at 40-41.

⁵⁸ Calculations made taking the mean of snapshot of the population for the given category on January 1, April 1, July 1, and October 1 in 2017.

felony sex offense because the only Class A felony sex offenses are attempt, solicitation or conspiracy of an unclassified felony sex offense. Unclassified felonies include sexual assault in the first degree and sexual abuse of a minor in the first degree; Class B Felonies include sexual assault in the second degree and sexual abuse of a minor in the second degree; and Class C felonies include sexual assault in the third degree and sexual abuse of a minor in the third degree.

On average, there were 764 people in prison whose most serious conviction was a sex offense on a given day in 2017. The average total number of people in prison on a given day in 2017 was 4,357.

Prisoners convicted of sex offenses often receive lengthy sentences. Figure 16 shows the average sentence length for sex offenders sentenced in 2015-2017, depicted in years.⁵⁹ (The chart does not include the average sentence length for Class A felonies or misdemeanors because there were not enough people sentenced in those categories within the three-year time period to produce a



Source: Alaska Department of Corrections

meaningful average.) The average sentences shown in Figure 16 are in keeping with sentences in other states; a Bureau of Justice Statistics review of sentences imposed in 44 states showed that the average sentence imposed for sex offenders released in 2016 was 12.2 years.⁶⁰

The average sentences depicted above fall within the statutory presumptive ranges for first-time felony offenders convicted of a sex offense. (The current presumptive ranges for a first-time felony offender convicted of a sex offense are: 20-30 years for an Unclassified felony, 15-30 years for a Class A felony, 5-15 years for a Class B felony, and 2-12 years

⁵⁹ This chart depicts the average *active* sentence length; it does not include suspended time. Nor does it account for any potential parole or furlough. Thus, the average sentence length does not represent the average length of stay. A person sentenced to prison may spend more time in prison than the active sentence length imposed if the person violates a condition of probation, and is required to serve all or part of a suspended sentence. A person sentenced to prison may also spend less time in prison than the active sentence length due to parole or furlough. Anyone sentenced to an offense with a mandatory minimum term must serve at least the mandatory minimum amount of time.

⁶⁰ Danielle Kaebler, *Time Served in State Prison, 2016*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, (November 2018), 4, available at <https://www.bjs.gov/content/pub/pdf/tssp16.pdf>.

for a Class C felony.) Section II below has more information on Alaska's sex offense sentencing laws and their history.

7. Evidence in Sexual Offense Cases

In some sexual assault cases, forensic evidence of the assault is collected using a sexual assault evidence collection kit, commonly known as a "sexual assault kit." A kit must be collected within seven days of an assault, so if an assault is not reported in this time, law enforcement, in consultation with a medical provider, will evaluate whether or not a forensic exam is warranted. In some instances, a forensic exam still may be warranted and thus authorized.

Sexual Assault Evidence Collection Kits

Forensic testing of evidence in sexual assault cases is not always required to proceed with a case or obtain a conviction against a suspect.

In the past, many forensic evidence kits were collected by law enforcement, but were not submitted for testing.

The Alaska Scientific Crime Detection Laboratory (Crime Lab) recently increased the forensic medical exam authorization limits for adult victims, allowing kits to be collected within seven days rather than 96 hours post-assault, thanks to advances in technology and science. The Crime Lab is bringing a new technology on line that will enhance its ability to obtain useful DNA results from evidence collected during the investigation of sexual assault. This technology, called Y-STR analysis, will enable the lab to generate interpretable male DNA profiles from the sexual assault kits for an extended period of time.

The testing of a sexual assault kit may not be required to obtain a conviction in every sexual assault case. For example, the issue to be proven in some cases may be lack of consent, rather than the assailant's identity. However, advocates argue that testing kits in all cases provides a greater chance of identifying assailants who may be serial attackers. Even if the identity of the assailant in one case is already known, it may be possible to connect that assailant's DNA to DNA collected in another case where the assailant was unknown.⁶¹ For example, Ohio conducted a seven-year testing initiative to address a

⁶¹ See James Brooks, *Juneau's Rape Kit Backlog is 'One of the Worst' Nationwide*, Juneau Empire, November 26, 2017, available at <http://juneauempire.com/news/local/2017-11-26/juneau-s-rape-kit-backlog-one-worst-nationwide>.

backlog of untested kits, which concluded in 2018. That initiative resulted in connecting 300 serial offenders to 1,125 crimes.⁶²

Like many other states, Alaska's law enforcement agencies have a number of sexual assault kits in storage that have never been submitted to the crime lab and thus have not been tested. In the fall of 2016, DPS was awarded a Federal Department of Justice, Office of Justice Programs, Bureau of Justice Assistance Sexual Assault Kit Initiative (SAKI) grant to begin addressing this backlog of unsubmitted kits. A working group was formed to develop a collaborative approach to tackling the problem and utilizing the funds.⁶³ The Department of Public Safety also received another federal grant to study the backlog of previously untested and unsubmitted kits held by the Alaska State Troopers and to develop a data-driven policy to address issues identified throughout the SAKI process. Grant funding includes a prosecutor and cold case investigator as well as a dedicated researcher.⁶⁴ DPS is currently focusing on testing kits that were collected but not submitted for testing by troopers. All such kits containing evidence from victims have now been sent to be analyzed by a lab out of state; DPS anticipates having all results back by May 2019.⁶⁵

A one-time inventory of untested kits was mandated by Senate Bill 55, a bill signed into law in June 2017. In November 2017, DPS reported on the inventory, having found that there

Addressing the backlog of unsubmitted kits

Beginning in 2018, all law enforcement agencies must submit an inventory of unsubmitted kits.

DPS has received two federal grants to help address the backlog of unsubmitted kits held by the Alaska State Troopers.

The Legislature has also appropriated funds to address the backlog of unsubmitted kits held by municipal law enforcement agencies.

⁶² Pamela Cravez. Sexual Assault Kit Initiative: Alaska Making Progress, 34(4) Alaska Justice Forum 5 (Spring 2018).

⁶³ James Brooks, *Nearly a Year Later, No Testing Done on Sex Assault Kits*, Juneau Empire, August 24, 2017, available at: <http://juneauempire.com/state/news/2017-08-22/nearly-year-later-no-testing-done-sex-assault-kits>.

⁶⁴ Cravez, *supra* note 62, at 5.

⁶⁵ There is a website to update the public on the progress of this initiative available at: <https://dps.alaska.gov/Comm/SAK/Home>.

were 3,484 untested sexual assault kits statewide.⁶⁶ Of the untested kits, 53% were held by the Anchorage Police Department, 22% by the Alaska State Troopers, 6% by the Juneau Police Department, and 5% by the Fairbanks Police Department. (The remainder were held by various other agencies around the state.)⁶⁷

In June 2018, Governor Bill Walker signed HB 31 into law, which requires a yearly inventory of untested kits. DPS must submit a report on the inventory by November 1 of each year. The bill also provides for standardized training for law enforcement on how to respond to sexual assault reports, and formalizes a process to ensure that victims know they can obtain a forensic exam and evidence collection while remaining anonymous.⁶⁸ In an effort to comply with HB 31, AST has provided all municipal police agencies in Alaska with a copy of their policy related to anonymous reporting and has made technical assistance on this particular matter available.

In November 2018, DPS reported that 48 of 48 police agencies complied with DPS's request to once again provide information on untested kits, resulting in 2,568 untested victim sexual assault kits being inventoried.⁶⁹ Of note, the decrease in the overall inventory from 3,484 to 2,568 is, in part, due to that fact that 577 previously untested AST victim sexual assault kits were sent out of state to be tested, as mentioned above.

Furthermore, in 2018 the Alaska Legislature approved a \$2.75 million appropriation to test kits previously collected by municipalities but never submitted for testing.⁷⁰ It is estimated that it will take 3-4 years for all sexual assault kits to be submitted and analyzed, at a submission rate of 100 kits per month. Prioritizing the timeline and order of the untested sexual kits will be made in consideration of local and state needs, including police department size and access to resources. In 2018, the Anchorage Police Department (APD) possessed approximately 62% of the unsubmitted kits.⁷¹ This initiative will

⁶⁶ Letter from Walt Monegan, Commissioner of the Department of Public Safety, to Senate President Pete Kelly and House Speaker Bryce Edgmon, November 1, 2017, *available at* <https://dps.alaska.gov/getmedia/2791c61b-4df3-45cb-9990-a612266140b5/2017-Legislative-Report.pdf>.

⁶⁷ *Id.* at 5.

⁶⁸ Chapter 48 SLA 2018.

⁶⁹ Letter from Walt Monegan, Commissioner of the Department of Public Safety, to Senate President Pete Kelly and House Speaker Bryce Edgmon, November 1, 2018, *available at* https://dps.alaska.gov/getmedia/30808674-7b75-455e-89c7-12dc65d9cf32/DPS-Annual-Sexual-Assault-Kit-Inventory-Report-2018_.pdf.

⁷⁰ Alaska Crime Lab Capital Project, Department of Public Safety Sexual Assault Kit Initiative, <https://dps.alaska.gov/Comm/SAK/Capital-Project>.

⁷¹ *See* Letter from Walt Monegan, November 2018, *supra* note 69.

require more inter-agency planning to absorb the increase in follow-up investigative and prosecutorial workloads.

As of January 2018, all kits in Alaska are now sent to the state crime lab, and the law enforcement agency sending the kit will indicate whether testing is required; if testing is not required, the agency will indicate why not.⁷²

8. Case Characteristics

The following data points highlight some characteristics of sex offense cases in Alaska:

- **Geographic disparity**
 - o In 2017, Anchorage had the highest overall number of reported felony sex offenses, but **the rate per 100,000 persons in Western Alaska was more than twice as much as the statewide rate.**⁷³
 - o Similarly, a study of reports to the Alaska State Troopers from 2008 to 2011 showed that the **Bethel unit received 24% of the total reports to AST** and the Fairbanks unit received 16% of reports. (None of the other units received more than 8%).⁷⁴
- **Victim demographics**
 - o In 2017, **89% of reported victims of felony sex offenses were female, and 46% were Alaska Native.**⁷⁵
 - o Similarly, the study of reports to the Alaska State Troopers from 2008 to 2011 showed that **86.5% of victims were female, and 61% were Alaska Native.**⁷⁶ (This study excluded local law enforcement reports from Anchorage and other cities.)

⁷² See Letter from Walt Monegan, November 2017, *supra* note 66.

⁷³ Spears, *2017 Felony Level Sex Offenses*, *supra* note 3, at 11.

⁷⁴ *Alaska Domestic Violence and Sexual Assault Case Processing Project*, *supra* note 36, at 6-7. Because this study was of the Alaska State Troopers, it would exclude reports to municipal law enforcement authorities such as the Anchorage Police Department.

⁷⁵ Spears, *2017 Felony Level Sex Offenses*, *supra* note 3, at 14.

⁷⁶ *Alaska Domestic Violence and Sexual Assault Case Processing Project*, *supra* note 36, at 27.

- **Victim-suspect relationships**
 - o In 2017, only **2.4% of reported felony sex offense cases involved suspects who were strangers to the victim.**⁷⁷
 - o Similarly, the study of reports to the Alaska State Troopers from 2008 to 2011 showed that **28.7% of victims were family members** of the suspect, **61% had a known relationship** to the suspect, and **3.9% were strangers.** (The relationship was unknown in the remaining 6% of cases.)⁷⁸
- **Location and weapon use**
 - o In 2017, 76% of all reported felony sex offenses occurred in a residence; **12% of sex offenses involved use of a weapon** (including the suspect's hands or feet).⁷⁹
 - o Similarly, the study of reports to the Alaska State Troopers from 2008 to 2011 showed that 84.9% of offenses occurred indoors and 91.4% of the offenses committed indoors occurred in a residence. **32.1% of these cases involved use of a weapon** (including the suspect's hands or feet).⁸⁰
- **Victim age**
 - o Around **half of all victims are under age 18.**⁸¹

In the study of reports to the Alaska State Troopers from 2008 to 2011, **58.9% of victims reported to someone other than a trooper.** More often than not, a victim's initial disclosure was made to a parent, friend, or family member rather than directly to the troopers.⁸²

⁷⁷ Spears, *2017 Felony Level Sex Offenses*, *supra* note 3, at 4.

⁷⁸ *Alaska Domestic Violence and Sexual Assault Case Processing Project*, *supra* note 36, at 24.

⁷⁹ Spears, *2017 Felony Level Sex Offenses*, *supra* note 3, at 19.

⁸⁰ *Alaska Domestic Violence and Sexual Assault Case Processing Project*, *supra* note 36, at 37, 40, 45.

⁸¹ Spears, *2017 Felony Level Sex Offenses*, *supra* note 3, at 14, *Alaska Domestic Violence and Sexual Assault Case Processing Project*, *supra* note 36, at 26.

⁸² *Alaska Domestic Violence and Sexual Assault Case Processing Project*, *supra* note 36, at 29-30.

The study also looked at the type of circumstances in which the suspect encountered the victim. **31.6% of cases occurred in a social setting or party**, and **30% occurred during a routine interaction** in the context of a long-term relationship (including family relationship and friendship) between the victim and the suspect. 9% of cases involved a sudden attack. (The remainder of the circumstances were miscellaneous or unknown.)⁸³

Table 3: Prior history of suspects in sex offense incidents reported to the Alaska State Troopers, 2008-2011	
Suspect Prior History	Percent of Suspects
At least one prior DV incident committed against the same victim(s)	13.1
One or more of these prior DV incidents reported	2.4
At least one prior SA/SAM incident committed against the same victim(s)	17.6
One or more of these prior SA/SAM incidents reported	3.0
At least one prior DV conviction, any other victim(s)	1.8
At least one prior SA/SAM conviction, any other victim(s)	5.8

Source: Myr Stol, B. A. & Parker, K. L., Alaska Domestic Violence and Sexual Assault Case Processing Project. University of Alaska Anchorage, Alaska Justice Statistical Analysis Center, 2015

Finally, the study also looked at the prior history of domestic or sexual violence of the suspects reported for sexual assault and sexual abuse of a minor. The data presented in Table 3 above were “gleaned from the narratives and supporting documents contained within AST domestic violence case records only. Other sources of information, such as criminal history repository (APSIN), archival prosecution records, or court proceeding judgments were not directly accessed by the research team.”⁸⁴ In other words, the report only had access to whatever prior history information was included in the AST records (such as the information gathered by the officer responding to the initial report).

Sex Offense Reports to the Alaska State Troopers, 2008-2011

17.6% of suspects had previously committed a sex offense against the same victim

3% of those prior incidents had been reported to law enforcement

Source: Myr Stol, B. A. & Parker, K. L., Alaska Domestic Violence and Sexual Assault Case Processing Project. University of Alaska Anchorage, Alaska Justice Statistical Analysis Center, 2015

⁸³ Alaska Domestic Violence and Sexual Assault Case Processing Project, *supra* note 36, at 42

⁸⁴ Alaska Domestic Violence and Sexual Assault Case Processing Project, *supra* note 36, at 25.

This aspect of the study is revealing: nearly a third of the suspects had previously attacked their victim—either in an act of domestic violence or sexual violence. But only a small fraction of those prior incidents had been reported. (Also, these data reflect only the information that was available to the troopers investigating the case.) This comports with the information relayed above: that a large proportion of incidents of sexual violence go unreported.

C. Cases Involving Minors

Many sex offense cases involve minors, both as victims and as defendants. The following is a summary of available data on cases involving minors.

1. Cases involving victim minors

In 2017, around half of all the victims of felony sex offenses reported to law enforcement in Alaska were children. Victims ages 0-10 were 15% of all reported victims, and victims ages 11-17 were 32% of all reported victims.⁸⁵

Younger victims were more likely to be victimized by a family member. For victims 0-10 years old, the suspect was a family member in 59% of reported cases. For victims 11-17 years old, the suspect was a family member in 39% of reported cases. For victims ages 18 and up, the suspect was a family member in 19% of reported cases.⁸⁶

Sex Offense Suspects Related to Victims Reports to Law Enforcement, 2017

- Victims age 0-10: suspect was a family member in 59% of cases
- Victims age 11-17: suspect was a family member in 39% of cases
- Victims age 18+: suspect was a family member in 19% of cases

Source: 2017 *Felony Level Sex Offenses: Crime in Alaska Supplemental Report*, Department of Public Safety, August 2018

Typically, if a victim is under age 16, the offense will be charged as sexual abuse of a minor. Some cases involving victims over age 16 may also be charged as sexual abuse of a minor if specific criteria apply. In 2017, 61% of all potential felony sex offense statute violations reported to law enforcement were sexual assault cases and 30% were sexual abuse of a minor cases.⁸⁷ (The remainder were child pornography and other offenses.)

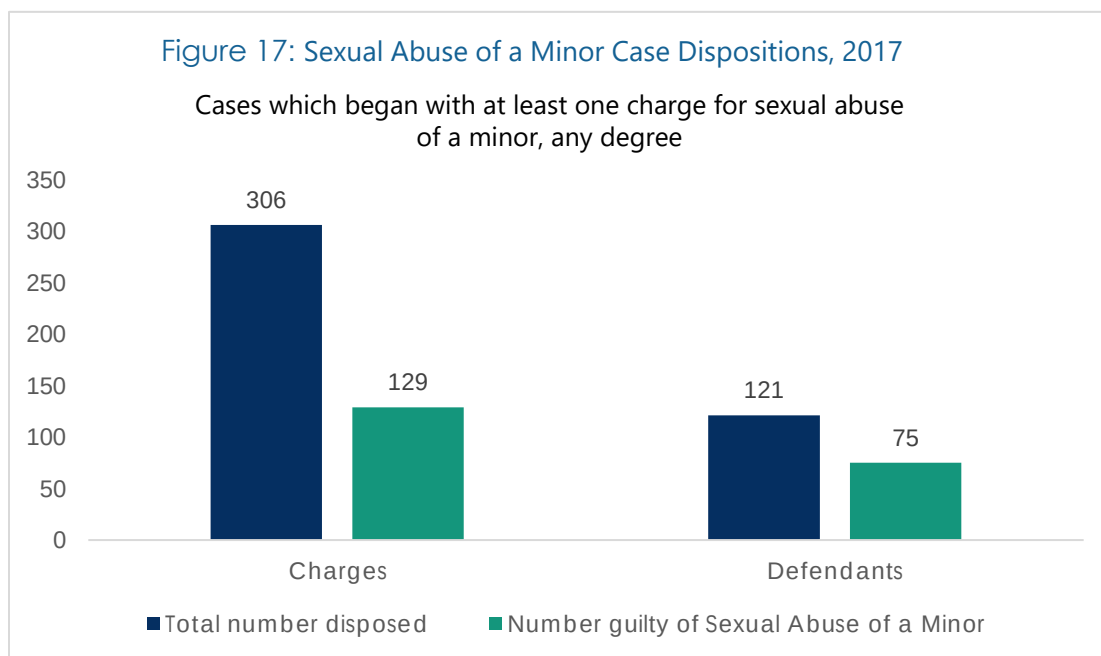
⁸⁵ Spears, *2017 Felony Level Sex Offenses*, *supra* note 3, at 12.

⁸⁶ Spears, *2017 Felony Level Sex Offenses*, *supra* note 3, at 16-18.

⁸⁷ Spears, *2017 Felony Level Sex Offenses*, *supra* note 3, at 20.

In 2017, 617 felony sexual abuse of a minor statute violations were reported to law enforcement.⁸⁸ In that same year, an arrest was made in cases involving 222 sexual abuse of a minor charges; these arrests involved 98 suspects.⁸⁹ (Three of these charges were for misdemeanors involving two suspects.) It should be noted that the number of reported statute violations does not directly correspond to the number of counts or charges filed in that year.

Also in 2017, 306 charges were disposed for 121 people who had been charged with sexual abuse of a minor. Of the 306 charges, 129 were disposed as guilty of sexual abuse of a minor; those guilty dispositions belonged to 75 people.⁹⁰ Figure 17 below reflects this information.



Source: Alaska Department of Public Safety

As stated elsewhere in this report, not all cases of abuse are reported or result in prosecution. Alaska's Child Advocacy Centers (or CACs, which are explained in more detail in section IV below) interview and investigate potential cases of child sexual abuse. In FY18, Alaska's CACs saw 2,514 children. Not all of those children disclosed abuse; in some cases, that was because there was no abuse to disclose. The Alaska Childcare Alliance is in the process of collecting data as to how many of those

⁸⁸ *Id.*

⁸⁹ Source: Department of Public Safety. The charges disposed in 2017 were not the same as the charges filed in 2017, though there was likely some overlap between the two. "Disposition" can include a guilty verdict (either of sexual abuse of a minor or some other charge), a dismissal, or an acquittal.

⁹⁰ *Id.*

children made a disclosure of sexual abuse, how many of those disclosures resulted in charges and how many of those charges were accepted for prosecution.

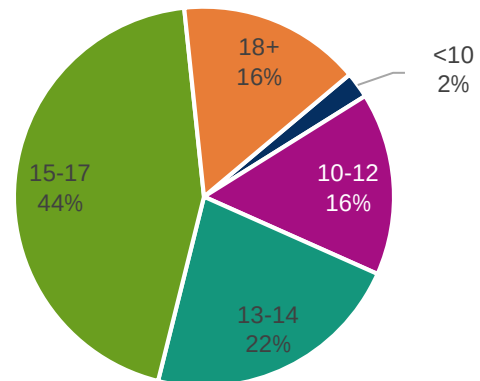
The CACs also see children who act out sexually or have sexual behavior problems. In FY18, they saw over 70 cases involving children under 13 with sexual behavior problems. The Childcare Alliance reports that while it is seldom the case that these children should be prosecuted, their parents could use additional support and information to ensure that these children do not later become perpetrators of sexual violence. (Criminal cases involving minor defendants are discussed below.) Appendix C has additional data on cases seen at CACs.

2. Cases involving defendants who are minors

In some cases, minors are also the perpetrators of sex crimes. Depending on the offense, suspects or defendants who are minors may have their cases prosecuted by the Department of Law (if they are charged and tried as an adult) or by the Division of Juvenile Justice. A minor defendant will be tried as an adult if charged with an unclassified or Class A felony, or if charged with a Class B felony and a weapon was used and the minor has previously committed a similar offense.⁹¹ Among all suspects in felony sex offense incidents reported to law enforcement in 2017, 15% were under 18.⁹²

In fiscal year 2016, 148 sex offense charges were referred to the Division of Juvenile Justice (DJJ) for 90 juveniles.⁹³ The majority of referred charges were for males; one juvenile charged was female. The majority (82%) of juveniles referred were age 13 and older (22% were ages 13-14, 44% were ages 15-17, and 16% were age 18 or over), while 18% of them were 12 or younger (16% were ages 10-12 and 2% under age 10). Of the juveniles referred, 46% were Alaska Native/American Indian, 33% were white,

Figure 18: Age of Juveniles Referred to DJJ for a Sex Offense (FY16)



Source: Alaska Division of Juvenile Justice

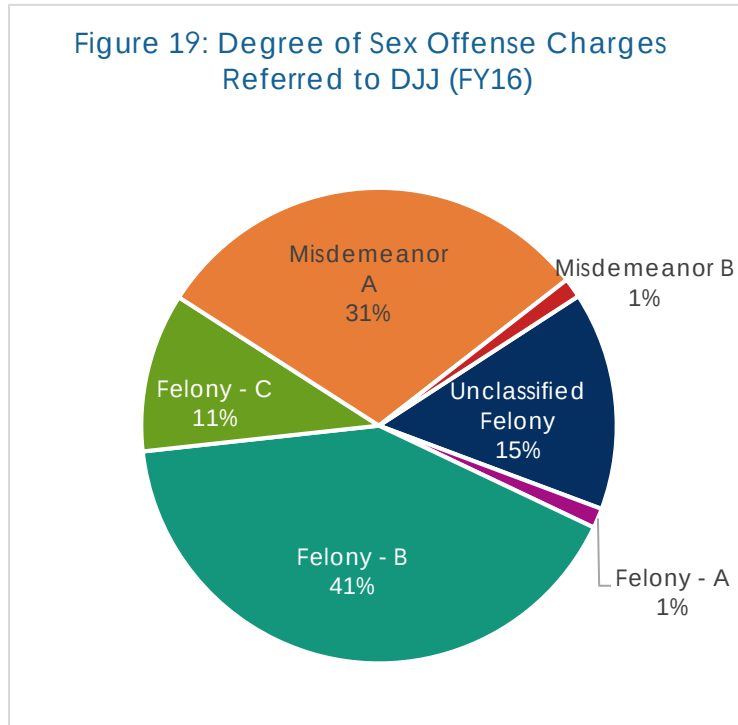
⁹¹ See AS 47.12.030.

⁹² Spears, *2017 Felony Level Sex Offenses*, *supra* note 3, at 14.

⁹³ Information in this section was provided directly by DJJ.

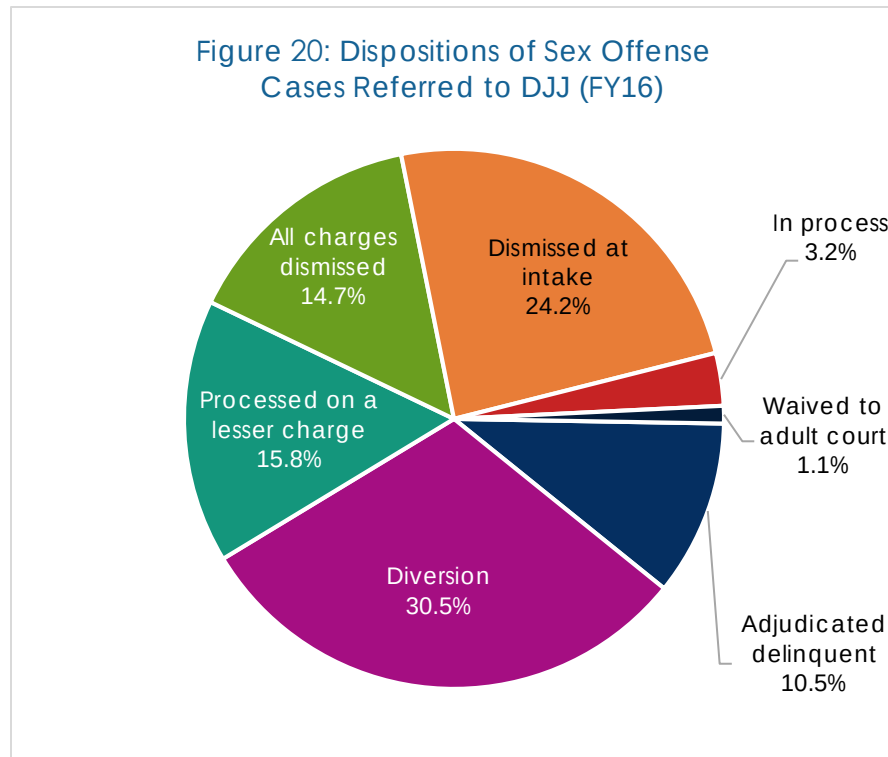
and the remainder were unknown or another race.

In the majority of these cases, the juvenile was charged with sexual abuse of a minor or sexual assault. Of the total charges, 68% were felonies (15% Unclassified, 1% Class A, 41% Class B, and 11% Class C), and 32% were misdemeanors (31% Class A and 1% Class B). This reflects the percentage of charges and not individuals; individual juveniles may have been charged with more than one offense. Figure 19, below, depicts this information.



Source: Alaska Division of Juvenile Justice

The majority of cases (57%) referred to DJJ resulted in adjudication, diversion, or an adjudication or diversion on a lesser charge. (Note that adult cases are much less likely to be subject to diversion than juvenile cases.) Around 24% of cases were dismissed at intake, meaning there was either a lack of sufficient proof to proceed further or the state exercised its prosecutorial discretion. A further 15% of cases were dismissed by the court after a petition was filed. The remainder of cases were in process or waived to adult court. Figure 20, below, depicts this information. Consult Appendix C for more detail on how these cases were resolved.



Source: Alaska Division of Juvenile Justice

3. SAM Cases in which the Defendant is Age 21 or Younger

Noting that the Legislature had expressed interest in the topic, the Commission has also taken a closer look at cases where a defendant charged with sexual abuse of a minor is age 21 or younger. These are cases that have in the past been referred to in common parlance as “statutory rape” cases, though this term is not used in legal settings in Alaska and is now generally disfavored.⁹⁴

Under Alaska law, consent is never a defense to the crime of sexual abuse of a minor if the victim of the offense is under 16 and the defendant is at least four years older than the victim, and this

⁹⁴ The FBI’s National Incident-Based Reporting System (NIBRS) is a nationwide data gathering system, requiring participating law enforcement agencies to gather detailed information on crime incidents that occur in their jurisdictions. NIBRS uses the term “Statutory Rape” and collects data on how many incidents of “statutory rape” occur in a given jurisdiction each year. Starting in 2021, all law enforcement agencies in the country will be required to use this reporting system. NIBRS defines “statutory rape” as “nonforcible sexual intercourse with a person who is under the statutory age of consent.” It describes “rape” as “the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.” See the FBI’s fact sheet “NIBRS Offense Definitions,” available at https://ucr.fbi.gov/nibrs/2017/resource-pages/nibrs_offense_definitions-2017.pdf. The FBI has also provided further clarification: “If the victim was incapable of giving consent because of his/her youth or mental impairment, either temporary or permanent, law enforcement should classify the offense as Rape, not Statutory Rape.” See the FBI’s fact sheet “Frequently Asked Questions about the Change in the UCR Definition of Rape,” available at <https://ucr.fbi.gov/recent-program-updates/new-rape-definition-frequently-asked-questions>.

is true regardless of whether the minor victim subjectively perceived him or herself to be a “consenting” partner to the sexual abuse.⁹⁵ However, it is not a crime for a person to engage in a sexual act with a person between ages 13 and 16 if the age difference between the two people is less than four years.⁹⁶

To get a better sense of whether cases involving a victim and defendant who are close in age were commonly screened in for prosecution, the Commission looked at all sexual abuse of a minor cases referred to the Department of Law in 2016 involving a defendant age 21 or younger, and the outcome of each of those cases. The Commission did not look at sexual assault cases, even though those cases may also involve a victim under 16 and a defendant who is a teen or young adult. In sexual assault cases, a necessary element is that the victim did not consent or lacked the capacity to consent to the sexual act.⁹⁷ In sexual abuse of a minor cases, the lack of consent is not an element of the crime, and, as noted above, consent is not a legal defense.

It is important to note that before a case is referred to the Department of Law, a law enforcement agency will also screen the case to determine whether there might be a viable criminal case against the suspect. If the law enforcement agency does not believe there is enough evidence to meet the “probable cause” standard to charge the suspect with a crime, then the agency will not forward the case to the Department of Law.

Per the Department of Law, once a case is referred for prosecution, the Department will then exercise its discretion as appropriate to determine whether charges should be filed and if so, what charges. In sex offense cases involving a youthful suspect and victim who are close in age, the Department will look at factors such as: whether the alleged conduct was predatory in nature, the comparative emotional maturity and intellectual development of the individuals involved, whether the victim’s parents or guardians were aware of the relationship and considered it acceptable, whether the defendant provided the victim drugs or alcohol, whether it was an isolated incident, whether there

⁹⁵ There is, however a defense of mistake of age, if the defendant reasonably believed the victim to be over the age of consent and undertook reasonable measures to verify that the victim was that age or older. See AS 11.41.445.

⁹⁶ There are several exceptions to this general rule. For example, it may be a crime regardless of the age difference if the offender resides in the same household, occupies a position of authority, encourages or causes a person under 16 to engage in lewd sexual conduct under AS 11.41.455(a)(2)-(6) or when the offender is under 16 and engages in penetration with a person under the age of 13. See AS 11.41.434(a)(3); AS 11.41.436(a)(4) – (7).

⁹⁷ Per AS 11.41.470, “without consent” is defined as “with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or is incapacitated as a result of an act of the defendant.”

were multiple victims, and any other relevant factors that might aggravate or mitigate the circumstances.

**Table 4: Defendant and Victim Age for SAM Cases Referred to DOL, 2016
(Defendant $\geq$ 21, Victim 13+)**

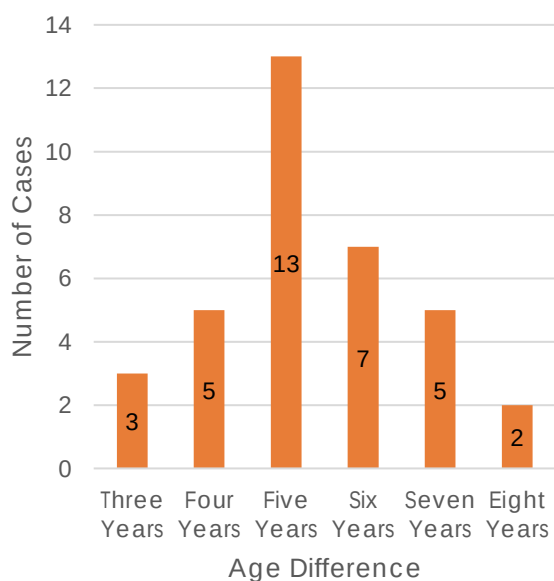
Victim Age	Defendant Age					
	17	18	19	20	21	Total
	N	N	N	N	N	N
13	0	1	1	1	2	5
14	1**	3	8	3	4	19
15	0	1	2	4	3	10
16	0	0	0	0	0	0
17	0	0	0	1*	0	1
Total	1	5	11	9	9	35

*Defendant was an authority figure
 **Refused for inadequate corroboration

Source: Alaska Department of Law

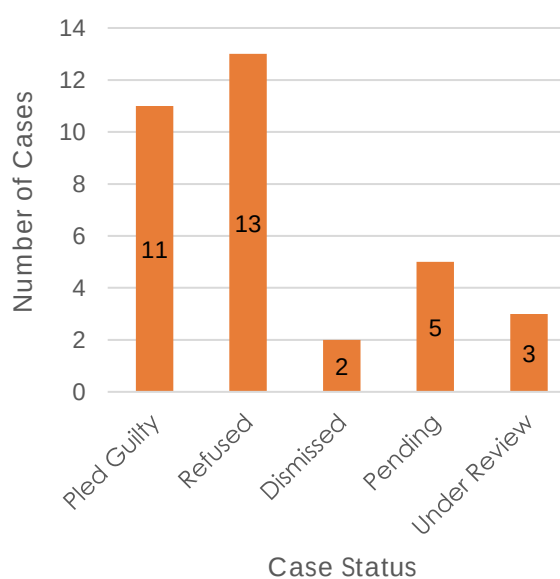
In 2016, there were 34 cases referred to the Department of Law in which the defendant was age 21 or younger and the victim was age 13 or older. Table 4 shows the ages of the defendants and

Figure 21: Defendant/Victim Age Difference, Sex Offense Cases involving a Defendant age 21 or Younger, 2016



Source: Alaska Department of Law

Figure 22: Case Status, Sex Offense Cases involving a Defendant age 21 or Younger, 2016



Source: Alaska Department of Law

the victims in these cases. The most frequent defendant age was 19 and the most frequent victim age was 14. (Note the total number is 35 rather than 34 because one case had more than one victim.)

Figures 21 and 22 above depict visually the defendant and victim age difference in these cases, and the status of these cases. As shown in Figure 21, the case status for these cases were as follows: pled guilty (11), refused (13), dismissed (2), pending (5), and under review (3). As seen in Figure 22, the most frequent age difference was five years.

D. Sex offender criminal histories and recidivism rates in Alaska

Given the high rate of sexual violence in Alaska, and given how comparatively few incidents of sexual violence result in the conviction of the offender, it is important also to look at how often sex offenders have previously engaged in criminal sexual conduct and whether they are likely to do so again once convicted.

1. The difference between prior criminal history and recidivism

Measures of past criminal history and post-conviction conduct may sound similar, but each is different:

- **Prior criminal history** looks at the past criminal conduct of a person who has been convicted. Typically this only refers to conduct that resulted in a charge or conviction, though the person may have engaged in other criminal acts that were not reported or did not result in conviction.
- **Recidivism** looks at the percentage of people who reoffend after they have been convicted, within set parameters. It is often used as a gauge of the effectiveness of a criminal justice policy or program. Typically recidivism rates look at the number of people in a given group (for example, people released from prison between 2006 and 2008) who are rearrested, reconvicted, or returned to prison within a three-year timeframe.

Of these measures, **recidivism** is the measure that is most easily tracked, because it takes a pool of known persons—people who have been convicted of a crime—and uses information that is routinely tracked to assess the share of those people who subsequently engage in criminal activity. While not all criminal activity can be tracked, the rate at which people are rearrested, reconvicted, or returned to prison can be tracked, and moreover can be tracked over time to provide a barometer of how different groups of people behave after being convicted of a crime.⁹⁸

Prior criminal history is something that is typically considered at sentencing, and is also used to determine the risk level and programming needs of a person who is involved in the criminal justice system to target rehabilitative resources. Law enforcement cannot apprehend every person who

⁹⁸ Because recidivism can measure either re-arrest rates, reconviction rates, or return to prison rates, and because different studies often use different follow-up periods (*i.e.*, 3 years, 5 years, or 10 years), readers should be careful in comparing recidivism rates from different studies.

commits a crime, and prosecutors are not always able to obtain a conviction in every case. For these reasons, a person may be considered a first-time offender even if the person has committed prior criminal acts. In other words, a person may not have any prior criminal history legally speaking, but that person may have committed criminal acts for which the person has not been charged or convicted.

It is important to keep these measures distinct when considering information on repeat sexual offending and sex offender recidivism. Though there is evidence to suggest that some people who are convicted for the first time have prior unreported or uncharged criminal history (see Table 3 above), that is not what recidivism measures. Recidivism is the measure of what happens after that first conviction. The data show that once a person is caught and convicted of a sex crime, the likelihood that person will be arrested or convicted for a new sex crime is relatively low.

2. UAA Recidivism Study

The Alaska Justice Statistical Analysis Center at UAA released a study in late 2016 on sex offender recidivism in Alaska.⁹⁹ The study tracked the re-offense rate of everyone released from a DOC institution in a three-year period, from 2006-2008, who had been convicted of a sex offense. This cohort consisted of 406 people. The study followed these people for seven years, and looked at their prior criminal history as well as the type of offense committed if they were convicted of a new offense.

The study found that of the total sample (those who had prior criminal history and those who did not), approximately **80% did not have any prior criminal conviction for a sex offense**.¹⁰⁰ It found that two-thirds of the sex offenders in the sample had been convicted of a crime at least once before, but only 8% of the previous conviction charges was for a sex offense.¹⁰¹ Of the total number of previous conviction charges in the sample, 18.9% were for assault, while other common previous conviction charges were for DUI, larceny theft, and disorderly conduct.¹⁰²

The study also found that within seven years of being released from incarceration following a conviction for a sex offense, 55.4% of offenders were rearrested for a new offense (any offense), while

⁹⁹ *Alaska Sex Offender Recidivism and Case Processing Study*, *supra* note 5.

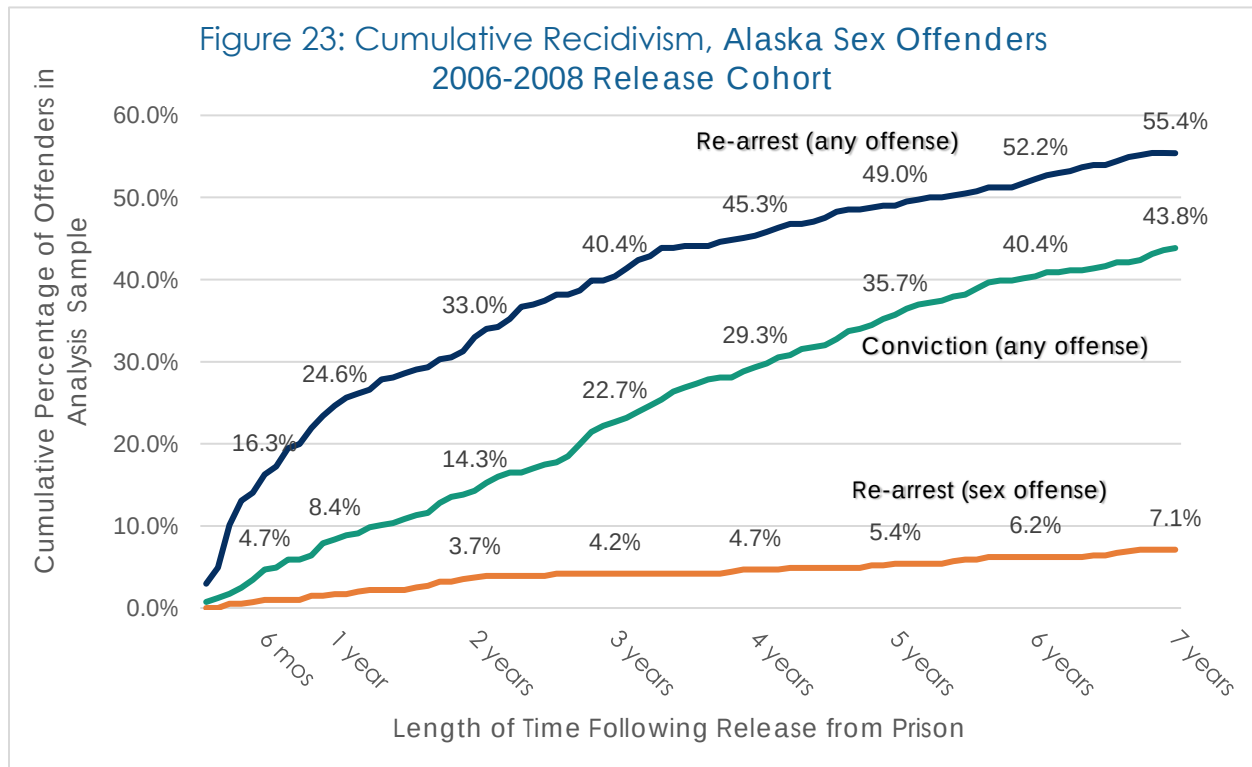
¹⁰⁰ *Id.* at 9.

¹⁰¹ There were 406 people in the sample, 271 (66.7%) of whom had at least one prior conviction. Those 271 people had 1,705 prior conviction charges. Of those conviction charges, 137 (8%) were for sex offenses. *Id.* at pp 6-7. Note that some conviction charges may have been from the same case.

¹⁰² *Id.* at 6-7. Given that many sex offenses go unreported, it is probable that many people in this cohort had a prior history of sexual violence that is not reflected in the data on previous convictions.

43.8% were convicted of a new offense (any offense). In that same period of time, **7.1% of the sex offenders were rearrested for a new sex offense**. The percentage of those convicted of a new sex offense was too small to report.¹⁰³ Put another way, 29 out of 406 sex offenders were rearrested for a new sex offense.

Figure 23 shows the cumulative recidivism of the offenders in the sample, comparing the rates of re-arrest, re-conviction, and re-arrest for a sex offense. For example, at two years post-release, 33% of the people in the cohort had been rearrested for any offense, 14.3% had been reconvicted of any offense, and 3.7% had been rearrested for a sex offense. The rates in this chart are cumulative, meaning that the 55.4% of people in the cohort who had been rearrested at least once for any offense at seven years post-release includes the 33% of people who had been re-arrested at two years post-release.

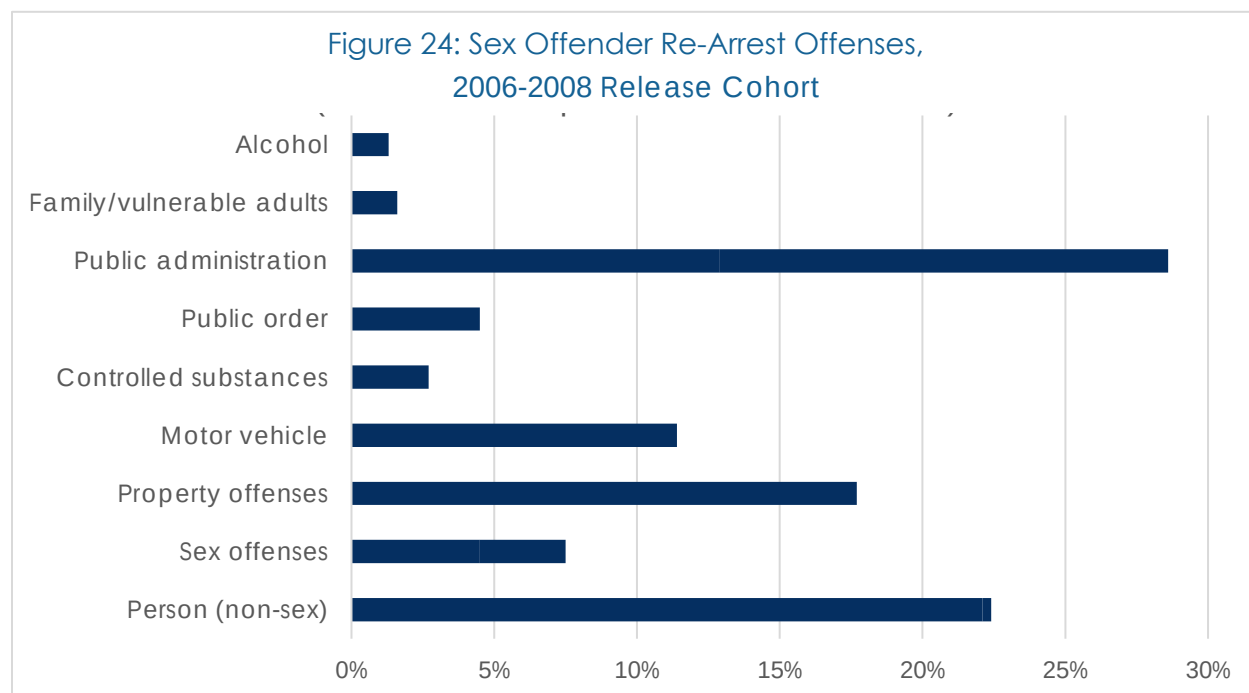


Source: Myr Stol, B.A., Rivera, M., and Parker, K.L., *Alaska Sex Offender Recidivism and Case Processing Study: Final Report*. Alaska Justice Statistical Analysis Center, 2016

The study also catalogued the offenses for which people in the cohort were re-arrested. Of the total number of post-release arrests in the sample, 24.4% of the arrests were for an offense against a person (the large majority of which were assault), 18% were for a property offense, and 28% were for

¹⁰³ *Alaska Sex Offender Recidivism and Case Processing Study*, *supra* note 5, at 10.

an offense against public administration. Of arrests for a public administration offense, many were for failure to register as a sex offender (12.9% of the total number of arrests).¹⁰⁴ Figure 24 below breaks down the re-arrest offenses by category.



Source: Myrstell, B.A., Rivera, M., and Parker, K.L., *Alaska Sex Offender Recidivism and Case Processing Study: Final Report*. Alaska Justice Statistical Analysis Center, 2016

The study also looked at when the risk of a new arrest was most likely to occur. The risk that an offender would be rearrested for any type of offense was greatest between 60 and 90 days after release. The risk decreased over time, nearing zero by the end of the seven-year follow-up period.¹⁰⁵ Figure 25 below shows this risk over time, tracking the percentage of people in the cohort who reoffended within a 30-day period.

Researchers at UAA recently updated their analysis of sex offender recidivism, tracking the recidivism rates for the cohort for an additional year, or for eight years total post-release. They found that there was a slight upward trend in the trajectory of recidivism for sex offenders between years seven and eight, indicating the need for further longitudinal study.¹⁰⁶ This analysis found that within

¹⁰⁴ *Alaska Sex Offender Recidivism and Case Processing Study*, *supra* note 5, at 12-13.

¹⁰⁵ *Alaska Sex Offender Recidivism and Case Processing Study*, *supra* note 5, at 11.

¹⁰⁶ Araceli Valle, *Expanded View of Recidivism in Alaska*, 34(3), Alaska Justice Forum 1-2 (Winter 2018), available at: <https://scholarworks.alaska.edu/bitstream/handle/11122/8091/ajf.343d.expanded-view-recidivism-alaska.pdf?sequence=1>.

the eight-year period, less than 10% of the cohort (people released from prison in 2007 after being convicted of a sex offense) were reconvicted of a felony sex offense.¹⁰⁷



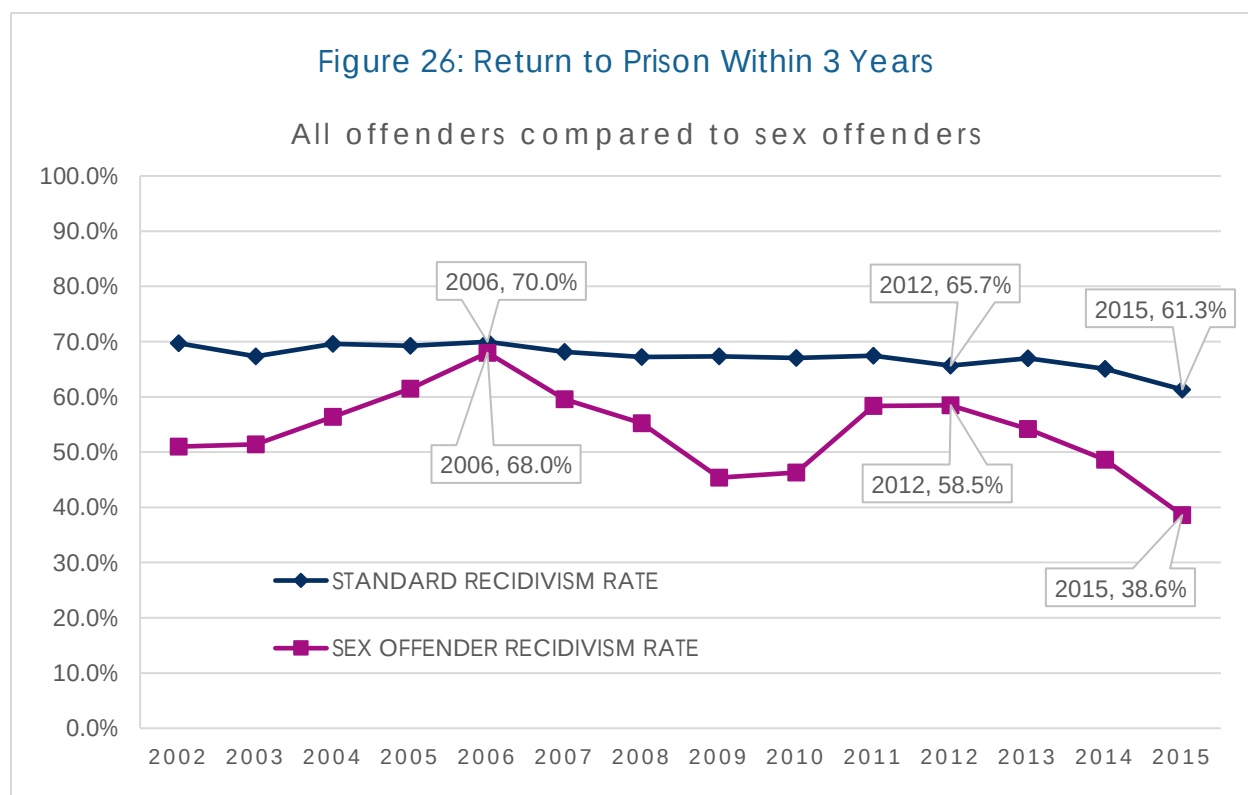
Source: Myrston, B.A., Rivera, M., and Parker, K.L., *Alaska Sex Offender Recidivism and Case Processing Study: Final Report*. Alaska Justice Statistical Analysis Center, 2016

3. DOC Recidivism Data

Alaska's Department of Corrections (DOC) tracks the rate at which felons return to prison, whether for a new criminal conviction or for a violation of probation or parole. Figure 26 below compares people who have been convicted of any felony offense to people who have been convicted of sex offenses. It shows the percentage of people released in each year who returned to prison within three years of release. For example, of all felony offenders released in 2012, 65.7% returned to prison within three years, while 58.5% of felony sex offenders released in 2012 returned to prison within three years.

The recidivism rates in Figure 26 are different from the recidivism rates shown in the subsection above, because DOC's rates look at whether offenders return to prison while the UAA study looked at whether offenders are rearrested or reconvicted. While many of the offenders who are rearrested or reconvicted will return to prison, not all of those who return to prison do so because they have been

¹⁰⁷ *Id.*



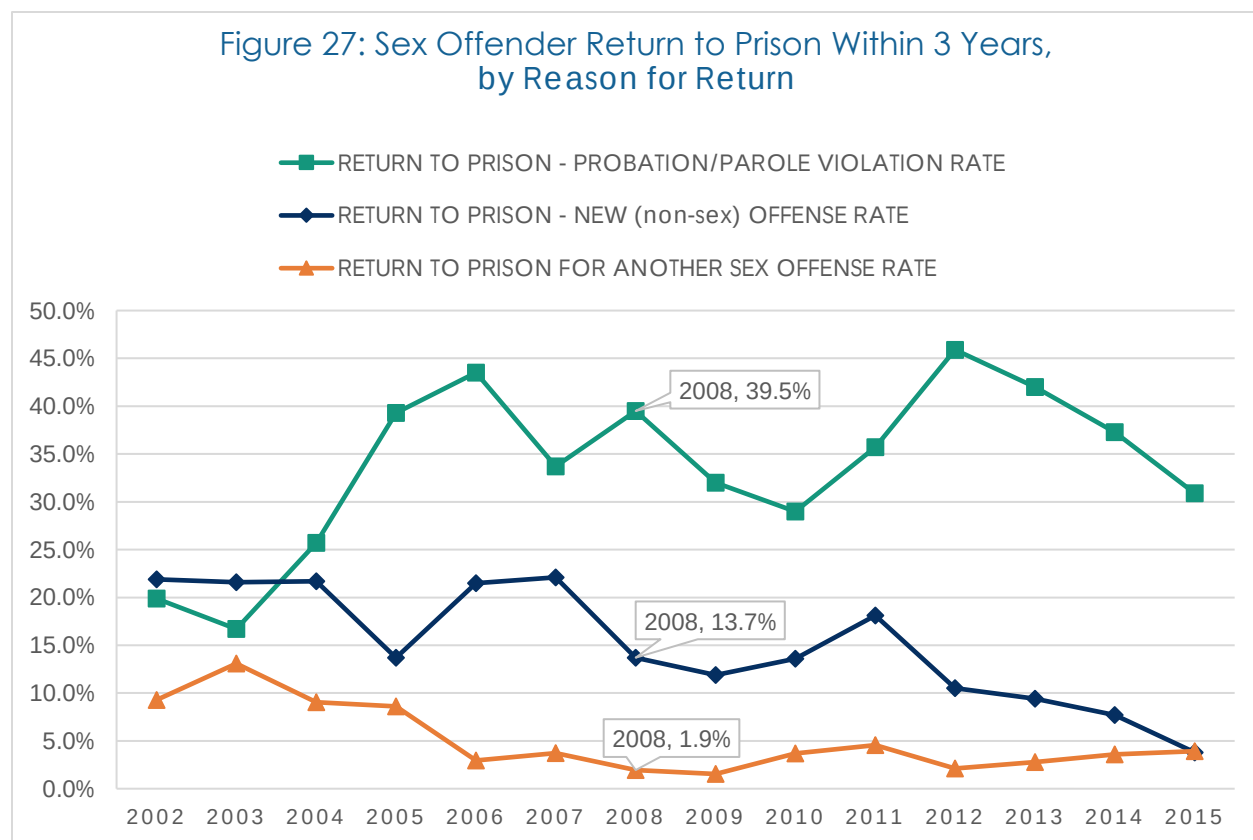
Source: Alaska Department of Corrections

rearrested or reconvicted of a new offense. Some offenders return to prison because they have violated the conditions of their probation or parole; often these supervision violators are not arrested by law enforcement and their arrests may not be reflected in the re-arrest or re-conviction data.

These different measures of recidivism each provide context for the various choices available to policymakers. Re-arrest, reconviction, and return to prison rates are to some extent a reflection of state policies as well as the behavior of individual sex offenders. Re-arrest rates, for example, reflect not just criminally suspicious activity on the part of sex offenders but also law enforcement staffing levels and priorities. Reconviction rates reflect the rate of criminal activity of released sex offenders, but they also reflect, among other things, prosecutorial choices and resources. Rates of return to prison for probation and parole violations indicate how well sex offenders adhere to the conditions of their supervision but also the reflect practices of the probation and parole officers who supervise them.

Figure 27 below breaks down the sex offender recidivism rate by returns to prison for a new criminal offense, returns to prison for a new sex offense, and returns to prison for a violation of

probation or parole. Like Figure 26, Figure 27 shows the percentage of sex offenders released in a given year who return to prison within three years—this time sorted by reason for return.

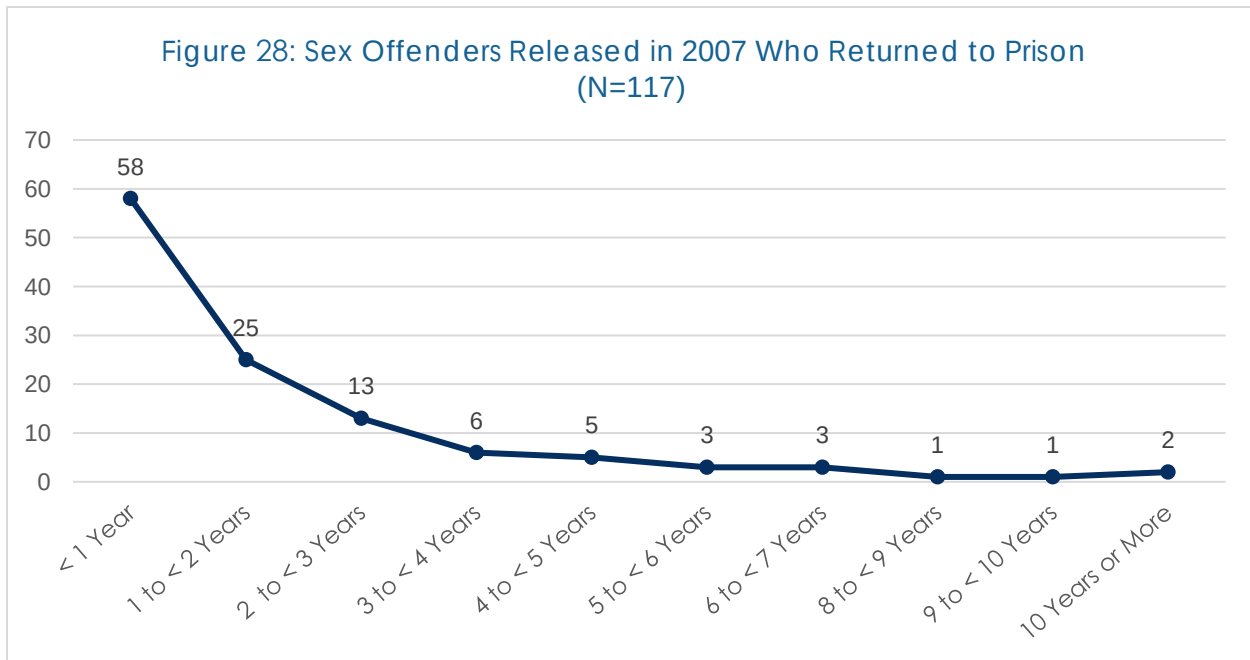


Source: Alaska Department of Corrections

For sex offenders released in 2008, 39.5% returned to prison for a probation or parole violation, 13.7% returned to prison for a non-sex offense conviction within three years, and 1.9% returned to prison for a sex offense conviction. As noted above, the UAA study looked at offenders released from 2006-2008; the three-year reconviction rate for any offense (sex or non-sex offense) for that cohort was 22.7%. Again, DOC's data and the data from the UAA study cannot be directly compared because they use different measures of recidivism.

DOC's data also show that if a sex offender returns to prison, they will likely do so within the first three years of their release. Of the 161 sex offenders released in 2007, 117 (72.7%) returned to prison within 10 years of release (this number includes returns to prison for probation and parole

violations as well as new offenses). Of those 117 people who returned, 96 (82%) returned within three years. Figure 28 below depicts this visually.



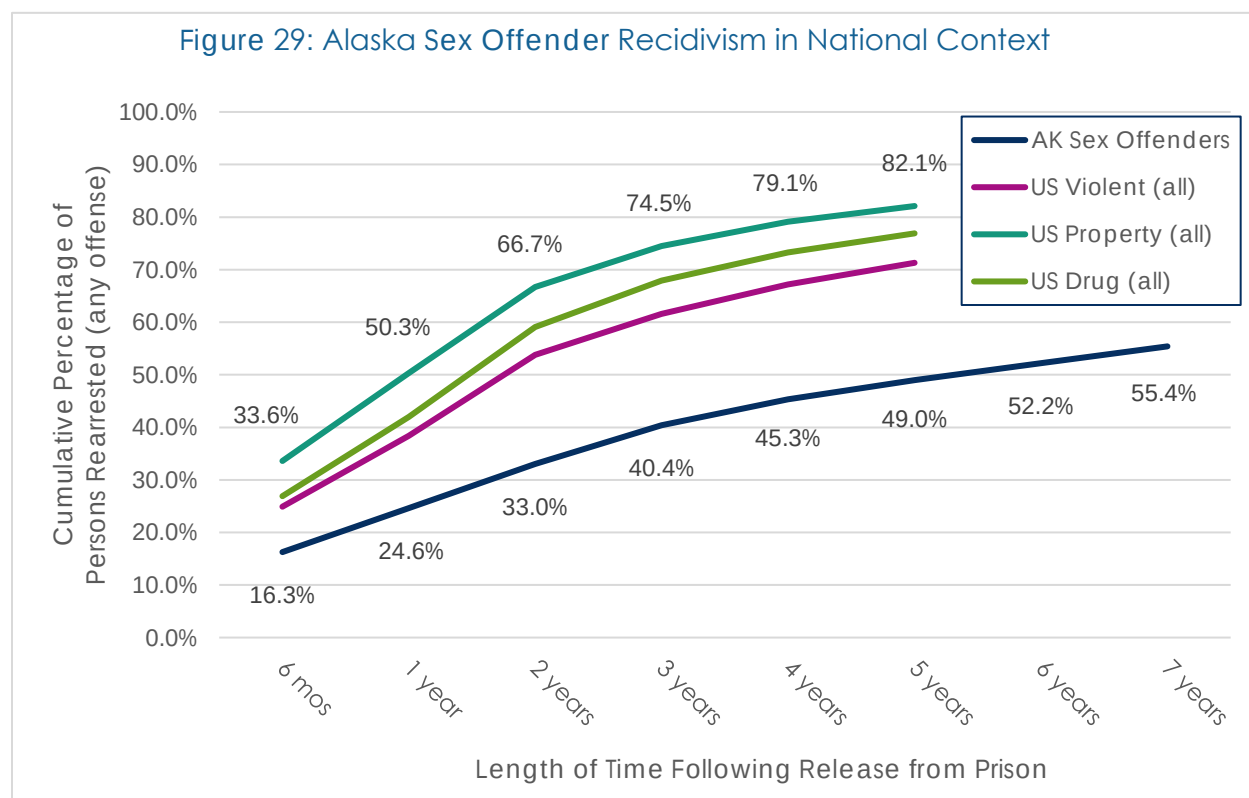
Source: Alaska Department of Corrections

4. Sex Offender Recidivism in Context

The sex offense recidivism rates for sex offenders may be unexpected given the fact that sex offenses tend to be vastly underreported, as noted above. But it is also important to keep in mind that after a sex offender is convicted, that person is subject to rigorous supervision procedures upon release, including treatment, registration requirements, polygraph tests, and lengthy probation periods. Other people on felony probation or parole typically have less stringent conditions. Thus the commission of a new sex offense is more likely to be discovered if the offender is on supervision for a sex offense.¹⁰⁸ Still, even though there is a higher level of supervision for sex offenders, not all offenses committed by released sex offenders will be reported or documented. Like any recidivism data, recidivism rates for sex offenses will necessarily exclude unreported and undocumented offenses.

¹⁰⁸ See also *Alaska Sex Offender Recidivism and Case Processing Study*, *supra* note 5, at 27-28.

Sex offender re-arrest rates are lower compared to national studies of recidivism for people who have been convicted of offenses other than sex offenses, as Figure 29 below shows.¹⁰⁹



Source: Myrستol, B.A., Rivera, M., and Parker, K.L., *Alaska Sex Offender Recidivism and Case Processing Study: Final Report*. Alaska Justice Statistical Analysis Center, 2016

Other national studies show similarly low recidivism rates (all offenses) for sex offenders compared to general offenders.¹¹⁰ One study comparing recidivism of offenders released from prison in 1994 from a variety of jurisdictions found that while sex offenders had a lower rearrest rate than non-sex offenders for any type of crime (43% compared to 68%), sex offenders had a higher rearrest rate for sex offenses than non-sex offenders (5.3% compared to 1.3%).¹¹¹ That said, the research on sex offense recidivism may be summarized as follows:

¹⁰⁹ In Figure 29, please note that the re-arrest rates labeled "US Violent," "US Property" and "US Drug" are from a study by the Bureau of Justice Statistics of prisoners released in 30 states. See Matthew R. Durose et al., *Recidivism of Prisoner Releases in 30 States in 2005: Patterns from 2005 to 2010*, Bureau of Justice Statistics (2014).

¹¹⁰ See, e.g., Roger Przybylski, *Recidivism of Adult Sexual Offenders*, US Department of Justice Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (July 2015), available at: <https://www.smart.gov/pdfs/RecidivismofAdultSexualOffenders.pdf>.

¹¹¹ Patrick A. Langan, et al., *Recidivism of Sex Offenders Released from Prison in 1994*, Bureau of Justice Statistics (November 2003), 1-2, available at: <https://www.bjs.gov/content/pub/pdf/rsorp94.pdf>.

A sound foundation of knowledge on the extent of sex offender recidivism has been produced in recent years, but significant knowledge gaps remain. Variations across studies in the operational definition of recidivism, the length of the followup period employed, and other measurement factors continue to make it difficult to make cross-study comparisons of observed recidivism rates. Studies that produce more readily comparable findings are greatly needed, as are those that employ followup periods longer than 5 years. Analyses are also needed that standardize the time at risk for all offenders in a given study using survival analysis. Future research should also attempt to build a stronger evidence base on the differential recidivism patterns of different types of sex offenders, particularly the recidivism patterns of crossover offenders.¹¹²

National studies have shown that sex offenders have different trajectories of recidivism depending on factors such as their criminal history.¹¹³ Similarly, the UAA recidivism study found that sex offenders tended to fall into distinct groups with distinct recidivism trajectories, and therefore presented different risks to public safety.¹¹⁴ This heterogeneity in recidivism should be accounted for in developing public policy.

This data on sex offender recidivism rates may also be surprising because there is data and anecdotal evidence to suggest that many people charged with a sex offense have a history of sexual offending. For example, in the study of reports to the Alaska State Troopers described in subsection B(7) above, 17.6% of suspects had committed sexual assault or abuse against the same victim. This suggests that repeat offending among sex offenders is relatively common. However, only 3% of these prior incidents had been reported to authorities. (As noted above, these prior incidents were only those known to AST though the course of their investigation; this number may be low.)

Thus while repeat sexual offending may be common, the low reporting rate of sex offenses means that many offenses are not documented. Recidivism rates are calculated using available data,

¹¹² Przybylski, *supra* note 110, at 4.

¹¹³ See Langan, *supra* note 111, at 1-2, and Przybylski, *supra* note 110, at 5.

¹¹⁴ *Alaska Sex Offender Recidivism and Case Processing Study*, *supra* note 5, at 20, 27. This study identified distinct recidivism trajectories after determining the recidivism rates for the entire cohort. The different groups were determined by their recidivism trajectory, not by being preassigned into a group based on demographics or prior criminal history.

and can therefore be tracked only for people who are caught up in the criminal justice system and have their offenses documented. A person may have committed many prior unreported or uncharged offenses, but it is only possible to track that person's recidivism *after* that person has been convicted of a crime.

Once a person is reported, charged, and convicted for a sex offense, the likelihood that person will be arrested for another sex offense is relatively low. There may be several reasons for this: long prison terms, success in treatment (this is described in section III below), or a personal reckoning triggered by being caught and made to answer for one's actions. Whatever the reasons, however, it is clear that charging and convicting a person of a sex offense is a key component of reducing an individual's likelihood of reoffending. Further research is needed to assess recidivism rates of sex offenders beyond their period of probation supervision.

III. Alaska's Sex Offense Sentencing Laws

The following section contains an overview and history of Alaska's sentencing laws for sex offenses. It also provides updates to the research that legislators previously relied upon in crafting these laws.

A. Sentencing in Alaska

Alaska's current sentencing structure for felonies is what is known as a presumptive sentencing system. There is a presumptive range of prison time to which an ordinary defendant may be sentenced, depending upon the classification (severity) of the crime of conviction and the defendant's criminal history. Table 5 below contains the current presumptive ranges for sex offense felonies in Alaska.¹¹⁵

Table 5: Presumptive Sentencing Ranges for Sex Offense Felonies in Alaska, in years ¹¹⁶					
	1st Felony	2nd Felony	2nd Felony with 1 Prior Sex Felony	3rd+ Felony	3rd Felony with 2 Prior Sex Felonies
Unclassified Sex Offense (E.g. 1 st -Degree Sexual Assault)	20-30*	30-45	35-45	40-60	99
Class A Felony Sex Offense (E.g. attempted 1 st -Degree Sexual Assault)	15-30**	25-35	30-40	35-50	99
Class B Felony Sex Offense (E.g. 2 nd -Degree Sexual Assault)	5-15	10-25	15-30	20-35	99
Class C Felony Sex Offense (E.g. 3 rd -Degree Sexual Assault)	2-12	8-15	12-20	15-25	99

* 25-35 years if the victim is less than 13 years of age or if a weapon is used or serious injury caused in the commission of the offense.

** 20-30 if the victim is less than 13 years of age or 25-35 years if a weapon is used or serious injury caused in the commission of the offense.

¹¹⁵ While most presumptive felony sentencing ranges were reduced by the criminal justice reform legislation enacted in 2016, sentencing ranges for sex offenses were not included in those reductions.

¹¹⁶ AS 12.55.125(i).

The court may impose a sentence above or below the presumptive range if it finds that an aggravating or mitigating factor applies in the defendant's case. Aggravating and mitigating factors are defined in statute, and the prosecuting attorney or defense attorney may argue that they apply at a sentencing hearing. If an aggravating factor applies, the court may impose a sentence up to a maximum of 99 years. If a mitigating factor applies, the court may impose a sentence that falls below the presumptive range but is at least half of the low end of the presumptive range (except for first-time Class C felonies, which may be mitigated to zero).¹¹⁷ For more on presumptive sentencing, consult Appendix D.

In addition to imposing sentences within the applicable ranges, the court must also impose a term of suspended prison time plus probation. The defendant may not have to serve the suspended time. Once a person convicted of a sex offense has been released from prison, that person will be placed on probation. If the person commits a new crime while on probation, some or all of the suspended time from the original sentence may be imposed. The maximum probation term for a felony sex offense is 15 years.¹¹⁸ The minimum suspended terms and probationary periods for sex offenses are as follows:

Table 6: Minimum Suspended Terms and Probationary Periods for Felony Sex Offenses¹¹⁹		
Offense	Minimum Suspended Term	Minimum Probationary Period
Unclassified felonies	5 years	15 years
Class A or B felonies	3 years	10 years
Class C felonies	2 years	5 years

Thus, a first-time felon convicted of a Class B felony sex offense with no aggravating factors may be sentenced to anywhere between 5 and 15 active years in jail, but they must also have at least 3 years of suspended time imposed above the presumptive minimum 5 years of active jail time, and the sentence must also include 10 years of probation. Therefore, the absolute minimum sentence for a non-aggravated, non-mitigated first-time Class B sex offense would be 8 years of imprisonment with 3 years suspended (5 years to serve) and 10 years of probation.

Often, individuals are released from prison before serving the full prison term to which they were sentenced. This process is known as parole, and individuals may be released on either mandatory

¹¹⁷ See AS 12.55.155.

¹¹⁸ See AS 12.55.090.

¹¹⁹ See AS 12.55.125(q).

parole or discretionary parole. Prisoners who accrue “good time” are typically released on mandatory parole after serving two-thirds of their sentence, but the parole board may release prisoners earlier than that at the board’s discretion (hence the term “discretionary parole”).

Sex offenders are subject to special rules regarding parole. First, anyone with a mandatory minimum sentence must serve the full mandatory minimum term. Those convicted of unclassified or Class A felony sex offenses are not eligible for discretionary parole. Those convicted of a Class B or Class C felony sex offense must serve at least half their imposed sentence—or the mandatory minimum, whichever is longer—before they may be considered for discretionary parole.¹²⁰ Being considered for discretionary parole does not mean that the individual will be granted parole.

¹²⁰ AS 33.16.090. Compare to non-sex felony offenses: all non-sex felony offenses are eligible for discretionary parole except for those carrying a 99-year sentence. Those convicted of an unclassified non-sex felony offense must serve one third of the imposed sentence while those convicted of a Class A, B, or C non-sex felony offense must serve one fourth of the sentence before they may be considered for discretionary parole.

B. Laws pre-2006

Prior to 2005, presumptive sentences for sex offenses were much lower than they are now. The pre-2005 sentences were as follows:

Table 7: Pre-2005 Presumptive Sentencing Terms for Sex Offense Felonies, in years ¹²¹					
	1st Felony	2nd Felony	2nd Felony with 1 Prior	3rd+ Felony	3rd Felony with 2 Prior
Unclassified Sex Offense (E.g. 1 st -Degree Sexual Assault)	8*	15	20	25	30
Class A Felony Sex Offense (E.g. attempted 1 st -Degree Sexual Assault)	5*	10	15	15	20
Class B Felony Sex Offense (E.g. 2 nd -Degree Sexual Assault)	1-3**	5	10	10	15
Class C Felony Sex Offense (E.g. 3 rd -Degree Sexual Assault)	0	2	3	3	6

* 10 years if a weapon was used or serious injury caused in the commission of the offense.

**There was no presumption in statute, but there was a 1-3 year benchmark set by case law.

Before 2005, Alaska had presumptive sentencing terms (rather than ranges) for felony offenses. For example, a first-time felon convicted of a Class A felony sex offense was subject to a presumptive term of 5 years, which could be adjusted upward or downward if an aggravating or mitigating factor was established.

Alaska's sentencing laws were changed in 2005 to conform to a U.S. Supreme Court decision that rendered Alaska's previous sentencing system unconstitutional. The legislature established presumptive ranges rather than presumptive terms. For felony sex offenses, the presumptive range started at the previous presumptive term. For example, a first-time felon convicted of a Class A felony sex offense was subject to a presumptive term of 5 years in 2004 and a presumptive range of 5-8 years in 2006.

¹²¹ AS 12.55.125(i).

C. 2006: Senate Bill 218

In 2006, the presumptive ranges for sex offenses were shifted upward with the passage of Senate Bill 218. The ranges also were expanded. For example, a first-time felon convicted of a Class A felony sex offense is now subject to a presumptive term of 15 to 30 years (20-30 years if the victim is under age 13).

SB 218 was sponsored by Senator Con Bunde, who told legislators that the bill was intended to address the fact that Alaska had the highest rates of sexual abuse in the country, and that the then-current laws weren't working.¹²² During legislative hearings, Sen. Bunde and other legislators discussed the fact that sexual assaults are underreported, and theorized that by the time sex offenders are caught, they likely have victimized many people before.¹²³

They also believed that these offenders were likely to recidivate and the only way to prevent their future offending was to remove them from society for a long time; they stated that the way to combat the high rate of victimization and the dangerousness of these offenders was to significantly increase the sentence lengths for felony sex offenses.¹²⁴

The legislators also championed the introduction of polygraph testing for sex offenders on supervision. Legislators heard testimony that the polygraph would "break[] down the offender's denial" and the offender would therefore become "more receptive to treatment and change."¹²⁵ They also believed it would help as a deterrent.¹²⁶

¹²² Minutes of the S. Jud. Comm., Senate Bill (S.B) 218, 24th Legislature, 2nd Sess., (Jan. 19, 2006) (Remarks of Sen. Con Bunde).

¹²³ Minutes of the S. Jud. Comm., S.B 218, 24th Legislature, 2nd Sess., (Jan. 24, 2006) (Remarks of Sen. Con Bunde); Minutes of the S. Fin. Comm., S.B 218, 24th Legislature, 2nd Sess., (Feb. 2, 2006) (Remarks of Sen. Con Bunde); Minutes of the S. Fin. Comm., S.B 218, 24th Legislature, 2nd Sess., (Feb. 9, 2006) (Remarks of Sen. Con Bunde); Minutes of the H. Fin. Comm., S.B 218, 24th Legislature, 2nd Sess., (Feb. 28, 2006) (Remarks of Rep. Beth Kerttula).

¹²⁴ Minutes of the S. Fin. Comm., S.B 218, 24th Legislature, 2nd Sess., (Feb. 2, 2006) (Remarks of Sen. Con Bunde and Walt Monegan); Minutes of the S. Fin. Comm., S.B 218, 24th Legislature, 2nd Sess., (Feb. 9, 2006) (Remarks of Sen. Con Bunde); Minutes of the H. Fin. Comm., S.B 218, 24th Legislature, 2nd Sess., (Feb. 28, 2006) (Remarks of Sen. Con Bunde).

¹²⁵ Minutes of the S. Fin. Comm., S.B 218, 24th Legislature, 2nd Sess., (Feb. 2, 2006) (Remarks of Portia Parker).

¹²⁶ Minutes of the H. Jud. Comm., S.B 218, 24th Legislature, 2nd Sess., (Feb. 15, 2006) (Remarks of Sen. Gretchen Guess.)

Finally, legislators also opined that raising sentences for sex offenders was necessary to reflect the seriousness of the offense. They noted the long-term harmful effects of sexual violence on the victims.¹²⁷ They also noted that the harsher sentences would reflect Alaskan values.¹²⁸

SB 218 was also accompanied by a letter of intent. It characterized the sexual assault and abuse rate in Alaska as a “plague,” noting that the rate in Alaska had been among the five-highest rates in the nation since data collection began, and that Alaska had the highest rate for the previous decade. The letter of intent also stated that treatment was ineffective, that sex offender recidivism rates were high, and that many sex offenders had prior arrests on their records.¹²⁹

Finally, the letter of intent observed that in some cases, the low end of the new presumptive range for a sex offense sentence was higher than the mandatory minimum sentence for a crime that resulted in death. The letter noted that this was intentional on the part of the legislature, as sex offenses “cause great harm to victims, their families and to the entire community.” It cited the psychological, emotional, and financial costs of sexual abuse and assault to the victims and to the state. The letter stated that while death can be caused by reckless conduct, sex offenses “are not reckless—they are at the very least knowing, and often intentional.”

Governor Frank Murkowski signed the bill shortly after it cleared the legislature in April 2006. It was hailed by victim advocates and community members as a step in the right direction to combat sexual assault in Alaska.¹³⁰

D. Incarceration Trends and Research since 2006

Sexual violence continues to be as serious a problem today as it was when SB 218 was passed. The letter of intent accompanying SB 218 noted that the rate of rape in Alaska in 2003 was about 2.5 times the national average; in 2017, the rate of rape in Alaska was 2.8 times the national average.¹³¹

¹²⁷ Minutes of the H. Fin. Comm., S.B 218, 24th Legislature, 2nd Sess., (Feb. 28, 2006) (Remarks of Sen. Con Bunde).

¹²⁸ Minutes of the H. Jud. Comm., S.B 218, 24th Legislature, 2nd Sess., (Feb. 15, 2006) (Remarks of Sen. Gretchen Guess).

¹²⁹ Letter of Intent for 2006 Changes to Sex Offense Laws (S.B. 218); 2006 Senate Journal 2207-2214, *citing* S. Ahlmeyer, et al., *The Impact of Polygraphy on Admissions of Victims and Offenses in Adult Sexual Offenders*, 12(2) *Sexual Abuse: A Journal of Research and Treatment* 123-138 (2000).

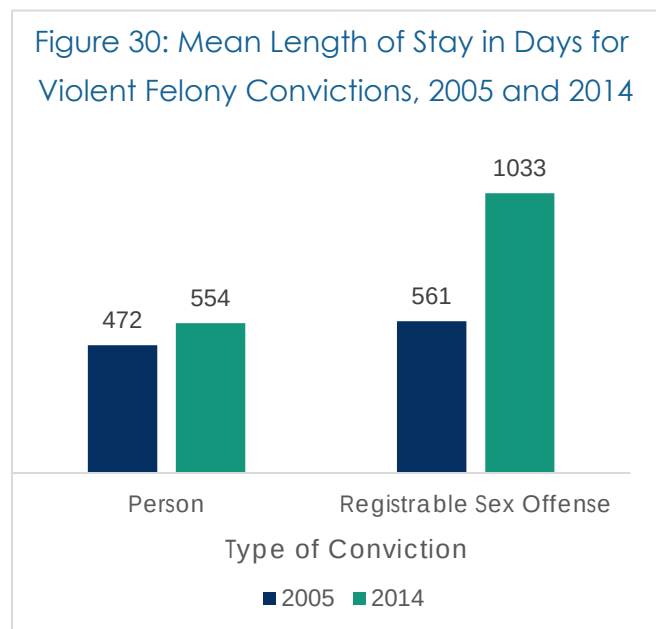
¹³⁰ Eric Morrison, *Rally Draws Attention To Sex Abuse Rate, Governor Signs Bill Giving State Toughest Sex-Assault Law in U.S.*, Juneau Empire, April 28, 2006.

¹³¹ FBI, *Crime In the United States*, available at <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-1> and <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-5>. The FBI's definition of rape is slightly different from the offense of sexual assault as defined in the Alaska statutes, which is why that term is

Between 2006 and 2016, reported incidents of rape rose 49% while the rate per capita rose 34%.¹³² As stated previously, the rate of reported sexual assaults does not necessarily mean an increase in victimization nor it is an actual measure of victimization. An increase in reporting could indicate positive factors such as increased resources and other factors that increase safety for victims as well as an enhanced trust with the criminal justice system. As also mentioned above, the Alaska Victimization survey indicated a decrease in victimization between 2010 and 2015. Thus, perhaps the problem of sexual violence, while still at unacceptable rates, has not actually gotten worse.

1. Changes in Incarceration

The 2006 increase in sentences resulted in more time in prison for sex offenders. Between 2005 and 2014, the felony length of stay (how much time a prisoner actually spent in prison) went up 17% for “person” offenders and went up 86% for sex offenders, as seen in the chart below. (“Person” offenses in this case are violent offenses directed against another person, such as assault or robbery, that are not sex offenses.)



It should be noted that the length of stay calculations are made when a person is released from prison. Some of those who were convicted of sex offenses and sentenced after SB 218 passed in 2006 may have been released by 2014, but many of them may not have been released. Since SB 218 created presumptive sentences that were expected to last many decades, there may not be a clear picture of its full impact on the prison population for some time. (For example, the average sentence for an unclassified felony sex offense in 2017 was 26.2 years.)

Between 2005 and 2014, admissions to prison for sex offenses dropped by 35%, but because the average length of stay during that same period increased by 86%, the overall sex offender

used in this context. The letter of intent accompanying SB 218 uses the term “sexual assault” but cites data from the FBI. Note that the FBI’s definition of rape changed in 2013.

¹³² *CSG 50-State Data*, *supra* note 2, at 9, 11.

population increased by 38%. In other words, fewer people were going to prison for sex offenses, but the people who were going to prison were staying longer.¹³³

2. Updating the Research

Since SB 218 was enacted, new data and research have been published. While legislators in 2006 stated that sex offenders had high recidivism rates, data from the Department of Corrections and a recent UAA study, summarized on pages 43-50 above, showed that Alaskans who have been convicted of sex offenses have relatively low recidivism rates compared to other types of offenders, and their recidivism rates for other sex offenses (i.e. the number of people arrested for a new sex offense after having previously been convicted for a sex offense) also is comparatively low.¹³⁴

Similarly, though legislators in 2006 were told that treatment programs were ineffective, newer research indicates that treatment and management programs for sex offenders can be effective. Though treatment does not affect all offenders the same way, the research suggests that treatment can reduce recidivism in sex offenders, particularly if the treatment uses cognitive-behavioral therapy and relapse-prevention techniques.¹³⁵

¹³³ Pew research team analysis based on Alaska DOC data, presented to the Alaska Criminal Justice Commission, 2015.

¹³⁴ The legislators who sponsored SB 218 relied upon one study in particular that requires some additional context to understand. The letter of intent for SB 218 stated, "Sex offenders average 110 victims and 318 offenses before being caught." The study cited was of a very small sample of offenders in one state (60 people total), who were not randomly selected. While the mean number of victims revealed after the polygraph process was 110, the median number was 11; the mean number of offenses revealed after the polygraph process was 318 but the median number was 23. A median of 11 victims is still an appalling number. But given the small scale of the study, the lack of a control group and the nonrandomized selection, this study has limited value for making generalizations about all sex offenders. The statement that sex offenders "average 110 victims and 318 offenses" cannot be said to apply to all offenders universally. Indeed, there is a great degree of variability in patterns and trajectories of sex offending. The actual incidence of undetected offenses is not a data point that can be determined. There is some research that gives a sense of how often offenses go unreported. Of offenses reported to the Alaska State Troopers from 2008-2011, 17.6% of the offenders reported had committed at least one previous sexual offense against the same victim, but only 3% of those prior incidents had been reported. Those data include only prior victimizations of the same victim; the offender may have had other victims. It is clear that many offenders have committed one or more undetected offenses prior to being caught. Letter of Intent, for S.B. 218, *supra* note 129; Ahlmeyer, *supra* note 129; Jane Wiseman, *Incidence and Prevalence of Sexual Offending*, Sex Offender Management, Assessment, and Planning Initiative, U.S. Department of Justice (July 2015); Dominique A. Simons, *Adult Sex Offender Typologies*, Sex Offender Management, Assessment, and Planning Initiative, U.S. Department of Justice (July 2015); *Alaska Domestic Violence and Sexual Assault Case Processing Project*, *supra* note 36.

¹³⁵ Roger Przybylski, *The Effectiveness of Treatment for Adult Sexual Offenders*, Sex Offender Management, Assessment, and Planning Initiative, U.S. Department of Justice (July 2015), 4.

This newer research is also corroborated by evaluations of Alaska's sex offender management program, administered by the Department of Corrections. As explained in Section IV below, the recidivism rate of offenders who complete the program, which uses cognitive-behavioral therapy and polygraph testing, is lower than the national average for sex offenders.

Legislators in 2006 did not have access to the same information that is available today. There is still a great deal of work to be done to ensure that Alaskans are safe from sexual violence, and there is new research available to help policymakers craft more nuanced responses to the epidemic of sexual violence. As explained in the next section, the Commission will be taking a look at some specific topics regarding sex offense laws, and will make recommendations on those topics if appropriate.

E. Victim Advocate Concerns about Alaska's Sex Offense Laws

Victim advocates in Alaska have indicated their belief that gaps exist in the Alaska Statutes that allow some people not to be held fully accountable for their criminal conduct. The following is a list of some issues identified by victim advocates:

- Harrassment in the First Degree- This offense can include subjecting another to unwanted contact with semen. It is not considered a sex offense and is classified as a Class A misdemeanor.
- The offense of sexual assault does not include inducing a person to engage in sexual conduct through deception.
- If the defendant is married to the victim, it is a defense to first- or second-degree sexual assault if the victim is mentally incapable; to second-degree sexual assault if the victim is incapacitated or unaware of the sexual act being committed; or to third- or fourth-degree sexual assault .
- Unwanted contact with the male chest is not considered a sex offense while unwanted contact with a female breast is considered a sex offense.

The Commission will review these and any other identified issues with statutory gaps or classifications and make recommendations for improving these laws as necessary.

Appendix D contains a summary of all sex offenses in Alaska, as well as some offenses which might be considered sex offenses in some circumstances or offenses that some defendants may plead to in cases where a sex offense is charged initially.

IV. Sex Offender Treatment and Reentry

People who are convicted of sex offenses are typically required to complete treatment as part of their sentence. They may complete this treatment while incarcerated or while released to supervision in the community. Sex offender treatment is a component of Alaska's Department of Corrections sex offender management programming, which is known as the Containment Supervision model. The model uses cognitive-behavioral therapy in conjunction with probation supervision, polygraph testing, and a safety net team.¹³⁶ Subsections A and B focus on the therapeutic aspects of the program while subsection C focuses on supervision, polygraphs, and safety nets.

A. In-Custody Programming

The Department of Corrections (DOC) has a waitlist for institutional sex offender treatment, which is prioritized according to risk level and the amount of time remaining on the offender's sentence. Offenders complete an application, and DOC employees perform risk assessment tests. A psychologist then performs a full psycho-sexual test, taking into account the risk assessment and offender's criminal history, along with an interview of the offender. Around 90 offenders undergo these assessments annually. (In 2015, 2016, and 2017, there were 216, 205, and 163 people, respectively, who were sentenced to a term of imprisonment for a felony sex offense.)

Once a spot becomes available, high-risk offenders are referred to the Lemon Creek Correctional Center program in Juneau, while medium-risk offenders are sent to the Goose Creek Correctional Center program in Wasilla. There are no programs solely for low-risk offenders.

At Lemon Creek Correctional Center, the high-risk offenders spend 24-36 months in the program and are all housed in one therapeutic community. They engage in group therapy four times per week and intensive individual therapy two times per week, along with regular polygraph testing. This program has a daily capacity of 24 people; in fiscal year 2017 (FY17) 39 people completed the program.

¹³⁶ Unless otherwise noted, the information in this section comes from DOC's 2018 white paper on the Sex Offender Management Program, available on request from DOC, or from information relayed to the Commission's working group by the staff of DOC's Health and Rehabilitation Services.

At Goose Creek Correctional Center, medium-risk offenders spend 18-24 months in the program and are housed in the general population. They engage in group therapy once per week and intensive individual therapy once per month. They are also subject to regular polygraph testing. The program began in April 2016 and in FY 17 treated 13 offenders. In FY18 the program capacity expanded to 36 people.

Beginning in 2018, DOC started two new programs for medium-risk sex offenders, one at the Wildwood Correctional Center in Kenai and one at the Anvil Mountain Correctional Center in Nome. The latter program will focus on medium and medium-low risk male offenders who are from Western Alaska and who will likely release back to Western Alaska.

Women are treated at Hiland Mountain Correctional Center, which typically has very few, if any, offenders in the sex offender management program. It has a daily capacity of 12. There were no women in this program in FY17.¹³⁷

All sex offender treatment models in Alaska use cognitive-behavioral therapy in conjunction with polygraph testing. Cognitive-Behavioral therapy for sex offenders is designed to promote pro-

Sex Offender Treatment Programs in DOC Institutions

- Lemon Creek Correctional Center (Juneau): High-risk offenders, daily capacity of 24 people
- Goose Creek Correctional Center (Wasilla): Medium-risk offenders, daily capacity of 36 people
- Hiland Mountain Correctional Center (Eagle River): Female offenders, daily capacity of 12
- New programs beginning in 2018 in Wildwood Correctional Center (Kenai) and Anvil Mountain Correctional Center (Nome) for medium to medium-low risk offenders

¹³⁷ In 2016, 10 women were incarcerated for registerable sex offenses: 6 for SAM 1, 2 for SA 1, 1 for attempted SAM 2, 1 for conspiracy of SAM 1. Compare to 780 men incarcerated in 2016. Alaska Department of Corrections, *2016 Offender Profile*, available at http://www.correct.state.ak.us/admin/docs/2016Profile_final.pdf.

social behavior in offenders and offers a number of cognitive restructuring interventions to combat criminogenic thinking.

In 2016, researchers at the University of Alaska Anchorage published the results of their research with the Results First Initiative. Results First seeks to identify the cost-benefit ratio of state-administered programs, finding the monetary benefit to the state for every dollar invested in a given program. The UAA researchers performed this analysis on a number of programs administered by DOC. They calculated the benefit of the program by attaching a monetary value to reduction in recidivism achieved by each program, including the avoided cost of additional victimization. They found that outpatient sex offender treatment in prisons (where offenders are housed in the general population) generated \$2.38 in benefits (such as recidivism reduction) for every dollar spent. Residential sex offender treatment (where offenders are housed in a special therapeutic ward) had positive benefits but did not recoup the cost of the program; the ratio was \$0.72 for every dollar spent.¹³⁸ This does not mean that the outpatient program is more effective; rather, the residential program may be more costly to run.

In-custody sex offender programs always have wait lists. Those who have been ordered to treatment will typically not start treatment until nearer the end of their sentence.

B. Out of Custody Programming

Approximately 250 people convicted of sex offenses are released from incarceration each year. DOC uses evidence-based risk assessments to determine an offender's appropriate level of supervision. DOC's containment teams focus resources on the highest risk offenders who are statistically more likely to sexually or violently reoffend.

People convicted of sex offenses may not be placed at Community Residential Centers (CRCs; also known as halfway houses), with the exception of one program in Bethel, the Tundra Center. The Tundra Center's sex offender program serves the Yukon-Kuskokwim Delta. The Bethel program uses a

¹³⁸ Araceli Valle, *Alaska Results First Initiative: Adult Criminal Justice Program Benefit Cost Analysis*, Alaska Justice Information Center, University of Alaska Anchorage (September 29, 2017), 42, available at <https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/alaska-justice-information-center/alaska-results-first.cshtml>.

culturally appropriate restorative justice model. The program is 24-36 months long with group therapy twice per week. It also involves intensive homework and classes, as well as polygraph testing.

Once a sex offender is released on probation or parole, they will likely go on a 30-90-day waitlist for community treatment. (This waitlist is also prioritized according to risk level and time remaining on supervision.) Community treatment programs are offered in Fairbanks, Bethel, Anchorage, Palmer, Kenai, and Juneau. Offenders waiting for treatment are polygraphed. DOC struggles to find community providers for sex offender management programming, which is the reason for the waitlist.

Sex Offender Treatment Programs in the Community

Community treatment for people who have served prison time for a sex offense includes:

- Regular polygraph testing
- Group and individual therapy
- Probation and parole supervision with conditions
- Safety net team of community members

Community treatment includes one-on-one therapy. Those in the program will have to pay for the therapy if they are able to pay, but treatment will still continue if they aren't able to pay. Community programs last 18-24 months. Participants have group therapy once per week and intensive individual therapy once per month. They must identify a "safety net" team of people who can be relied upon to report triggering behaviors to the participant's parole/probation officer. Safety net team members can include people such as a community elder, a VPSO, or a clergy member. Participants also have regular polygraph testing.

The community treatment programs (as opposed to the in-custody treatment programs) were originally designed to be aftercare—that is, a follow-up to more intensive treatment. However, they are now used as primary treatment for those who did not complete treatment in prison. Community treatment is an effective standalone program, because it uses cognitive-behavioral therapy and polygraph testing. (Polygraph testing is explained more in section C.)

Experienced program administrators at DOC report that some individuals who were ordered at sentencing to complete sex offender treatment, but not specifically ordered to in-custody treatment, will opt for the community treatment because it is less intensive and takes less time. Some will avoid in-custody treatment to avoid being labelled a sex offender while in prison. Regardless of the reason, the fact is that some individuals who were ordered to complete sex offender treatment do not complete that treatment before they are released from DOC. These probationers present a potential management issue for DOC, because many of them (especially those from rural Alaska) wish to return home to live until a space is available in treatment. In some instances, DOC allows the probationer to return home to await a treatment opening; however, in other instances that is not possible for various reasons. Those who are not permitted to return to their communities, often must wait in a hub community where treatment is offered until a spot becomes available. This may mean months or years of waiting in an unfamiliar community and may mean that the person will be homeless for that time. In FY19, the Department of Corrections began a teletreatment program that now allows offenders to remain in their home communities and get assessments and access treatment long distance.

The Results First study (the same study conducted by UAA researchers as explained in the section above) found community sex offender treatment to be quite cost effective; the 2015 model had a benefit-cost ratio of \$4.43 for every dollar spent and the 2017 model had a benefit-cost ratio of \$6.33 for every dollar spent.

Recently, DOC has been able to revamp its out of custody sex offender treatment using a standardized curriculum designed to account for any treatment an individual has received in custody. This focusing of resources has allowed DOC to reduce the wait time in the community. DOC has also added a telehealth clinician who is now able to provide treatment for certain individuals living in rural Alaska, which has also had positive impact on waitlist times with a capacity of 12 to 24 people.

C. Probation and the Containment Model

As noted above, probation is required for all sex offenders, and probation terms range from 5 to 15 years. Offenders also have parole terms in addition to probation terms. The length of parole depends on the person's sentence and eligibility for discretionary release, but it would not be unusual for an offender's parole period to extend beyond the probationary period.

The length of time an offender goes without reoffending is a positive indicator of success. The longer an offender goes without committing a new crime, the more that person's risk to the community decreases, eventually approaching the same level of risk as the general population.¹³⁹ As of 2017, those on supervision for a sex offense can earn time off of supervision for compliance with their conditions of supervision (as can people convicted of other offenses). Sex offenders may not be discharged from supervision early if they have not completed treatment. If DOC feels as though probation should be extended, it may petition the court to extend probation.

Alaska uses the Containment Model for sex offender management. The Containment Model uses specially trained probation/parole officers, polygraph testing, and cognitive-behavioral therapy.

1. Polygraph testing

As noted above, polygraph testing of sex offenders on supervision was statutorily mandated starting in 2006, with the hope that it would reduce recidivism rates.¹⁴⁰ Polygraph testing in conjunction with cognitive-behavioral therapy continues to be a national best-practice model.¹⁴¹

Per statute, all sex offenders in Alaska must undergo regular polygraph exams while they are on probation or parole. Per the State Standards of Sex Offender Management,¹⁴² they must undergo one exam when entering treatment, and then two per year are recommended for as long as they are on probation or parole. A person's parole/probation officer (PO) has discretion to require more or fewer exams; the PO may require more exams for higher-risk offenders or fewer exams for lower-risk offenders. Offenders may undergo more exams if they fail an exam or the exam reveals they are engaging in high-risk behavior. If they fail a polygraph, they must take another one within 90 days.

One state in the vanguard of using polygraph testing for the sex offender population was Colorado. In 2000, Colorado corrections officials published a study that showed that when offenders were subjected to polygraphs, there was a significant increase in reporting of past and current offending or risky behaviors—these reports are called "clinically significant disclosures."¹⁴³ The numbers cited were alarming—for the group of offenders who did disclose more offenses after the

¹³⁹ *DOC White Paper* (2018), *supra* note 7, at 2 (citing studies).

¹⁴⁰ Minutes of the S. Jud. Comm., Senate Bill (S.B) 218, 24th Legislature, 2nd Sess., (Jan. 19, 2006) (Remarks of Sen. Con Bunde).

¹⁴¹ *DOC White Paper* (2018), *supra* note 7, at 2.

¹⁴² Alaska Department of Corrections, *Standards of Sex Offender Management*, available at http://www.correct.state.ak.us/inmate_health/docs/Standards%20of%20Care.pdf.

¹⁴³ Ahlmeyer, *supra* note 129.

Polygraph Exams

- Regular polygraph testing is statutorily required for everyone convicted of a sex offense in Alaska
- Some researchers have called the validity of polygraphs into question
- The use of polygraphs for sex offender management has proved helpful for clinicians and treatment teams

polygraph than before, the mean number of additional victims per offender revealed by these disclosures was 36.¹⁴⁴ The 2000 Colorado study was cited in the letter of intent accompanying the bill requiring polygraph use in Alaska.

A number of studies have replicated Colorado's finding that being subjected to polygraphs can increase reporting of clinically significant disclosures. These studies often report a marked difference between known sexual offense incidents and incidents reported during the polygraph process.¹⁴⁵ One study, for example, looked at a sample of 119 federal offenders, many of whom were convicted on a non-contact sexual offense (such as possessing child pornography). Of that sample, 34 offenders who had no official

record of a contact sex offense admitted to a contact sexual offense.¹⁴⁶

However, other studies have called these findings into question.¹⁴⁷ Some note that polygraphs cannot be proven to determine the truth with accuracy, and that a polygraph may give false positives. Polygraphs measure physiological responses, and innocent subjects may be nervous or alarmed at the prospect of a polygraph and react physiologically in the same way they would if they were being intentionally deceptive.¹⁴⁸ Applied in a sex offender context, a polygraph may generate a false positive

¹⁴⁴ *Id.*

¹⁴⁵ Matt DeLisi et al., *The Dark Figure of Sexual Offending: New Evidence from Federal Sex Offenders*, 6(1) *Journal of Criminal Psychology* 3-15 (2016); Ahlmeyer, *supra* note 129, *supra*; Theresa A. Gannon et al., *An Evaluation of Mandatory Polygraph Testing for Sexual Offenders in the United Kingdom*, 26(2) *Sexual Abuse: A Journal of Research and Treatment* 178-203 (2014). Ewout H. Meijer, et al., *Sex Offender Management Using the Polygraph: A Critical Review*, 31(5) *International Journal of Law and Psychiatry* 423-429. (2008).

¹⁴⁶ DeLisi et al., *supra* note 145.

¹⁴⁷ See Theodore Cross, & Leonard Saxe, *Polygraph Testing and Sexual Abuse: The Lure of the Magic Lasso*, 6(3) *Child Maltreatment* 195-206 (2001) (summarizing the significant disagreements among experts regarding the adequacy of the studies concerning polygraph effectiveness).

¹⁴⁸ *Id.*

born out of an offender's nervousness at the interview, which could result in unwarranted heightened supervision or restrictions/sanctions.

In Alaska, offenders do not face increased sanctions or restrictions based on the results of a polygraph alone. Failed polygraphs result in a treatment team meeting that includes, at a minimum, the treatment provider, the PO and the offender. This meeting is held to determine why the offender failed the exam – and often it results in an admission (an admission in this setting is a clinically significant statement that can be used by the treatment team to further the offender's rehabilitation). Those behaviors are then addressed in treatment and with heightened supervision.

Some who doubt the scientific validity of polygraphs believe that it is nevertheless effective as a tool of psychological manipulation.¹⁴⁹ Some studies have even tested subjects using a "bogus" polygraph device, and found that subjects were more likely to respond honestly if they believed they were being subjected to a machine that could tell the truth.¹⁵⁰ Regardless of whether polygraphs actually elucidate truthful disclosures, they do elucidate disclosures that clinicians and treatment teams find helpful in the offender's course of treatment and supervision. For this reason, many states continue to use polygraphs with their supervision programs.

DOC continues to fine-tune its polygraph policy to keep up to date with best practices and use the risk-needs-responsivity principle, a general practice for criminal justice programming that can be applied in a variety of contexts, as explained below.

2. Risk-Needs-Responsivity

People once believed that nothing worked for general offender treatment, until rigorous studies showed that some interventions could in fact reduce recidivism. The same is true for the sex offender population. A metastudy by Hanson et al. (2009) showed that the same effective principles used on the general population could also apply to the sex offender population.¹⁵¹

The Risk-Needs-Responsivity (RNR) concept is evidence-based, and programming is more effective when RNR principles are used than when not.¹⁵² A meta-analysis of sex offender treatment

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Karl Hanson et al., *The Principles of Effective Correctional Treatment Also Apply to Sexual Offenders: A Meta-Analysis*. 36(9) *Criminal Justice and Behavior* 865-891 (2009).

¹⁵² Jan Looman & Jeffrey Abracen, *The Risk Need Responsivity Model of Offender Rehabilitation: Is There Really a Need For a Paradigm Shift?*, 8(3-4) *International Journal of Behavioral Consultation and Therapy* 30-36 (2013).

programming found a direct correlation between the number of RNR principles used in a program and lower recidivism.¹⁵³ Another meta-analysis found that programming that included relapse prevention techniques used within an RNR framework was also associated with a reduction in recidivism.¹⁵⁴

Critics of the RNR approach argue that more focus should be placed on emphasizing and developing an offender's positive attributes. However, there is no evidence to support that this other approach (sometimes called the "Good Lives" model) is effective in reducing recidivism or effective for sex offenders.¹⁵⁵ More recent literature suggests that it may be worthwhile to update the RNR model with an eye toward trauma-informed care and the prevalence of mental illness among the justice-involved population.¹⁵⁶

In Alaska, sex offenders undergo an extensive psychosexual evaluation to assess their risk and determine their course of treatment, using a number of different tests and queries. The evaluator interviews the offender to determine the offender's version of the offense of conviction (to be later compared to the official record), the offender's complete sexual history, and the offender's complete social and family history. The offender undergoes a mental status examination, and two personality/psychological tests. The evaluator scores the offender on tools to assess the risk of sexual, violent, and general criminal re-offending. The results of these interviews and tests inform the course of treatment for the offender, an exemplary use of the risk-needs-responsivity principle.

3. Probation and Parole Conditions

In addition to complying with the requirements of the Containment Model, reentrants must also comply with the conditions of their probation and parole. Probation conditions are imposed by a judge at sentencing, and for this reason, may not be tailored to the reentrant's need upon release (which may be many years after sentencing). Probation conditions that do not have a nexus to the underlying crime or the reentrant's risk or needs may be unduly burdensome and set the reentrant up for failure unnecessarily.¹⁵⁷

¹⁵³ Hanson et al., *supra* note 151.

¹⁵⁴ Looman & Abracen, *supra* note 152, citing Craig Dowden et al., *The Effectiveness of Relapse Prevention With Offenders: A Meta-Analysis*, 47(5) *International Journal of Offender Therapy and Comparative Criminology* 516-528 (2003) (this study looked at general populations as well as sex offender populations).

¹⁵⁵ Looman & Abracen, *supra* note 152.

¹⁵⁶ *Id.*

¹⁵⁷ Current case law requires that probation conditions have a nexus to the offense or offender.

Parole conditions are set by the parole board prior to an offender's release, and therefore may be better able to be responsive to the risk and needs of the individual to be released.

4. Results of the Containment Model

The Containment Model as implemented by Alaska's DOC has produced positive results. DOC studied its 2011-2014 sex offender management cohorts and found that around 53% of people in those cohorts completed treatment. Of those who completed the cognitive behavioral program between 2011 and 2014, 3% were reconvicted of a sex offense and 22% were reconvicted of any offense.¹⁵⁸

Even those who participated in but did not complete the program received some benefit; those who did not complete had a 44% general reconviction rate compared to 63% for the general population. Moreover, most offenders who fail do eventually return to and complete their program.

Results of the Alaska Sex Offender Management Program, 2011-2014

53% of those assigned to the program completed treatment.

Of those who completed treatment, 3% were reconvicted of a sex offense.

Source: Alaska Department of Corrections

D. Reentry for Rural Alaskans

Rural Alaskans convicted of sex offenses face particular challenges upon reentry. Offenders who have not completed treatment in the facility must complete treatment in the community. Most of the time, that treatment is only offered in the hub cities. (DOC has recently started a teletreatment program to allow some offenders to be treated remotely in their home communities). The treatment programs typically have waiting lists, which means that offenders from rural communities often must wait in the hub cities for a spot in treatment. In the hub cities, they lack a support network and many become homeless and struggle with day-to-day needs.

The Commission's Sex Offenses Workgroup heard from a group of men from rural Alaska who were waiting to complete sex offender treatment in Anchorage. These men had formed a talking circle

¹⁵⁸ DOC White Paper (2018), *supra* note 7, at 3. These numbers reflect reconviction rates up to 5 years after program completion for an FY11-FY14 cohort.

which later became the Alaska Nations Reentry Group. The group meets weekly at the Partners For Progress Reentry Center in Anchorage.

The men from the Alaska Nations Reentry Group explained that they were from villages in rural Alaska but had to wait in Anchorage to begin and participate in their community treatment programs.¹⁵⁹ While they are waiting, they face cultural barriers to housing and employment: because they are not from Anchorage, they are not used to navigating the city. They described a sense of hopelessness and a loss of cultural connection while being in Anchorage.

They believed that if they were allowed to wait at home for treatment, or better yet, allowed to complete treatment at home, they would be more productive and successful members of their community. They believed in treatment requirements and also in getting permission from their home community to return. In some cases, they said they have contacted their village or even contacted their victim or victim's family through their probation officer to ask their forgiveness and permission to return home. (Note that DOC does not allow victim contact by the offender under any circumstances, and if there is a court order prohibiting contact DOC will enforce that order.)

The Alaska Nations Reentry Group supports treatment and policies based on community safety, accountability, and respect. They will not condone sending someone home if they are not welcomed back in their village.

Probation officers may allow offenders to return home between release and beginning community treatment. The probation officer will look at victim safety issues and the availability of probation officers, among other things. Many sex offenders do return home in this time, but those who are homeless will remain in the hub community. This decision is left up to individual POs and is made on a case-by-case basis. The Alaska Nations Reentry Group supports a systemic approach that will facilitate their return home while ensuring the safety of their community.

The Department of Corrections (DOC) has recently begun using teletreatment in for sex offender treatment, which allows certain individuals to complete treatment in their own community. DOC struggles with finding qualified treatment providers to work in Alaska, and teletreatment provides

¹⁵⁹ DOC does not necessarily require that people from rural areas stay in a hub community while awaiting treatment, but sometimes they must stay in a hub community if no housing is available in their village or their village does not want them to return. There may also be subject to a condition of probation that requires them to live in a location where there are probation officers.

DOC with the ability to contract with providers from outside Alaska. DOC has begun a trial run with a capacity of 12 to 15 participants who are from rural communities and would otherwise need to live in a hub community for treatment.

E. Sex Offender Registry

In addition to supervision on parole or probation, treatment, and polygraph testing, people who have been convicted of a sex offense must be placed on the sex offense registration list, with regular reporting requirements.¹⁶⁰

1. State and federal law and the history of registry statutes

In Alaska, anyone convicted of an “aggravated sex offense” or anyone convicted of more than one sex offense must register for life. An aggravated sex offense is:

- A sex offense or an attempted sex offense that results in that results in the death of the victim;¹⁶¹
- First-degree sexual assault or first-degree sexual abuse of a minor;
- Attempt, solicitation or conspiracy to commit first-degree sexual assault or first-degree sexual abuse of a minor.

Anyone who is convicted only once of any other sex offense must register for 15 years. The offender must register as soon as he or she is released from prison, but the 15-year time period does not start running until his or her probation period has ended.

Those required to register for life must verify their registration quarterly, while those required to register for 15 years must verify their registration annually. Offenders required to register must report their address, place of employment, aliases used, driver’s license number, vehicles used, and email and social media aliases.¹⁶² Failure to register or to file written notice of the above information is a Class A misdemeanor (first offense), or a Class C felony (second offense, or with intent to escape identification in facilitation of another sex offense).¹⁶³ Anyone convicted in another state of an offense that is similar to an Alaska offense requiring registration in Alaska must also register as a sex offender

¹⁶⁰ The registration requirement statutes are found in AS 12.63.010-100.

¹⁶¹ This is charged under special subsections of the first- and second-degree murder statutes.

¹⁶² AS 12.63.010.

¹⁶³ AS 11.56.835 and 11.56.840.

in Alaska. If a person must register in another state, but the offense requiring that person to register in that other state is not recognized as a sex offense in Alaska, that person is not required to register in Alaska.¹⁶⁴

Information in the registry is made available to the public, along with the offender's photograph and crime of conviction, on the Department of Public Safety's website. The registry database is searchable by name or location.¹⁶⁵

Alaska's law requiring sex offenders to register was passed in 1994, and at the time was one of the most stringent in the country. The 1994 legislature believed (similar to the 2006 legislature) that sex offenders were not amenable to treatment and were likely to reoffend. Legislators believed that releasing information on sex offenders to the public would "assist in protecting public safety."¹⁶⁶

This law applied retroactively to people convicted of sex offenses before the law passed, and therefore became the subject of an *ex post facto* challenge in the United States Supreme Court, a case that drew national attention.¹⁶⁷ While the United States Supreme Court held that the 1994 law did not violate the *ex post facto* clause of the United States Constitution, the Alaska Supreme Court held that the law did violate the *ex post facto* clause of the Alaska Constitution, and therefore could not be applied to defendants who committed their crime before the law was enacted.¹⁶⁸

There have been federal laws requiring registration since 1994. These laws – the Jacob Wetterling Act, Megan's Law, and the Adam Walsh Act – require states to meet certain standards with regard to sex offender registries. Under the Adam Walsh Act, which is the most recent, there are three offense-based tiers of offenders; Tier III offenders must register for life, Tier II offenders must register for 25 years, and Tier I offenders must register for 15 years. Failure to register is also a federal offense.¹⁶⁹

¹⁶⁴ See *Department of Public Safety v. Doe*, 425 P.3d 115 (Alaska 2018).

¹⁶⁵ AS 18.65.087. See also Department of Public Safety, *Sex Offender/Child Kidnapper Registry*, <https://dps.alaska.gov/SORWeb/>.

¹⁶⁶ Deb Periman, *Revisiting Alaska's Sex Offender Registration and Public Notification Statute*, University of Alaska Anchorage Justice Center (October 2008), 2.

¹⁶⁷ *Id.* A law violates the *ex post facto* clause of the United States Constitution if it retroactively increases the punishment for a crime beyond the statutory penalty that existed at the time the crime was committed.

¹⁶⁸ *Doe v. State*, 189 P.3d 999, 1002, 1019 (Alaska 2008).

¹⁶⁹ Alex Tsarkov et al., *A Study of the Sex Offender Sentencing, Registration, and Management System*. Connecticut Sentencing Commission (November 2017), 66-70.

2. Effectiveness of registry statutes

The purpose of registration and notification statutes is to improve public safety, based on the theory that making information on sex offenders publicly available will discourage offenders from committing new sex crimes. However, studies have shown rates of sex offenses either holding steady or increasing since the passage of Megan's Law, the federal law passed in 1997 requiring states to make sex offender registry information public.¹⁷⁰ A causal relationship between the rates of sex offenses and the passage of registry laws has not been established; also, as noted above, increased rates of reporting do not necessarily reflect increased rates of victimization.

One study looking at the effect of registry in multiple states also found that registries had an effect on crime but that the effect depended on the size of the registry and who had access to it. An average-sized registry to which only law enforcement had access led to a decrease in sex crimes, but a registry with a public notification provision (such as a publicly accessible online database) was associated with no decrease or an increase in sex crimes. Researchers hypothesized that there was a deterrent effect to registry (for would-be first-time offenders or unregistered individuals), but that this was offset by an increase in recidivism by registered offenders, perhaps due to the collateral consequences of public registry.¹⁷¹ Publicizing sex offender registries has had a number of consequences, not all of them intended. Often those on a public registry experience a great deal of isolation, difficulty obtaining or maintaining employment, and homelessness. There have been instances of vigilantism, including here in Alaska.¹⁷²

Researchers have linked offender life instability (i.e. uncertainty in unemployment and social connections based on fear of discovery) and housing instability to increased criminal recidivism. Though recidivism rates for sex offenders are relatively low compared to other offenders, offenders who are transient have higher sexual recidivism rates. A study of sex offenders in California found that transients committed 19% of sexual reoffenses among probationers and 33% of sexual reoffenses among parolees, while only 6% of the total supervision population was transient; this led researchers

¹⁷⁰ Kelly Bonnar-Kidd, *Sexual Offender Laws and Prevention of Sexual Violence or Recidivism*, 100(3) American Journal of Public Health, Health Policy and Ethics 414 (March 2010).

¹⁷¹ J.J. Prescott & Jonah Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?* 54 Journal of Law and Economics 161, 192 (February 2011).

¹⁷² Periman, *supra* note 166, at 6; Tegan Hanlon, *Anchorage Man Who Attacked Sex Offenders Hopes His Story Can Be a Lesson for Others*, Anchorage Daily News, January 1, 2018, available at <https://www.adn.com/alaska-news/crime-courts/2018/01/01/anchorage-man-who-attacked-sex-offenders-says-he-wants-his-story-to-serve-as-a-deterrent/>.

to conclude that transient status was associated with higher sexual recidivism rates.¹⁷³ Stress and lack of social support can also be a trigger for problematic behavior that can lead to reoffending.¹⁷⁴ Sex offender homelessness can also pose a challenge for those charged with monitoring registrants and enforcing registry compliance.¹⁷⁵

A study of South Carolina's registry found that there was a deterrent effect to the state's registration requirement, in that arrest for first-time sex offenses declined after the requirement went into effect. However, the same study showed that there was no associated reduction in recidivism, and those who failed to register did not appear to be any more of a danger to the public than those who registered. The registration law was also associated with an increase in sex crime charges being reduced to non-sex crime charges.¹⁷⁶

Critics argue that broad, offense-based registry systems cast the net too widely; people convicted of a variety of offenses are lumped together and treated similarly, in part based on the false assumption that all sex offenders are a danger to children.¹⁷⁷ This net widening allows the more serious or high risk offenders to get "lost in the crowd," prompting calls for registries to be risk-based.¹⁷⁸ Recent research suggests that there are different typologies of sex offenders; offenders with certain risk factors may follow distinct patterns of behavior.¹⁷⁹ Recidivism rates vary according to typology.¹⁸⁰

Seventeen states use a risk-based registry system; a handful of other states use a system that is a hybrid of an offense-based and a risk-based system. The Connecticut Sentencing Commission has recently proposed moving to a risk-based system which includes the chance for some offenders to earn their way off the registry after a period of demonstrated appropriate behavior. The proposal also

¹⁷³ Seung Lee et al., *The Predictive Validity of Static-99R for Sexual Offenders in California*, Government Report, First Posted Online, (July 13, 2016) 9, available at http://www.saratso.org/docs/ThePredictiveValidity_of_Static-99R_forSexualOffenders_inCalifornia-2016v1.pdf.

¹⁷⁴ Periman, *supra* note 166, at 7.

¹⁷⁵ Andrew Harris et al., *Law Enforcement Perspectives on Sex Offender Registration and Notification*, Research Report Submitted to the U.S. Department of Justice (August 15, 2016), 8-9.

¹⁷⁶ Elizabeth Letourneau et al., *Evaluating the Effectiveness of Sex Offender Registration and Notification Policies for Reducing Sexual Violence against Women*. Medical University of South Carolina (September 2010), available at: <https://www.ncjrs.gov/pdffiles1/nij/grants/231989.pdf>

¹⁷⁷ Bonnar-Kidd, *supra* note 170, at 416.

¹⁷⁸ Periman, *supra* note 166, at 8.

¹⁷⁹ Simons, *supra* note 134.

¹⁸⁰ Andrew Harris & R. Karl Hanson, *Sex Offender Recidivism: A Simple Question*, Public Safety and Emergency Preparedness Canada (2004), available at <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/sx-ffndr-rcdvsm/index-en.aspx>.

creates a two-tier system in which only higher-risk offenders would be required to be on a public registry while lower-risk offenders would be on a law enforcement-only registry.¹⁸¹

People with mental illness or intellectual or developmental disabilities face particular challenges if they are on the registry; existing challenges with housing and employment are compounded, and these individuals have difficulty complying with the registration requirements.¹⁸² The Commission was also told that guardians of people who are convicted of sex offenses and have mental illness or intellectual or developmental disabilities sometimes forget to register their wards. Further study is needed on how registry requirements affect individuals with mental illness or intellectual or developmental disabilities in Alaska.

Families of individuals who are on the registry have attended Commission meetings to testify regarding the collateral impact the registry has on family members. Victims or members of the public who might use the registry have not yet come forward to testify regarding its utility. The Commission has also not heard any testimony on the effect of criminal convictions in Alaska being publicly available on CourtView. There are no Alaska-specific studies on the effect of the sex offender registry on recidivism or deterrence. This is an area that warrants further study.

¹⁸¹ Tsarkov et al., *supra* note 169, at 26-27.

¹⁸² See Jessica Oppenheim, *Sex Offenders with I/DD: The Negative Impact of Megan's Law Consequences on Communities*, in *Sex Offenders with Intellectual/Developmental Disabilities: A Call to Action for the Criminal Justice Community*, The Arc's National Center on Criminal Justice and Disability (2015), 6-8, available at <https://www.thearc.org/document.doc?id=5253>.

V. Victim Services and Safety

Non-profits operating throughout Alaska provide community-based victim services. Many of these are linked through a membership-based organization, the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA). ANDVSA members provide victims of sexual assault a variety of services. These programs are funded in part by grants from the Council on Domestic Violence and Sexual Assault (CDVSA), a division of the Department of Public Safety. There are also numerous tribal grantees throughout the state providing the same services through federal grants. The Office of Victims Rights (OVR) provides legal representation to victims statewide. These organizations work tirelessly to assist victims of sexual assault, yet victims and victim advocates make it clear that much more could be done to help victims.

A. Victim Services and Safety: Urban Areas and Rural Hub Communities

Most major cities and regional hub communities in Alaska have a Sexual Assault Response Team (SART) as well as a Child Advocacy Center (CAC). The SART teams and CACs provide a multidisciplinary approach to acute cases of sexual assault or sexual abuse of minors. Both SARTs and CACs are considered the national best practice. This section describes SART, CAC, and victim support services available in urban and rural hub communities.

1. Sexual Assault Response Teams (SART)

The SART team includes a victim advocate, law enforcement officer and a health care provider (nurse). The SART response is designed to reduce the trauma of the sexual assault by providing victim centered advocacy, care and services, and to increase the likelihood that assaults can be successfully prosecuted.¹⁸³

Statewide victim service providers (advocates) are an integral part to the SART process. They provide crisis intervention, ensure that victims are aware of the resources available to them, and support victims either in person in the hub communities, or on the phone should a victim choose not to participate in the SART process.

¹⁸³ Guidelines for Community Response to Sexual Assault in Alaska, Council on Domestic Violence and Sexual Assault (CDVSA), Department of Public Safety.

Law enforcement officers are responsible for screening and authorizing the forensic exam, seeing to the immediate safety needs of the victim, interviewing the victim, securing the crime scene, and collecting and preserving evidence from the crime scene including collecting forensic evidence from the suspect.

Medical providers conduct the medical forensic exam which includes a physical assessment; documentation and treatment of injuries; collection of evidence; screening for and treatment of sexually transmitted infections; screening for risk of pregnancy as a result of the sexual assault and providing of emergency contraception (if appropriate) and referrals to vital resources as needed.

Each team member is expected to have training in their respective field and it is also recommended that each team member received general team training, specialized instruction and practical experience responding to sexual assault. Currently, CDVSA sponsors several SART trainings a year in collaboration with AST and DOL as well as other essential non-profit partners such as ANDVSA. These intensive training sessions are usually four days and there is no fee associated with the training.

Victim Services: Immediate Response

- Sexual Assault Response Teams (SARTs) for adults
- Child Advocacy Centers (CACs) for children

For communities that do not have SART teams (mostly smaller rural communities), trainings are also available. Statewide teams currently provide First Responders Training. This two and a half day training is designed for health aides, behavioral health aides and VPSOs in an effort to provide a coordinated-community response that is victim-centered and safety-oriented. This training is a joint effort between AST and ANDVSA and is done in conjunction with the local victim service provider and health corporation. It is available on request as resources allow.

Since the inception of SART in Alaska in the 1990's, numerous SART teams have struggled in finding and keeping qualified medical professionals (nurses) to conduct the forensic medical exams. Throughout the years, this issue has impacted programs throughout Alaska. Support from medical institutions (hospitals or health corporations) is essential to the overall success of the program, including the commitment to provide qualified staff and shift coverage to conduct the forensic medical exam.

For example, at the time of this writing, one Southeast Alaska community has only one SART nurse to conduct a portion the forensic medical exam (excluding pelvic). If the provider is unavailable, an adult victim of sexual assault from this community would be flown to Juneau for the exam. It should be noted that four medical providers are actively being trained in this community. In one Southcentral community, currently there is no trained medical provider to conduct the forensic medical exam. The local victim service provider program is available to accompany the victim to another community two hours away for the exam if the victim requests this option.

Victims of sexual assault in rural villages are offered the opportunity to be transported into a hub community for the forensic medical exam, typically within seven days of the assault. As stated previously, the cost of this transportation should be covered by the investigating law enforcement agency such as AST and in certain circumstances a medivac may be needed. Regional victim service providers often provide financial assistance to victims traveling in for forensic medical exams.

As of this writing, there are SARTs in Anchorage, Bethel, Cordova, Dillingham, Fairbanks, Homer, Juneau, Ketchikan, Kodiak, Kotzebue, Nome, Mat-Su, Sitka, Soldotna, Unalaska, and Utqiagvik.

Previously in this document, we discussed the sexual assault evidence collection kits and efforts underway to test previously unsubmitted and untested kits. It is important to note that the protocols and training specific for these kits are governed under AS 18.68.020-030. Equally as important to note, is that per AS 18.68.040, a law enforcement agency, health care facility or other entity may not require a victim of a sexual assault who is 16 years of age or older to pay, directly or indirectly, the costs of the forensic examination.

2. Child Advocacy Centers (CACs)

While SART teams predominately serve adult victims of sexual assault, the Child Advocacy Centers (CACs) serve minor victims of sexual abuse and serious physical abuse by providing a multidisciplinary response which improves outcomes for victims and their families. The multidisciplinary team has representatives from many disciplines, including law enforcement, victim/family advocacy, child protection, prosecution, mental health, medical, and tribal representatives.

The CACs provide a child friendly environment in which a specially trained interviewer and specially trained medical provider interview and evaluate the child. The CACs also offer support and counseling for non-offending caregivers as well as referral for services so that the healing can begin.

As of this writing, there are CACs in Anchorage, Bethel, Copper river Basin, Dillingham, Fairbanks, Juneau, Kenai Peninsula, Kodiak, Kotzebue, Mat-Su, Nome/Bering Strait and St. Paul. Minor child victims in Utqiagvik are being transported to Fairbanks for evaluation.

Many child forensic interviewers throughout the state are now trained in the ChildFirst™ interviewing model.¹⁸⁴ ChildFirst is a nationally recognized protocol supported by current research and guided by best practice in the field of forensic interviewing. As with SART, ChildFirst uses a multidisciplinary team, ensuring best interest of the child is paramount. This protocol has been specifically recognized and approved by many appellate courts throughout the country. Since Alaska started using the Child First model, approximately 214 child protection professionals have been trained, representing state and local law enforcement, OCS, CAC staff, and criminal and civil attorneys from the Department of Law.¹⁸⁵

3. The Office of Victims' Rights

The Alaska Office of Victims' Rights (OVR) provides free legal representation statewide to crime victims, including victims of sexual offenses, throughout the criminal justice process. OVR assists victims in two main ways: 1) to preserve and protect crime victims' rights under the Alaska Constitution and statutes; and 2) to investigate, like an ombudsman, complaints by crime victims concerning criminal justice agencies such as law enforcement, prosecutors, corrections, or the courts.

Victims can contact OVR any time after the crime is reported to law enforcement. Whether the victim's case is in the investigative stage with law enforcement, the prosecution stage in the court system or in the parole or probation stage after conviction, OVR attorneys will legally advocate for victims to help protect their rights.

When representing a victim, OVR will investigate the victim's concern. During this representation, OVR may confer with law enforcement, provide referrals, confer with prosecution, file pleadings or make legal arguments and statements in court on behalf of the victim, when issues arise that have resulted or could result in a violation of the victim's rights. Examples of the rights OVR helps protect include the right to privacy; the right to due process; the right to be treated with dignity, fairness and respect; the right to make a statement in court regarding bail, continuances and

¹⁸⁴ ChildFirst Alaska, <http://childfirstalaska.org/>.

¹⁸⁵ See ChildFirst Alaska History, <http://childfirstalaska.org/leadin-list/childfirst-alaska-history/>.

sentencing; the right to confer with prosecution about the case; the right to a timely disposition of the case, and the right to restitution from the defendant.

As of this writing, OVR had the highest number of open and active cases it has ever had, at 272 (230 of which are assigned to attorneys; not all of these cases are sex offense cases). OVR reports that it has not as yet had to turn away any victim who has come to them, but it is now operating essentially at capacity and would need to make programmatic changes if it had to take on a greater caseload.

B. Victim Safety in Rural Alaska

As stated previously in this report, Alaska Natives and rural Alaskans are often disproportionately affected by sexual violence.

1. Data

The problem is particularly pronounced in Western Alaska. In 2016, the rate of sexual violence incidents per 100,000 people reported to law enforcement in Western Alaska was 106% greater than the rate in the Anchorage area.¹⁸⁶

In a study of reports to the Alaska State Troopers, the largest volume of sexual assault and abuse cases was handled by the Bethel unit—by a substantial margin (24% of cases). The next largest was the Fairbanks unit (at 16% of cases).¹⁸⁷

Many rural Alaskan communities lack a regular law enforcement presence. Troopers are not stationed in every location; if called to respond, troopers may be delayed by weather or transportation difficulties. In 2013, there was approximately one field officer for every million acres. Village Public Safety Officers (VPSOs) supplement and assist the troopers. While legislation passed to allow VPSOs to carry firearms, none are currently armed. Some villages or tribes are able to fund their own law enforcement (Village or Tribal Police Officers). As of 2011, at least 75 communities in rural Alaska completely lacked any law enforcement presence.¹⁸⁸

¹⁸⁶ Spears, *2017 Felony Level Sex Offenses*, *supra* note 3, at 4. Boroughs designated as “Western Alaska” in the Felony Level Sex Offenses report are: Aleutians East Borough, Aleutians West Census Area, Bethel Census Area, Bristol Bay Borough, Dillingham Census Area, Kodiak Island Borough, Kusilvak Census Area, Lake and Peninsula Borough, Nome Census Area, and Northwest Arctic Borough. *Id.* at 6.

¹⁸⁷ *Alaska Domestic Violence and Sexual Assault Case Processing Project*, *supra* note 36, at 6-7.

¹⁸⁸ Indian Law and Order Commission, *Reforming Justice for Alaska Natives: The Time is Now*, in *A Roadmap for Making Native America Safer*, Indian Law and Order Commission at 39 (November 2013) *available at*

In a recent study of a sample of sexual assault and abuse cases closed by the Alaska State troopers, around 67% of cases were referred for prosecution when troopers were first responders, 70% of cases were referred for prosecution when VPSOs were the first responders, and 85% of cases were referred for prosecution when Village or Tribal Police Officers (VPOs or TPOs) were the first responders. There was also an enhanced likelihood that the case would be accepted for prosecution when a VPSO, VPO, or TPO was involved.¹⁸⁹ This study shows that a local law enforcement presence, including a paraprofessional police presence, helps increase offender accountability in rural areas.

As noted previously in this report, 33% of women statewide reported experiencing sexual violence in their lifetime, while 2.9% reported experiencing sexual violence in the past year (in 2015, the year the survey was conducted).¹⁹⁰ However, these rates vary according to region¹⁹¹:

- Aleutian/Pribilof Island region: 24% reported experiencing sexual violence in their lifetime.¹⁹²
- Anchorage: 31.6% reported experiencing sexual violence in their lifetime, 3.6% reported experiencing sexual violence in the past year.
- Bristol Bay Region: 31% reported experiencing sexual violence in their lifetime, 4.4% in the past year.
- Fairbanks North Star Borough: 31.6% reported experiencing sexual violence in their lifetime, 1.3% in the past year
- Juneau: 35.3% reported experiencing sexual violence in their lifetime, 1% in the past year;
- Kenai Peninsula Borough: 30.1% reported experiencing sexual violence in their lifetime; 2.2% in the past year.
- Ketchikan Gateway Borough: 33.2% reported experiencing sexual violence in their lifetime; 4.7% in the past year.
- Kodiak Island Borough: 22.9% reported experiencing sexual violence in their lifetime; 1.1% in the past year.

https://www.aisc.ucla.edu/iloc/report/files/Chapter_2_Alaska.pdf [hereinafter *Reforming Justice for Alaska Natives*]. Most, if not all, of these communities have populations under 200.

¹⁸⁹ Brad A. Myrstol, *High Referral Rate for VPSO-Assisted Sex Assault Cases*, 34(4) Alaska Justice Forum 1 (Spring 2018).

¹⁹⁰ 2015 AVS, *supra* note 1.

¹⁹¹ Survey results for each region are all available online at *Alaska Victimization Survey*, UAA Justice Center, University of Alaska Anchorage, <https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/research/alaska-victimization-survey/>. Surveys were conducted in different years; past-year rates reflect responses for the year preceding each survey.

¹⁹² Note past-year figures for this region are not available.

- Mat-Su Borough: 33.7% reported experiencing sexual violence in their lifetime; 3% in the past year.
- Nome Census Area: 31.0% reported experiencing sexual violence in their lifetime; 5.2% in the past year.
- Sitka: 24.7% reported experiencing sexual violence in their lifetime; 2.4% in the past year.
- Yukon-Kuskokwim Delta: 25.4% reported experiencing sexual violence in their lifetime; 5.1% in the past year.

2. Testimony

Advocates who work with survivors of sexual violence in rural Alaska explain that barriers to addressing the problem of sexual violence in rural communities remain pervasive.¹⁹³ Due to the isolation and remoteness of rural communities there is a general feeling of disconnect from the criminal justice system and that justice “happens elsewhere.” In some instances, it can take months for law enforcement to build a sufficient case against the person accused of sexual assault to arrest that person. For victims residing in rural Alaska this means that the victim must coexist with the accused in the village. While there is the option for the victim to travel to a hub community and reside at the local victim service provider program, this is often, for many valid reasons, not the option the victim chooses. Some victims may seek the additional possible remedies of a protective order. However in rural Alaska, there may not be a law enforcement presence to immediately enforce the order. While sexual assault and sexual abuse of minor cases are of the highest priority for law enforcement, delays due to weather and geography do occur in rural Alaska. These barriers all warrant further study regarding ways to enhance victim safety and healing in rural Alaska.

This dynamic of the suspect and victim living in the same small community can lead to unsafe outcomes for victims and for public safety generally. Victims and victim advocates report that victims feel as if there is no follow-up to their reports of sexual violence, and wonder what happened to the cases against the person they reported. Some victims report feeling as though they are the ones being punished for reporting, and/or that no one has believed their story. This discourages future reporting and contributes to decreased trust in law enforcement which, in turn, contributes to the State’s inability to hold all perpetrators of sexual violence accountable for the violence they have perpetrated.

¹⁹³ Unless otherwise noted, the information in this section was provided by survivors or advocates who work with survivors of sexual violence in rural Alaska, or by DPS.

Even for towns and villages with a law enforcement presence, it may be difficult to recruit and retain officers of sufficient quality. As of this writing, the Alaska State Troopers have 301 authorized positions including the Division Director (Colonel). Of these 301 authorized positions there are 32 vacancies as of December 1, 2018. AST reports that its recruitment unit has been working to recruit troopers. A recent one-range increase for all commissioned State Troopers was approved and implemented in an effort to aid in recruitment and retention efforts.

In a stated effort to better serve residents of rural Alaska, AST has opened up trooper posts in rural communities such as Hooper Bay, Selawik and Togiak. In FY 18, 44 out of 68 VPSO positions were filled. Troopers and VPSOs receive the same training on sexual assault and sexual abuse of a minor offenses at the training academy in Sitka. Though DPS reports that the academy provides over 24 hours of instruction on domestic violence investigations and 16 hours of instruction on sexual assault and sexual abuse of minor investigations, and that these respective hours of instruction exceed the statutorily required amount, victims and victim advocates in rural Alaska feel as though VPSOs are not adequately trained to handle sexual assault cases.

Qualified village or tribal police officers (TPOs or VPOs) are also hard to recruit, since they are asked to perform a difficult job in a close-knit community.¹⁹⁴ Though there are set standards for VPO recruiting that exist in regulation,¹⁹⁵ in practice, people with criminal records have been hired as

Victim Services: Issues in Rural Alaska

- Lack of law enforcement
- Lack of local facilities for a forensic exam

VPOs—one such VPO admitted to raping a 16-year-old girl in 2015; the village settled with the girl's family in a lawsuit claiming he also caused her death.¹⁹⁶ Situations like these can lead to community mistrust of law enforcement officers, which further discourages reporting.¹⁹⁷ Recently, the Alaska Police

¹⁹⁴ Teresa Cotsirilos, *In Rural Communities, Village Police Officers Face Impossible Job*, Alaska Public Media (September 21, 2018), available at <http://www.alaskapublic.org/2018/09/21/ak-in-rural-communities-village-police-officers-face-impossible-job/>.

¹⁹⁵ See 13 AAC 89.010 *et seq.*

¹⁹⁶ Kyle Hopkins, *From Criminal to Cop, and Back Again, in Alaska's Most Vulnerable Villages*, Anchorage Daily News (June 8, 2018), available at <https://www.adn.com/features/alaska-news/crime-courts/2018/06/08/from-criminal-to-cop-and-back-again-in-alaskas-most-vulnerable-villages/>.

¹⁹⁷ See also Kyle Hopkins, *911 Dispatcher: I Was Raped and Nome Police Colleagues Ignored the Case*, Anchorage Daily News (September 3, 2018), available at <https://www.adn.com/alaska-news/crime-courts/2018/09/03/911-dispatcher-i-was-raped-and-nome-police-colleagues-ignored-the-case/>.

Standards Council (APSC) board tasked the APSC staff to undertake a review and revision of the standards specific to VPOs. In 2018, the legislature enacted HB 31, requiring VPOs to receive 12 hours of instruction related to sex crime investigation when they attend a VPO academy. Currently, there are no state standards for TPOs specific to employment, certification or training.

A rural victim who wants to report a sexual assault and have the evidence collected in a SART (Sexual Assault Response Team) exam must fly to a hub community. Typically the victim will have to approach the local community health aide, who will then involve law enforcement, who in turn will arrange for a flight to the hub community. The process can take several hours and in some cases, the victim may need to stay in the hub community overnight. (Under current training standards, community health aides cannot perform forensic exams for sexual assault cases.)

Advocates report that it would be better for victims to have in-village exams available. They note that a new program called SAFESTAR, funded by the Violence Against Women Act and designed to be implemented by tribes, could help address this need. SAFESTAR is facilitated by The Southwest Center For Law And Policy, which trains qualified indigenous women to deliver emergency first aid to sexual assault survivors and to collect some forensic evidence.¹⁹⁸ It is not clear, however, whether the evidence collected under the SAFESTAR program will be accepted in court. The community of St. Paul has reportedly taken on the SAFESTAR model and hopes to use an Alaska-specific version. The state crime lab has not yet received any kits from St. Paul using this model.

In addition to looking further into SAFESTAR, the state could explore the option of using telemedicine or a traveling forensic examiner, and policymakers should also thoroughly evaluate and understand the current structure and role of the Community Health Aides (CHAs). CHAs have some training (1.5 hours) on evaluating sex assault victims including performing an external genital exam, but are not authorized to conduct a full pelvic exam or collect specimens for evidence.¹⁹⁹

Clearly, victims and survivors of sexual assault have many barriers to safety and healing. These barriers are often compounded when living in rural Alaska. An environment or community that does not support victims leaves victims feeling as though they are the ones being punished for reporting, and/or that no one has believed their story. Not only does this discourage future reporting and allow

¹⁹⁸ See SAFESTAR, <http://www.safestar.net/> and *SAFESTAR: A Unique Model of Healthcare for American Indian/Alaska Native Communities*, National Indian Country Clearinghouse on Sexual Assault, <http://www.niccsa.org/safestar/>.

¹⁹⁹ For more information on the Community Health Aide Program, including the Community Health Aide Manual, visit <http://www.akchap.org/html/home-page.html>.

perpetrators of sexual violence to avoid accountability and potentially reoffend, it also increases the level of trauma a victim experiences.

C. Alaska Native Perspectives²⁰⁰

Statewide, 54% of victims in reported sex offense cases in 2016 were Alaska Native.²⁰¹ (Alaska Natives make up approximately 15% of Alaska's population.²⁰²) Nationally, American Indian/Alaska Natives age 12 and older are 2.5 times more likely than average to experience sexual assault.²⁰³ As part of its report on public safety issues facing Native Americans nationwide, Indian Law and Order Commission visited Alaska in 2012 and observed that the problem of sexual assault among Alaska Natives was shockingly pervasive:

On average, in 2003-2004 an Alaska Native female became a victim of reported sexual assault or of child sexual abuse every 29.8 hours, as compared to once every 46.6 hours for non-Native females. Victimization rates, which take account of underlying population proportions, are even more dissimilar: the rate of sexual violence victimization among Alaska Native women was at least seven times the non-Native rate.²⁰⁴

In Galena, one citizen told the Indian Law and Order Commission, "Every woman you've met today has been raped."²⁰⁵

Many factors have likely contributed to the epidemic of sexual violence among Alaska Natives. Victim advocates mentioned the legacy of historical and intergenerational trauma wrought by the boarding schools set up for Alaska Native children, abuse by clergy members, and the societal pressures to maintain silence about sexual violence as factors that may all be at the root of the

²⁰⁰ Unless otherwise noted, the information in this section was provided by advocates who work with Alaska Native survivors of sexual violence in rural Alaska.

²⁰¹ Christen L. Spears, *2016 Felony Level Sex Offenses: Crime in Alaska Supplemental Report*, Department of Public Safety (October 26, 2017), 6.

²⁰² Department of Labor and Workforce Development's Alaska Population Estimates, *available at* <http://live.laborstats.alaska.gov/pop/>

²⁰³ Steven W. Perry, *American Indians And Crime: A BJS Statistical Profile, 1992-2002*, Bureau of Justice Statistics (December 1, 2004), *available at* <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=386>.

²⁰⁴ *Reforming Justice for Alaska Natives*, *supra* note 188 at 41.

²⁰⁵ *Id.*, at 34.

problem. These factors are compounded by the lack of law enforcement in rural villages and the consequent lack of accountability for offenders,

Alaska has only begun to examine the impact of boarding schools for Alaska Native children. These schools began as missionary schools or orphanages run by religious organizations or run by the Bureau of Indian Affairs (BIA) in the early 1900's and continued to be run by the state of Alaska through the 1960s. The practice of requiring children to attend school outside their villages ended in 1970s with the *Molly Hootch* case, and the resulting agreement on the part of the state to create high schools in any village with 10 or more children. Until that time, families in rural areas were forced to send their children to the boarding schools which were hundreds of miles away; often to the Wrangell Institute in Wrangell and the Mt. Edgecumbe Boarding School in Sitka.

At these schools, children were made to sever their connection to their culture and languages. Many were physically and sexually abused. Some students who were sexually abused began abusing other children. Decades later, former students at these schools report difficulty with connecting with their culture and their family, and report problems of drug and alcohol abuse and suicide. Parents living with trauma from sexual abuse have children who are more likely to experience sexual abuse themselves, and the culture of silence that parents create around their history of sexual abuse can serve to perpetuate cycles of abuse as children keep silent about their experiences. As parents use various coping mechanisms to deal with their trauma, they may foster environments that render their children more vulnerable.²⁰⁶

²⁰⁶ See Diane Hirshberg & Suzanne Sharp, *Thirty Years Later: The Long-Term Effect of Boarding Schools on Alaska Natives and Their Communities*, Institute of Social and Economic Research, University of Alaska Anchorage (September 2005); Cheryl Easley, *Boarding School: Historical Trauma Among Alaska's Native People*, National Resource Center for American Indian, Alaska Native, and Native Hawaiian Elders (October 2005); Rebecca Hersher, *The Conflicting Educations of Sam Schimmel*, National Public Radio (May 30, 2018), available at <https://www.npr.org/sections/goatsandsoda/2018/05/30/610384132/the-conflicting-educations-of-sam-schimmel?>; Patrick Yack, *"The Way Home"- Healing from Historical Trauma*, Alaska Public Media (September 23, 2016), available at <https://www.alaskapublic.org/2016/02/23/the-way-home%C2%AD-healing-from-historical-trauma/>; Diane Payne, *Pathway to Hope: An Indigenous Approach to Healing Child Sexual Abuse*, International Journal of Circumpolar Health (August 2013); Maria Testa, Joseph H. Hoffman & Jennifer A. Livingston, *Intergenerational Transmission of Sexual Victimization Vulnerability as Mediated via Parenting*, 35(5) The International Journal of Child Abuse and Neglect 363-371; Laurelle L. Myhra, *"It Runs In The Family": Intergenerational Transmission Of Historical Trauma Among Urban American Indians And Alaska Native In Culturally Specific Sobriety Maintenance Programs*, 18(2) American Indian and Alaska Native Mental Health Research 17, available at [http://www.ucdenver.edu/academics/colleges/PublicHealth/research/centers/CAIANH/journal/Documents/Volume%2018/18\(2\)_Myhra_It_Runs_in_the_Family_17-40.pdf](http://www.ucdenver.edu/academics/colleges/PublicHealth/research/centers/CAIANH/journal/Documents/Volume%2018/18(2)_Myhra_It_Runs_in_the_Family_17-40.pdf); Lisa Demer, *Presbyterian Church Apologizes at AFN for Boarding School Abuses*, Anchorage Daily News (October 22, 2016), available at <https://www.adn.com/alaska-news/2016/10/22/presbyterian-church-apologizes-for-boarding-school-abuses-as-afn-wraps-up-its-convention/>.

Clergy members and volunteers of the Catholic and Presbyterian churches also preyed upon Alaska Native children in rural Alaskan villages.²⁰⁷ Oftentimes this abuse went on for years, affecting hundreds of children. Those affected often kept silent for years, feeling they were alone and that no one would believe them, until others came forward. This culture of silence allowed the abuse to perpetuate.²⁰⁸

The culture of silence also stems from the nature of living in a village where everyone knows one another. There are social pressures not to reveal sexual assault or abuse because it may be perceived as an embarrassment to the family; those who commit sexual assault or abuse may also hold a position of respect or perform a vital function to the community, which increases pressure not to accuse them of abuse.²⁰⁹

At the 2013 Alaska Federation of Natives (AFN) conference, the teenaged members of the Tanana 4-H Club stood up to speak out about the sexual abuse, violence, and alcoholism that plagued their village. Their presentation drew statewide and national attention, and the group was asked to repeat their presentation all over the state, indicating that many are interested in breaking the traditional silence around these issues.²¹⁰ The 4-H club has now evolved into an organization called My Grandma's House (Setsoo Yeh) which helps children and teens tell their stories of abuse, including sexual abuse. Despite the attention that the 4-H club received, children, teens, and adult mentors involved with My Grandma's House report that the culture has been slow to change, that adults in villages are still reluctant to hear and believe children who come forward with reports of abuse, and that much more needs to be done to combat child sexual abuse in particular.

Advocates report that the culture of silence is slowly fading, as more organizations develop to advocate for victims and educate their communities. Alaska Native communities across the state are

²⁰⁷ Kyle Hopkins, *Jesuits Identify 33 Alaska Clergy and Volunteers 'Credibly Accused' of Sexually Abusing Children*, Anchorage Daily News (December 26, 2018), available at <https://www.adn.com/alaska-news/crime-courts/2018/12/26/jesuits-identify-33-alaska-clergy-and-volunteers-credibly-accused-of-sexually-abusing-children/>; Demer, *supra* note 206.

²⁰⁸ Frontline, *The Silence*, PBS (April 19, 2011), available at <https://www.pbs.org/wgbh/pages/frontline/the-silence/etc/introduction.html>.

²⁰⁹ Sara Bernard, *Rape Culture in the Alaskan Wilderness*, The Atlantic (September 11, 2014), available at <https://www.theatlantic.com/health/archive/2014/09/rape-culture-in-the-alaskan-wilderness/379976/>.

²¹⁰ Lisa Demer, *Tanana 4-H Girls Tell of Dysfunction -- And Hope for Better Way*, Anchorage Daily News (October 21, 2014), available at <https://www.adn.com/afn-coverage/article/tanana-4-h-girls-tell-dysfunction-and-hope-better-way/2014/10/22/> and Bernard, *supra* note 209.

reclaiming their cultural heritage by engaging in traditional practices, talking circles, and workshops as a way to heal the legacy of historical and collective trauma.²¹¹

D. A Need for a New Approach

Regardless of location, advocates in Alaska see the need to build on trauma-informed approaches to investigating and prosecuting sexual assault crimes. As more becomes known about the brain and trauma, there is an increasingly urgent need to change how the criminal justice system engages victims of sexual violence to account for how the brain processes trauma. Current approaches can re-traumatize victims by making them relive their assaults, by putting personal details of their lives and bodies on display in a public courtroom, and by requiring victims to face the person who assaulted them in court.²¹² However, addressing these challenges will be difficult based on clearly established constitutional rights that are afforded to defendants charged with criminal offenses.

Victim services such as those described in section A above typically are not set up to work with the long-term nature of the trauma created by sexual violence; rather, these services tend to be short-term and crisis-driven. There is a need for a wraparound continuum of care for sexual assault victims that can ensure safe housing, counseling services, and on-going support. Recovery from the trauma of sexual violence can take time, and it is often a matter of years before a case will go to trial, if it ever does.

While funds from the Violent Crimes Compensation Board are available in Alaska for victims of sexual assault, some victims experience barriers to accessing these funds. Advocates report that one barrier is the requirement of a police report. Many victims do not wish to involve the criminal justice system but still need financial assistance to heal. Another barrier is requiring meaningful participation with the investigations. Often victims are fearful of the person who abused or attacked them, or they want to protect their identity in the community. Participating with law enforcement or the prosecution is required by the VCCB to receive funds, but this participation does not allow victims to maintain their anonymity. A third barrier is that there is a two-year request window for assistance. It oftentimes takes more than two years for victims to realize they need assistance to overcome the trauma created by sexual violence.

²¹¹ Yack, *supra* note 206,

²¹² Defendants have a constitutional right to require witnesses to testify.

There are statewide efforts to account for the trauma experienced by victims of sexual violence. For example, between 2016 and 2018, AST implemented regional trauma informed training sessions for law enforcement officers investigating sexual assault cases. In addition to providing the training, AST has adapted academy-level curriculum for both domestic violence and sexual assault investigations to reflect the trauma informed approach to include discussions regarding the neurobiology of trauma and impacts on memory.

The Division of Behavioral Health (DBH) has established a state-wide Provider Agreement for individualized trauma-informed behavioral health services. The intent of this Provider Agreement is to encourage partnerships between behavioral health providers and Council on Domestic Violence and Sexual Assault (CDVSA) funded programs for the purpose of providing behavioral health clinic services to victims of domestic violence, sexual assault, and other forms of interpersonal violence.

In addition to the Provider Agreement, DBH has awarded grants to Anchorage Community Mental Health Services (ACMHS) and Petersburg Mental Health Services (PMHS). The intent of these grants are to develop active partnerships and coordinated systems of care with shelters and CDVSA-funded programs for the purpose of providing trauma-informed behavioral health services to victims of domestic violence, sexual assault, and other forms of interpersonal violence. The Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), in collaboration with Alaska Native Tribal Health Consortium and three host communities, currently implements a three-year project designed to enhance and co-locate services for individuals who experience violence and substance use issues. This project is being rolled out with victim service organizations and behavioral health organizations within three communities: Nome, Ketchikan, and Kodiak. The project has an ongoing evaluation component and relies on partner engagement to define what is and is not working.

Victim Services: Room for Improvement

Needs identified include:

- Victim-centered response
- Comprehensive, trauma-informed, wraparound care

Despite the accomplishments and progress outlined above, accessibility to trauma informed care or specific therapeutic interventions in Alaska remains a significant hurdle for many victims and

survivors. Nor do these accomplishments change the fundamentally traumatic nature of participating in the criminal justice system as a survivor of sexual violence.

A victim's decision to report is influenced by how a victim is treated, and what options are available for her/his safety and well-being. If the criminal justice system and state social services were able to adopt a more victim-centered, trauma-informed response to sexual violence, more victims might report crimes of sexual violence. Offenders who are not reported, caught, and convicted may continue to commit crimes of sexual violence. Increased reporting and increased victim participation in the criminal justice system will allow a greater percentage of offenders to be apprehended.

Furthermore, helping victims to address the trauma caused by sexual violence is also likely to help prevent future crime, whether sex offenses or otherwise. People who experience sexual violence as children are more likely to become victims of sexual violence as adults, perhaps because the lasting emotional and socioeconomic impact of the trauma renders the victim more vulnerable.²¹³ Some male victims of childhood sexual abuse may fall into an abusive cycle and commit crimes of sexual violence later in life.²¹⁴ By not helping the victim to address this trauma, Alaska runs the risk of perpetuating cycles of sexual violence. For these reasons, the Alaska Criminal Justice Commission has asked the legislature to increase funding for victims services, particularly for child victims, in its 2018 annual report.²¹⁵

E. Prevention programs

Apprehension and prosecution of sex offenders is only one component of reducing the high rates of sexual violence in Alaska. An even more effective (though longer-term) approach may be to focus on programs that will help prevent future sexual violence from occurring. Prevention programming not only reduces the rate of sexual violence, it is also cost-effective. A recent California study found that "prevention programs would lead to substantial cost savings: every prevented rape of an adult could save up to \$163,800, and every prevented rape or sexual assault of a child could save

²¹³ See M. C. Black et al., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (2011), 26, available at https://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf.

²¹⁴ See Mallory Plummer & Annie Cossins, *The Cycle of Abuse: When Victims Become Offenders*. 19(3) Trauma, Violence, & Abuse 286-304 (2018), available at <https://journals.sagepub.com/doi/abs/10.1177/1524838016659487>.

²¹⁵ *Alaska Criminal Justice Commission 2018 Annual Report*, available at <http://www.ajc.state.ak.us/acjc/docs/ar/2018.pdf>.

up to \$277,700.”²¹⁶ We also know that the estimated lifetime economic burden for victims of sexual assault and intimate partner violence in the state of Alaska is an estimated \$11 billion.²¹⁷ Given these projections, it is clear that investing in prevention programming is a cost-saver for the state and its residents in the long run.

The State of Alaska, through a federal grant to the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), has had a statewide multi-stakeholder steering committee, including members from the the Council on Domestic Violence and Sexual Assault (CDVSA), to guide prevention activities since 2008. The Pathways to Prevention steering committee continues to meet annually and attempts to coordinate strategies, provide state-wide technical assistance, and inform state-wide strategic plans. ANDVSA has maintained this federal funding for over ten years and is currently implementing another evaluation-based project that seeks to transform social relationships and inform institutional policies that prevent violence. ANDVSA expects that greater collaboration amongst all stakeholders in prevention efforts will result in a greater impact of all programming and further the impact of federal and state dollars.

CDVSA currently receives State of Alaska reinvestment funds for prevention programming, much of which has been allocated in grants to community-based organizations in order to nurture community-coordinated coalitions to address violence prevention and fund discrete evidence-based programs.

There are many promising programs being implemented that are community-driven and have shown to be effective and sustainable, specifically the COMPASS program and the Boys Run (I toowu klatseen) curriculum being implemented in the southeast region. These programs are designed to address some of the root causes of sexual violence, identify and respond to risk factors for sexual victimization, and help children and young people learn about sexual victimization and build resiliency. The programs are meant to ensure that children have full access to institutional resources such as comprehensive abuse prevention curriculum in schools. Over the past two fiscal years, thanks in part to justice reinvestment funding, the state has doubled its investment in prevention programming.

²¹⁶ Ted R. Miller et al., *The Cost and Consequences of Sexual Violence in California*, California Coalition Against Sexual Assault (2018), available at http://www.calcasa.org/wp-content/uploads/2018/02/CALCASA_CCoSV_FINALSpreads_2018.pdf.

²¹⁷ Cora Peterson et al., *Lifetime Economic Burden of Intimate Partner Violence Among U.S. Adults*, 55(4) American Journal of Preventative Medicine 433-444 (2018), available at https://vawnet.org/sites/default/files/assets/files/2018-10/NRCDV_LifetimeEconomicBurdenIPV-StateData-Sept2018.pdf.

Programs currently funded by the CDVSA and implemented by community partners include:

- The COMPASS project – COMPASS promotes male and youth leadership through mentorship; uses a guide to help adult male mentors create a safe atmosphere for men and boys to learn about and practice healthy lifestyles, healthy identities, and safe and violence-free communities.
- Stand Up Speak Up – A media and engagement campaign to teach youth how to more effectively speak up and encourage other youth to stand up to end violence.
- Talk Now Talk Often – A parent engagement project for parents of teenagers; provides resources for parents to speak with their teens about healthy dating relationships.
- Coaching Boys into Men – Engages athletic coaches of high school male athletic teams to help shape the attitudes and behaviors of young male athletes. The program equips coaches to talk with their athletes about respect for women and girls and that violence does not equal strength.
- The Green Dot – A nationally recognized bystander intervention program with the goal of preparing organizations or communities to take steps to reduce power-based personal violence including sexual violence and domestic violence. The “green dot” refers to any behavior, choice, word or attitude that promotes safety for everyone and communicates intolerance for violence.
- Girls on the Run – An after school program for girls in the 3rd through 5th grade that encourages positive emotional, social, mental and physical development, healthy adult peer and adult role modeling, and healthy relationships.
- LeadOn! – Leadon! is a nine-month comprehensive state-wide violence prevention approach for youth aged 13 – 18, and allied adults in their home communities. LeadOn starts with a leadership conference where participations build skills in order to return home and implement community projects on healthy relationships and respect. Organized by ANDVSA, LeadOn just celebrated its 10th anniversary and this year, resulted in 15 communities receiving small grants to implement youth-led prevention activities.

In addition to the above programs from the CDVSA, the Department of Health and Social Services and Department of Education and Early Development operate the Fourth R program for middle and high school-age children.²¹⁸

²¹⁸ *Fourth R for Healthy Relationships*, Division of Public Health, <http://dhss.alaska.gov/dph/wcfh/Pages/adolescent/Fourth-R.aspx>.

Other promising violence prevention programs organized by educational or nonprofit groups include:

- Flip the Script – A violence prevention program for college-age women which has been shown to reduce a woman’s risk of being sexually assaulted.²¹⁹
- Safe Dates – A teen dating violence prevention and intervention program.²²⁰
- No Means No – A global rape prevention program that operate similarly to Flip the Script which has reduced the incidence of rape among participants and enabled participants to intervene to stop the rape of others.²²¹
- Darkness to Light/Stewards of Children – A program to teach adults to take steps to reduce a child’s risk of being sexually abused.²²²
- Boys Run – I toowu klatseen – An Alaska-based after-school program for boys in 3rd – 5th grades that is grounded in Tlingit and Haida values and encourages positive emotional, social, mental and physical development, and healthy adult role modeling.

²¹⁹ See Tina Rosenberg, *Equipping Women to Stop Campus Rape*, New York Times (May 30, 2018), available at <https://www.nytimes.com/2018/05/30/opinion/women-stop-campus-rape.html>

²²⁰ *Safe Dates*, Violence Prevention Works, http://www.violencepreventionworks.org/public/safe_dates.page; see also Vangie Foshee et al., *Assessing the Long-Term Effects of the Safe Dates Program and a Booster in Preventing and Reducing Adolescent Dating Violence Victimization and Perpetration*, 94(4) American Journal of Public Health 619–624 (April 2004), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448308/>.

²²¹ *No Means No Worldwide*, <https://www.nomeansnoworldwide.org/>; see also Tina Rosenberg, *A Worldwide Teaching Program to Stop Rape*, New York Times (June 12, 2018), available at <https://www.nytimes.com/2018/06/12/opinion/a-worldwide-teaching-program-to-stop-rape.html>.

²²² *Stewards of Children*, Darkness to Light, <https://www.d2l.org/education/stewards-of-children/>.

VI. Substance Abuse and Sexual Violence

Alcohol and drug use may play a role in some cases of sexual violence. A report by the McDowell Group estimated that in 2014, 31% of reported rape and attempted rape cases and 19% of other reported sex offenses were “attributable to alcohol abuse.”²²³ In the same year, 47% of reported homicide cases and 23% of motor vehicle theft cases were attributable to alcohol abuse.²²⁴ Of all reported cases that year, 25% were alcohol-related.²²⁵

Another report by the McDowell group found that far fewer cases were “attributable to drug abuse”: 4% of reported rape and attempted rape cases involved drug abuse in 2014, compared with 25% of all reported cases.²²⁶

Similarly, a study of reports of sex offenses to Alaska State Troopers from 2008 to 2011 found that 34.4% of suspects were under the influence at the time of the assault, and 4.1% of suspects were under the influence of drugs.²²⁷ The study also found that 21.0% of suspects used alcohol with the victim prior to the assault, and 2.4% of suspects used drugs with the victim at the time of the assault.²²⁸ In total, 39.3% of the cases involved any alcohol or drug use by victims or suspects.²²⁹

Alcohol or drug use does not necessarily correspond to intoxication, however. The study of sex offenses reported to the Alaska State Troopers found that 63.5% of victims were sober at the time of the assault, 20.6% were intoxicated by alcohol, 1.3% were intoxicated by drugs, 1.7% were intoxicated by both alcohol and drugs, and in 12.9% of the cases, the victim’s sobriety status was missing or unknown. Additionally, 7.6% of victims in this study were unconscious due to intoxication at the time of the assault.²³⁰

There is some evidence to suggest that the use of substances in the context of sexual violence is decreasing. The Alaska Victimization Survey polled adult women in Alaska in 2010 and 2015 about

²²³ The McDowell Group, *The Economic Costs of Alcohol Abuse in Alaska, 2016 Update*, The McDowell Group (March 2017), 52.

²²⁴ *Id.*

²²⁵ *Id.* at 51.

²²⁶ The McDowell Group, *The Economic Costs of Drug Abuse in Alaska, 2016 Update*, The McDowell Group, (March 2017), 42-43.

²²⁷ *Alaska Domestic Violence and Sexual Assault Case Processing Project*, *supra* note 36, at 34.

²²⁸ *Id.*

²²⁹ *Id.* at 36.

²³⁰ *Id.*

their past-year and lifetime experiences with sexual violence.²³¹ To ascertain whether survey respondents had experienced alcohol- or drug-related sexual violence, the survey asked: "When you were alcohol or drug intoxicated and unable to consent, has anyone:

- Had vaginal sex with you?
- Made you receive anal sex?
- Made you perform oral sex?
- Made you receive oral sex?

The survey found a 16% decrease in lifetime alcohol- or drug-involved sexual violence between 2010 and 2015, compared to an 11% decrease in all lifetime sexual violence. The Survey also found a 44% decrease in past-year alcohol- or drug-involved sexual violence between 2010 and 2015, compared to a 33% decrease in all past-year sexual violence.²³² Further surveys are needed to determine whether these trends have continued.

²³¹ 2015 AVS, *supra* note 1. As noted elsewhere in this report, the Victimization Survey did not reach non-English speakers, women without a phone, men, or children.

²³² *Id.*

VII. Conclusion: Future Tasks and Opportunities

Alaska has a great deal of work to do to address its epidemic of sexual violence. Alaska's rates of sexual abuse and assault remain the highest in the nation, and the rates are particularly high in Western Alaska and disproportionately affect Alaska Native women and girls. Rethinking Alaska's approach to victims' services, encouraging open dialogue about the problem of sexual assault, increasing reporting rates, and continuing to invest in prevention programming may help move the needle in the future.

In this report, the Commission has identified areas in need of further study (using Alaska-specific data):

- Reasons why victims may not report victimization, and what may be done to help victims feel more comfortable reporting.
- A large-scale, statewide case processing study beginning with the report of a sex offense through to the disposition of that report.
- A longitudinal study of sex offender recidivism rates, particularly looking at recidivism rates once offenders are no longer supervised.
- The processing of sex offense cases involving defendants with developmental and intellectual disabilities, and the effect of registry requirements on such individuals.
- Ways to address the long-term needs of victims and the development of a more trauma-informed, victim-centered approach to addressing sexual violence.

The Alaska Criminal Justice Commission will continue to look at issues of sexual violence. Future topics of discussion include loopholes in the sex offense statutes including the categorization of certain offenses as sex offenses and sex trafficking laws.

The Commission will also be hosting victim roundtable discussions in various locations around the state to generate further ideas on how to better address the needs of victims.

Appendix A: Methodology

This report is a product of research and data gathered by Alaska Criminal Justice Commission staff and input from Commissioners, practitioners, and other stakeholders. Noting that AS 44.19.645(c)(4) requires the Commission to report the legislature on sex offenses,²³³ the Commission convened a workgroup to focus on sex offenses and related issues. The Sex Offenses Workgroup has largely been focused on drafting this report, having met 14 times starting in December 2016. The workgroup has been chaired by former Commissioner of Corrections Dean Williams, former Deputy Commissioner of Corrections Karen Cann, and Brenda Stanfill. The following current and former members of the Commission have participated in workgroup meetings:

- Chief Justice Joel Bolger,
- Justice Alex Bryner, Ret.
- Former Department of Public Safety Commissioner Walt Monegan,
- Department of Public Safety Commissioner Amanda Price
- Greg Razo, Alaska Native Justice Center appointee for the Commission,
- Brenda Stanfill, victim advocate for the Commission and director of the Interior Alaska Center for Non-Violent Living,
- Quinlan Steiner, Public Defender,
- Judge Trevor Stephens
- Former Department Of Corrections Commissioner Dean Williams

Additionally, the following practitioners, stakeholders, and members of the public have participated in workgroup meetings:

Eileen Arnold, Tundra Women's Coalition; Brian Barlow, Department of Public Safety; Laura Brooks, Department of Corrections; Chanta Bullock, Women Against Registry; Terra Burns, Community United for Safety and Protection; Diane Casto, Council on Domestic Violence and Sexual Assault; Shannon Cross-Azbill, Department of Juvenile Justice; Maxine Doogan, Community United for Safety and Protection; Cynthia Erickson, My Grandma's House (Setsoo Yeh); Rose Foley, Legislative Aide to

²³³ AS 44.19.645(c)(4) reads: "The commission shall appoint a working group to review and analyze sexual offense statutes and report to the legislature if there are circumstances under which victims' rights, public safety, and the rehabilitation of offenders are better served by changing existing laws; the working group shall consult with the office of victims' rights in developing the report; the commission shall deliver the report to the senate secretary and the chief clerk of the house of representatives and notify the legislature that the report is available; the commission may include in the working group people representing a variety of viewpoints who are not members of the commission."

Rep. John Lincoln; Crystal Godby, Community United for Safety and Protection; Karen Gonne-Harrell, Standing Together Against Rape; Jenna Gruenstein, Department of Law; Alison Hanzawa, Department of Public Safety; Grace Harrington, Partners for Progress; Vicky Henry, Women Against Registry; Laura Hill, Standing Together Against Rape; Kelly Howell, Department of Public Safety; Ingrid Johnson, University of Alaska Anchorage Justice Center; Aliza Kazmi, Alaska Network on Domestic Violence and Sexual Assault; Lizzie Kubitz, Legislative Aide to Rep. Matt Claman; Amory LeLake, Legislative Aide to Rep. Bryce Edgmon; Renee McFarland, Public Defender Agency; Natasha McClanahan, Department of Corrections and Alaska Network on Domestic Violence and Sexual Assault; Doug Miller, attorney; Suki Miller, Governor's Office; Paul Miovas, Department of Law; Jenelle Moore, Department of Corrections; Chim Morris, Tundra Women's Coalition; Brad Myrstol, University of Alaska Anchorage Justice Center; Amber Nickerson, Community United for Safety and Protection; Carol Nordin, Women Against Registry; Leonard Olrun, Alaska Nations Reentry Group; Keely Olson, Standing Together Against Rape; Tara Rich, American Civil Liberties Union of Alaska; Laura Russell, Department of Health and Social Services; Jordan Shilling, Legislative Aide to Sen. John Coghill; John Skidmore, Department of Law; Marlin Sookiayak, Alaska Nations Reentry Group; Triada Stampas, American Civil Liberties Union of Alaska; Emily Starr, Standing Together Against Rape; Clare Sullivan, Department of Corrections; Anna Taylor, Alaska Institute for Justice; Katie TePas, Department of Public Safety; Eddie Tocktoo, Alaska Nations Reentry Group; Lei Tupou, Department of Corrections; Melody Vidmar, American Civil Liberties Union of Alaska; Ed Webster, Department of Corrections; Taylor Winston, Office of Victims' Rights.

Staff members who worked on this report were Brian Brossmer, Staci Corey, Susanne DiPietro, Susie Dosik, and Barbara Dunham. Information in this report is from data provided directly to the Commission; research as cited, and input from the practitioners and stakeholders listed above. For additional information, contact Barbara Dunham, project attorney for the Alaska Criminal Justice Commission, at bdunham@ajc.state.ak.us or 907-279-2526 x18.

Appendix B: Alaska Victimization Survey

This appendix provides more information on the Alaska Victimization Survey. The Alaska Victimization Survey is the basis for the information provided on pages 6-7, above. The survey was implemented by the Council on Domestic Violence and Sexual Assault (CDVSA) and by the University of Alaska Anchorage Justice Center (UAA Justice Center). The survey was conducted statewide in 2010 and 2015. Regional surveys were conducted between 2011 and 2014.

The survey reached a sample of Alaskan women that represented the population as a whole. By necessity, the survey did not include people who do not have a phone. It also excluded women who don't speak English, men and children under 18. The results were weighted for selection, non-responsiveness, and geographical coverage.

The questions pertained both to the respondents' experiences in the past year and in their lifetime. The questions avoided using legal definitions of offenses and instead focused on the behavior to which the respondents were subjected. For example, respondents were asked:

- When you were alcohol or drug intoxicated and unable to consent, has anyone...
 - o Had vaginal sex with you?
 - o Made you receive anal sex?
 - o Made you perform oral sex?
 - o Made you receive oral sex?
- Has anyone used physical force or threats to physically harm you to...
 - o Make you have vaginal sex?
 - o Make you receive anal sex?
 - o Make you perform oral sex?
 - o Make you receive oral sex?
 - o Put their fingers or an object in your vagina or anus?
 - o Try to have vaginal, oral, or anal sex with you?

Because the statewide survey was conducted twice (in 2010 and 2015), researchers were able to compare the results from those two surveys. The results showed that past-year sexual violence decreased by 33% from 2010 to 2015, while lifetime sexual violence decreased by 11% between 2010 and 2015. The term "sexual violence" here refers to any "yes" answer to the questions above.

There are some limitations to these results. As noted above, the survey excluded women who did not have a phone, non-English speakers, men, and children under 18. The survey also relied on truthful responses. Even though the respondents were anonymous, the stigma of sexual violence and a natural resistance to being labelled a “victim” may have discouraged women from reporting the full extent of their experiences. Like the rest of the data contained in this report, the Alaska Victimization Survey does not provide an exact count of sex offenses that occur in Alaska. It does, however, provide a clear picture of the scope of the problem of sexual offending.

For more information on the Alaska Victimization Survey, consult the following:

- 2015 survey main page:
 - o <https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/research/alaska-victimization-survey/alaska.cshtml>
- Summary of estimates in the 2015 survey:
 - o <https://scholarworks.alaska.edu/bitstream/handle/11122/8103/avs-alaska-statewide-2015.summary.1103.051a.pdf>
- Powerpoint explaining the 2015 survey in detail:
 - o <https://scholarworks.alaska.edu/bitstream/handle/11122/8104/avs-alaska-statewide-2015.handout.1103.051b.pdf>

Appendix C: Additional Data

Case Resolution Data: Comparing 2017 to 1999.

The case resolution data from 2017, found in pages 20-22 above, may also be compared to similar data from a felony processing study conducted by the Alaska Judicial Council that included sex offense cases filed in 1999.²³⁴ The following bullet points highlight the major differences between the two years studied:

- First-degree sexual abuse of a minor cases:
 - o 12% of cases resulted in an acquittal or dismissal in 1999; 5% of cases resulted in an acquittal or dismissal in 2017.
 - o Just over 20% of cases resolved with a first-degree sexual abuse of a minor conviction in both years.
 - o 19% of cases resolved with an attempted first-degree sexual abuse of a minor conviction in 1999; 3% of cases resolved with an attempted first-degree sexual abuse of a minor conviction in 2017.
 - o 35% of cases resolved with a second-degree sexual abuse of a minor conviction in 1999; 52% of cases resolved with a second-degree sexual abuse of a minor conviction in 2017.
- First-degree sexual assault cases:
 - o Around a quarter of cases resulted in an acquittal or dismissal in both 1999 and 2017.
 - o Around 10% of cases resolved with a first-degree sexual assault conviction in both years.
 - o 28% of cases resolved with a second-degree sexual assault conviction in 1999; 8% of cases resolved with a second-degree sexual assault conviction in 2017.
 - o 12% of cases resolved with a conviction for a felony sex offense other than first- or second-degree sexual assault in 1999; 42% of cases resolved with a conviction for a felony sex offense other than first- or second-degree sexual assault in 2017.

²³⁴ Teri Carns, Larry Cohn, & Susie Dosik, *Alaska Felony Process: 1999*. Alaska Judicial Council (2004), appendix B, available at [http://www.ajc.state.ak.us/publications/docs/research/AKFelonProcess1999 \(02-04\).pdf](http://www.ajc.state.ak.us/publications/docs/research/AKFelonProcess1999%20(02-04).pdf).

- Second-degree sexual abuse of a minor cases:
 - o 6% of cases resulted in an acquittal or dismissal in 1999 while 24% of cases resulted in an acquittal or dismissal in 2017.
 - o 41% of cases resolved with a second-degree sexual abuse of a minor conviction in 1999; 11% of cases resolved with a second-degree sexual abuse of a minor conviction in 2017.
 - o 8% of cases resolved with a third-degree sexual abuse of a minor conviction in 1999; 24% of cases resolved with a third-degree sexual abuse of a minor conviction in 2017.
- Second-degree sexual assault cases:
 - o 17% of cases resulted in an acquittal or dismissal in 1999 while 33% of cases resulted in an acquittal or dismissal in 2017.
 - o 17% of cases resolved with a second-degree sexual assault conviction in 1999; 9% of cases resolved with a second-degree sexual assault conviction in 2017.
 - o 17% of cases resolved with an attempted second-degree sexual assault conviction in 1999; 4% of cases resolved with an attempted second-degree sexual assault conviction in 2017.

The rate at which cases resulted in an acquittal or dismissal (i.e., no conviction) for *all* felony sex offenses was 13.4% in 1999 and 20.9% in 2017. This increase in the acquittal/dismissal rate was not exclusive to sex offenses, however. For felony assault cases, the acquittal/dismissal rate was 15.9% in 1999 and 24.8% in 2017.

Data from Child Advocacy Centers (CACs)

The following data on children who have been seen following a report of sexual abuse at a Child Advocacy Center (CAC) was provided by The Alaska Childcare Alliance. Pages 35-36 and 80-81 have more information on CACs.

Table 8: Child Advocacy Centers (CACs): Children seen following reports of sexual abuse							
Location of CAC	# of communities served	State FY14 # of children seen	State FY15 # of children seen	State FY16 # of children seen	State FY17 # of children seen	State FY18 # of children seen	Total # of children seen since CAC open
Anchorage (1st in AK - opened in 1996)	27	741	934	884	932	904	15,806
Bethel (opened in 2001)	56	93	108	160	94	124	2,043
Copper River Basin (opened in 2009)	17	14	20	21	17	18	163
Dillingham (opened in 2003)	33	25	31	62	89	105	605
Fairbanks (opened in 2003)	52	259	278	286	438	466	3,565
Juneau (opened in 2001)	19	127	126	107	126	159	1,945
Kenai Peninsula (opened in 2008)	30	163	142	146	146	183	1,433
Kodiak (opened in 2011)	7	37	28	50	44	97	292
Kotzebue (opened in 2014)	11	18	17	29	46	74	184
Mat-Su (opened in 1999)	11	217	236	254	210	275	3,550
Nome (opened in 2002)	17	58	67	92	125	109	767
St. Paul Island (opened in 2018)	2					2	2
TOTALS	282	1,752	1,987	2,091	2,267	2,516	30,355

Figure 31 Children Seen at CACs Following Reports of Sexual Abuse, by Gender

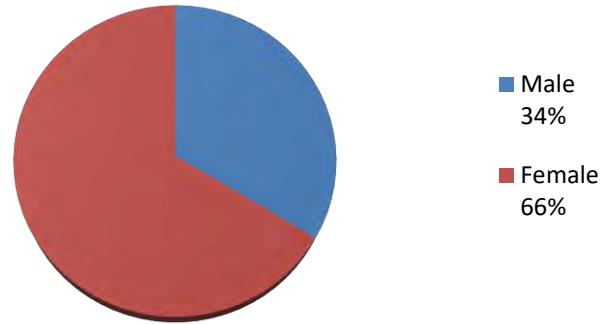


Figure 32: Children Seen at CACs Following Reports of Sexual Abuse by Age

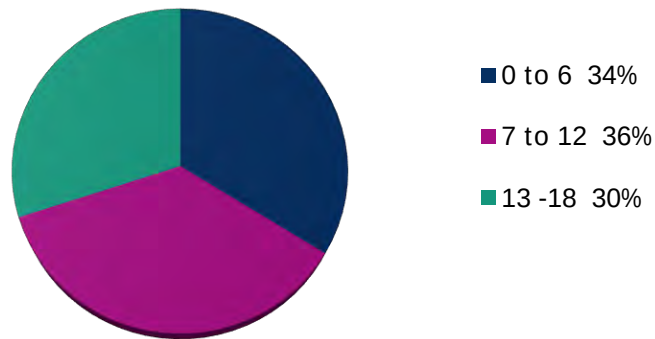
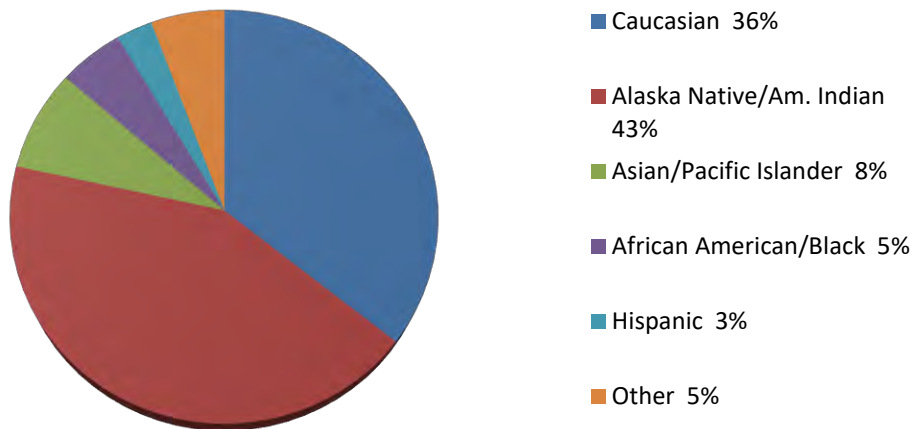


Figure 33: Children Seen at CACs Following Reports of Sexual Abuse, by Ethnicity/Race



Figures 31-33 Source: Alaska Childcare Alliance

Case Disposition Data, Department of Juvenile Justice

Pages 31-33 above describe the juvenile justice cases resolved in 2016 that involved allegations of sexual violence. The table below breaks down how these cases were disposed.

Table 9: DJJ Case Dispositions, FY16	N	%
Adjudicated delinquent	10	10.5
Most serious charge adjudicated	10	10.5
Diversion	29	30.5
Most serious charge dismissed after HIA/formal diversion	6	6.3
Screened and referred	3	3.2
Informal probation	6	6.3
Intake diversion supervision	2	2.1
Adjusted - no probation	12	12.6
Processed on a lesser charge	15	15.8
Most serious charge dismissed, lesser charge adjudicated	10	10.5
Most serious charge dismissed, lesser charge dismissed after HIA formal diversion	3	3.2
Most serious charge dismissed, lesser charge HIA/formal diversion	1	1.1
Most serious charge dismissed, lesser charge petitioned as delinquent	1	1.1
All charges dismissed	14	14.7
All charges dismissed	14	14.7
Dismissed at intake	23	24.2
All charges dismissed at intake	23	24.2
In process	3	3.2
Petitioned as delinquent	1	1.1
In process	2	2.1
Waived to adult court	1	1.1
Waived to adult court	1	1.1
Total	95	100.0

Appendix D: Alaska Statutes

A summary of Alaska's laws pertaining to sex offenses begins on the next page.

Sex offenses and related statutes

All of the following offenses are contained in Title 11 of the Alaska Statutes. The standard sentence range listed is the base sentence range for a first-time felony offender; aggravating or mitigating factors may apply which might increase a person's sentence above the range or decrease a person's sentence below the range. Some ranges may be shifted upward if the victim is under 13 or a peace officer. Some offenses carry a mandatory minimum time that must be served.

If a person is convicted of more than one offense at the same time, the sentences may be served either consecutively (one after the other) or concurrently (at the same time), or a combination of consecutively and concurrently. For some offenses, a minimum amount of time must run consecutively.

An attempt, a conspiracy, or solicitation of an offense is typically classified as one level below a completed offense. For example, sexual assault in the first degree is an unclassified felony, while attempted sexual assault in the first degree is a Class A felony.

The listed sex offender registration periods are for first-time offenses. If a person is convicted of an offense that carries a 15-year registration period, but the person has previously been convicted of a sex offense requiring registration, that person will be required to register for life.

All sentences imposed in Alaska must reflect:

- (1) the seriousness of the defendant's present offense in relation to other offenses;
- (2) the prior criminal history of the defendant and the likelihood of rehabilitation;
- (3) the need to confine the defendant to prevent further harm to the public;
- (4) the circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety or order;
- (5) the effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct;
- (6) the effect of the sentence to be imposed as a community condemnation of the criminal act and as a reaffirmation of societal norms; and
- (7) the restoration of the victim and the community.

The following is a summary of existing statutes; for further details, please consult the statutes themselves.

Statute Number	Offense	Classification	Standard sentence for a first offense	Sex Offender registration period
<i>Chapter 41, Article 1: Offenses Against the Person; Homicide</i>				
11.41.100 (a)(3)	Murder in the first degree (commits or attempts to commit an offense in Ch 41, Art. 4 and causes the death of a child under 16)	Unclassified Felony	30-99 years	Lifetime
11.41.110 (a)(3)	Murder in the second degree (commits or attempts to commit sexual assault in the first degree, sexual assault in the second degree, sexual abuse of a minor in the first degree, or sexual abuse of a minor in the second degree, and causes the death of any person)	Unclassified Felony	15-99 years	Lifetime
<i>Chapter 41, Article 4: Offenses Against the Person; Sex Offenses</i>				
11.41.410	Sexual assault in the first degree	Unclassified Felony	20-30 years	Lifetime
11.41.420	Sexual assault in the second degree	Class B Felony	5-15 years	Lifetime
11.41.425	Sexual assault in the third degree	Class C Felony	2-12 years	15 years
11.41.427	Sexual assault in the fourth degree	Class A Misdemeanor	Up to 1 year	15 years
11.41.434	Sexual abuse of a minor in the first degree	Unclassified Felony	20-30 years	Lifetime
11.41.436	Sexual abuse of a minor in the second degree	Class B Felony	5-15 years	Lifetime
11.41.438	Sexual abuse of a minor in the third degree	Class C Felony	0-2 years	15 years
11.41.440 (a)(1)	Sexual abuse of a minor in the fourth degree (defendant under 16 engages in sexual contact with victim under 13)	Class A Misdemeanor	Up to 1 year	Not required
11.41.440 (a)(2)	Sexual abuse of a minor in the fourth degree (adult defendant in position of authority engages in sexual contact with victim aged 16 or 17)	Class A Misdemeanor	Up to 1 year	15 years
11.41.450	Incest	Class C Felony	2-12 years	15 years
11.41.452	Online enticement of a minor	Class B Felony	5-15 years	15 years
11.41.452	Online enticement of a minor (if defendant was required to register as a sex offender at the time)	Class A Felony	15-30 years	15 years
11.41.455	Unlawful exploitation of a minor	Class B Felony	5-15 years	15 years
11.41.455	Unlawful exploitation of a minor (if defendant was previously convicted of this offense)	Class A Felony	15-30 years	15 years
11.41.458	Indecent exposure in the first degree	Class C Felony	2-12 years	15 years

Statute Number	Offense	Classification	Standard sentence for a first offense	Sex Offender registration period
11.41.460	Indecent exposure in the second degree (victim under 16)	Class A Misdemeanor	Up to 1 year	15 years
11.41.460	Indecent exposure in the second degree	Class B Misdemeanor	Up to 10 days	Not required
<i>Chapter 41, Article 4: Offenses Against the Person; Robbery, Extortion, and Coercion</i>				
11.41.530	Coercion	Class C Felony	0-2 years	Not required
<i>Chapter 51, Article 1: Offenses Against the Family and Vulnerable Adults; Offenses Against the Family</i>				
11.51.130	Contributing to the delinquency of a minor	Class A Misdemeanor	Up to 30 days	Not required
<i>Chapter 61, Article 1: Offenses Against Public Order; Offenses Related to Riot, Disorderly Conduct, Pornography, Indecency, Gangs, Corpses, or Animals</i>				
11.61.116	Sending an explicit image of a minor (accessible to the public)	Class A Misdemeanor	Up to 1 year	Not required
11.61.116	Sending an explicit image of a minor (sent to another person)	Class B Misdemeanor	Up to 90 days	Not required
11.61.118 (a)(1)	Harassment in the first degree (contact with bodily fluids including semen)	Class A Misdemeanor	Up to 30 days	Not required
11.61.118 (a)(2)	Harassment in the first degree (touching victim's genitals, buttocks, or breast)	Class A Misdemeanor	Up to 1 year	15 years if repeat offense
11.61.120 (a)(6)	Harassment in the second degree (publishes or distributes pornography)	Class B Misdemeanor	Up to 90 days	Not required
11.61.123	Indecent viewing or photography (subject is a minor)	Class C Felony	0-2 years	Not required
11.61.123	Indecent viewing or photography (subject is an adult)	Class A Misdemeanor	Up to 30 days	Not required
11.61.125	Distribution of child pornography (repeat offense)	Class A Felony	5-15 years	15 years
11.61.125	Distribution of child pornography	Class B Felony	2-12 years	15 years
11.61.127	Possession of child pornography	Class C Felony	2-12 years	15 years
11.61.128	Distribution of indecent material to minor (if defendant was required to register as a sex offender at the time)	Class B Felony	0-2 years	15 years
11.61.128	Distribution of indecent material to minor	Class C Felony	0-2 years	15 years
11.61.130 (a)(2)	Misconduct involving a corpse	Class A Misdemeanor	Up to 30 days	Not required
11.61.140(a)(6),(7)	Cruelty to animals (repeat offense)	Class C Felony	0-2 years	Not required
11.61.140(a)(6),(7)	Cruelty to animals	Class A Misdemeanor	Up to 30 days	Not required

Statute Number	Offense	Classification	Standard sentence for a first offense	Sex Offender registration period
<i>Chapter 66, Article 1: Offenses Against Public Health and Decency; Prostitution and Related Offenses</i>				
11.66.100	Prostitution (defendant is over age 18 and a patron of a prostitute under age 18)	Class C Felony	0-2 years	15 years
11.66.100	Prostitution	Class B Misdemeanor	Up to 10 days	Not required
11.66.110 (a)(2)	Sex trafficking in the first degree (induces someone under 20 into prostitution)	Unclassified Felony	20-30 years	15 years
11.66.110(a)(1),(3)	Sex trafficking in the first degree (induces someone into prostitution through use of force or the person is in the defendant's legal custody)	Class A Felony	3-6 years	Not required
11.66.120	Sex trafficking in the second degree	Class B Felony	0-2 years	Not required
11.66.130	Sex trafficking in the third degree (induces someone under 20 into prostitution)	Class C Felony	0-2 years	15 years
11.66.130	Sex trafficking in the third degree	Class C Felony	0-2 years	Not required
11.66.135	Sex trafficking in the fourth degree	Class A Misdemeanor	Up to 30 days	Not required

Appendix E: Presumptive Sentencing

Alaska's current sentencing structure for felonies creates what is known as a presumptive sentencing system. There is a presumptive range of prison time to which an ordinary defendant may be sentenced, depending upon the classification (severity) of the crime of conviction and the defendant's criminal history. Section II (A) above lists the presumptive sentences for sex offenses. Most felonies—those classified as a Class A, Class B, or Class C felony—carry a sentence that is determined using the presumptive sentencing system. Other felonies are called unclassified felonies (examples include Sexual Abuse of a Minor in the First Degree or Murder in the First Degree), and they carry specific sentences determined by special provisions in statute.

For Class A, Class B, or Class C felonies, the court may not impose a sentence above or below the presumptive range unless it finds that an aggravating or mitigating factor applies in the defendant's case. Aggravating and mitigating factors are defined in statute, and the prosecuting attorney or defense attorney may argue that they apply at a sentencing hearing if they have been properly proven. In 2004, the U.S. Supreme Court issued the case commonly referred to as *Blakely*²³⁵, which greatly limited the sentencing court's ability to aggravate a sentence. Under *Blakely*, most of the applicable statutory aggravating factors must be proven beyond a reasonable doubt to a jury.

To fully understand how *Blakely* affects sentencing, one must first understand that most cases (around 95%) are resolved through plea negotiations, and because of this, there is never a jury impaneled for the overwhelming majority of cases. Under *Blakely*, a sentencing judge is not permitted to consider aggravating factors that have not been proven to a jury beyond a reasonable doubt unless the defendant waives his / her right to a jury trial on the matter or the factor is a matter of record. Thus, if the defendant has agreed to plead guilty but has not waived this right, in general, the sentencing judge may not apply an aggravating factor at sentencing..

If, however an aggravating factor does apply and the defendant waived his or her rights under *Blakely* or the state has proven the aggravator beyond a reasonable doubt to a jury, the court may impose a sentence up to a maximum of 99 years. If a mitigating factor applies, the court may impose a sentence that falls below the presumptive range but is at least half of the low end of the presumptive

²³⁵ *Blakely v. Washington*, 542 U.S. 296 (2004).

range (except for first-time Class C felonies, which may be mitigated to zero).²³⁶ It is worth noting that *Blakely* does not apply to mitigating factors, and the defendant is always permitted to have the sentencing judge consider applicable mitigating factors. These factors must be proven by a clear and convincing evidence standard.

²³⁶ See AS 12.55.155.

Appendix F: Perspectives of Victim Services Providers

This section represents the views of advocates in each of the listed cities about the supports available to victims in each city as well as the challenges they face.

Anchorage

In Anchorage STAR (Standing Together Against Rape) provides a 24-hour crisis line, support and advocacy for immediate crisis intervention (such as support in making a report to law enforcement), and short- and long-term case management. There is one safe shelter for victims of sexual violence, AWAIC (Abused Women's Aid In Crisis). AWAIC reports that the shelter was over capacity for 50% of the year in the decade leading up to 2017; it hopes to complete an expansion in 2019.²³⁷ There are no shelters for men, though men can receive STAR's case management services. Advocates report that in the lower 48, cities of Anchorage's size have 3-4 shelters.

Lack of appropriate shelter is a significant barrier to recovery for those who have experienced sexual violence; many people seen by STAR and AWAIC lack affordable housing and some would rather sleep in the streets or in their cars than at a shelter that feels unsafe. Though sexual violence affects people of all backgrounds, people living in poverty face obstacles that render them more likely to be revictimized in the future.²³⁸ In 2017, approximately 125 of STAR's clients were homeless.²³⁹

Adult victims of sexual assault can find immediate support and start the reporting process by contacting Anchorage's Sexual Assault Response Team (SART). The reporting of a sexual assault is invasive and often-times traumatizing to victims as it involves divulging deeply personal information and an invasive exam. Having a team work together enables a victim to re-live the trauma only once by telling their story to everyone at the same time. In Anchorage, victims can get in touch with the SART team by contacting STAR. Child victims receive similar services at AlaskaCares.

²³⁷ AWAIC, *2017 Annual Report*, available at

<http://www.awaic.org/documents%20and%20links/AWAIC%20FY17%20Annual%20Report%20for%20Web.pdf>.

²³⁸ Kathryn Casteel et al., *What We Know About Victims Of Sexual Assault In America*, FiveThirtyEight (January 2, 2018), available at <https://projects.fivethirtyeight.com/sexual-assault-victims/>; Thema Bryant-Davis et al., *Struggling to Survive: Sexual Assault, Poverty, and Mental Health Outcomes of African American Women*, 80(1) *American Journal of Orthopsychiatry* (January 2010).

²³⁹ This number would likely be larger if those who are "couch surfing" or who are afraid to report homelessness (because they have children) were included.

Fairbanks

Fairbanks has a sexual assault response team (SART) which responds to all reported sexual assaults for both adults and children, available to respond to a reported sexual assault 24/7.

The Interior Alaska Center for Non-Violent Living (IAC) provides victim services for the interior of Alaska which includes Fairbanks and the surrounding 42 villages in the TCC/Doyon region. IAC responds to adult victims of sexual assault as a member of the SART team and provide follow-up services that include emergency shelter, assistance with violent crimes compensation requests, criminal justice advocacy, counseling referrals, and crisis and long-term advocacy services. Victims who choose not to report to law enforcement or as a "Jane Doe" are still able to access all victim services IAC offers.

Stevie's Place, operated by the Resource Center for Parents and Children, serves as the victim service agency for child victims of sexual assault and provides both supports to both the child and non-offending parent. If there is a need for emergency shelter they are co-located with IAC and use the emergency shelter facility. They operate as a multi-disciplinary team in conjunction with investigators, Office of Children's Services, the District Attorney, and necessary social services.

Fairbanks advocates report that very few reported sexual assault cases are accepted for prosecution and an even lower amount result in any type of penalty or conviction. Juries often do not deem victims "credible" and engage in a certain amount of victim-blaming. Fairbanks also has not adopted a trauma-informed approach to investigating and prosecuting sexual assault crimes.

Juneau

In Juneau, AWARE provides a gender-inclusive safe shelter and supportive services for victims/survivors of sexual assault. AWARE also coordinates Juneau's Sexual Assault Response Team, and staffs a 24 hour on-call advocacy team, trained to respond and support sexual assault victims at emergency room/forensic exams. AWARE also supports survivors through the criminal justice process.

During FY18, after feeling frustrated with poor resolutions in sexual assault cases, AWARE staff implemented additional recordkeeping measures, as well as individual analysis of each case when advocates respond to the hospital for a SART call-out. AWARE responded to the hospital 10 times during the final quarter of FY18. Of the 10 victims they met in the Emergency Room, 60% were repeat victims (meaning AWARE had responded to a prior sexual assault for this person). 50% believed they had been drugged to facilitate sexual assault, although none tested positive for common date rape drugs. (AWARE also reports having contact with several persons who believe they were dosed with

methamphetamine in their drinks. These attacks did not result in sexual assault, but in the victim feeling sick and disoriented. This disorientation prompted medical intervention, and they tested positive for meth without a history of use.)

Sexual assault victims receiving services from AWARE in the last quarter of FY 18 were also highly vulnerable; four were hospitalized due to suicidal ideation post exam. Several of victims were chronically homeless or experience housing instability. Most also experience addiction, and have expressed interest in additional treatment options that are more accessible, local, and immediate. Given the high number of repeat assaults, as well as an increase in suicidal ideation, AWARE is concerned about Juneau's ability to address sexual assault in vulnerable populations.

AWARE is also concerned about and minding the backlog of untested rape kits in Juneau. Juneau Police Department (JPD) has identified a point of contact who represents JPD on the Juneau SART team, and advocates are hopeful for teamwork, transparency, and accountability as Juneau begins to address the backlog.

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