

# Meeting Summary

## Alaska Criminal Justice Commission Sentencing Workgroup

September 12, 2018, 10:00-12:00

Denali Commission Conference Room, 510 L Street, Suite 410  
And teleconference

Commissioners present: Greg Razo, Brenda Stanfill, Quinlan Steiner

Participants: Tracy Dompeling, Juliana Melin, Kelly Manning, Karen Cann, Paul Miovas, John Bernitz, Tammy Axelsson, Matt Davidson, Jillian Gellings

Staff: Barbara Dunham

### **Juvenile auto-waiver**

Commission project attorney Barbara Dunham explained that at the last meeting, the workgroup had discussed several proposals to amend the auto-waiver statute. Justice Bolger had proposed three tiers of amendments to the auto-waiver process based on the severity of the underlying offense: (1) for the least serious crimes, remove them from the auto-waiver statute entirely; (2) for the next tier of crimes, remove them from the auto-waiver statute and allow extension of DJJ's jurisdiction, and (3) for the highest tier of crimes, allow for a reverse waiver process. Barbara had come up with a draft recommendation based on those proposals for further discussion.

Tracy Dompeling, director of DJJ, said that they had been discussing the extended jurisdiction idea and concluded that DJJ could not support extended jurisdiction at this time. She had had an opportunity to speak with DOC Commissioner Dean Williams and Deputy Commissioner Wyckoff and Deputy Director Axelsson, to start a conversation about how to jointly better serve this population. DJJ is amenable to holding pre- and post-conviction youth who are waived into the adult system through the current age of jurisdiction/extended jurisdiction. They had spoken with representatives in the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) and this was acceptable per regulations. DJJ was also in agreement with the proposal to take the less-serious Class B felonies out of the auto-waiver statute.

John Bernitz, with the Public Defender Agency, asked to clarify: is DJJ okay with keeping youth who are auto-waived in DJJ custody? Tracy said yes, thought there would need to be some statutory changes to allow that. She added that DJJ was just not ready to extend jurisdiction beyond what it is currently, and thought a better way to approach this idea was to look at how best to serve this population no matter where they are housed. Their issue is that they are not equipped to house 24-year-olds with 14-year-olds. Another issue is that juvenile probation officers and adult probation officers are very different; probation officers for adults carry firearms because the supervision population can be more dangerous.

Matt Davidson with DJJ added that OJJDP had confirmed that DJJ could hold youth who are convicted in the adult system until they are age 18 ½, but no longer. Tracy explained that for youth whose

cases are disposed in the juvenile system, DJJ can have jurisdiction over them (and hold them in custody) until age 19, or age 20 with the juvenile's consent. If they are sentenced in adult court, DJJ can only hold them in custody until age 18 ½. If DJJ were to hold youth who were sentenced as adults, they would have to be released at age 18 ½ or transferred to DOC custody.

Commissioner Brenda Stanfill asked why they were treated differently. Tracy said that it in the regulations the juveniles disposed as juveniles were not considered "adults." Even then, it was rare to have someone in DJJ custody through age 20; at that point it is a struggle for DJJ if they are on supervision in the community.

Barbara explained that she had asked one of the Judicial Council analysts to look at how many youth were housed in DOC custody. She provided the workgroup with a chart showing the number of 16- and 17-year-olds in DOC custody on snapshot days. There were no more than 11 on any of the snapshot days. (She also provided a chart showing the number of 16- to 26-year-olds in DOC custody who had been admitted to custody at age 16 or 17, also on snapshot days. There were no more than 18 on any of the snapshot days.)

Tracy said that it would be possible for DJJ to absorb the 16- and 17-year-olds at those numbers. In her talks with DOC representatives, they said they would get her more information on average numbers of these youth in custody and their location.

Deputy DOC Commissioner Karen Cann noted that the country seems to be moving in the away from treating juveniles as adults where possible. She wondered if DJJ might have the capacity to hold juveniles for longer in the future. Tracy said that for now they were looking more at collaboration with DOC and the possibility of blended sentences, though she noted this was more easily done in states where juvenile justice and adult criminal justice systems were located in the same agency. She thought that for now DOC would likely be fine with DJJ taking over responsibility for the 16- and 17-year olds. Deputy DOC Director Tammy Axelsson agreed, and noted that housing those youth in adult facilities rendered them non-compliant with PREA, and that they would be better served in DJJ facilities.

John noted that DJJ facilities such as McLaughlin Youth Center (MYC) house the older juveniles separately from the younger and pre-disposition juveniles. He understood the challenge for DJJ in housing older juveniles past the current age of jurisdiction—there is a big difference between a 13-year-old and a 25-year-old. He also saw the benefit of having those caught in the system as youth treated differently. If youth are allowed to stay in the juvenile system, it will be more beneficial to society, as the youth will have a better shot at redemption, and could become productive citizens.

John noted that developing research on brain science suggests that kids who get into trouble at a young age are not fully culpable for their actions because they cannot fully comprehend the consequences of their actions. He had a real concern for youth who leave the system at age 20, because there was nothing to keep them in line at that point. California, for example, has a system that allows those kids to go to probation after being released from juvenile custody. Regarding the reverse waiver, John thought it should not be based on any one crime but rather on the culpability aspect. He thought that anyone with a shot at a reverse waiver should remain in DJJ custody.

John also noted that electronic monitoring might be an option, though it could be applied overbroadly, it might be an alternative to custody.

Tammy thought that everyone could agree that the population of youth who are legally adults but still very young was a vulnerable population. There is an opportunity here for everyone to collaborate, but, she thought more needed to be talked through.

Commissioner Quinlan Steiner thought that the practical concerns shouldn't be relevant to the discussion; the workgroup should make the best policy choice regardless of what logistically would need to happen to achieve it. The question of housing should be a separate, later discussion. He would like to have more time to consider the drafted recommendation. He proposed having a discussion about what the most appropriate rehabilitative model might be.

Paul Miovas from the department of Law also thought there were other considerations to take into account. Law had some concerns, and while they acknowledge the science on brain development, rehabilitation is not the only criminal justice policy goal. The *Cheney* criteria list a number of other things the workgroup shouldn't lose sight of.

Brenda said she appreciated both views and wanted to know more about the neuroscience research behind these ideas. John suggested a book by Laurence Steinberg called *The Age of Opportunity*, written for a general audience. It describes adolescence as an extended period between ages 10 and 25, though each individual is different.

Tracy didn't think anyone disagreed with the neuroscience research or the idea that juveniles need rehabilitative treatment, or the public safety benefit of that treatment. She was supportive of working with this population differently. She noted that the draft as written specified that DJJ would assume custody of this population—she thought that it could be redrafted to make it more of a general recommendation without naming a particular agency responsible for custody.

Karen agreed that there are partnership models out there and she thought they could be workable for Alaska. She believed that Florida and Pennsylvania were also looking at these issues, and offered to look into what they were doing.

Commissioner Greg Razo agreed with Quinlan that logistics shouldn't drive the conversation, as logistics will always be a problem. He wanted to read up more to understand the science better. The Commissioners would need to be solid on the science to explain any proposal to legislators.

Tracy said she thought it was helpful to think about two co-defendants, one age 16 and one age 18, involved in a robbery. One would get rehabilitative treatment with DJJ and the other would be sentenced and held in custody at DOC. But they would not functionally be all that different. She thought this whole population needed to be served better.

Quinlan said that could be part of the recommendation, to include prison reform that better serves the needs of the 18- to 25-year-old population. Karen agreed.

Quinlan suggested wordsmithing the current draft to be less specific about jurisdiction. He thought the group should set another meeting to vote up or down on this draft with minor changes.

Brenda said she reached out to other victims' services providers and found that no one really understands how the different waivers work, but she didn't really get a sense of outcry on this from them. She would like to hear more about Law's thoughts on this. Paul said that they hadn't had a chance to discuss this; he would try to pin down his colleagues and get more direction by the next meeting.

Matt suggested reorganizing the proposal with numbers so it would be easy to refer to. Tracy suggested reordering it to reflect the priorities Justice Bolger had suggested at the last meeting.

### **DV Sentencing/Programming**

Barbara reminded the group that two domestic violence (DV) sentencing proposals had been forwarded to the group earlier this year. The workgroup had rejected those proposals but expressed an interest in developing other proposals to address DV offenses. She explained that before the previous meeting of this workgroup she had circulated a memo summarizing research on DV. The group had not had time to discuss this issue at the last meeting.

Barbara walked the group through the memo, which addressed recidivism rates, sentencing, monitoring, intervention programming, coordinated community responses, risk assessments, DV protective orders, mandatory arrests, shelters, and fatality reviews. Two practices in Alaska were associated with negative effects in the research: the Duluth model of batterer intervention programming (which is required for state funding in Alaska) was associated with increased recidivism, and mandatory arrest laws, which are associated with increased fatality.

Quinlan thought that now was the right time to come up with a recommendation on this issue. He thought there was a pressing need to inform the legislature and the court system that the Duluth model was associated with increased recidivism. People in Alaska are ordered to do these programs every day that can lead to increased violence. He also thought changing the mandatory arrest law was a good idea, and that warrantless arrest might be a better option. It is not always clear to law enforcement what has happened when they respond to a domestic violence call and although they can call a prosecutor to ask not to arrest anyone, practically speaking that is a barrier.

Brenda noted that the Judicial Council (AJC) and the Council on Domestic Violence and Sexual Assault (CDVSA) were studying this. She didn't agree that the WSIPP study on batterer intervention programming was the last word on the issue, and moreover, most if not all providers of those programs in Alaska augment their programming with cognitive-behavioral therapy. She was hesitant to agree that there was cause to think that all Alaska intervention programs are increasing recidivism and that they should be shut down immediately. It would deny people the opportunity to change. There is research to support the effectiveness of the Duluth program, and the data on the program's effectiveness (positive or negative) is not specific to Alaska.

Quinlan felt there was a real need to make a statement about these programs. People are going through the program, recidivating, and being blamed for recidivating when the program might have caused them to recidivate. Prosecutors argue for enhanced sentences on the basis that someone has failed one of these programs.

Brenda thought that the AJC and the CDVSA should finish their research. She didn't feel comfortable supporting a recommendation. Quinlan noted that the study won't get to the effectiveness of the programs—the Commission should at least say that there is evidence the Duluth model is counterproductive and the state should fund an evaluation of the programs. Brenda agreed that an evaluation of the state's batterer intervention programs would be helpful. Karen said she had a hard time recommending that a program should just be thrown out but agreed that there was a need for more data on what's happening in Alaska.

Quinlan said that an interim step could be recommending that failing an intervention program should not be the subject of a PTRP. He understood Brenda's objection but thought it was important to make a statement that this needed to be addressed immediately. Brenda agreed that failure should not necessarily be held against someone in a program because lasting change takes time.

Paul thought there would be little support at Law for abandoning the program altogether. He also noted that public defense attorneys will often use pre-sentence completion of one of the intervention programs to argue for a more lenient sentence. He wanted to review the research.

Brenda said she could agree on a need for an evaluation of Alaska's intervention programs but didn't want to do anything that would undermine the existing programs. She thought it was premature to make a blanket statement that these programs are doing harm. She thought they were doing good work in Alaska. There are more eyes on people ordered to these programs which could drive up the recidivism numbers as it is more likely someone will notice this population is reoffending.

Quinlan thought the need for an evaluation was urgent and the urgency should be made clear in a recommendation, separate from the general need for evaluation of all programs.

Karen said she also thought the programs have evolved and there was a need to find out what about them is working. Quinlan said he hoped the modifications to the programs were positive, but there was no way of knowing this. He thought the only way to highlight that this was an immediate need was to point out the concerns raised by the research.

Brenda thought it was necessary to bring CDVSA director Diane Casto into this conversation. Quinlan thought was also necessary to bring in UAA Justice Center director Brad Myrstol because the conversation involved evaluation. Barbara said she would try to get both Diane and Brad for the next meeting. Brenda and Quinlan agreed they were both working for the same ends on this issue.

Quinlan said he also wanted to talk about the mandatory arrest issue. Paul noted that the law as is gives law enforcement officers cover. They don't want to make the wrong call so calling a prosecutor can give them that cover.

Quinlan suggested there might be a need for a study on this as well. One question for Brad might be what is it about mandatory arrest that increases fatality? Is this something that can be studied in Alaska? Barbara noted that one of the studies on mandatory arrest noted increased fatality for mandatory arrests involving intimate partner violence but not for mandatory arrests involving other family violence.

Brenda noted that the history of that law was that law enforcement officers used to be too reluctant to arrest in DV cases. She thought perhaps the pendulum has swung in the other direction. Sometimes the victim is the one who gets arrested in the confusion of the moment, and that arrest could cause them to lose their job. She thought it was important to make sure there is a mechanism for separating the victim and perpetrator of DV when it is needed for the victim's safety. She agreed there was a need for a study. She thought that it was worth looking at options. She recalled there were decreased fatalities when this law first came out.

Brenda also noted that people had been talking about a diversion program for DV cases. The Alaska Network on Domestic Violence and Sexual Assault and CDVSA met, and they wanted to resolve the intervention program question first, then would like to look at diversion.

**Public comment**

There was an opportunity for public comment but none was offered.

**Next meeting**

The next meeting was set for November 5<sup>th</sup> at 9:30.

# Meeting Summary

## Alaska Criminal Justice Commission Sentencing Workgroup

July 26, 2018, 9:30-11:30

Denali Commission Conference Room, 510 L Street, Suite 410  
And teleconference

Commissioners present: Quinlan Steiner, Joel Bolger, Brenda Stanfill, Greg Razo, Steve Williams

Participants: Tracy Dompeling, Paul Miovas, John Bernitz, Chris Provost, Matt Davidson, Kaci Schroeder

Staff: Susanne DiPietro, Barbara Dunham

### **Juvenile auto-waiver**

Quinlan Steiner summarized the group's previous discussions on changing the juvenile auto-waiver statute. (This statute requires juveniles charged with certain crimes to be tried in adult court.) In some cases, discretionary waiver might be more appropriate; if fewer cases were waived into adult court, the Division of Juvenile Justice (DJJ) would also need to raise the age of extended jurisdiction. This was based on evolving research on brain development, which shows that a person's executive functioning and decision-making capability is not fully developed until their mid-20s. There is also research that shows that there are better recidivism outcomes associated with housing young people convicted of crimes in juvenile facilities as opposed to adult facilities.

John Bernitz of the Public Defender Agency said that he was compiling a table with all waiver cases since the auto-waiver law was enacted in 1996. His information comes from DJJ and fellow attorneys, including Chris Provost. His database is about 80% complete and it has to be combed through for consistencies and to redact confidential information. His database has about 80 individuals now; he is hoping to have a complete database soon. He also wanted a way to talk about individual impacts. The problem with the auto-waiver law in his view was that it took discretion away from judges in cases where leniency was most warranted. He added that there has been a lot of new research since 1996, not only on juvenile brain development but also on debunking the concept of the "superpredator." He and Chris were working on a law review article on this—this is something many other jurisdictions are working on.

Susanne DiPietro noted that the Commission has a research analyst who might be able to help with the database project, and John said he would welcome the help.

Tracy Dompeling, director of DJJ, said that she took the spreadsheet compiled by Justice Bolger for a previous meeting and dug a little deeper in their records, and identified about 90 individuals subject to auto-waiver which is close to John's number. Chris asked whether she had a sense of how many were convicted of A felonies as opposed to unclassified. Tracy said she didn't have that level of detail yet. Justice Bolger said he was also interested in knowing the number convicted of A felonies as those were the people who would be getting out of prison in 5 to 10 years.

John proposed looking at the auto-waiver population as two categories, those subject to auto-waiver under AS 47.12.030(a)(1)-(3) and those under AS 47.12.030(a)(4). [This was in a handout that John brought to the meeting which was circulated via email to the workgroup.] In the former group, they should be given a chance to rehabilitate so they don't commit a similar crime again; they should be under DJJ custody until age 24-26 to permit treatment until emotional maturity. In the latter group, the mental state required for those offenses was essentially the mental state of any teenager, and he didn't think it was fair to punish children as adults for something they are physically unable to control. Justice Bolger said the same logic could be applied to manslaughter cases.

John noted that the purpose of the juvenile system was different from the adult system—the focus is on rehabilitation of the juvenile so they don't commit crimes as an adult. Time is also spent differently in the juvenile system- a juvenile might stay in the system longer than they would in the adult system if there was a therapeutic need.

Tracy said she was concerned about mixing 25-year-olds with teenagers in DJJ custody. Chris noted that the Detention 1 unit at McLaughlin Youth Center had been repurposed and he wondered if that could be used for housing. Tracy said that DJJ would have to comply with the OJJ and PREA requirements, and she was not convinced that McLaughlin was the best facility. She thought staffing alone for this additional population might cost around \$1.2 million. Chris thought that money could be shifted from DOC. DJJ is better equipped and trained to deal with this population and DOC didn't want to house them in the first place. He has talked to superintendents throughout the state saying they are not equipped to handle youth in custody and he has heard stories of juveniles spending years in solitary for this reason.

Tracy suggested looping in DOC for this conversation, and Susanne said that staff would make sure someone from DOC was at the next meeting.

Tracy said she had a list of options for changes to the laws in the handout she had brought. [This was also circulated via email to the workgroup.] She thought the first few options were doable:

- 1) Hold auto-waiver and discretionary waiver youth in DJJ custody until convicted on an adult charge.
- 2) Hold auto-waiver and discretionary waiver convicted youth in DJJ custody until age 18 (Tracy was willing to adjust the age)
- 3) Reform/expand dual sentencing.

Tracy was interested to hear the defense attorneys' thoughts on #3, as she thought that option might address some of the Department of Law's concerns about accountability.

Paul wondered how many teens were being held in DOC facilities. Chris said he had three such clients.

Chris said that legislative fixes will be hard to obtain. He has worked on reform efforts before but victims' rights groups spoke against those efforts and the bills died in committee. He did think, however, that any change to dual sentencing would definitely need a legislative fix as the statutory language was too convoluted. He also said that raising the age of DJJ jurisdiction to 25 or 26 might be a nonstarter, as many experts say that while the brain is not fully developed until that age, it's about 90% developed by age 20.

Quinlan said that the proposal would not be to raise the age of DJJ jurisdiction in the first instance, just the age of extended jurisdiction. The cases would still start when the juvenile was under 18 but extended jurisdiction would allow them to remain in DJJ custody for longer. Chris said he still thought that may be an issue. He was interested in sorting those charged with unclassified felonies from those charged with Class A or B felonies, because the latter will be released and likely recidivate more if detained in the adult system, which undermines the public safety purpose of the auto-waiver statute.

Brenda Stanfill agreed that any proposal would be a tough sell before the legislature. She didn't know of many who would be in the auto-waiver population in Fairbanks but there are some she could think of that would see going to adult prison as a badge of honor. She was very interested in exploring the idea of alternative facilities for this population but didn't think it would be best for everyone.

Paul said that prosecutors were typically reluctant to use dual sentencing because of the age of jurisdiction ending at 20. Law would probably support raising the age of extended jurisdiction as that would allow for additional time to know how an individual will do on supervision. The purpose would not be to keep anyone in a facility longer but to understand the chances of success on supervision. He also agreed that the appropriate sentence should account for individual circumstances. He noted, however, that there were cases where a juvenile under 16 might warrant a discretionary waiver but Law often loses those cases—he thought those decisions should also account for individual circumstances.

Chris said he would also like to propose a reverse-waiver process. There is no mechanism for that in Alaska now, and it would also allow for a case-specific analysis. He noted that if fewer Class A and B felonies were subject to auto-waiver, there would be fewer cases where a reverse waiver would be requested.

Justice Bolger wondered why the Class B felonies were auto-waiver cases. He counted only 6 cases in 5 years, and if the sentences were only 3-5 years, he wondered what the purpose was in shifting them to the adult system. Paul said he would like to look into the legislative history of those provisions—he was not sure of the rationale.

Paul said that though rehabilitation and individual circumstances should be accounted for in these cases, consideration should also be given to the severity of the offense. Chris noted that the US Supreme Court decision in *Kent* held that rehabilitation was a factor to be emphasized, but that the seriousness of the crime should also be considered. John noted that the seriousness of the crime was itself a factor in determining someone's potential for rehabilitation.

Quinlan said he would try to summarize the gist of the conversation thus far: he thought that non-violent A and B felonies were fairly easy to deal with—he would like to see a summary of these crimes covered under the auto-waiver statute and thought that they could be removed from the statute. For higher-level crimes, it sounded to him like that would involve a longer discussion on removing them from the auto-waiver statute or creating a reverse-waiver statute. Either option would warrant a discussion on offense severity. He thought it appropriate to flag potential costs, but he didn't think cost should influence the discussion. He also thought a separate but related topic was to address the housing and isolation practices for young individuals in custody.

Chris thought it was important to address housing, as that was a factor in many cases. He had a client who became incompetent to proceed because he was placed in solitary confinement. He thought it

was important to ensure that a juvenile doesn't experience arrested development because of how they are held in custody.

Tracy observed that this was also an opportunity to work with DOC to serve this population—it is all one demographic. She also noted that the JPOs are not as well equipped to deal with this older population as the POs.

Justice Bolger wondered if anyone opposed removing the lower-level felonies from the auto-waiver statute as a general idea, and whether anyone opposed DJJ proposals 1 and 2 [listed above]. Most were unopposed. Brenda wondered which crimes those would cover. Justice Bolger said second-degree robbery and second-degree assault would be included. Tracy added that there were also aggravating circumstances attached to those. She noted that a federal monitor was coming to Alaska in August and she would check on whether these proposals are allowed under federal regulations.

Brenda asked whether, if these lower-level felonies were subject to a discretionary waiver, the Department of Law would still have a hard time winning the discretionary waiver hearings. Paul said that Law really doesn't prosecute many of those crimes so it was hard to say, but it was a possibility. He added that Law would probably approve of DJJ proposals 1 and 2, but he would need to check in with the management team about the lower-level felonies.

Justice Bolger next proposed removing the more serious felonies (Class A felonies including manslaughter, first-degree assault, first-degree robbery, first-degree misconduct involving weapons, arson, and second-degree sexual abuse of a minor) from the auto-waiver statute and making them eligible for extended DJJ jurisdiction to age 25.

Tracy said she was hesitant about the above proposal because she was not sure DJJ custody of those juveniles would be feasible given the logistics of housing or federal regulations. Justice Bolger said that the proposal would be subject to satisfactorily addressing these concerns. The biggest selling point for him on this proposal was that these juveniles would be serving the same time as they would if they were waived into the adult system but they would have the therapeutic advantages of being in DJJ custody. Tracy cautioned that not all juveniles want to be in the juvenile system; some would rather be in adult prison and those juveniles might be a cause for concern if DJJ is housing them through age 24.

There was generally no objection to Justice Bolger's second proposal. Greg Razo thought it was a good fix until the adult system can become more therapeutic. Brenda did not yet agree with the proposal and wanted to look at specific cases and how they would play out under this proposal.

Justice Bolger's third proposal was to allow a reverse waiver process for any juveniles charged with an unclassified felony who are auto-waived. Paul said the devil would be in the details for this proposal for Law, but he thought it was an idea worth talking about. He said he would check with the management team at the department about this and the other proposals.

Barbara agreed to write up Justice Bolger's proposals with the various crimes listed for each category. The group would discuss the draft at the next meeting.

### **DV Sentencing/Programming**

There was not enough time to discuss this topic and it was tabled until the next meeting.

**Public comment**

Chanta Bullock urged the workgroup to remember that no matter what crime a person has committed, everyone has the potential to change. People should be treated as individuals. Just because someone commits a crime at age 16 does not mean they will do so at age 20 or age 40.

**Next meeting**

The next meeting was set for Friday, September 14 at 9:30

# Meeting Summary

## Alaska Criminal Justice Commission Sentencing Workgroup

May 16, 2018 1:30-3:30

Denali Commission Conference Room, 510 L Street, Suite 410  
And Teleconference

Commissioners: Joel Bolger, Quinlan Steiner, Brenda Stanfill, Trevor Stephens

Participants: Josie Garton, Paul Miovas, Tracy Dompeling, Heidi Redick, Dennis Weston, Christina Allison, Matt Davidson, Barb Murray, Kaci Schroeder, Debbie Banaszak, Pam Cravez

Staff: Barbara Dunham

### **Juvenile auto-waiver**

Quinlan Steiner explained that the workgroup's discussion of the juvenile auto-waiver statute stems from a white paper issued by DJJ a few years ago that explored the idea of modifying or getting rid of the auto-waiver. In previous meetings the group had discussed raising the age of DJJ's extended jurisdiction to 26, because if juveniles who commit serious crimes aren't waived into the adult system, DJJ would need the authority to hold them in custody longer. John Bernitz of the Public Defender Agency is gathering data on all juvenile auto-waiver cases.

Barbara Dunham noted that she had compiled some research on recidivism rates for juveniles. The research was fairly conclusive that recidivism rates were worse for juveniles when they were incarcerated in adult facilities as opposed to juvenile facilities.

Tracy Dompeling, director of DJJ, said that staff at DJJ had been talking about this and they have been looking at their data as well, comparing it to the list of cases Justice Bolger had compiled for the last meeting. She thought the court system data might be more complete. In some places DJJ gets custody of an auto-waived juvenile first, and in other places, DOC gets custody first, and DJJ doesn't necessarily have records of the latter.

Tracy thought that if raising DJJ's age of jurisdiction and removing the auto-waiver were among the options on the table, removing auto-waiver would be easier than raising the age of jurisdiction. Quinlan clarified that the group had only been interested in looking at raising the age of extended jurisdiction (currently set at age 20), not the age of jurisdiction in the first instance (i.e. only for those who start out in DJJ custody at age 17 or under).

Paul Miovas said that this is an issue they struggle with at the Department of Law. Often they would like to avoid an adult conviction but by the time the case reaches a resolution, there is not much time before the juvenile reaches age 20. These are complex cases that don't resolve quickly.

Justice Bolger noted there were a lot of cases in the list of cases he had compiled in which the juvenile would likely be serving 5-10 years—those are all kids who will be coming back to the community sooner rather than later who would have a better chance if their cases were kept in the juvenile system.

Heidi Redick wondered if there had been any talk of expanding dual sentencing. She knew it was something that was used locally in Anchorage, but can also raise the same issue of running into pressure once the juvenile nears age 20.

Tracy said that she had talked to her counterparts in other states such as Oregon and Nevada about this. Many states struggle with this issue. Some start all these cases in the juvenile system and then transfer them over to adult court only when warranted. Oregon was one state that did this. Heidi noted that some states have a dual sentence system where the juvenile starts a sentence in juvenile custody and transfers over to adult probation when released.

Tracy explained that all DJJ facilities are PREA compliant, though the state as a whole is not. (PREA is the federal Prison Rape Elimination Act which requires juveniles to be housed separately from adults.) She was not sure that DOC's noncompliance was based on the way they housed juveniles; it could be based on something else. Also the Juvenile Justice and Delinquency Prevention Act has different requirements—the separation must be “sight and sound” separation but the requirements don't apply to those 16 or older. Matt Davidson noted that it also doesn't apply to youthful offenders sentenced as adults.

Heidi noted that DOC's policy is to keep youthful inmates separate from the general population up to age 22, and kids under 16 are even more removed from the general population. DOC sometimes struggles to adhere to that policy as they have trouble with gangs forming and some of the youthful offenders have to be placed in adult segregation.

Tracy said that whatever course this discussion took, DJJ wouldn't want to do anything that would render them noncompliant with PREA, which would be a concern if they were to have custody of 24- to 26-year-olds. DJJ was not necessarily opposed to changes but would need to look at capacity and might need a specialized unit. She definitely understood the research on recidivism.

Heidi said that this issue has come up in the past, but before any action is taken, there is a wave of serious crime such as homicides committed by juveniles and the subject is dropped. Tracy said that on that count it would be good to get the victim advocacy groups involved.

Brenda Stanfill agreed and said she needed to do some outreach to other victim advocates and educate herself more on this topic. She was thinking of a 17-year-old in FCC right now who she definitely wouldn't want to be in a DJJ facility. Tracy offered to touch base with her the next time she was in Fairbanks and to give her a tour of DJJ's facility there.

Matt said that this conversation had occurred in various forms over a number of years. He offered to put together a list of options to better frame the discussion.

Barbara said she would be sure to loop in John Bernitz and Chris Provost for the next meeting.

### **DV Sentencing/Programming**

Brenda explained that she and Quinlan had met with the Council on Domestic Violence and Sexual Assault (CDVSA) to get their input on the two proposals forwarded to the workgroup following February's Commission meeting. The first proposal was to enact a mandatory 1-year sentence for anyone who violates a domestic violence protective order (DVPO) and the second was to enact a mandatory 99-year sentence for people who murder their spouses.

Brenda said that the CDVSA was not interested in weighing in on the proposal for the 99-year sentence, but would support the workgroup with whatever action it decided to take. For violations of domestic violence protective orders, they wanted to lump that issue into taking a broader look at penalties for domestic violence crimes and the effectiveness of protective orders. They especially wanted help gathering and analyzing data, which they did not have the capacity to do. CDVSA has been working on evaluating and inventorying DV treatment and intervention programs in Alaska.

Quinlan said he was concerned about jointly participating in a sweeping review of DV laws with CDVSA, and would prefer to first see what their proposals are. He thought the two sentencing proposals that had been forwarded to the workgroup were too radical. He didn't think anyone was interested in the 1-year mandatory minimum for violating DVPOs, as that could have unintended consequences. He wanted to take a look at programming for prevention and recidivism reduction and to look into the value of protective orders.

Brenda said she had also spoken to others in the Alaska Network for Domestic Violence and Sexual Assault (ANDVSA) about the mandatory 1-year proposal. They agreed that violations of DVPOs should be taken very seriously, but they also noted that DVPOs are easy to obtain, and people who are actually victims might end up being respondents to a DVPO and end up violating the DVPO—that would be an unintended consequence of the proposal which was aimed at helping victims.

Quinlan noted that the unintended consequences problem was complicated by the mandatory arrest laws. DVPOs were often subject to manipulation and erroneously granted, and he would like to see more focus on that problem.

Paul said he hadn't had a lot of experience with prosecuting violation of DVPO cases but agreed that the mandatory 1-year proposal was probably a non-starter.

Quinlan asked if there was any opposition to rejecting the mandatory 1-year proposal but recommending to the Commission that the workgroup look into preventive programming and how to strengthen DVPOs.

Justice Bolger said he thought that the mandatory 1-year proposal had the same problem as the mandatory 99-year proposal, in that violation of a DVPO, like murder, can cover a wide range of behavior. Violating a DVPO could involve driving within the perimeter of an exclusion zone. He thought there should be a way to sanction such behavior without ruining someone's life. He suggested saying the workgroup "doesn't support" the mandatory proposal rather than saying the workgroup opposes or rejects it.

Paul asked what the basis was for the proposal. Quinlan said that it had been proposed by the parents of Bree Moore, who was killed by her ex-boyfriend. The idea behind the proposal was to separate a DV victim from her abuser long enough to sever the relationship. He did not think this was a valid theory of how domestic violence works. Brenda said she agreed, and often observed as a victim advocate that distance can make the heart grow fonder. She also thought that it was hard to base a law on one perceived dynamic, when the circumstances around domestic violence vary widely.

Paul said he was familiar with the Bree Moore case because he prosecuted the defendant. He recalled that there was no protective order in that case. He was sympathetic to what her family must be going through but didn't think this proposal would have helped Ms. Moore.

Brenda recalled that Commission Chair Greg Razo had tasked the workgroup with looking at whatever data and research was available on this topic and wondered if there was any data to report out.

Quinlan said he was not sure what data would be available that would be relevant to this topic there was data on sentences generally. He thought the workgroup could say it relied on the professional judgment of its members, and note that DVPOs are often subject to error and manipulation. Barbara said she could look into social science and policy research on evidence-based practices and theories of DV. Brenda said that the workgroup could also note the proposal didn't have the support of the ANDVSA. Quinlan suggested highlighting the variety of DVPO cases and factual scenarios behind them Barbara said she would draft a memo to the full Commission covering these points.

Justice Bolger said that the memo should be clear that the workgroup did not support this specific proposal did support evaluating the CDVSA's work once it is complete. Quinlan said he would also be interested in looking at a defense for violating a protective order in cases where the respondent is responding to contact initiated by the petitioner, which the Public Defender Agency sees a lot.

Judge Stephens said that he supported the idea of sending a memo to the Commission saying the workgroup did not support the proposal and noted that he also did not support the mandatory 99-year proposal. Quinlan said he agreed with that too.

Brenda asked Paul whether it was true that implementing a mandatory 99-year sentence for people who murder their spouses would help cases come to a speedy resolution. That was one reason the Moores had made the 99-year proposal.

Paul said that generally speaking, the possibility of a 99-year sentence can hasten plea negotiations; it's something that tends to play out in sex offenses cases which often carry a 99-year maximum sentence. It is a benefit to the prosecution to have that kind of leverage. In this case he was not sure it was wise, and if it was a mandatory sentence he was not sure how a plea deal would work. Both first and second-degree murder already carry a sentence of up to 99 years if an aggravator is proven.

Quinlan thought it was antithetical to the idea of justice to force a resolution in a criminal case based on the fear of a long sentence. He agreed that this proposal could cover a wide range of cases. If the "DV" designation is used it could theoretically include a former college roommate from 30 years ago. The broad "DV" designation is useful in the protective order context but too broad for enhanced sentencing. Paul said he didn't disagree on that point and also thought that it would be difficult to narrow down the DV category—for example, if it were only to apply to spouses and dating relationships, how long would a couple have to be dating? One week? One year? Quinlan agreed and said practitioners have often struggled over what "dating" means.

Justice Bolger agreed and noted that the legislature is also bound to enact penalties based on the sentencing goals in the constitution. He noted that not all cases plea out. He thought that the DV context was very different from killing a police officer (which also carries a 99-year sentence). A person who kills their spouse might be a woman with battered woman syndrome who may not have a viable self-defense claim. He didn't think the Moores would intend that a woman like that be sent to prison.

Brenda said that the CDVSA would be working on new programming over this year and roll it out next year. The CDVSA was interested in but needed help with taking a broader look at sentencing and DVPOs. They do not have the resources to effectively take a thorough look at those topics and do the necessary data and research analysis. Quinlan asked for clarification—if the Commission does not look into those topics, neither will the CDVSA? Brenda said that was correct.

Barbara explained that the Commission has data on things like criminal case charges and dispositions, but that getting data on DVPOs would require an extra ask from the court system and potentially be a big ask. Quinlan said the workgroup should figure out what it wants to do first before asking for extra data. Justice Bolger agreed and said that DV was a broad topic and it would be difficult to narrow the workgroup's scope of inquiry.

Brenda said there is already published research showing that people convicted of DV crimes have the highest recidivism rates. She thought it was worth looking into what data the Commission could get. She agreed with Justice Bolger that it was a broad topic and she wasn't sure where to start.

Quinlan said that it could broadly be divided into two categories: recidivism reduction and keeping victims safe. He wasn't sure what the takeaway was from the memo on the evidentiary basis for protective orders. Barbara said she thought the takeaway was that they can be effective in certain circumstances. Paul said that the answer as to whether DVPOs were protective seemed to be "it depends." He thought law was interested in discussing this but agreed it was a wide topic.

Quinlan said he didn't want to abandon the topic and also wanted to look into the idea of an affirmative defense. It has been kicked around in the legislature in the past. He didn't want to suggest any kind of reverse penalty (i.e. for abusing the system) but thought there should be some defense in cases where the petitioner calls the respondent and essentially baits them into violating. Paul said that it could also be a mitigator. He wasn't sure Law would support an affirmative defense. Quinlan said it was something of a side issue but he didn't want to abandon it.

Barbara asked whether the CDVSA had put together a list of concerns or things that should be researched further. Brenda said they didn't have a list of specific concerns, but rather a broader concern that the incidence of DV in Alaska was not declining. The CDVSA was also interested in looking at diversion-type program options.

Justice Bolger said it sounded like a literature survey could be helpful, to see what other jurisdictions have sentencing alternatives and what places have made effective progress tackling DV. He thought he had heard about a new intervention program. Brenda said that was a program from Iowa—its preliminary evaluation showed it to be promising, but it was still very new and needed time to be rigorously tested and evaluated for recidivism effects. Judge Stephens said he would be interested in knowing more about effective programs across the board.

Paul said he would be interested in data on arrests and dispositions of DV Assault 4 cases, and whether once someone is convicted of that offense, whether there is any change in their behavior. He knew prosecutors tend to compromise those offenses a lot. He was also interested in looking at how many prior arrests DV offender had. Pam Cravez said that Araceli Valle at the Justice Center had done a lot of research on this, and has more data than she has published.

Barbara noted that there would soon be a pilot misdemeanor DV monitoring project in Anchorage, which staff member Teri Carns was working on. Justice Bolger said he understood that the theory behind that project was that just having the person monitored and touching base occasionally keeps them on track.

#### **Public comment**

Christina Alison said that it was difficult to follow the meeting without the agenda and suggested making that available to the public. She said her husband was wrongfully convicted, and his

case was classified as a DV case. She appreciated the discussion acknowledging that DV was a broad and complicated topic and agreed that the two proposals that had been forwarded to the group had been extreme. She also appreciated the discussion about the pressure to plea being a result of long sentences. She thought the group might also consider people who have been wrongfully

**Next meeting**

Barbara said she would send a Doodle poll to schedule the next meeting.

# Sentencing Subgroup Policy Recommendations

1. **Limit the use of prison for nonviolent misdemeanor offenders**
    - a. Misdemeanor B offenses
    - b. Theft under \$250 offenses
    - c. Driving while license suspended offenses
    - d. Misdemeanor driving under the influence offenses
    - e. Nonviolent misdemeanor A offenses
  2. **Revise drug penalties to focus the most severe punishments on higher-level drug offenders**
  3. **Utilize inflation-adjusted property crime thresholds**
  4. **Align non-sex felony presumptive ranges with prior presumptive terms**
  5. **Incentivize completion of treatment for sex offenders with an earn time program**
  6. **Return sentences for Felony C and B sex offenders to 2005 levels**
  7. **Expand the use of discretionary parole**
  8. **Implement a specialty parole option for the oldest cohort of inmates**
- 

## 1. **Limit the use of prison for nonviolent misdemeanor offenders**

- a. Misdemeanor B offenses (excepting theft under \$250, see (1)(b)):
  - i. Reclassify all state misdemeanor b and similar municipal offenses as violations, punishable by a fine up to \$1000, excepting theft under \$250.
- b. Theft under \$250 offenses:
  - i. Reclassify all first- and second-time theft offenses under \$250 as non-jailable misdemeanors (includes theft 4, as well as concealing merchandise - under \$250, removal of identification marks – under \$250, unlawful possession – value under \$250, and issuing a bad check – value under \$250).
  - ii. Reduce the penalty for third and subsequent theft under \$250 offenses to 5 days suspended with a maximum 180 probation term.
- c. Driving while license suspended (DWLS) offenses:
  - i. Reclassify DWLS offenses when the suspended license was not due to a DUI or refusal to submit to a chemical test offense as violations, punishable by a fine up to \$1000.
  - ii. Eliminate the mandatory minimum for a first DUI or refusal-related DWLS offense.
  - iii. Reduce the mandatory minimum for a second or subsequent DUI or refusal-related DWLS offense to 10 days.
- d. Misdemeanor driving under the influence (DUI) offenses:
  - i. Option 1:
    1. Mandate the post-conviction diversion of first-time misdemeanor DUI and refusal to submit to a chemical test offenders to surveillance under remote monitoring technologies.
      - a. If surveillance under remote monitoring technologies is not available, the DOC may divert first-time offenders to supervised probation.
  - ii. Option 2:
    1. Mandate the post-conviction diversion all misdemeanor DUI offenders (including first- and second-time misdemeanor DUI and refusal to submit to a chemical test offenders) to surveillance under remote monitoring technologies; or – in the case of second or subsequent misdemeanor DUI offenders – diversion to either surveillance under remote monitoring technologies or to a halfway house.
      - a. If surveillance under remote monitoring technologies is not available, the DOC may divert first-time misdemeanor DUI offenders to supervised probation.
    2. Allow the DOC to divert first-time felony DUI or refusal to submit to a chemical test offenders to surveillance under remote monitoring technologies or a halfway house.

- a. *This will be forwarded not as a part of the consensus recommendations, but as an additional recommendation for legislative consideration that did meet consensus approval.*
- e. Misdemeanor A offenses (excluding DUI, DWLS offenses)
  - i. Presumptively setting a zero to thirty day range for all misdemeanor A's, excluding DUI and refusal to submit to a chemical test offenses, unless there is a finding by a jury trial that the offender exhibited past similar criminal convictions, or the conduct was among the most serious constituting the offense.

## 2. Revise drug penalties to focus the most severe punishments on higher-level drug offenders

- a. Reclassify possession of IA and IIA controlled substances as misdemeanors.
- b. Limit the maximum penalty for first- and second-time possession offenses at one month and six months of suspended time, respectively.
- c. Bring penalties for IA controlled substances into alignment with penalties for IIA controlled substances; and forward this recommendation to the Controlled Substances Advisory Committee for their review and consideration.
- d. Create a tiered commercial drug statute whereby sale of less than 5g of IA and IIA is a Felony C; and sale of more than 5g of IA and IIA is a Felony B.

### Summary drug offense recommendation

Offense Levels		Alaska Current	Policy Recommendation
MICS 2	Felony A	Sale of any amount of IA	
MICS 3	Felony B	Sale of any amount of IIA	Sale of more than 5g IA, IIA
MICS 4	Felony C	Possession of any amount of IA, IIA	Sale of less than 5g of IA, IIA
MICS 5	Misdemeanor A		Possession of any amount of IA, IIA; first and second possession convictions are non-jailable

IA – opiates, including heroin

IIA – methamphetamine, cocaine, PCP etc.

## 3. Utilize inflation-adjusted property crime thresholds

- a. Raise the felony threshold from \$750 to \$2000 for all property crimes with a required dollar amount, including, but not limited to theft 3, criminal mischief 3, and vehicle theft 1.
- b. Require the Department of Labor to set in regulation an inflation-adjusted felony property threshold every 5 years, rounded up to the nearest \$50 increment.
- c. Require the Department of Labor to set in regulation an inflation-adjusted threshold between misdemeanor A and B property crimes (set at \$250) every 5 years, rounded up to the nearest \$50 increment.

## 4. Align non-sex felony presumptive ranges with prior presumptive terms

- a. Option 1: Bring presumptive ranges under the ceiling of 2005 presumptive terms; implement presumptive probation for first- and second-time Class C offenders.
  - a. *This will be forwarded not as a part of the consensus recommendations, but as an additional recommendation for legislative consideration.*
- b. Option 2: Align presumptive ranges with 2005 presumptive terms; implement presumptive probation for first-time Class C offenders.

### Summary presumptive felony sentencing recommendation

Felony Class	Presumptive Term (2005)	Alaska Current	Option 1	Option 2
<b>Class A</b>				

First	[5] – 20	[5 – 8] – 20	[2 – 5] – 20	[3 – 6] – 20
First/Enhanced	[7] – 20	[7 – 11] – 20	[3 – 7] – 20	[5 – 9] – 20
Second	[10] – 20	[10 – 14] – 20	[6 – 10] – 20	[8 – 12] – 20
Third	[15] – 20	15 – 20	[10 – 15] – 20	13 – 20
<b>Class B</b>				
First	[n/a] – 10	[1 – 3] – 10	[0 – 2] – 10	[0 – 2] – 10
First/Enhanced	[n/a] – 10	[2 – 4] – 10	[0 – 3] – 10	[1 – 3] – 10
Second	[4] – 10	[4 – 7] – 10	[1 – 4] – 10	[2 – 5] – 10
Third	[6] – 10	6 – 10	[2 – 6] – 10	4 – 10
<b>Class C</b>				
First	[n/a] – 5	[0 – 2] – 5	Presumptive Probation	Presumptive Probation
Second	[2] – 5	[2 – 4] – 5	Presumptive Probation	[1 – 3] – 5
Third	[3] – 5	3 – 5	[1 – 3] – 5	2 – 5

**5. Incentivize completion of treatment for sex offenders with an earn time program**

- a. Implement an earned time program for sex offenders, whereby sex offenders who are currently ineligible for mandatory parole (Class C and B sex offenders with prior offenses, as well as Class A and Unclassified sex offenders) to earn up to a third off their sentence for complying with their treatment requirements as set forth by the Courts and/or DOC.

**6. Revise sentences for Felony C and B sex offenders to 2005 levels**

- a. Return presumptive ranges and statutory maximums for Felony C and B sex offenders to 2005 levels.
  - i. *This will be forwarded not as a part of the consensus recommendations, but as an additional recommendation for legislative consideration that did meet consensus approval.*

**7. Expand the use of discretionary parole**

- a. Expand eligibility for discretionary parole to all offenders except Class A or Unclassified sex offenders with prior felony convictions.

**8. Implement a specialty parole option for the oldest cohort of offenders**

- b. Provide for automatic parole hearings for offenders, including those incarcerated prior to the implementation of the legislation, who are over an age threshold set between 55 and 60 and have served at least 10 years of their sentence.

# Agenda

Sentencing Subgroup – December 1<sup>st</sup>, 2015

- 1. Introductions**
- 2. Review of drivers of Alaska's sentenced population**
  - a. Increasing felony length of stay
    - i. Average felony length of stay up across nonviolent offense categories – up 13% for property offenders; up 16% for drug offenders; up 57% for alcohol offenders; and up 91% for public order offenders
    - ii. Average felony length of stay up across violent offense categories – up 17% for person offenders; and up 84% for sex offenders
  - b. High number of nonviolent misdemeanor admissions
    - i. 82% of prison admissions are misdemeanants; 60% of prison admissions are nonviolent misdemeanants
    - ii. Limited use of prison alternatives outside of probation
- 3. Preliminary impact summary**
  - a. Bed reductions needed to meet legislative and gubernatorial goalposts
  - b. Preliminary impacts from sentencing, community supervision, and pretrial subgroups
- 4. Areas of policy consensus w/ outstanding questions**
  - a. Misdemeanor driving under the influence (DUI) offenses
  - b. Misdemeanor B offenses
  - c. Driving while license suspended (DWLS) offenses
  - d. Shoplifting offenses under \$250
  - e. Felony theft offenses
  - f. Felony drug offenses
  - g. Specialty parole option for the oldest cohort of offenders
  - h. Earn time program for sex offenders contingent on treatment completion
  - i. Expansion of discretionary parole eligibility
- 5. Areas of further discussion**
  - a. Presumptive sentencing for non-sex felons
  - b. Presumptive sentencing for Felony C and B sex offenders
  - c. Nonviolent misdemeanor A offenders
- 6. Public comment**

\*\*\* Discussion draft – not for distribution \*\*\*

# Preliminary Impact Summary

Bed impacts needed to meet legislative and gubernatorial goalposts.—

- To avert all future prison growth: **Avert 1,416 beds.**
- To avert all future prison growth and reduce the current prison population by 15 percent: **Avert 2,180 beds.**
- To avert all future prison growth and reduce the current prison population by 25 percent: **Avert 2,689 beds.**

Preliminary impacts from sentencing, pretrial, and community supervision subgroups.—

Policy	Project Bed Impacts
<b>Consensus Policy Options (with associated impacts)</b>	
<b>Pretrial</b>	
1. Creating a presumption for the issuing of citations (versus arrest).	Estimated to avert 74 beds.
2. Providing statutory guidance for a release decision-making grid based on risk.	Estimated to avert 393 beds.
3. Reclassifying penalties for failure to appear and violation of release conditions.	Estimated to avert 22 beds.
<b>Sentencing</b>	
4. Diverting 1 <sup>st</sup> -time misdemeanor DUI offenders to electronic monitoring.	Estimated to avert 80 beds.
5. Reclassifying misdemeanor B offenses as violations.	Estimated to avert 64 beds.
6. Rendering first- and second-time shoplifting under \$250 offenses as non-jailable offenses.	Estimated to avert 21 beds.
7. Reclassifying non-DUI related DWLS offenses as violations.	Estimated to avert 31 beds.
8. Raising the felony theft threshold to \$2000.	Estimated to avert 31 beds.
9. Aligning presumptive ranges with prior presumptive terms (lowest reduction).	Estimated to avert 130 beds.
10. Creating an earn-time program for sex offenders contingent on treatment.	Estimated to avert 150 beds.
11. Reclassifying felony drug offenses; diverting 1 <sup>st</sup> - and 2 <sup>nd</sup> -time possession offenders.	Estimated to avert 209 beds.
12. Expanding discretionary parole eligibility for non-sex felons.	Estimated to avert 259 beds.
13. Expanding discretionary parole eligibility for sex felons.	Estimated to avert 33 beds.
<b>Community Supervision.</b>	
14. Implementing revocation caps.	Estimated to avert 581 beds.
15. Diverting all pretrial technical violator time.	Estimated to avert 474 beds.
<b>Total (before accounting for overlap): 2,552</b>	
<b>Additional Policies to be Forwarded to the Legislature</b>	
16. Diverting 1 <sup>st</sup> and 2 <sup>nd</sup> -time misdemeanor DUI to electronic monitoring and CRCs. <i>(Variation on policy option #4 – above).</i>	Estimated to avert an additional 53 beds.
17. Bringing presumptive ranges under the prior presumptive terms. <i>(Variation on policy option #9 – above).</i>	Estimated to avert an additional 137 beds.
<b>Total w/consensus policy options (before accounting for overlap): 2,662</b>	
<b>Policies Under Discussion Today</b>	
18. Reducing sentencing ranges and maximums for Felony C and B sex offenders.	Estimated to avert up to 30 beds.
19. Reducing the maximum sentence for nonviolent misdemeanor A offenses to 1 month active time and 5 months suspended time	Estimated to avert up to 105 beds.
20. Expanding the felony theft threshold policy to pertain to all property crimes with a related dollar amount.	Estimated to avert an additional 7 beds.

# Areas of Policy Consensus

## 1. Misdemeanor DUI Offenses

- a. Version A (part of consensus recommendations)
  - i. Mandate that first-time misdemeanor DUI offenders serve their active imprisonment sentences on surveillance under remote monitoring technologies.
    1. If remote monitoring technologies are not available, the DOC may have first-time DUI offenders serve their active imprisonment sentence on supervised probation.
  - ii. This policy would not affect the calculation of priors for the DUI recidivist statute.
- b. Version B (to be forwarded as an additional recommendation to the legislature that received majority support)
  - i. Mandate that first-time misdemeanor DUI offenders serve their active imprisonment sentences on surveillance under remote monitoring technologies
    1. If remote monitoring technologies are not available, the DOC may divert first-time DUI offenders to supervised probation for the duration of the imprisonment sentence.
  - ii. Mandate that second or subsequent misdemeanor DUI offenders serve their active imprisonment sentences on surveillance under remote monitoring or a community residential center.
  - iii. Allow the DOC to divert first-time felony DUI offenders to surveillance under remote monitoring technologies or community residential centers depending on the offender's risk level.
  - iv. This policy would not affect the calculation of priors for the DUI recidivist statute.
- c. **Question for group consideration: Should this policy (both versions) be extended to offenders convicted of refusing to submit to a chemical test and for DUI's related to driving a commercial vehicles?**

## 2. Misdemeanor B Offenses

- a. Reclassify state misdemeanor B offenses as violations (excepting shoplifting offenses under \$250), punishable by a fine up to \$1000.
- b. Restrict municipalities from incarcerating past these limits for similar municipal offenses.
- c. Ensure that commitment of a misdemeanor B qualifies as a violation of probation or parole.
- a. **Question for group consideration: Should the \$250 dollar threshold that applies to a number of misdemeanor B offenses be indexed to inflation moving forward?**

## 3. Driving while license suspended (DWLS) offenses

- a. Reclassify DWLS offenses when the suspended license was not due to a DUI or refusal to submit to a chemical test offense as violations, punishable by a fine up to \$1000.
- b. Ensure that commitment of a DWLS violation qualifies as a violation of probation or parole.
- c. Eliminate the mandatory minimum for a first DUI-related or refusal-related DWLS offense.
- d. Reduce the mandatory minimum for a second or subsequent DUI or refusal-related DWLS offense to 10 days (from 30 days currently).

## 4. Shoplifting offenses under \$250

- a. Reclassify first- and second-time shoplifting offenses under \$250 as non-jailable misdemeanors, punishable by a fine up to \$2000.

- b. Reduce the maximum sentence for a third or subsequent shoplifting under \$250 to 5 days suspended with a maximum 6-month probation term and a fine up to \$2000.
- c. Questions for group consideration:
  - i. Should the carve-out for shoplifting offenses under \$250 be expanded to include all theft-related offenses?
  - ii. Should the \$250 threshold that applies to a number of misdemeanor B offenses be indexed to inflation moving forward?

## 5. Felony theft offenses

- a. Raise the felony theft threshold to \$2000 for the following theft crimes:
  - i. Theft 3;
  - ii. Concealing merchandise, \$250 - \$750; and
  - iii. Removal of identification marks, \$250 - \$750;
  - iv. Issuing a bad check, \$250 - \$750.
- b. Require the Department of Labor to set in regulation an inflation-adjusted felony theft threshold every 5 years, rounded up to the nearest \$50 increment.
- c. Question for group consideration: Should the raised felony theft threshold pertain to the following additional property crimes?
  - i. Vehicle theft 1;
  - ii. Criminal mischief 3;
  - iii. Unlawful possession 1; and
  - iv. Misapplication of property 1.

## 6. Felony drug offenses

- a. Reclassify possession of IA and IIA controlled substances as a misdemeanor; render first-and second-time possession of IA and IIA controlled substances as non-jailable misdemeanors.
- b. Bring penalties for IA controlled substances into alignment with penalties for IIA controlled substances.
- c. Create a tiered commercial drug statute whereby sale of less than 5g of IA and IIA is a felony c; and sale of more than 5g of IA and IIA is a felony b.
- d. Questions for group consideration:
  - i. Should judges be able to impose periods of suspended time for first- and second-time possession offenders to incentivize completion of treatment programs?
  - ii. Should a stipulation be included in the recommendation that statutory changes be made to ensure that residential treatment provided for in a sentence of probation *can* exceed the maximum amount of jail time that can be imposed?

## 7. Specialty parole option for the oldest cohort of inmates

- a. Provide for automatic parole hearings for offenders who are over a certain age and have served a set number of years in prison.
- b. Ensure that when evaluating inmates under this policy, the Parole Board considers the inmate's likelihood of re-offense in light of his age, as well as criminal history, behavior in prison, participation in treatment, and plans pending release.

- c. Question for group consideration: What is the appropriate age and minimum number of years served to be eligible for this specialty parole provision?

## 8. Earn time program for sex offenders contingent upon treatment completion

- a. Enable felony sex offenders who are currently ineligible for mandatory parole (Class C and B sex offenders with prior offenses, as well as Class A and Unclassified sex offenders) to earn up to a third off their sentence for complying with their treatment requirements (including but not limited to sex offender treatment) mandated by the courts and/or the Department of Corrections.

## 9. Expansion of discretionary parole eligibility

- a. Expand eligibility for discretionary parole to all felony offenders excepting Class A or Unclassified sex offenders with prior felony convictions
- b. *(From the community supervision subgroup)*. Streamline parole decision-making for lower-level felonies (first time Felony C and B offenders) by limiting hearings to only those offenders who have failed to comply with their Individual Case Plan or who have been disciplined for failure to obey institutional rules, or in cases where the victim has requested a parole hearing. Otherwise, these inmates will be paroled at their earliest eligibility date.
- c. Require that any other offender who is eligible for parole receives a hearing at least 90 days before his or her first eligibility date, with the presumption that the offender will be granted parole if he or she has complied with the Individual Case Plan and followed institutional rules. The presumption of parole could be overcome with a finding on the record that release would jeopardize public safety.
- d. Question for group consideration: Should the parole eligibility expansion be retroactively extended to offenders who are currently in prison?

# Presumptive Sentencing for Non-Sex Felons

Review of last discussion.—

- Interest in bringing current presumptive ranges into line with presumptive terms in 2005.
- Interest in further discussing presumptive sentencing reform options that would provide for greater judicial discretion in sentencing below the current range.

Effects of sentencing range changes in last decade.—

From 2004 to 2014, average length of stay for:

- Class A felonies grew 67 percent;
- Class B felonies grew 19 percent; and
- Class C felonies grew 20 percent.

Felony Class	Pre-Implementation average LOS			2005 Change	Post-Implementation average LOS		
	2002	2003	2004		2012	2013	2014
Class A Felony	11 months	14 months	27 months		33 months	35 months	45 months
Class B Felony	7 months	8 months	11 months		13 months	12 months	13 months
Class C Felony	4 months	5 months	6 months		6 months	6 months	7 months

## Presumptive Sentencing for Non-Sex Felons Policy Options

Option 1: Bring presumptive ranges under the ceiling of 2005 presumptive terms.

Option 2: Align presumptive ranges with 2005 presumptive terms.

Option 3 (new option): Align presumptive ranges with 2005 presumptive terms; expand judicial discretion in sentencing below the current range

Felony Class	Presumptive Term (2005)	Alaska Current	Option 1	Option 2	Option 3
<b>Class A</b>					
First	[5] – 20	[5 – 8] – 20	[2 – 5] – 20	[3 – 6] – 20	[0 – 6] – 20
First/Enhanced	[7] – 20	[7 – 11] – 20	[3 – 7] – 20	[5 – 9] – 20	[3 – 9] – 20
Second	[10] – 20	[10 – 14] – 20	[6 – 10] – 20	[8 – 12] – 20	[6 – 12] – 20
Third	[15] – 20	15 – 20	[10 – 15] – 20	13 – 20	10 – 20
<b>Class B</b>					
First	[n/a] – 10	[1 – 3] – 10	[0 – 2] – 10	[0 – 2] – 10	[0 – 2] – 10
First/Enhanced	[n/a] – 10	[2 – 4] – 10	[0 – 3] – 10	[1 – 3] – 10	[0 – 3] – 10
Second	[4] – 10	[4 – 7] – 10	[1 – 4] – 10	[2 – 5] – 10	[1 – 5] – 10
Third	[6] – 10	6 – 10	[2 – 6] – 10	4 – 10	3 – 10
<b>Class C</b>					
First	[n/a] – 5	[0 – 2] – 5	Presumptive Probation	Presumptive Probation	Presumptive Probation
Second	[2] – 5	[2 – 4] – 5	Presumptive Probation	[1 – 3] – 5	Presumptive Probation
Third	[3] – 5	3 – 5	[1 – 3] – 5	2 – 5	1 – 5
Estimated bed impact:			267 beds	130 beds	185 beds

# Presumptive Sentencing for Class C and B Sex Felons

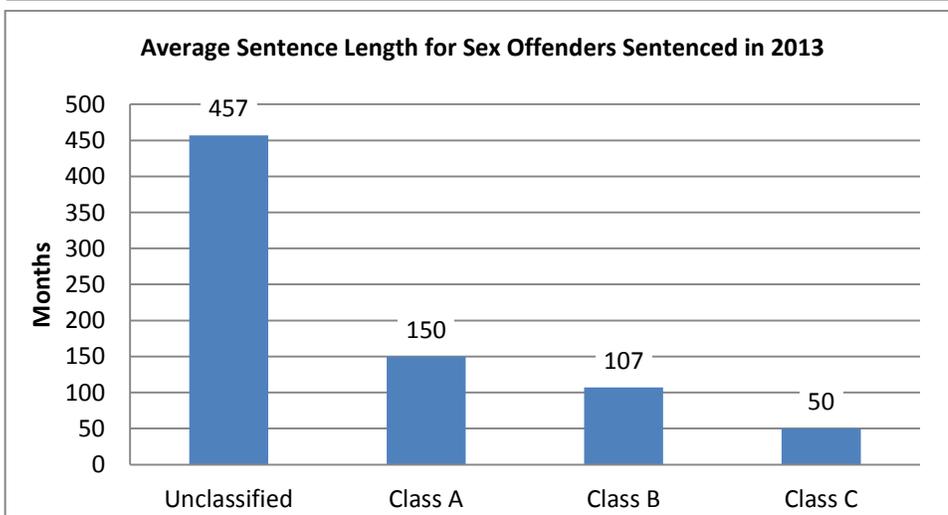
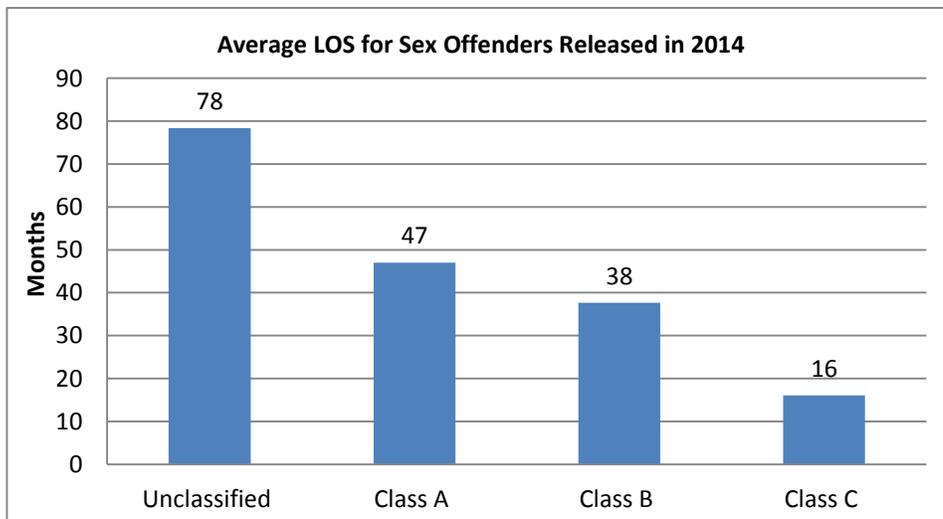
Review of last month's discussion.—

- Interest in discussing modest sentencing reforms for Alaska's Class C and B sex felons.

What we know about Alaska's sex offender population.—

- In July 2014, there were 581 people in prison on sex offenses; all but 10 of them were in for felony offenses.
- Length of stay in the last 10 years has grown by 86%, contributing to a 38% growth of the sex offender population in prison. In the last 10 years –
  - Length of stay for Unclassified sex offenses has grown by 123%.
  - Length of stay for Class A sex offenses has grown by 42%.
  - Length of stay for Class B sex offenses has grown by 124%.
  - Length of stay for Class C sex offenses has grown by 45%.

Current LOS likely not representative.---



# Presumptive Sentencing for Class C and B Sex Felons Policy Options

Option 1: Return presumptive ranges and statutory maximums for Felony C and B sex offenders to 2006 levels.

Option 2: Return statutory maximums to 2006 levels; moderate presumptive ranges for all Felony C and B sex offenders.

Option 3: Maintain statutory maximums for all Felony C and B sex offenders; moderate presumptive ranges for first- and second-time Felony C and B sex offenders only.

Felony Class	2005 Levels	Alaska Current	Option 1	Option 2	Option 3
<b>Sex - Class B</b>					
First	[2 – 4] – 20 years	[5 – 15] – 99 years	[2 – 4] – 20 years	[4 – 8] – 20 years	[4 – 8] – 99 years
Second	[5 – 8] – 20 years	[10 – 25] – 99 years	[5 – 8] – 20 years	[10 – 16] – 20 years	[10 – 25 ] – 99 years
Third	[10 – 14] – 20 years	[20 – 35] – 99 years	[10 – 14] – 20 years	16 – 20 years	[20 - 35] – 99 years
<b>Sex – Class C</b>					
First	[1 – 2] – 10 years	[2 – 12] – 99 years	[1 – 2] – 10 years	[2 – 4] – 10 years	[2 – 4] – 99 years
Second	[2 – 5] – 10 years	[8 – 15] – 99 years	[2 – 5] – 10 years	[4 - 7] – 10 years	[8 – 15] – 99 years
Third	[3 – 6] – 10 years	[15 – 25] – 99 years	[3 – 6] – 10 years	6 – 10 years	[15 – 25] – 99 years
Estimated bed impact:			30 beds	22 beds	TBD

# Nonviolent Misdemeanor A Offenses

Review of last month's discussion.—

- Interest in discussing reducing the maximum sentence for some nonviolent misdemeanor A's to 30 days of active time and 180 days of suspended time.

What we know about Alaska's nonviolent misdemeanor A population (excludes DUI, DWLS and violent crimes).—

- **In 2014, 1,354 offenders entered prison post-conviction for a nonviolent misdemeanor A** (definition utilized here excludes assault 4, reckless endangerment, and stalking 2).
- **Drivers of the misdemeanor A population include:**
  - **Theft 3:** 554 offenders admitted in 2014
  - **Violate DV protective order:** 147 offenders admitted in 2014
  - **Criminal trespass 1:** 118 offenders admitted in 2014
  - **Filing a false report:** 107 offenders admitted in 2014
  - **Criminal mischief 4:** 68 offenders admitted in 2014
  - **Forgery 3:** 43 offenders admitted in 2014
  - **Escape 4:** 39 offenders admitted in 2014

## Nonviolent Misdemeanor A Offense Options

Option 1: Nonviolent misdemeanor A's are presumptively sentenced to a 0 – 30 day active imprisonment and a 0 – 180 day suspended imprisonment term, except that the maximum term can be exceeded if it can be proved that aggravating factors exist.

*Estimated impact: TBD*

Option 2: Reduce statutory maximum for all nonviolent A misdemeanors to 30 days active time and 180 days suspended time, excluding DUI and DWLS offenses.

*Estimated bed impact: 105 beds*

Option 3: Reduce statutory maximums for all nonviolent A misdemeanors to 30 days active time and 180 days suspended time, excluding DUI and DWLS offenses, as well as sex offenses, and certain public order, property, and severe property crimes. (See complete list of carve-outs on next page).

*Estimated bed impact: TBD*

### List of potential carve-out crimes for option 3

1. Resisting or interfering with arrest.
2. Violate DV protective order.
3. Interfere with report of DV crime.
4. Unlawful contact 1.
5. Harassment 1.
6. Failure to register a sex offender 2.
7. Indecent exposure 2.
8. Sexual abuse of a minor 4.
9. Sexual assault 4.
10. Sex trafficking 4.
11. Criminal trespass 1
12. Removal of identification marks
13. Theft 3 (and related)
14. Forgery 3
15. Removal of identification marks
16. Interfere with report of DV crime
17. Criminal nonsupport
18. Endangering the welfare of a child 1
19. Failure to report an accident

## Nonviolent Misdemeanor As

Note: This is not a complete list. This list comprises all the offenses that have appeared in the data within the last 10 years. Offenses that do not have admissions or LOS figures for 2014 appeared sometime within the prior 10 years, but had no offenders in prison under those offense titles in 2014.

Offense	Description	Statute AS:	2014	
			Adms	LOS
<b>Drug</b>				
Misconduct involving controlled substances 5	Person possesses: <ul style="list-style-type: none"> <li>• &lt;25 doses of IIIA or IVA</li> <li>• Aggregate weight of &lt;3 g IIIA or IVA; &gt;6 but &lt;12 g synthetic cannabinoids applied to a medium; &lt;500 mg of cathinone and analogs</li> <li>• &lt;50 doses of VA</li> <li>• Aggregate weight of &lt;6 g VA</li> <li>• Aggregate weight of ≥1 oz. VIA</li> </ul>	11.71.050	31	28 days
<b>Property</b>				
Theft 3	Person commits theft of ≥\$250 but <\$750; or person commits theft of <\$250; and has 2 or more prior thefts within preceding 5 years.	11.46.140	554	53 days
Criminal trespass 1	Person enters or remains unlawfully on land with intent to commit a crime on the land; or person enters or remains unlawfully in a dwelling.	11.46.330	118	40 days
Vehicle theft 2	<ul style="list-style-type: none"> <li>• Person takes the propelled vehicle of another, other than a vehicle described in AS 11.46.360(a)(1)</li> <li>• Having custody of a propelled vehicle under a written agreement with the owner that includes an agreement to return the vehicle, the person retains possession for an extended period of time</li> </ul>	11.46.365	22	60 days
Criminal mischief 4	Damages property ≥\$250 but <\$750 or: <ul style="list-style-type: none"> <li>• Tampers with a fire protection device in public building</li> <li>• Knowingly accesses a computer system without right to do so</li> <li>• Uses a device to descramble an electronic signal that has been scrambled to prevent viewing of the signal</li> <li>• Knowingly damages an official traffic control device</li> </ul>	11.46.484	68	72 days
Forgery 3	With intent to defraud, person falsely makes, possesses, or utters an instrument.	11.46.510(a)	43	47 days
Criminally negligent burning 2	Person damages property of another by fire or explosion with criminal negligence.	11.46.430	-	-
Criminal impersonation 2	Person assumes a false identify and does an act with intent to defraud, commit a crime, or obtain a benefit.	11.46.570	-	-
Possession of burglary tools	Person possesses a burglary tool with intent to use the tool for burglary or theft.	11.46.315	-	-
Concealment of merchandise	Person knowingly conceals merchandise of less than \$750 but more than \$250 with intent to steal the merchandise.	11.46.220	-	-

Removal of identification marks	Person erases, defaces, or otherwise alters any serial number or identification mark on merchandise worth less than \$750 but more than \$250 with intent to steal the merchandise.	11.46.260	-	-
Issuing a bad check	Person issues a bad check knowing that it will not be honored in an amount less than \$750 but more than \$250.	11.46.280	-	-
Fraudulent use of an access device	Person uses an access device to obtain property valued at less than \$750 knowing that the access device has been stolen, forged, or cancelled.	11.46.285	-	-
Failure to control or report a dangerous fire	Person knows that a fire is endangering life or substantial amount of property and fails to take reasonable measures to control the fire.	11.46.450	-	-
Obtaining signature by deception	Person causes another to sign a document by deception.	11.46.540	-	-
Offering a false instrument for recording 2	Person presents a lien to the recorder for registration, filing, or recording with reckless disregard that the lien is not provided for in statute or was not authorized under state or federal law.	11.46.560	-	-
Deceptive business practices	Person, in the course of engaging in a business, occupation, or profession, makes a false statement in an advertisement, among other acts.	11.46.710	-	-
Misrepresentation of use of propelled vehicle	Person sells or leases a propelled vehicle knowing that a usage registering device on the vehicle has been disconnected or replaced so as to misrepresent the distance traveled by the vehicle or the hours of engine use.	11.46.720	-	-
<b>Alcohol</b>				
Misdemeanor DUI	<i>Addressed in a separate policy (impacts not included).</i>			
Furnish alcohol to person under 21	Furnishing or delivering alcoholic beverage to person under 21 (This does not prohibit furnishing alcohol (1) by a parent to a child; (2) by a guardian to the guardian's ward; and (3) by one spouse to another.)	04.16.051	19	34 days
Drunk person on licensed premises	Drunken person knowingly enters or remains on alcohol-licensed premises.	04.16.040	9	7 days
Alcohol restricted persons – in licensed areas	Person who is restricted from purchasing alcohol knowingly enters or remains in alcohol-licensed premises.	04.16.047	2	5 days
Sell alcohol without license – wet area	Knowingly manufacturing, selling etc. an alcoholic beverage without a license or permit. (Mandatory minimum – 10 days).	04.11.010; 04.16.200	3	173 days
Importation of alcoholic beverages into local option area	Person who brings, sends, or transports alcohol beverages into area that has elected to be dry If less than 10.5 liters of distilled spirits, 24 liters of wine, or 12 gallons of malt beverages.	04.11.499	-	-
Purchase alcohol in dry area	Person knowingly purchases alcohol in a designated dry area.	04.16.200(f)	-	-
<b>Public Order</b>				
Escape 4	Person removes oneself from official detention for a misdemeanor; or person removes oneself from a restraint after being placed under a restraint by a peace officer; or person removes an EM device or leaving one's residence against EM restrictions.	11.56.330	39	60 days

Unlawful evasion 2	Person fails to return to official detention within the time authorized following temporary leave; or while on furlough, person fails to return to the place of confinement.	11.56.340	6	37 days
Promoting contraband 2	Person takes contraband into a correctional facility. Person makes or possesses contraband while under official detention in a correctional facility.	11.56.380	5	53 days
Tampering with a witness 2	Person knowingly induces a witness to be absent from an official judicial proceeding.	11.56.545	-	-
Resisting or interfering with arrest	Person resists or interferes with an arrest by (1) force; (2) committing any degree of criminal mischief; or (3) any means that creates a substantial risk of physical injury to any person.	11.56.700	74	44 days
Violate DV protective order	Person commits or attempts to commit an act that violates a DV protective order.	11.56.745	147	42 days
Interfere with report of DV crime	Person interferes with another person who is reporting a crime involving domestic violence.	11.56.745	-	-
Harm police dog 2	Person intentionally causes physical injury to or torments a police dog.	11.56.710	-	-
Unlawful contact 1	Person is arrested for a crime involving domestic violence; and, before the initial appearance before a judge, person attempts to communicate with the alleged victim.	11.56.750	20	58 days
False report	Person gives false information to a peace officer; makes a false report or gives a false alarm etc.	11.56.800	107	72 days
Tamper with public records 2	Person knowingly makes a false entry in or falsely alters a public record.	11.56.820	-	-
Unsworn falsification 2	Person, with intent to mislead, submits a false written or recorded statement.	11.56.210	-	-
Impersonate public servant 2	Person pretends to be a public servant and purports to exercise the authority of a public servant in relation to another person.	11.56.830	-	-
Harassment 1	Person subjects someone to offensive physical contact and the contact is contact with human or animal blood, saliva and other bodily fluids; or person subjects someone to offensive physical contact through touching another person's genitals, buttocks, or female breast.	11.61.118	2	45 days
Contributing to delinquency of a minor	Person over 19 years of age who aids or induces a child under 18 years of age to do any act prohibited by state law, among other acts.	11.51.130	-	-
Tampering with public records 2	Person knowingly makes a false entry in or falsely alters a public record, among other acts.	11.56.820	-	-
Unlawful possession of traffic preemption device	Person possesses or uses a traffic preemption device and that person is not, at the time of the possession or use, operating an emergency vehicle.	11.56.825	-	-
Recruiting a gang member 2	Adult person, without force or the threat of force, encourages or recruits a person who is under 18 years of age and at least three years younger to participate in a criminal street gang.	11.61.165	-	-
Misconduct involving a corpse	Person intentionally disinters, removes, mutilates a corpse; or engages in sexual penetration of a corpse; or detains a corpse for a debt.	11.61.130	-	-
Promoting gambling 2	Person promotes or profits from unlawful gambling.	11.66.220	-	-

Possession of gambling records 2	Person, with knowledge of its contents or character, possesses a gambling record.	11.66.240	-	-
Possession of gambling device	Person manufactures, sells, or possesses a gambling device knowing that the device is used or is to be used in unlawful gambling.	11.66.260	-	-
Minors present at adult entertainment business	An agent of the owner of a business that offers adult entertainment allows a person under the age of 18 years to enter and remain within premises where adult entertainment is offered with criminal negligence.	11.66.30	-	-
Cruelty to animals	<i>Some forms are a felony.</i>	11.61.140	-	-
Official misconduct	A public servant performs an act relating to the public servant's office but constituting an unauthorized exercise of the public servant's official functions, knowing that that act is unauthorized, among other acts.	11.56.850	-	-
Misuse of confidential information	A public servant who learns confidential information through employment as a public servant; and uses the confidential information for personal gain, among other acts.	11.56.860	-	-
Custodial interference 2	A relative of a child under 18 years of age takes, entices, or keeps that child from a lawful custodian for a protracted period, among other acts.	11.41.330	-	-
Endangering welfare of child 1	Only if no serious physical injury or sexual contact A parent or guardian intentionally deserts the child in a place under circumstances creating a substantial risk of physical injury to the child, among other acts.	11.51.100	-	-
Criminal nonsupport	Personally legally charged with the support of a child the person knowingly fails, without lawful excuse, to provide support for the child.	11.51.120	-	-
Aiding nonpayment of child support 2	Person who knows that an obligor has a duty for periodic payment of child support and being a person with a statutory duty to disclose information to a child support enforcement agency, intentionally withholds the information when it is requested by a child support enforcement agency, among other acts.	11.51.122	-	-
Violation of custodian's duty (felony)	Person fails, when acting as a custodian appointed by the court, to report immediately that the person has violated a condition of release.	11.56.758	-	-
Violating condition of release (felony)	<i>Addressed in a separate policy (impacts not included).</i>			
<b>Transportation Offenses</b>				
Leave scene of accident	Person involved in an accident who does not shall immediately stop the vehicle and remain at the scene until they have rendered assistance and provided information	28.25.050	31	159 days
Accident report – provide false info or fail to report	Person involved in an accident who does not give his name, address, and license number to the person stuck or injured, and provide assistance if necessary.	28.25.060(	-	-
Drive without valid operator's license	Person who drives and does not have in their possession a valid Alaska driver's license.	28.15.011	1	7 days
Drive without valid CMV license	Person who drives a commercial motor vehicle without being licensed or privileged to drive a commercial motor vehicle.	28.33.150	1	7 days

Unlawful use of license	Person who displays a canceled, suspended, or revoked license; or displays a license not issued to the person; or lends the person's license to another person, among other acts.	28.15.281	1	2 days
Drive with license suspended	<i>Addressed in a separate policy (impacts not included).</i>			
<b>Weapons Offenses</b>				
Misconduct involving weapons 4	Person possesses on the person, or in the interior of a vehicle in which the person is present, a firearm when the person's physical or mental condition is impaired as a result of the intoxicating liquor or a controlled substance, among other acts.	11.61.210	-	-
<b>Non-Registrable Sex Offenses</b>				
Failure to register as a sex offender 2	Person who is required to register as a sex offender and fails to register or file written notice of change of residence, change of mailing address, among other acts.	11.56.840	45	119 days
Indecent exposure 2	Person knowingly exposes the offender's genitals in the presence of another person with reckless disregard for the offense effect if witness is under 16.	11.41.460	6	42 days
Sexual abuse of a minor 4	Person who is under 16 years of age engages in sexual contact with a person who is under 13 years of age and at least three years younger than the offender.	11.41.440	-	-
Sex trafficking 4	Person engages in conduct that institutes, aids, or facilitates prostitution under circumstances not proscribed under AS 11.66.130(a)(4).	11.66.135	-	-
<b>Fish and Game Offenses</b>				
Airborne hunting	Person who shoots or assists in shooting a free-ranging wolf or wolverine the same day that a person has been airborne.	16.05.783	-	-
Fishway and hatchery violations	A person who violates AS 16.05.871 - 16.05.896.	16.05.901	-	-
Unlawful taking or sale of prohibited fish	A person may not possess, purchase, sell, or offer to sell migratory fish or migratory shellfish taken on the high seas knowing that they were taken in violation of regulations.	16.10.220	-	-

# Agenda

Sentencing Subgroup – November 18<sup>th</sup>, 2015

- 1. Introductions**
- 2. Review of drivers of Alaska’s sentenced population**
  - a. Increasing felony length of stay
    - i. Average felony length of stay up across nonviolent offense categories – up 13% for property offenders; up 16% for drug offenders; up 57% for alcohol offenders; and up 91% for public order offenders
    - ii. Average felony length of stay up across violent offense categories – up 17% for person offenders; and up 84% for sex offenders
  - b. High number of nonviolent misdemeanor admissions
    - i. 82% of prison admissions are misdemeanants; 60% of prison admissions are nonviolent misdemeanants
    - ii. Limited use of prison alternatives outside of probation
- 3. Preliminary impact summary**
  - a. Bed reductions needed meet legislative and gubernatorial goalposts
  - b. Preliminary impacts from community supervision and pretrial subgroups
- 4. Review of areas of policy consensus**
  - a. Misdemeanor DUI offenses
  - b. Misdemeanor B offenses
  - c. Shoplifting offenses under \$250
  - d. Felony theft offenses
  - e. Felony drug offenses
  - f. Geriatric parole
- 5. Policies addressing felony length of stay**
  - a. Research on increasing felony length of stay
  - b. Policies under discussion
    - i. Non-sex felony presumptive sentencing
    - ii. Sex offender sentencing
    - iii. Parole eligibility (new policy)
- 6. Policies addressing misdemeanor admissions**
  - a. Research on short jail stays
  - b. Policies under discussion
    - i. Driving on a suspended license (new policy)
    - ii. Nonviolent misdemeanor a offenses (new policy)
- 7. If necessary, December meeting scheduled for December 1<sup>st</sup>, 12 - 2pm**
- 8. Public comment**

\*\*\* Discussion draft – not for distribution \*\*\*

# Preliminary Impact Summary

Bed impacts needed to meet legislative and gubernatorial goalposts.—

- To avert all future prison growth: **Avert 1,416 beds.**
- To avert all future prison growth and reduce the current prison population by 15 percent: **Avert 2,180 beds.**
- To avert all future prison growth and reduce the current prison population by 25 percent: **Avert 2,689 beds.**

Preliminary impacts from sentencing, pretrial, and community supervision subgroups.—

Policy	Project Bed Impacts
<b>Sentencing</b>	
Diverting misdemeanor DUI offenders to prison alternatives; and allowing for diversion of first-time felony DUI offenders to alternatives at Commissioner's discretion.	Estimated to avert 133 beds.
Reclassifying state misdemeanor b offenses and first- and second-time shoplifting under \$250 as non-jailable violations; restrict municipalities from incarcerating past these limits.	Estimated to avert 81 beds.
Raising the felony theft threshold to \$2000 and index to inflation moving forward.	Estimated to avert 31 beds.
Reclassifying possession of schedule I and II drugs as misdemeanors; rendering first- and second-time possession offenses non-jailable offenses; aligning penalties for heroin to other serious controlled substances and create a tiered commercial drug statute based on weight.	Estimated to avert 209 beds.
Creating a geriatric parole valve for offenders who are over 45 and have served at least 20 years.	TBD.
<b>Pretrial</b>	
Creating a presumption for the issuing of citations (versus arrest) –	Estimated to avert 74 beds.
Providing statutory guidance for a release decision-making framework, tying conditions of release to charge severity and risk score, and determine in statute who should never be detained pretrial/	Estimated to avert 393 beds.
Reclassify penalties for failure to appear and violation of release conditions.	Estimated to avert 22 beds.
<b>Community Supervision</b>	
Putting caps on the amount of prison time that can be used as a sanction for technical (non-criminal) violations.	Estimated to avert 576 beds.
Reducing pretrial length of stay for technical violations.	Estimated to avert 474 beds.
Extend earn time to offenders serving sentences on electronic monitoring.	No impact projected.
Statutorily authorize the DOC to create a graduated sanctions and incentives matrix using swift, certain, and proportional responses and to use the matrix when responding to technical (non-criminal) violations of supervision.	No impact projected.
Reducing the statutory maximum lengths for probation terms.	No impact projected.
Eliminating the confusing practice of dual supervision, where both the court and the Parole Board have authority over offenders leaving prison at the same time.	No impact projected.
Streamlining the discretionary parole process to ensure that all offenders who are eligible for discretionary parole receive a hearing.	No impact projected.
Creating policies that prioritize higher risk offenders in need of treatment for placement at CRCS, and requiring CRCs to provide cognitive-behavioral programming.	No impact projected.
Focusing ASAP's resources on mandatory referrals (DUIs, MCAs) and expanding the services that ASAP is able to offer to that smaller pool of referrals.	No impact projected.

# Review of Areas of Policy Consensus

## 1. Misdemeanor DUI offenses

- a. Divert first-time misdemeanor DUI offenders to surveillance under remote monitoring technologies (or supervised probation for the duration of the imprisonment sentence if remote monitoring technologies are unavailable in the offender's area);
- b. Divert second or subsequent misdemeanor DUI offenders to surveillance under remote monitoring or a community residential center; and
- c. Allow the DOC to divert first-time felony DUI offenders to surveillance under remote monitoring technologies or community residential centers depending on the offender's risk level.

## 2. Misdemeanor B offenses

- a. Reclassify state misdemeanor b offenses as non-jailable offenses;
- b. Restrict municipalities from incarcerating past these limits for similar municipal offenses; and
- c. Ensure that commitment of a misdemeanor b qualifies as a violation of supervision.
  - i. See appendix a for list of common misdemeanor bs (page 14).

## 3. Shoplifting offenses under \$250

- a. Reclassify first- and second-time shoplifting offenses under \$250 as non-jailable offenses; and
- b. Reduce the maximum sentence for a third or subsequent shoplifting under \$250 offense to 5 days suspended with a maximum 6-month probation term.

## 4. Question for discussion – fine amount for misdemeanor b, shoplifting offenses (see next page)

## 5. Felony theft offenses

- a. Raise the felony theft threshold to \$2000; and
- b. Require the Department of Revenue to set in regulation an inflation-adjusted felony theft threshold every 5 years, rounded up to the nearest \$50 increment.

## 6. Felony drug offenses

- a. Reclassify possession of IA and IIA controlled substances as a misdemeanor; render first-and second-time possession of IA and IIA controlled substances as non-jailable misdemeanors;
- b. Bring penalties for IA controlled substances into alignment with penalties for IIA controlled substances; and
- c. Create a tiered commercial drug statute whereby sale of less than 5g of IA and IIA is a felony c; and sale of more than 5g of IA and IIA is a felony b.

## 7. Implement a specialty parole option for the oldest cohort of inmates

- a. Provide for automatic parole hearings for offenders who are over age 45 and have served at least 20 years of their sentence.
- b. Ensure that when evaluating inmates under this policy, the Parole Board considers the inmate's likelihood of re-offense in light of his age, as well as criminal history, behavior in prison, participation in treatment, and plans pending release.

# Question for Discussion: Financial Penalties

Current fines for lower-level offenses.—

Offense	Penalty
Misdemeanor B <sup>i</sup>	Up to 90 days and \$2,000.
Violation <sup>ii</sup>	Up to \$500.
Possession of marijuana – no previous convictions (committed while not under formal probation; possession was for personal use) <sup>iii</sup>	Up to \$500.
Possession of marijuana – previous conviction (committed while not under formal probation; possession was for personal use) <sup>iv</sup>	Up to \$1,000.
<i>[Proposal from Alcoholic Beverage Control Board]</i> for third or subsequent minor consuming alcohol <sup>v</sup>	Flat \$500 ticket, which can be reduced with the completion of an alcohol education or treatment program within six months of the court hearing.

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## Research on Increasing Length of Stay

Longer prison stays do not reduce recidivism more than shorter prison stays.—

- A meta-analysis conducted by Nagin et. al (2009) **found no relationship between time served behind bars and recidivism.**
- A Pew analysis (2012) conducted by external researchers using data from three states – Florida, Maryland, and Michigan – **found that a significant proportion of offenders who were released in 2004 could have served shorter prison terms without impacting public safety.**<sup>vi</sup>

# Felony Presumptive Sentencing System

Review of last month's discussion.—

- Interest in bringing current presumptive ranges into line with presumptive terms in 2005.

Effects of sentencing range changes in last decade.—

From 2004 to 2014, average length of stay for:

- Class A felonies grew 67 percent;
- Class B felonies grew 19 percent; and
- Class C felonies grew 20 percent.

Felony Class	Pre-Implementation LOS			2005 Change	Post-Implementation LOS		
	2002	2003	2004		2012	2013	2014
Class A Felony	11 months	14 months	27 months		33 months	35 months	45 months
Class B Felony	7 months	8 months	11 months		13 months	12 months	13 months
Class C Felony	4 months	5 months	6 months		6 months	6 months	7 months

## Felony Presumptive Sentencing System Policy Options

Option 1: Bring presumptive ranges under the ceiling of 2005 presumptive terms.

Option 2: Align presumptive ranges with 2005 presumptive terms.

(Numbers in brackets indicate the presumptive term/ranges.)

Felony Class	Presumptive Term (2005)	Alaska Current	Policy Option 1	Policy Option 2
<b>Class A</b>				
First	[5] – 20	[5 – 8] – 20	[2 – 5] – 20	[3 – 6] – 20
First/Enhanced <sup>vii</sup>	[7] – 20	[7 – 11] – 20	[3 – 7] – 20	[5 – 9] – 20
Second	[10] – 20	[10 – 14] – 20	[6 – 10] – 20	[8 – 12] – 20
Third	[15] – 20	15 – 20	[10 – 15] – 20	13 – 20
<b>Class B</b>				
First	[n/a] – 10	[1 – 3] – 10, SIS available	[0 – 2] – 10, SIC available	[0 – 2] – 10, SIC available
First/Enhanced <sup>viii</sup>	[n/a] – 10	[2 – 4] – 10	[0 – 3] – 10	[1 – 3] – 10
Second	[4] – 10	[4 – 7] – 10	[1 – 4] – 10	[2 – 5] – 10
Third	[6] – 10	6 – 10	[2 – 6] – 10	4 – 10
<b>Class C</b>				
First	[n/a] – 5	[0 – 2] – 5	Presumptive Probation	Presumptive Probation
Second	[2] – 5	[2 – 4] – 5	Presumptive Probation	[1 – 3] – 5
Third	[3] – 5	3 – 5	[1 – 3] – 5	2 – 5
Estimated bed impact:			267 beds	130 beds

# Felony Sex Offenses

Review of last month's discussion.—

- Interest in further discussing both front-end and back-end reforms to Alaska's sex offender sentencing system.

What we know about Alaska's sex offender population.—

- **In July 2014, there were 581 people in prison on sex offenses; all but 10 of them were in for felony offenses.**
- **Length of stay in the last 10 years has grown by 86%, contributing to a 38% growth of the sex offender population in prison.** In the last 10 years –
  - Length of stay for unclassified sex offenses has grown by 123%.
  - Length of stay for class a sex offenses has grown by 42%.
  - Length of stay for class b sex offenses has grown by 124%.
  - Length of stay for class c sex offenses has grown by 45%.

What the research says about sex offender populations.—

**Low risk of recidivism compared to other offender types.** Studies have consistently shown that sex offenders recidivate at much lower levels than other types of offenders.<sup>ix</sup> An Alaska Judicial Council study of recidivism in Alaska in 2008 and 2009 found that sex offenders had substantially lower rates of rearrest within one year than other offense groups (see chart below). The same study found that sex offenders were reconvicted for a new sex offense within two years at a rate of 2%.<sup>x</sup>

Rearrest rates within one year, according to type of underlying offense

Violent offenses	36%
Other	36%
Property offenses	34%
Drug offenses	24%
Alcohol offenses	21%
Sex offenses	<b>18%</b>

**Treatment interventions have been shown to be successful.** A cost-benefit analysis conducted by the Washington State Institute for Public Policy (WSIPP) compiling all credible evaluations of sex offender treatment found that in-prison treatment had a cost-benefit ratio of \$1.87 (i.e. for every dollar spent on treatment, there was a \$1.87 returned in benefits to the state and state residents), while community-based treatment had greater returns – \$6.36 in benefits.<sup>xi</sup> (Note that the WSIPP analyses include outcomes outside of recidivism, including victimization rates).

# Felony Sex Offenses Continued

## Felony Sex Offense Policy Options

**Option 1:** Return sex offense sentences to 2005 levels.

Offense	Alaska Current	Option 1
<b>Sex – Unclassified:</b> Sexual assault 1, sex abuse minor 1		
No prior felony	[20 – 30] – 99 years	[8 – 12] – 99 years
1 prior felony	[30 – 40] – 99 years	[15 – 40] – 99 years
2 prior felonies	[40 – 60] – 99 years	[25 – 60] – 99 years
<b>Sex – Class A:</b> Attempt, conspiracy, or solicitation of sexual assault 1, sex abuse of a minor 1 <sup>xii</sup>		
No prior felony	[15 – 30] – 99 years	[5 – 30] – 60 years
1 prior felony	[25 – 35] – 99 years	[12 – 35] – 60 years
2 prior felonies	[35 – 50] – 99 years	[15 – 50] – 60 years
<b>Sex – Class B:</b> Sexual assault 2, sexual assault of a minor 2, exploit minor, distribution of child pornography		
No prior felony	[5 – 15] – 99 years	[2 – 15] – 40 years
1 prior felony	[10 – 25] – 99 years	[5 – 25] – 40 years
2 prior felonies	[20 – 35] – 99 years	[10 – 25] – 40 years
<b>Sex – Class C:</b> Sexual assault 3, incest, indecent exposure 1, possess child porn; attempt to commit sexual assault 2, sexual assault of a minor 2, exploit minor, or distribution of child pornography		
No prior felony	[2 – 12] – 99 years	[1 – 12] – 20 years
1 prior felony	[8 – 15] – 99 years	[2 – 15] – 20 years
2 prior felonies	[15 – 25] – 99 years	[3 – 25] – 20 years
Estimated bed impact:		30 beds

**Option 2:** Implement an earned time program for sex offenders, whereby offenders can earn up to 1/3 off their sentence if they complete treatment requirements set forth by the courts and/or the Department of Corrections.

- Enable felony sex offenders who are currently ineligible for mandatory parole (Class C and B sex offenders with prior offenses, as well as Class A and Unclassified sex offenders) to earn up to a third off their sentence for complying with their treatment requirements (including but not limited to sex offender treatment) mandated by the courts and/or the Department of Corrections.
- For sex offenders who are currently eligible for mandatory parole (first-time Class C and B sex offenders), replace the current mandatory parole system with the treatment-contingent earn time program.
- Estimated bed impact: TBD

**Option 3:** Option 2 *and* introduce discretionary parole eligibility for certain classes of sex offenders.

- Implement an earned time program for sex offenders (see option 2) *and* provide for discretionary parole eligibility for all Class C, B, and first-time A and unclassified sex offenders.
- Estimated bed impact: TBD

# Discretionary Parole Eligibility (non-sex felonies)

What we know about Alaska's parole eligible population.—

- A study of felony filings in 2012 and 2013 conducted by the Alaska Judicial Council **found that of 78% of sentenced felony offenders were first- or second-time C felons or first-time B felons, meaning they would be eligible for discretionary parole upon serving ¼ of their sentence.**
- **Of the 178 individuals seen by the Parole board in 2014, approximately 56% received discretionary parole.**

Overview of Alaska's current parole eligibility.—

(Eligibility marked by purple shading.)

Offense	No prior felony	One prior felony	Two prior felonies	Earliest eligibility date
Murder I	20 – 99	20 – 99	20 – 99	Mandatory minimum or 1/3 (whichever is longer)
Murder II	10 – 99	10 – 99	10 – 99	
Att. Murder I, Kidnapping and MICS I	5 – 99	5 – 99	5 – 99	
A Felony	[5 – 8] – 20	[10 – 14] – 20	15 – 20	Must serve ¼
B Felony*	[1 – 3] – 10	[4 – 7] – 10	6 – 10	
C Felony	[0 – 2] – 5	[2 – 4] – 5	3 – 5	Must serve ¼

Policy Recommendation from the Community Supervision Subgroup: Automatic parole hearings for all inmates eligible for discretionary parole.

- All inmates are required to receive a hearing before the Parole board at least 90 days before their initial parole eligibility date.
  - DOC/Parole Board is responsible for putting together packet for inmate.
- Any inmate not released at the time of the inmate's initial parole date has a discretionary parole hearing at least every two year subsequently.

# Discretionary Parole Eligibility Continued

## Parole Eligibility Policy Options

**Option 1:** Expand parole eligibility to all Felony C and Felony B offenders, regardless of criminal history, and first-time Felony A offenders.— (option in light blue)

- Expand parole eligibility to third and subsequent Felony C offenders; second and subsequent Felony B offenders; and first-time Felony A offenders who have served at least  $\frac{1}{4}$  of their sentence.
- Estimated bed impact: TBD

**Option 2:** Option 1 *and* expand parole eligibility to first-time Unclassified Felony offenders.— (option in light blue) *and* (option in dark blue)

- Expand parole eligibility to third and subsequent Felony C offenders; second and subsequent Felony B offenders; and first-time Felony A offenders who have served at least  $\frac{1}{4}$  of their sentence.
- Additionally, expand parole eligibility to first-time Unclassified Felony offenders who have served the mandatory minimum or  $\frac{1}{3}$  of their sentence, whichever is longer.
- Estimated bed impact: TBD

Offense	No prior felony	One prior felony	Two prior felonies	Earliest eligibility
Murder I	20 – 99	20 – 99	20 – 99	Mandatory minimum or $\frac{1}{3}$ (whichever is longer)
Murder II	10 – 99	10 – 99	10 – 99	
Att. Murder I, Kidnapping and MICS I	5 – 99	5 – 99	5 – 99	
A Felony	[5 – 8] – 20	[10 – 14] – 20	15 – 20	Must serve $\frac{1}{4}$
B Felony	[1 – 3] – 10	[4 – 7] – 10	6 – 10	
C Felony	[0 – 2] – 5	[2 – 4] – 5	3 – 5	Must serve $\frac{1}{4}$
Estimated bed impact from option1 : TBD				
Estimated bed impact from option 2: TBD				

# Research on Short Jail Stays

Jail stays do not reduce recidivism relative to probation, and can increase recidivism.—

- Gordon and Glaser (1991) found that, **compared to defendants sentenced to probation, individuals sentenced to jail with probation had a significantly higher likelihood of future arrest and incarceration, controlling for other variables.** The average crime-increasing effect of jail remained statistically significant even after controlling for individuals' education, employment, drug abuse, and current offense.<sup>xiii</sup>

A finding that has been borne out in DUI studies.—

- Brachmann and Dixon (2014), in a recent study of first-time DWI offenders in Texas, **found that jail sentences were associated with higher recidivism rates than both probation and work detail,** even when controlling for socio-economic differences among offender groups.<sup>xiv</sup>
- **This finding is consistent for offenders with multiple prior DUI convictions.** Analyzing all California drivers convicted of a DUI from 1990 to 1991, DeYoung (1997) found that no matter the number of past DUI convictions (1, 2, or 3 or more), sanctions involving jail were associated with the highest recidivism rates.<sup>xv</sup>

Jail stays are particularly ineffective for first-time offenders.—

- DeJong (1997), using data on over 4,500 arrestees in New York City, **found that first-time offenders sentenced to jail were more likely to be rearrested in the subsequent three years than those not jailed.**<sup>xvi</sup> DeJong's analysis controls for many factors such as individuals' drug test results, education, employment, marital status, and offense type.

# Driving with License Suspended

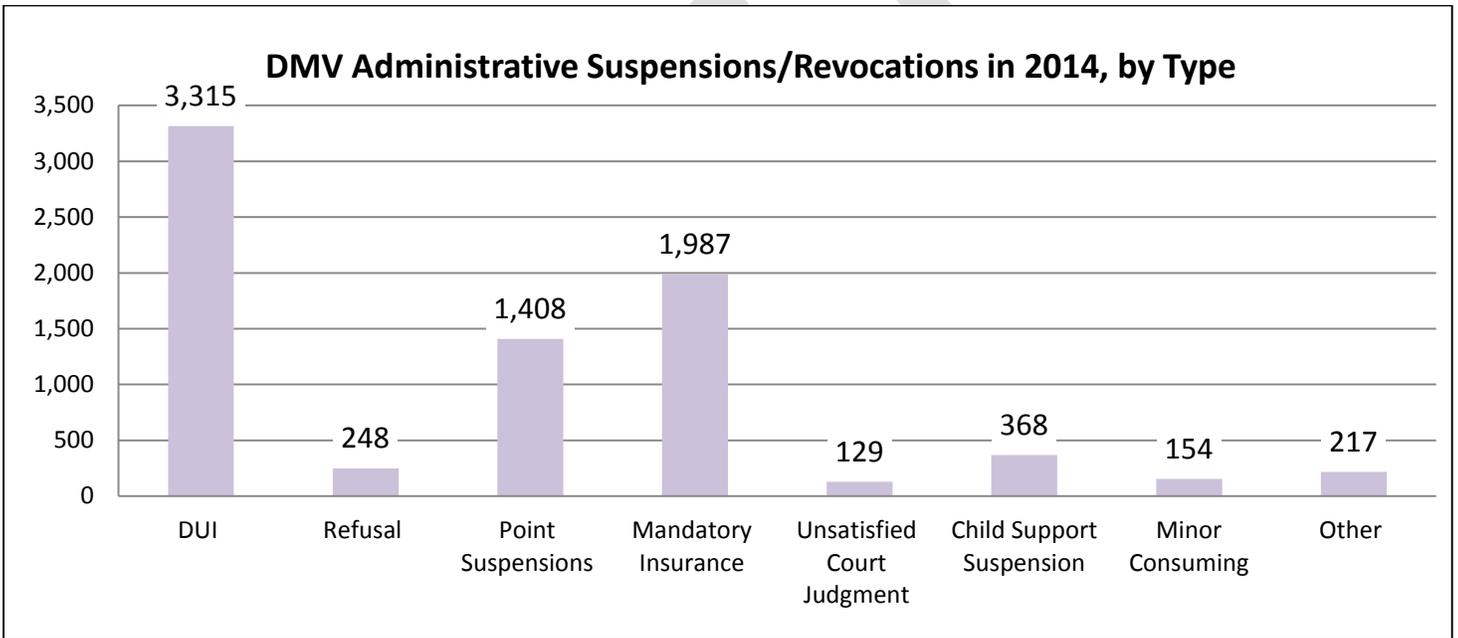
What we know about Alaska’s driving with license suspended population in prison.—

- In 2014, 637 offenders were admitted to prison post-conviction for driving with license suspended – or nearly 10 percent of all post-conviction admissions in that year.
- Driving with license suspended offenders spent an average of 41 days behind bars post-conviction (not including any time spent behind bars pre-trial).

What’s driving the number of Alaskans with suspended, revoked, or cancelled licenses.—

- In 2014, the Alaska Department of Motor Vehicles suspended, revoked, or cancelled 7,826 Alaska driver’s licenses. Of those, roughly 46 percent were revoked for DUI or refusal crimes.

Department of Motor Vehicle Administrative Suspensions and Revocations in 2014.—



Overview of Alaska’s current driving on a suspended license penalties.—

License revoked due to:	Criminal History	Sentence <sup>xvii</sup>
Reason other than DUI or refusal	No previous conviction for DWLS	(10 days w/10 suspended) – 1 year and 80 hours of community service
	Previous conviction for DWLS	10 days – 1 year
DUI or refusal*	No prior conviction for DUI	(20 days w/10 suspended) – 1 year and 80 hours of community service + minimum <\$500 fine
	Second or subsequent DUI conviction	30 days – 1 year

\*Or driving in violation of a limited license issued following that revocation due to DUI, or if the person was driving in violation of an ignition interlock device requirement following that revocation due to DUI.

# Driving with License Suspended Continued

Comparison driving with license suspended grids.—

License revoked due to:	Alaska Current	Pennsylvania <sup>xviii*</sup>	Missouri <sup>xix</sup>
Reason other than DUI or refusal			
1 <sup>st</sup> offense	(10 days w/10 suspended) – 1 year + 80 hrs of cs	\$200	<\$300
2 <sup>nd</sup> offense	10 days – 1 year	0 – 6 months	0 – 1 year
DUI or refusal			
1 <sup>st</sup> offense	(20 days w/10 suspended) – 1 year + 80 hrs of cs + fine	60 – 90 days	0 - \$300
2 <sup>nd</sup> offense	30 days – 1 year	6 month minimum	0 – 1 year

\*Additional penalties for third or subsequent offenses.

## Driving with License Suspended Policy Options

Option 1: Reclassify driving with license suspended for non-DUI (and refusal) crimes as non jailable violations.—

Option 2: Option 2 *and* eliminate mandatory minimums for DUI-related DWLS offenses, while maintaining the sentence ceiling.

License revoked due to:	Alaska Current	Option 1	Option 2
Reason other than DUI or refusal			
1 <sup>st</sup> offense	(10 days w/10 suspended) – 1 year	Fine	Fine
2 <sup>nd</sup> or subsequent offense	10 days – 1 year		
DUI or refusal			
1 <sup>st</sup> offense	(20 days w/10 suspended) – 1 year and	(20 days w/10 suspended) – 1 year and	0 – 1 year
2 <sup>nd</sup> offense	30 days – 1 year	30 days – 1 year	
<b>Estimated bed impact:</b>		<b>TBD</b>	<b>Same as option 1</b>

# Nonviolent Misdemeanor As

See appendix b for a list of common nonviolent misdemeanors (page 14).

## Nonviolent Misdemeanor A Policy Options.—

Option 1: Reduce the maximum sentence for nonviolent misdemeanors to 6 months.

Option 2: Reduce the maximum sentence for nonviolent misdemeanor to 1 month active time and 5 months suspended time.

Alaska Current	Option 1	Option 2
0 – 1 year	0 – 6 months	0 – 1 month active time, and 0 – 5 months suspended time
Estimated bed impact:	TBD	TBD

## Appendix A: Misdemeanor Bs

Offense	Description		2014:	
			Admis	LOS
<b>Drug</b>				
Misconduct involving controlled substances 6	Person possesses aggregate weight of ≤6g synthetic cannabinoids applied to a medium; or person refuses entry into a premise for an inspection authorized under AS 17.30.	11.71.060	19	32.25 days
<b>Property</b>				
Criminal trespass 2	Person enters or remains unlawfully on premises (excludes dwellings, or in cases with criminal intent).	11.46.330	376	24.28
Criminal mischief 5	Person tampers with property of another with reckless disregard; person damages property worth less than \$250.	11.46.486	146	38.96 days
Unauthorized entry	Municipal statute.	Municipal	6	10.43 days
Theft 4s (non-shoplifting)	Person steals property worth less than \$250.	11.46.130		23.29 days
Issuing a bad check	Person issues a bad check knowing that it will not be honored in an amount less than \$250.	11.46.280	0	-
Unlawful possession 3	Person possesses a propelled vehicle, bicycle, or firearm knowing that the serial number has been removed or altered with the intent to steal, where the value of the property is less than \$250	11.46.270	0	-
Theft 4s (shoplifting)	<i>Addressed in a separate policy (impacts not included).</i>			
Concealment of Merchandise <\$250				
Removal of identification marks <\$250				
<b>Alcohol</b>				
Minor consuming (habitual)	Person under 21 who knowingly consumes, possesses, or controls alcoholic beverages and has at least 2 prior convictions.	04.16.050	47	24.26 days
Drinking in public	Municipal statute.	Municipal	12	44.29 days
<b>Public Order</b>				
Disorderly conduct	Includes person making unreasonably loud noise; person refusing to comply with lawful order to disperse; person challenging another to fight or fighting other than in self-defense; person recklessly causing a hazardous condition.	11.61.110	271	15.77 days
Harassment 2	Includes person insulting or taunting another person in a manner likely to provoke a violent response; person repeatedly making telephone calls at extremely inconvenient hours; person subjecting another person to offensive contact.	11.61.120	48	28.47 days
Unlawful contact 2	Person is arrested for a crime against a person under or a crime involving domestic violence; and before the person's initial appearance before a judge, the person initiates communication with the alleged victim of the crime.	11.56.755	In PO coding	

Impersonate public servant 2	Person pretends to be a public servant and purports to exercise the authority of a public servant in relation to another person	11.56.830	In PO coding	-
Hindering prosecution 2	Person aids another who has committed a crime punishable as a misdemeanor with intent to hinder the prosecution or assist the another in profiting from the crime.	11.56.780	In PO Coding	-
Sending an explicit image of a minor	Person, with intent to annoy or humiliate another person, distributes an electronic photograph or video that depicts the genitals, anus, or female breast of a minor under 16.	11.61.116	0	-
Misconduct involving confidential information 2	Person, who without legal authority or the consent of another person, knowingly obtains confidential information about another other person.	11.76.115	0	-
Violation of custodian's duty (misdemeanor)	Person fails, when acting as a custodian appointed by the court, to report immediately that the person has violated a condition of release.	11.56.758	0	-
Interference with the rights of physically or mentally challenged persons	Person intentionally prevents a physically or mentally challenged person from having full and free pedestrian use of a street, highway, sidewalk, walkway, or other thoroughfare or being assisted by a certified service animal.	11.76.130	0	-
Violating condition of release (misdemeanor)	<i>Addressed in a separate policy (impacts not included).</i>			
<b>Weapons</b>				
Misconduct involving weapons 5	Person who is 21 years and older and knowingly possesses a concealed deadly weapon other than a pocket knife, and, when contacted by a peace officer, fails to inform him of that possession, among other acts.	11.61.220	In PO coding	
<b>Non-Registrable Sex Offenses</b>				
Prostitution	Person engages in or agrees or offers to engage in sexual conduct in return for a fee; or offers a fee in return for sexual conduct.	11.66.100	In NRSO coding	
<b>Transportation</b>				
Disregard for highway obstruction	Person drives through, over, or around a highway obstruction.	11.46.460	0	-
Obstruction of highways	Person knowingly renders a highway impassable or places a substance on the highway that creates substantial risk.	11.61.150	0	-
<b>Fish and Game Violation</b>				
Fish and game license violation*	Person who violates AS 16.05.330 - 16.05.420 or a regulation adopted under AS 16.05.330 - 16.05.420.	16.05.430	In FG coding	
Falsification of application for fish and game license*	Person who knowingly makes a false statement on an application for a license under AS 16.05.440 - 16.05.660.	16.05.665	In FG coding	
Wasting salmon*	Person who wastes salmon intentionally, meaning the failure to utilize the majority of the carcass.	16.05.831	In FG Coding	
Non-resident hunting big game*	Nonresident person who hunts large game without being personally accompanied by a licensed guide.	16.05.407	In FG coding	

Shellfish violation *	Person who uses a drum or reel around which a purse seine is coiled, rolled, or looped for purposes of taking or removing fish from a body of water.	16.10.120	In FG coding	
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## Appendix B: Nonviolent Misdemeanor As

Offense	Description	Statute AS:	2014	
			Adms	LOS
<b>Drug</b>				
Misconduct involving controlled substances 5	Person possesses: <ul style="list-style-type: none"> <li>• &lt;25 doses of IIIA or IVA</li> <li>• Aggregate weight of &lt;3 g IIIA or IVA; &gt;6 but &lt;12 g synthetic cannabinoids applied to a medium; &lt;500 mg of cathinone and analogs</li> <li>• &lt;50 doses of VA</li> <li>• Aggregate weight of &lt;6 g VA</li> <li>• Aggregate weight of <math>\geq 1</math> oz. VIA</li> </ul>	11.71.050	31	27.95 days
<b>Property</b>				
Theft 3	Person commits theft of $\geq \$250$ but $< \$750$ ; or person commits theft of $< \$250$ ; and has 2 or more prior thefts within preceding 5 years.	11.46.140	554	52.69 days
Criminal trespass 1	Person enters or remains unlawfully on land with intent to commit a crime on the land; or person enters or remains unlawfully in a dwelling.	11.46.330	118	39.96 days
Vehicle theft 2	<ul style="list-style-type: none"> <li>• Person takes the propelled vehicle of another, other than a vehicle described in AS 11.46.360(a)(1)</li> <li>• Having custody of a propelled vehicle under a written agreement with the owner that includes an agreement to return the vehicle, the person retains possession for an extended period of time</li> </ul>	11.46.365	22	60.17 days
Criminal mischief 4	Damages property $\geq \$250$ but $< \$750$ or: <ul style="list-style-type: none"> <li>• Tampers with a fire protection device in public building</li> <li>• Knowingly accesses a computer system without right to do so</li> <li>• Uses a device to descramble an electronic signal that has been scrambled to prevent viewing of the signal</li> <li>• Knowingly damages an official traffic control device</li> </ul>	11.46.484	68	72.37 days
Forgery 3	With intent to defraud, person falsely makes, possesses, or utters an instrument.	11.46.510(a)	43	46.64 days
Criminally negligent burning 2	Person damages property of another by fire or explosion with criminal negligence.	11.46.430	1	-
Criminal impersonation 2	Person assumes a false identify and does an act with intent to defraud, commit a crime, or obtain a benefit.	11.46.570	4	-
Possession of burglary tools	Person possesses a burglary tool with intent to use the tool for burglary or theft.	11.46.315	0	-
Concealment of merchandise	Person knowingly conceals merchandise of less than \$750 but more than \$250 with intent to steal the merchandise.	11.46.220	0	-
Removal of identification marks	Person erases, defaces, or otherwise alters any serial number or identification mark on merchandise worth less than \$750 but more than \$250 with intent to steal the merchandise.	11.46.260	0	-
Issuing a bad check	Person issues a bad check knowing that it will not be honored in an amount less than \$750 but more than \$250.	11.46.280	0	-

Fraudulent use of an access device	Person uses an access device to obtain property valued at less than \$750 knowing that the access device has been stolen, forged, or cancelled.	11.46.285	0	-
Failure to control or report a dangerous fire	Person knows that a fire is endangering life or substantial amount of property and fails to take reasonable measures to control the fire.	11.46.450	0	-
Obtaining signature by deception	Person causes another to sign a document by deception.	11.46.540	0	-
Offering a false instrument for recording 2	Person presents a lien to the recorder for registration, filing, or recording with reckless disregard that the lien is not provided for in statute or was not authorized under state or federal law.	11.46.560	0	-
Deceptive business practices	Person, in the course of engaging in a business, occupation, or profession, makes a false statement in an advertisement, among other acts.	11.46.710	0	-
Misrepresentation of use of propelled vehicle	Person sells or leases a propelled vehicle knowing that a usage registering device on the vehicle has been disconnected or replaced so as to misrepresent the distance traveled by the vehicle or the hours of engine use.	11.46.720	0	-
<b>Alcohol</b>				
Misdemeanor DUI	<i>Addressed in a separate policy (impacts not included).</i>			
Furnish alcohol to person under 21	Furnishing or delivering alcoholic beverage to person under 21 (This does not prohibit furnishing alcohol (1) by a parent to a child; (2) by a guardian to the guardian's ward; and (3) by one spouse to another.)	04.16.051	19	34.32 days
Drunk person on licensed premises	Drunken person knowingly enters or remains on alcohol-licensed premises.	04.16.040	9	6.69 days
Alcohol restricted persons – in licensed areas	Person who is restricted from purchasing alcohol knowingly enters or remains in alcohol-licensed premises.	04.16.047	2	5 days
Sell alcohol without license – wet area	Knowingly manufacturing, selling etc. an alcoholic beverage without a license or permit. (Mandatory minimum – 10 days).	04.11.010; 04.16.200	3	173.2 days
Importation of alcoholic beverages into local option area	Person who brings, sends, or transports alcohol beverages into area that has elected to be dry If less than 10.5 liters of distilled spirits, 24 liters of wine, or 12 gallons of malt beverages.	04.11.499	0	-
Purchase alcohol in dry area	Person knowingly purchases alcohol in a designated dry area.	04.16.200(f)	0	-
<b>Public Order</b>				
Escape 4	Person removes oneself from official detention for a misdemeanor; or person removes oneself from a restraint after being placed under a restraint by a peace officer; or person removes an EM device or leaving one's residence against EM restrictions.	11.56.330	TBD	
Unlawful evasion 2	Person fails to return to official detention within the time authorized following temporary leave; or while on furlough, person fails to return to the place of confinement.	11.56.340	TBD	
Promoting contraband 2	Person takes contraband into a correctional facility. Person makes or possesses contraband while under official detention in a correctional facility.	11.56.380	TBD	

Tampering with a witness 2	Person knowingly induces a witness to be absent from an official judicial proceeding.	11.56.545	TBD	
Resisting or interfering with arrest	Person resists or interferes with an arrest by (1) force; (2) committing any degree of criminal mischief; or (3) any means that creates a substantial risk of physical injury to any person.	11.56.700	TBD	
Violate DV protective order	Person commits or attempts to commit an act that violates a DV protective order.	11.56.745	TBD	
Interfere with report of DV crime	Person interferes with another person who is reporting a crime involving domestic violence.	11.56.745	TBD	
Harm police dog 2	Person intentionally causes physical injury to or torments a police dog.	11.56.710	TBD	
Unlawful contact 1	Person is arrested for a crime involving domestic violence; and, before the initial appearance before a judge, person attempts to communicate with the alleged victim.	11.56.750	TBD	
Hindering prosecution 2	Person renders assistance to another who has committed a crime punishable as a misdemeanor with intent to hinder the prosecution.	11.56.780	TBD	
False report	Person gives false information to a peace officer; makes a false report or gives a false alarm etc.	11.56.800	TBD	
Tamper with public records 2	Person knowingly makes a false entry in or falsely alters a public record.	11.56.820	TBD	
Unsworn falsification 2	Person, with intent to mislead, submits a false written or recorded statement.	11.56.210	TBD	
Impersonate public servant 2	Person pretends to be a public servant and purports to exercise the authority of a public servant in relation to another person.	11.56.830	TBD	
Harassment 1	Person subjects someone to offensive physical contact and the contact is contact with human or animal blood, saliva and other bodily fluids; or person subjects someone to offensive physical contact through touching another person's genitals, buttocks, or female breast.	11.61.118	TBD	
Contributing to delinquency of a minor	Person over 19 years of age who aids or induces a child under 18 years of age to do any act prohibited by state law, among other acts.	11.51.130	0	-
Tampering with public records 2	Person knowingly makes a false entry in or falsely alters a public record, among other acts.	11.56.820	0	-
Unlawful possession of traffic preemption device	Person possesses or uses a traffic preemption device and that person is not, at the time of the possession or use, operating an emergency vehicle.	11.56.825	0	-
Recruiting a gang member 2	Adult person, without force or the threat of force, encourages or recruits a person who is under 18 years of age and at least three years younger to participate in a criminal street gang.	11.61.165	0	-
Misconduct involving a corpse	Person intentionally disinters, removes, mutilates a corpse; or engages in sexual penetration of a corpse; or detains a corpse for a debt.	11.61.130	0	-
Promoting gambling 2	Person promotes or profits from unlawful gambling.	11.66.220	0	-
Possession of gambling records 2	Person, with knowledge of its contents or character, possesses a gambling record.	11.66.240	0	-

Possession of gambling device	Person manufactures, sells, or possesses a gambling device knowing that the device is used or is to be used in unlawful gambling.	11.66.260	0	-
Minors present at adult entertainment business	An agent of the owner of a business that offers adult entertainment allows a person under the age of 18 years to enter and remain within premises where adult entertainment is offered with criminal negligence.	11.66.30	0	-
Cruelty to animals	<i>Some forms are a felony.</i>	11.61.140	0	-
Official misconduct	A public servant performs an act relating to the public servant's office but constituting an unauthorized exercise of the public servant's official functions, knowing that that act is unauthorized, among other acts.	11.56.850	0	-
Misuse of confidential information	A public servant who learns confidential information through employment as a public servant; and uses the confidential information for personal gain, among other acts.	11.56.860	0	-
Custodial interference 2	A relative of a child under 18 years of age takes, entices, or keeps that child from a lawful custodian for a protracted period, among other acts.	11.41.330	0	-
Endangering welfare of child 1	Only if no serious physical injury or sexual contact A parent or guardian intentionally deserts the child in a place under circumstances creating a substantial risk of physical injury to the child, among other acts.	11.51.100	0	-
Criminal nonsupport	Personally legally charged with the support of a child the person knowingly fails, without lawful excuse, to provide support for the child.	11.51.120	0	-
Aiding nonpayment of child support 2	Person who knows that an obligor has a duty for periodic payment of child support and being a person with a statutory duty to disclose information to a child support enforcement agency, intentionally withholds the information when it is requested by a child support enforcement agency, among other acts.	11.51.122	0	-
Violation of custodian's duty (felony)	Person fails, when acting as a custodian appointed by the court, to report immediately that the person has violated a condition of release.	11.56.758	0	-
Violating condition of release (felony)	<i>Addressed in a separate policy (impacts not included).</i>			
<b>Transportation Offenses</b>				
Leave scene of accident	Person involved in an accident who does not shall immediately stop the vehicle and remain at the scene until they have rendered assistance and provided information	28.25.050	TBD	
Accident report – provide false info or fail to report	Person involved in an accident who does not give his name, address, and license number to the person stuck or injured, and provide assistance if necessary.	28.25.060(	TBD	
Drive without valid operator's license	Person who drives and does not have in their possession a valid Alaska driver's license.	28.15.011	1	7 days
Drive without valid CMV license	Person who drives a commercial motor vehicle without being licensed or privileged to drive a commercial motor vehicle.	28.33.150	1	7 days
Unlawful use of license	Person who displays a canceled, suspended, or revoked license; or displays a license not issued to the person; or lends the person's license to another person, among other acts.	28.15.281	1	2 days

Drive with license suspended	<i>Addressed in a separate policy (impacts not included).</i>			
<b>Weapons Offenses</b>				
Misconduct involving weapons 4	Person possesses on the person, or in the interior of a vehicle in which the person is present, a firearm when the person's physical or mental condition is impaired as a result of the intoxicating liquor or a controlled substance, among other acts.	11.61.210	TBD	
<b>Non-Registrable Sex Offenses</b>				
Failure to register as a sex offender 2	Person who is required to register as a sex offender and fails to register or file written notice of change of residence, change of mailing address, among other acts.	11.56.840	TBD	
Indecent exposure 2	Person knowingly exposes the offender's genitals in the presence of another person with reckless disregard for the offense effect if witness is under 16.	11.41.460	TBD	
Sexual abuse of a minor 4	Person who is under 16 years of age engages in sexual contact with a person who is under 13 years of age and at least three years younger than the offender.	11.41.440	TBD	
Sexual assault 4			0	-
Sex trafficking 4	Person engages in conduct that institutes, aids, or facilitates prostitution under circumstances not proscribed under AS 11.66.130(a)(4).	11.66.135	0	-
<b>Fish and Game Offenses</b>				
Airborne hunting	Person who shoots or assists in shooting a free-ranging wolf or wolverine the same day that a person has been airborne.	16.05.783	TBD	
Fishway and hatchery violations	A person who violates AS 16.05.871 - 16.05.896.	16.05.901	TBD	
Unlawful taking or sale of prohibited fish	A person may not possess, purchase, sell, or offer to sell migratory fish or migratory shellfish taken on the high seas knowing that they were taken in violation of regulations.	16.10.220	TBD	

# Endnotes

<sup>i</sup> Alaska Stat. §12.55.135.

<sup>ii</sup> Alaska Stat. §12.55.135.

<sup>iii</sup> Alaska Stat. §12.55.135.

<sup>iv</sup> Alaska Stat. §12.55.135.

<sup>v</sup> Fairbanks Daily News-Miner, "Alaska law on underage drinking could see major change," November 2015, [http://www.newsminer.com/news/akrecovery/alaska-law-on-underage-drinking-could-see-major-change/article\\_0f9b8766-829e-11e5-816c-635dad776b09.html](http://www.newsminer.com/news/akrecovery/alaska-law-on-underage-drinking-could-see-major-change/article_0f9b8766-829e-11e5-816c-635dad776b09.html).

<sup>vi</sup> Pew Charitable Trusts, "Time Served: The High Cost, Low Return of Longer Prison Terms," June 2012.

<sup>vii</sup> The enhanced sentence applies to possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, or knowingly directed the conduct at a peace officer or first responder who was engaged in official duties and to manufacturing of methamphetamine offenses if knowing within presence of children.

<sup>viii</sup> The enhanced sentence applies to violations of AS 11.41.130 (CN Homicide) and the victim was a child under 16 and to manufacturing of methamphetamine offenses if reckless within presence of children.

<sup>ix</sup> Bureau of Justice Statistics, "Recidivism of Sex Offenders Released from Prison in 1994," November 2003.

<http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1136>

<sup>x</sup> Alaska Judicial Council, "Criminal Recidivism in Alaska, 2008 and 2009," November 2011.

<http://www.ajc.state.ak.us/reports/recid2011.pdf>

<sup>xi</sup> Washington State Institute for Public Policy, "What works and what does not?: Cost-Benefit Findings from WSIPP", February 2015.

[http://www.wsipp.wa.gov/ReportFile/1602/Wsipp\\_What-Works-and-What-Does-Not-Benefit-Cost-Findings-from-WSIPP\\_Report.pdf](http://www.wsipp.wa.gov/ReportFile/1602/Wsipp_What-Works-and-What-Does-Not-Benefit-Cost-Findings-from-WSIPP_Report.pdf)

<sup>xii</sup> Unlawful exploitation of a minor under AS 11.41.455(c)(2) and online enticement of a minor under AS 11.41.452€ were removed from the lower category and added to this category in 2011.

<sup>xiii</sup> Margaret Gordan and Daniel Glaser. 1991. "The Use and Effects of Financial Penalties in Municipal Courts." *Criminology* 29: 651-76.

<sup>xiv</sup> Michael Bachmann and Ashford L. Dixon. 2014. "DWI Sentencing in the United States: Toward Promising Punishment Alternatives in Texas." *International Journal of Criminal Justice Sciences* 9: 181-91; Susan Martin, Sampson Annan, and Brian Forst. 1993. "The Special Deterrent Effects of a Jail Sanction on First-Time Drunk Drivers: A Quasi-Experimental Study." *Accident Analysis and Prevention* 25:561–68. Annan, Sampson O., Susan E. Martin, and Brian Forst. 1986. *Deterring the Drunk Driver: A Feasibility Study Technical Report*. Washington, DC: Police Foundation.

<sup>xv</sup> David J. DeYoung. 1997. "An evaluation of the effectiveness of alcohol treatment, driver license actions and jail terms in reducing drunk driving recidivism in California." *Addiction* 92: 989-97.

<sup>xvi</sup> Christina DeJong. 1997. "Survival Analysis and Specific Deterrence: Integrating Theoretical and Empirical Models of Recidivism." *Criminology* 35: 561–75.

<sup>xvii</sup> Alaska Stat. §28.15.291

<sup>xviii</sup> Pennsylvania Stat. 75 Pa. CSA §1543.

<sup>xix</sup> Missouri Stat. §302.321.

# Agenda

Sentencing Subgroup – October 21<sup>st</sup>, 2015

- 1. Introduction**
- 2. Review of drivers of Alaska's sentenced population**
  - a. Increasing felony length of stay (continued discussion of policies from last month)
    - i. Average felony length of stay up across nonviolent offense categories – up 13% for property offenders; up 16% for drug offenders; up 57% for alcohol offenders; and up 91% for public order offenders.
    - ii. Average felony length of stay up across violent offense categories – up 17% for person offenders; and up 84% for sex offenders.
  - b. High number of nonviolent misdemeanor admissions (discussion of new policies)
    - i. 82% of prison admissions are misdemeanants; 60% of prison admissions are nonviolent misdemeanants.
    - ii. Limited use of prison alternatives outside of probation.
- 3. Preliminary impact summary**
  - a. Bed reductions needed meet legislative and gubernatorial goalposts
  - b. Preliminary impacts from community supervision and pretrial subgroups
- 4. Nonviolent misdemeanor admissions**
  - a. **Research on short jail stays**
  - b. **Policy discussions around misdemeanor admissions**
    - i. Misdemeanor DUI
    - ii. Misdemeanor B and similar offenses
    - iii. Misdemeanor shoplifting under \$250
- 5. Felony length of stay**
  - a. **Follow-up policy discussions around felony length of stay**
    - i. Felony presumptive sentencing system
    - ii. Felony drug offenses
    - iii. Felony property offenses
    - iv. Geriatric prison population
- 6. Scheduling additional meeting in November**
- 7. Public comment**

\*\*\* Discussion draft – not for distribution \*\*\*

# Preliminary Impact Summary

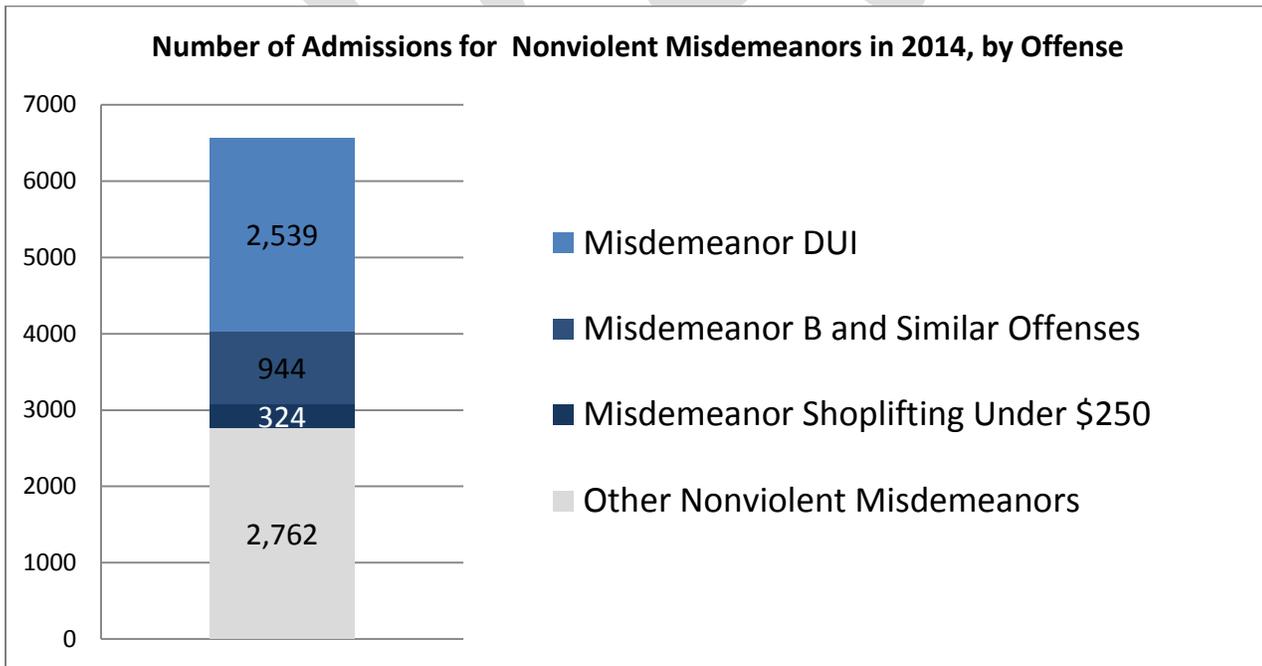
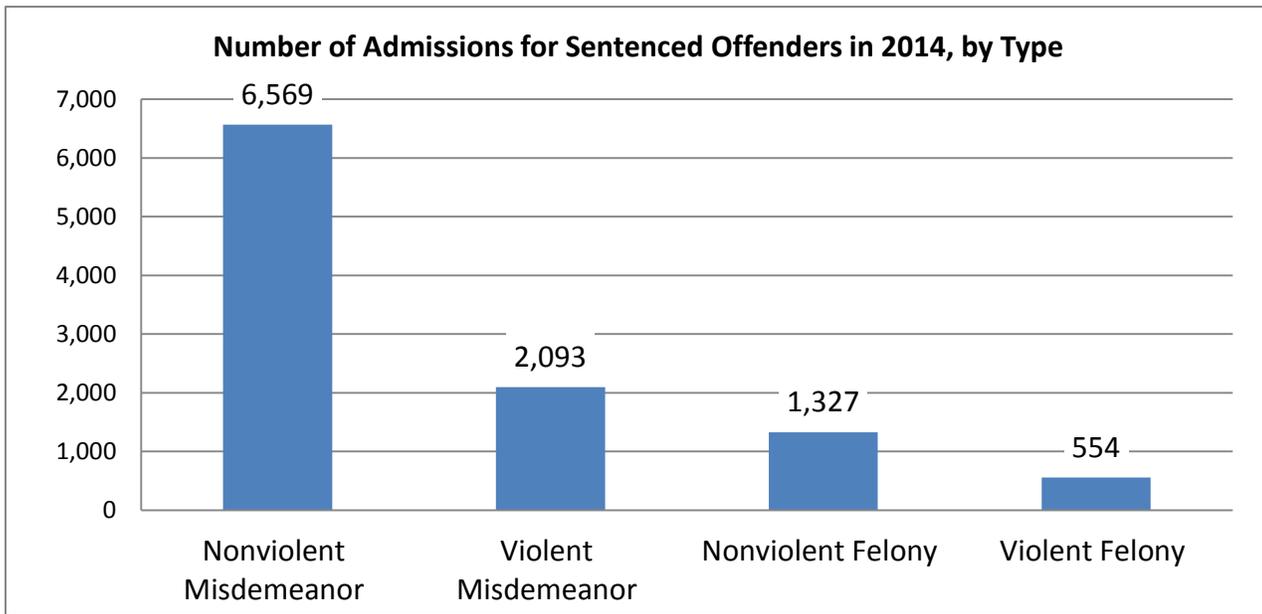
Bed reductions needed to meet legislative and gubernatorial goalsposts.—

- To avert all future prison growth: **Avert 1,416 beds.**
- To avert all future prison growth and reduce the current prison population by 15 percent: **Avert 2,180 beds.**
- To avert all future prison growth and reduce the current prison population by 25 percent: **Avert 2,689 beds.**

Preliminary impacts from community supervision and pretrial subgroups (subject to change).—

Pretrial	
Presumption for issuing of citations (versus arrest) – <ul style="list-style-type: none"> <li>• For all nonviolent misdemeanors; or</li> <li>• For all nonviolent misdemeanors and nonviolent Class C felonies.</li> </ul>	Estimated to avert 48 beds. Estimated to avert 80 beds.
Provide statutory guidance for a release decision-making framework, tying conditions of release to charge severity and risk score, and determine in statute who should never be detained pretrial, specifically— <ul style="list-style-type: none"> <li>• All nonviolent misdemeanor charges; or</li> <li>• All nonviolent charges (misdemeanors and felonies).</li> </ul>	Estimated to avert 294 beds. Estimated to avert 413 beds.
Reclassify penalties for failure to appear and violation of release conditions.	Impacts TBD.
Community Supervision	
Limit revocation sentences for technical violations of supervision to the following: (1) 3 days for a 1 <sup>st</sup> revocation; (2) 5 days for a 2 <sup>nd</sup> revocation; (3) 10 days for a 3 <sup>rd</sup> revocation; and (4) referral to PACE and/or judicial discretion for 4 <sup>th</sup> and subsequent revocations.	Estimated to avert 700 beds.
Extend earn time to offenders serving sentences on electronic monitoring.	No impact projected.
Authorize the DOC to respond to technical violations of supervision with swift, certain, and proportional sanctions.	No impact projected.
Limit misdemeanor and felony probation term limits.	No impact projected.
For offenders under dual supervision (both probation and parole supervision), grant primacy to the parole board in determining conditions and revoking sentences.	No impact projected.
Institute an automatic parole hearing process.	Impacts TBD.
Reduce the housing of low-risk and high-risk offenders together in CRCs; ensure that CRCs provide cognitive-behavioral therapy.	No impact projected.
Focus ASAP resources on DUI offenders.	No impact projected.

# Nonviolent Misdemeanor Admissions



# Research on Short Jail Stays

Jail stays do not reduce recidivism relative to probation, and can increase recidivism.—

- Gordon and Glaser (1991) found that, **compared to defendants sentenced to probation, individuals sentenced to jail with probation had a significantly higher likelihood of future arrest and incarceration, controlling for other variables.** The average crime-increasing effect of jail remained statistically significant even after controlling for individuals' education, employment, drug abuse, and current offense.<sup>i</sup>

A finding that has been borne out in DUI studies.—

- Brachmann and Dixon (2014), in a recent study of first-time DWI offenders in Texas, **found that jail sentences were associated with higher recidivism rates than both probation and work detail,** even when controlling for socio-economic differences among offender groups.<sup>ii</sup>
- **This finding is consistent for offenders with multiple prior DUI convictions.** Analyzing all California drivers convicted of a DUI from 1990 to 1991, DeYoung (1997) found that no matter the number of past DUI convictions (1, 2, or 3 or more), sanctions involving jail were associated with the highest recidivism rates.<sup>iii</sup>

Jail stays are particularly ineffective for first-time offenders.—

- DeJong (1997), using data on over 4,500 arrestees in New York City, **found that first-time offenders sentenced to jail were more likely to be rearrested in the subsequent three years than those not jailed.**<sup>iv</sup> DeJong's analysis controls for many factors such as individuals' drug test results, education, employment, marital status, and offense type.

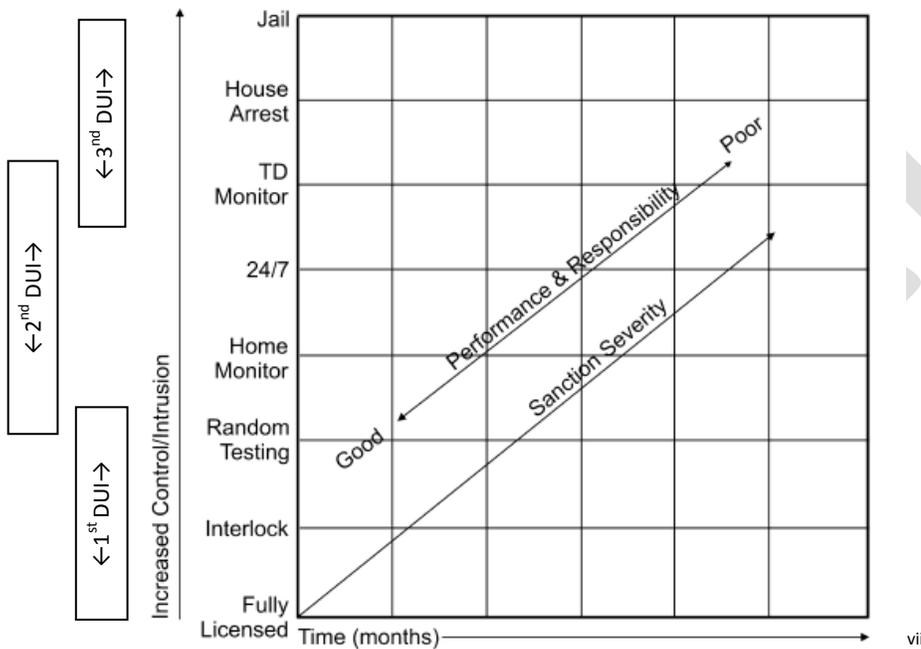
# Misdemeanor DUI Offenses

What we know about Alaska’s misdemeanor DUI population.—

- In 2014, 2,539 offenders were admitted to prison post-conviction for a misdemeanor DUI – nearly a quarter of all post-conviction admissions in that year.
- Misdemeanor DUI offenders spent an average of just under 18 days behind bars post-conviction (not including any time spent behind bars pre-trial).

Research indicates that the best DUI responses.—

- **Emphasize replacement of jail with low-cost monitoring programs.** The use of community-based interventions like electronic monitoring, 24/7, and intensive probation provide better treatment results because the offender can learn to adjust their consumption behavior within their normal living environment.<sup>v</sup>
- **Provide a continuum of sanctions with graduated levels of severity.** An effective DUI penalty structure has a variety of responses to hold offenders accountable, and becomes more restrictive depending on the offenders’ criminal history, from low-severity responses like interlock devices, testing, and home monitoring to high-severity responses like house arrest and jail.<sup>vi</sup>



Overview of Alaska’s current DUI penalties.—

Prior DUI	Imprisonment Length	Imprisonment Location	Ignition Interlock	Fine	TX	License Suspension
none	72hrs – 1 year	CRC/EM/jail	≥ 6 months	≥\$1,500	ASAP	≥ 90 days
1 (m)	20 days – 1 year	jail	≥ 1 year	≥\$3,000		≥ 1 year
2(f)*	120 days – 5 years	Jail	≥ 60 months	≥\$10,000		Permanent
3(f)*	240 days – 5 years					
4+ (f)*	360 days – 5 years					

\*Can be sentenced as a misdemeanor if prior DUIs are older than 10 years.

# Misdemeanor DUI Offenses Continued

## DUI Policy Options

### Option 1: Divert misdemeanor DUI offenders to CRCs and EM.

- Require the Department of Corrections to divert misdemeanor DUI offenders to either community residential centers or electronic monitoring, depending on available resources and the offender's assessed risk level.
- If a community residential center or electronic monitoring is not available, enable the Commissioner of Corrections to place the offender on supervised probation for the duration of the sentence.

### Option 2: Option 1 *and* allow for diversion of first-time felony DUI offenders to CRCs and EM.

- Alongside option 1, allow the Department of Corrections to divert first-time felony offenders to community residential centers or electronic monitoring depending on their risk level.

Prior DUI	Alaska Current		Option 1		Option 2	
	Imprisonment	Eligible Place of Imprisonment	Imprisonment	Eligible Place of Imprisonment	Imprisonment	Eligible Place of Imprisonment
none	72hrs – 1 year	CRC/EM/jail	Unchanged	CRC/EM*	Unchanged	CRC/EM*
1 (m)	20 days – 1 year	CRC/EM/jail		CRC/EM*		
2(f)	120 days – 5 yrs	Jail		Jail		CRC/EM/jail
3(f)	240 days – 5 yrs			Jail		
4+ (f)	360 days – 5 yrs			Jail		
<b>Potential bed effects:</b>				XXX		XXX

\*If a CRC or EM is not available, the Commissioner of Corrections may place the offender on supervised probation for the duration of the sentence.

### Policy Recommendation from the Community Supervision Subgroup: Focus Alcohol Safety Action Program (ASAP) resources on DUI offenders.

- Focus ASAP resources on DUI offenders by limiting judge's ability to refer non-DUI offenders.
  - In fiscal year 2015, ASAP received 7243 referrals, 57% (4132) of which were statutorily-mandated referrals (DUI/OUI, Refusal, MCA). The remaining 3111 were referrals not mandated by statute, which included child neglect, concealing merchandise, disorderly conduct, discharge of a firearm, and many others.
- By reducing the number of referrals the agency handles, expand services offered – potentially including screening for criminogenic risk, and increased case supervision.

# Misdemeanor B Offenses

Admissions and length of stay for misdemeanor b offenses.—

(This list includes all misdemeanor Bs for which offenders were in prison in 2014 – however; it is not an exhaustive list of all misdemeanor Bs.)

Offense	Ads in 14'	LOS in 14'
<b>Property</b>		
Trespass 2 <b>Entering or remaining unlawfully on premises</b> (excluding dwellings, or in cases w/ criminal intent)	376	24 days
Criminal Mischief 5 <b>Tampering with property of another w/ reckless disregard; damaging property &lt;\$250</b>	146	39 days
Unauthorized Entry (Anchorage municipal statute)	6	10 days
Theft 4: <i>Policy on page 8.</i>		
<b>Alcohol</b>		
Minor Consuming (Habitual) <b>Consuming alcoholic beverage if person is under 21 and has at least 2 prior convictions</b>	47	24 days
Furnish Alcohol to Person Under 21	19	34 days
Drinking in Public	12	44 days
<b>Public Order</b>		
Disorderly Conduct <b>Includes making unreasonably loud noise; refusing to comply with a lawful order to disperse; challenging another to fight or fighting other than in self-defense; recklessly causing a hazardous condition</b>	271	16 days
Harassment 2 <b>Includes insulting or taunting another person in a manner likely to provoke a violent response; repeatedly making telephone calls at extremely inconvenient hours; subjecting another person to offensive physical contact</b>	48	28 days
Violation of Release on a Misdemeanor: <i>Policy under consideration by pretrial subgroup.</i>		
<b>Transportation</b>		
Driving without Valid Insurance	9	4 days
Drive without Valid Operator's License <b>Offense is distinct from driving with a license that is suspended, revoked, or refused</b>	8	5 days
Drive without Valid Commercial Vehicle Operator's License	1	7 days
Unlawful Use of License <b>Includes displaying a canceled, suspended, or revoked license; displaying a license not issued to the person; authorizing a person to drive a motor vehicle who is not validly licensed</b>	1	2 days

# Misdemeanor B Offenses Continued

Penalties for misdemeanor b crimes can differ between state, municipalities.—

(List not exhaustive and crime definitions can differ between jurisdictions).

Offense	State Offense	Anchorage	Fairbanks
Disorderly conduct	0 – 10 days	0 – 6 months <sup>viii</sup>	0 – 60 days <sup>ix</sup>
Drinking in public	None	Fine only <sup>x</sup>	0 – 5 days <sup>xi</sup>
Standard misd. b penalty	0 – 90 days	0 – 6 months <sup>xii</sup>	0 – 60 days <sup>xiii</sup>

## Misdemeanor B Policy Options

**Option 1:** Reclassify state misdemeanor b and similar municipal offenses as non-jailable offenses, excepting offenses committed while the offender was under felony supervision.—

- Courts would only be able to impose a sentence of imprisonment (including a suspended sentence of imprisonment) if the defendant was under felony supervision at the time of the offense.
- If the defendant was under felony supervision at the time, the offender could be sentenced up to 5 days; if the defendant was not under felony supervision at the time of the offense, the maximum unsuspended fine that the court would be able to impose would be \$1,000.
- Restrict municipalities from incarcerating past these limits for similar municipal offenses.

**Option 2:** Reduce the maximum imprisonment term for state misdemeanor b and similar municipal offenses to 5 days.—

- Limit the maximum term of imprisonment (including a suspended sentence of imprisonment) for a misdemeanor b to 10 days.
- Restrict municipalities from incarcerating past these limits for similar municipal offenses.

Offense	Alaska Current (State)	Option 1	Option 2
Misdemeanor Bs (state and equivalent municipal ordinances)	0 – 90 days (most)	Non-jailable, unless offender on felony supervision	0 – 5 days
<b>Potential bed effects</b>		<b>XXX</b>	<b>XXX</b>

# Shoplifting Offenses under \$250

What we know about Alaska's lowest-level theft offenders.—

- In 2014, 324 offenders were admitted to prison for theft of property worth less than \$250.
- Offenders convicted of theft of less than \$250 stayed for an average of 23 days behind bars post-conviction.

Comparison shoplifting offense grids.—

(Unlike many other states, Alaska does not have designated shoplifting penalties.)

Amount	Alaska Current	California <sup>xiv</sup>	Massachusetts <sup>xv</sup>	West Virginia <sup>xvi</sup>
<\$50	0 – 30 days	<\$50, fine only*	<\$100, fine only**	<\$500, fine only***
\$50 - <\$100		0 – 6 months		
\$100 - <\$250			0 – 2 years	
\$250 - <\$500	0 – 1 year			0 – 60 days
\$500 - <\$750				
\$750 - <1,000	[0 – 2] – 5 years	0 – 1 year		
≥\$1,000				

\*2<sup>nd</sup> and subsequent shoplifting offenses under \$50 punishable by up to 6 months.

\*\*3<sup>rd</sup> and subsequent shoplifting offenses under \$100 punishable by up to 2 years.

\*\*\*2<sup>nd</sup> shoplifting offense under \$500 punishable by up to 6 months.

## Shoplifting under \$250 Policy Options

**Option 1:** Reclassify 1st and 2nd time shoplifting offenses under \$100 as an infraction.—

- 1st and 2nd time shoplifting offenses under \$100 would be classified as violations, and could be sentenced with a fine only.
- 3rd and subsequent shoplifting offenses under \$100 would be punishable by up to 5 days in jail.
- Restrict municipalities from incarcerating past these limits for shoplifting under \$100.

**Option 2:** Reclassify 1<sup>st</sup> and 2<sup>nd</sup> time shoplifting offenses under \$250 as an infraction.—

- 1st and 2nd time shoplifting offenses under \$250 would be classified as violations, and could be sentenced with a fine only.
- 3rd and subsequent shoplifting offenses under \$250 would be punishable by up to 5 days in jail.
- Restrict municipalities from incarcerating past these limits for shoplifting under \$250.

Amount	Alaska Current	Option 1	Option 2
<\$50	0 – 30 days	1&2: <\$100, fine only	1 & 2: <\$250, fine only
\$50 - <\$100		3: <\$100, 0 – 5 days	
\$100 - <\$250		0 – 5 days	
\$500 - <\$750	0 – 1 year	0 – 1 year	0 – 1 year
\$750 - <1,000			
>\$750	0 – 2] – 5 years	0 – 2] – 5 years	0 – 2] – 5 years
≥\$1,000			
<b>Potential bed effects:</b>		XXX	XXX

# Felony Presumptive Sentencing System

Review of last month's discussion.—

- Interest in bringing current presumptive ranges into line with presumptive terms in 2005.

Effects of sentencing range increases in last decade.—

From 2004 to 2014, average length of stay for:

- **Unclassified felonies grew 147 percent.**
- **Class A felonies grew 67 percent;**
- **Class B felonies grew 19 percent; and**
- **Class C felonies grew 20 percent.**

Felony Class	Pre-Implementation LOS			2005 Change	Post-Implementation LOS		
	2002	2003	2004		2012	2013	2014
Class A Felony	11 months	14 months	27 months		33 months	35 months	45 months
Class B Felony	7 months	8 months	11 months		13 months	12 months	13 months
Class C Felony	4 months	5 months	6 months		6 months	6 months	7 months

## Felony Presumptive Sentencing System Policy Options

Option 1: Bring presumptive ranges under the ceiling of 2005 presumptive terms; reduce statutory maximums accordingly.

Option 2: Align presumptive ranges with 2005 presumptive terms; reduce statutory maximums accordingly.

Felony Class	Presumptive Term(2005)	Alaska Current	Policy Option 1	Policy Option 2
<b>Class A</b>				
First	5	[5-8] – 20	[2-5] – 18	[3-6] – 18
First/Enhanced <sup>xvii</sup>	7	[7-11] – 20	[3-7] – 18	[5-9] – 18
Second	10	[10-14] – 20	[6-10] – 18	[8-12] – 18
Third	15	15 – 20	[10 – 15] – 18	13 – 18
<b>Class B</b>				
First	n/a	[1-3] – 10 , SIS available	[0 – 2] – 8	[0 – 2] – 8
First/Enhanced <sup>xviii</sup>	n/a	[2-4] – 10	[0 – 3] – 8	[1 – 3] – 8
Second	4	[4-7] – 10	[1 – 4] – 8	[2-5] – 8
Third	6	6 – 10	[2 – 6] – 8	4 – 8
<b>Class C</b>				
First	n/a	[0-2] – 5	Presumptive Probation	Presumptive Probation
Second	2	[2-4] – 5	Presumptive Probation	[1-3] – 4
Third	3	3 – 5	[1- 3] – 4	2 – 4

# Felony Theft Offenses

Review of last month’s discussion.—

- Interest in raising the felony theft threshold up to \$2,000.
- Interest in indexing the felony theft threshold to inflation.

Options to index the felony theft threshold to inflation.—

Automatic adjustments set in DPS regulations, pursuant to legislative approval.

- Require the Department of Public Safety to set in regulation an inflation-adjusted felony theft threshold every 2 years; provide for a period of legislative review in which the threshold can be amended.

Automatic adjustments set in DPS regulations.

- Require the Department of Public Safety to set in regulation an inflation-adjusted felony theft threshold every 2 years.

## Felony Property Policy Options

Option 1: Raise the felony theft threshold to \$1500 and index to inflation

Option 2: Raise the felony theft threshold to \$2000 and index to inflation.

Amount		Alaska Current	Option 1	Option 2	
Theft 1	≥25,000	>\$25,000, Fel. B	>\$25,000, Fel. B	>\$25,000, Fel. B	
Theft 2	\$2,500– \$25,000	\$750 - \$25,000, Fel. C	\$1,500 - \$25,000, Fel. C	\$2,000 - \$25,000, Fel. C	
	\$2,250 - <\$2,500				
	\$2,000 - <\$2,250				\$250 - <\$2,000, Misd. B
	\$1,750 - <\$2,000				
	\$1,500 - <\$1,750				
	\$1,250 - <\$1,500				
	\$1,000 - <\$1,250		\$250 - <\$1,500, Misd. A		
	\$750 - <\$1,000				
Theft 3	\$500 - <\$750	\$250 - <\$750, Misd. A			
	\$250 - <\$500				
Theft 4	<\$250	<\$250, Misd. B	<\$250, Misd. B	<\$250, Misd. B	
<b>Potential bed effects:</b>			<b>XXX</b>	<b>XXX</b>	

# Felony Drug Offenses

Review of last month's discussion.—

- Interest in reviewing data on admissions for felony drug offenses (as opposed to stock population data).
- Interest in reclassifying drug possession as a misdemeanor.
- Interest in equalizing heroin penalties to those of other serious drugs including cocaine and methamphetamine; and reexamining commercial drug penalties.

Admissions to prison for felony drug offenders.—

- **In the last decade, admissions to prison for felony drug offenses has grown by 52%; driven in large part by a 68% growth in MICS 4 offenders – the category which includes possession of any amount of heroin, cocaine, and methamphetamine.**

Offense	2005 Admissions	2014 Admissions	2005 Stock	2014 Stock
MICS 1	0	0	5	4
MICS 2	50	79	59	70
MICS 3	81	87	45	54
MICS 4	<b>198</b>	<b>333</b>	75	76
Total	<b>329</b>	<b>499</b>	<b>188</b>	<b>204</b>

## Felony Drug Policy Options

Option 1: Reclassify IA and IIA drug possession and lower-weight commercial offenses; maintain disparity between penalties for commercial IA and IIA offenses.

- Reclassify possession of IA and IIA controlled substances as a misdemeanor.
- Create a tiered commercial drug statute whereby sale of less than 5g of IIA is a felony c; and sale of more than IIA remains a felony b

Option 2: Reclassify IA and IIA drug possession and lower-weight commercial offenses; align penalties for IA and IIA commercial offenses.

- Reclassify possession of IA and IIA controlled substances as a misdemeanor.
- Bring penalties for IA controlled substances into alignment with penalties for IIA controlled substances.
- Create a tiered commercial drug statute whereby sale of less than 5g of IA and IIA is a felony c; and sale of more than 5g of IA and IIA is a felony b.

Current Drug Levels		Alaska Current	Option 1	Option 2
MICS 2	Felony A	Sale of any amount of opiates	Sale of more than 5g IA	
MICS 3	Felony B	Sale of any amount of meth, cocaine	Sale of less than 5g of IA; sale of more than 5g of IIA	Sale of more than 5g IA, IIA
MICS 4	Felony C	Possession of opiates, meth, cocaine	Sale of less than 5g of IIA	Sale of less than 5g of IA, IIA
MICS 5	Misd. A		Possession of IA, IIA	Possession of IA, IIA
<b>Potential bed effects:</b>			<b>XXX</b>	<b>XXX</b>

# Geriatric Prison Population

Review of last month’s discussion.—

- Interest in examining options for a geriatric release policy.

## Geriatric Release Policy Options

**Option 1:** Provide for geriatric parole hearings for offenders who are over age 60 and have served at least 10 years of their sentence.

- Offenders who were over age 60 and have served at least 10 years of their sentence – and were not otherwise eligible for discretionary parole – would have the opportunity to petition for parole release through a specialized geriatric parole provision.

**Option 2:** Provide for geriatric parole hearings for offenders who are over age 55 and have served at least 20 years of their sentence.

- Offenders who were over age 55 and have served at least 20 years of their sentence – and were not otherwise eligible for discretionary parole – would have the opportunity to petition for parole release through a specialized geriatric parole provision.

Alaska Current	Option 1		Option 2	
None	Age	# of Years Served	Age	# of years Served
	60	10	55	20
Potential bed effects:		XXX		XXX

# Endnotes

<sup>i</sup> Margaret Gordan and Daniel Glaser. 1991. "The Use and Effects of Financial Penalties in Municipal Courts." *Criminology* 29: 651-76.

<sup>ii</sup> Michael Bachmann and Ashford L. Dixon. 2014. "DWI Sentencing in the United States: Toward Promising Punishment Alternatives in Texas." *International Journal of Criminal Justice Sciences* 9: 181-91; Susan Martin, Sampson Annan, and Brian Forst. 1993. "The Special Deterrent Effects of a Jail Sanction on First-Time Drunk Drivers: A Quasi-Experimental Study." *Accident Analysis and Prevention* 25:561-68. Annan, Sampson O., Susan E. Martin, and Brian Forst. 1986. *Deterring the Drunk Driver: A Feasibility Study Technical Report*. Washington, DC: Police Foundation.

<sup>iii</sup> David J. DeYoung. 1997. "An evaluation of the effectiveness of alcohol treatment, driver license actions and jail terms in reducing drunk driving recidivism in California." *Addiction* 92: 989-97.

<sup>iv</sup> Christina DeJong. 1997. "Survival Analysis and Specific Deterrence: Integrating Theoretical and Empirical Models of Recidivism." *Criminology* 35: 561-75.

<sup>v</sup> Voas et. all, "Towards a national model for managing impaired driving offenders," *Addition Review* 106, 1221-1227.

<sup>vi</sup> *Ibid.*

<sup>vii</sup> *Ibid.*

<sup>viii</sup> Anchorage municipal code § 8.30.120.

<sup>ix</sup> Fairbanks municipal code § 42.20.090.

<sup>x</sup> Anchorage municipal code § 8.05.25.

<sup>xi</sup> Fairbanks municipal code, § 1.108.

<sup>xii</sup> Anchorage municipal code § 8.05.020.

<sup>xiii</sup> Fairbanks municipal code, § 1.108.

<sup>xiv</sup> Cal. Pen. Code. § 484.

<sup>xv</sup> Mass. Gen. Laws ch.266, §30A.

<sup>xvi</sup> W. Va. Code §61-3A-3.

<sup>xvii</sup> The enhanced sentence applies to possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, or knowingly directed the conduct at a peace officer or first responder who was engaged in official duties and to manufacturing of methamphetamine offenses if knowing within presence of children.

<sup>xviii</sup> The enhanced sentence applies to violations of AS 11.41.130 (CN Homicide) and the victim was a child under 16 and to manufacturing of methamphetamine offenses if reckless within presence of children.

# Agenda

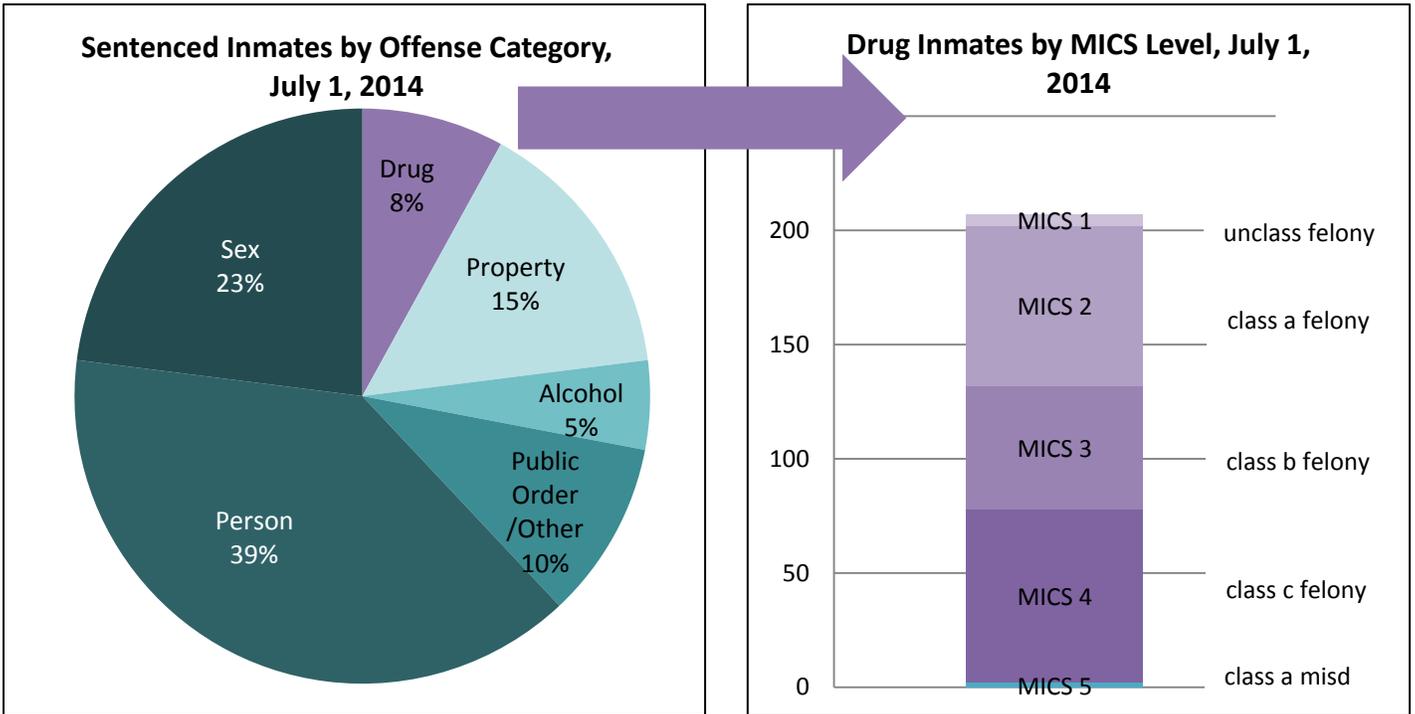
Sentencing Subgroup – September 9<sup>th</sup>, 2015

1. **Introduction – Justice Bryner**
2. **Review of drivers of Alaska’s sentenced population**
  - a. Increasing felony length of stay (primary topic of today’s meeting)
    - i. Average felony length of stay up across nonviolent offense categories – up 13% for property offenders; up 16% for drug offenders; up 57% for alcohol offenders; and up 91% for public order offenders
    - ii. Average felony length of stay up across violent offense categories – up 17% for person offenders; and up 84% for sex offenders
  - b. High number of nonviolent misdemeanor admissions
    - i. 82% of prison admissions are misdemeanants; 60% of prison admissions are nonviolent misdemeanants
    - ii. Limited use of prison alternatives outside of probation
3. **Review of the research around length of stay and recidivism**
  - a. **Longer prison stays do not reduce recidivism more than shorter prison stays.**—Studies attempting to assess the impact of time served on offenders with similar characteristics who serve different lengths of stay in prison have found no significant effect, positive or negative, of longer prison terms on recidivism rates.<sup>1</sup>
4. **Policy discussions around felony length of stay**
  - a. Drug offenses
  - b. Property offenses
  - c. Presumptive sentencing system
  - d. Sex offenses
  - e. Geriatric prison population
5. **Public comment**

**\*\*Discussion draft – not for distribution\*\***

# Drug Offenses

Overview of Alaska's drug offender population. —



\*misconduct involving a controlled substance

MICS 1 (N=5) – includes continuing criminal enterprise<sup>2</sup>

MICS 2 (N=70) – includes **manufacture, sale, possession with intent to sell opiates; manufacture of meth**<sup>3</sup>

MICS 3 (N=54) – includes **manufacture, sale, possession with intent to sell cocaine, spice; sale of meth**<sup>4</sup>

MICS 4 (N=76) – includes **possession of any amount of opiates, cocaine, meth** and higher weights of tranquilizers, cough syrup; manufacture, sale, possession with intent to sell tranquilizers, cough syrup<sup>5</sup>

MICS 5 (N=2) – includes possession of lower weights of tranquilizers, cough syrup<sup>6</sup>

What we know about Alaska's drug offender population. —

- In 2014, there were 207 people in prison for drug related offenses; of those, 205 were in for felony offenses.
- In the past 10 years, length of stay for Alaska's felony drug offenders has increased by 16%.
- In the past 10 years, admissions to prison for drug offenses has grown by 35%, driven in large part by a 68% increase in admissions for MICS 4 offenders (felony c) and 58% growth for MICS 2 (felony a) offenders.

What the research says about lengthy drug sentences. —

**Low deterrent value.** Research shows that the chances of a typical drug dealer being caught during a transaction are about 1 in 15,000. With such a low risk of detection, drug dealers on the street are unlikely to be deterred by the remote possibility of long prison terms.<sup>7</sup>

**Little impact on recidivism.** Studies show that for many offenders, serving longer sentences has little impact on recidivism.<sup>8</sup> In addition, severe punishments such as felony convictions and prison terms may have criminogenic effects, causing offenders to be more likely to commit crimes in the future.<sup>9</sup> Research indicates this may be especially true for drug offenders.<sup>10</sup>

## Comparison drug offense grids.—

<b>Heroin</b>			
<b>Amount</b>	<b>Alaska<sup>11</sup></b>	<b>North Carolina<sup>12</sup></b>	<b>Iowa<sup>13</sup></b>
<b>Possession ( base offense)</b>			
Any amount	[0 – 2] – 5* years	4 – 6 mos probation	0 – 1 year (misd)
<b>Possession (3<sup>rd</sup> felony offense)</b>			
Any amount	3 – 5* years	8 – 10 mos probation or jail “serious or violent criminal history”	0 – 5 years (2+ prior convictions, drug only)
<b>Sale, possession with intent, manufacture or delivery (base offense)</b>			
<100g	[5 – 8] – 20* years	5 – 13 mos	0 – 10 years
100g – 1kg			0 – 25 years
>1kg			0 – 50 years
<b>Methamphetamine/Cocaine</b>			
<b>Possession (base offense)</b>			
Any amount	[0 – 2] – 5* years	4 – 6 mos probation	0 – 1 year (misd)
<b>Possession (3<sup>rd</sup> felony offense)</b>			
Any amount	3 – 5* years	8 – 10 mos probation or jail “serious or violent criminal history”	0 – 5 years?
<b>Sale, possession with intent, manufacture or delivery (base offense)</b>			
<100g	[1 – 3] – 10* years	5 – 13 mos	0 – 10 years
100g – 500g	*manufacture of meth:	*manufacture of meth	0 – 25 years
>500g	[5 -8] – 20* years	58 – 73 months	0 – 50 years

\*Alaska has a mitigator for small quantities of drugs.

## Drug Offense Policy Options

### Reclassify simple possession.—

Alaska currently classifies simple possession of any amount of opiates, methamphetamine or cocaine (class IA and IIA) and higher-weight amounts of spice, LSD, and tranquilizers (classes IIIA, IVA, VA, VIA) as a class c felony.

**Thirteen states** classify simple possession as a misdemeanor, including **Tennessee, West Virginia, California, Wyoming,** and **South Carolina.**<sup>14</sup> (Some states have exempted a certain type of drug or placed restrictions on the amount of number of offenses; others have elected to place no restrictions on the law).

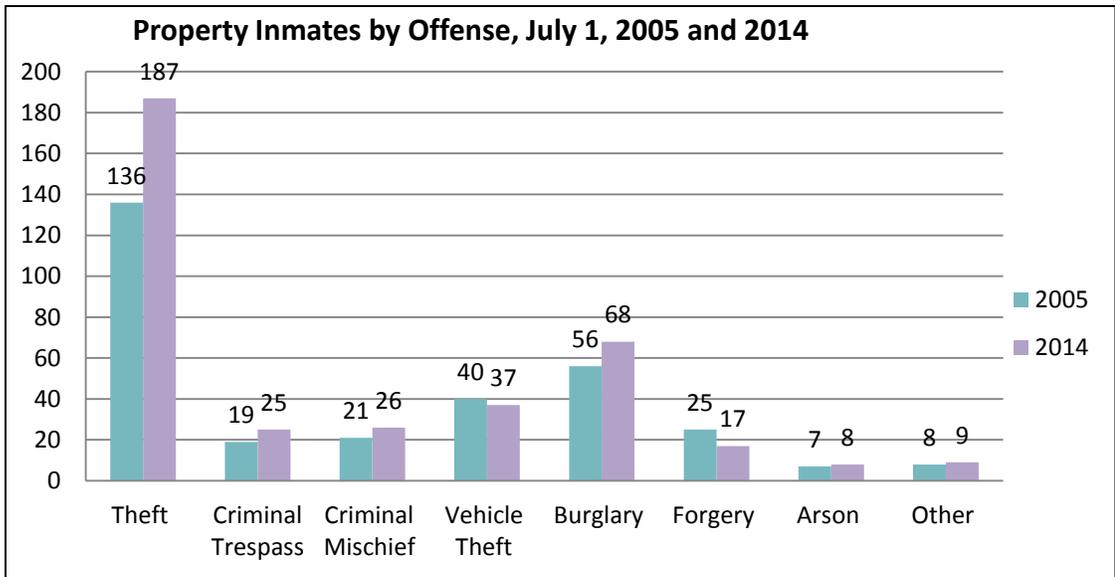
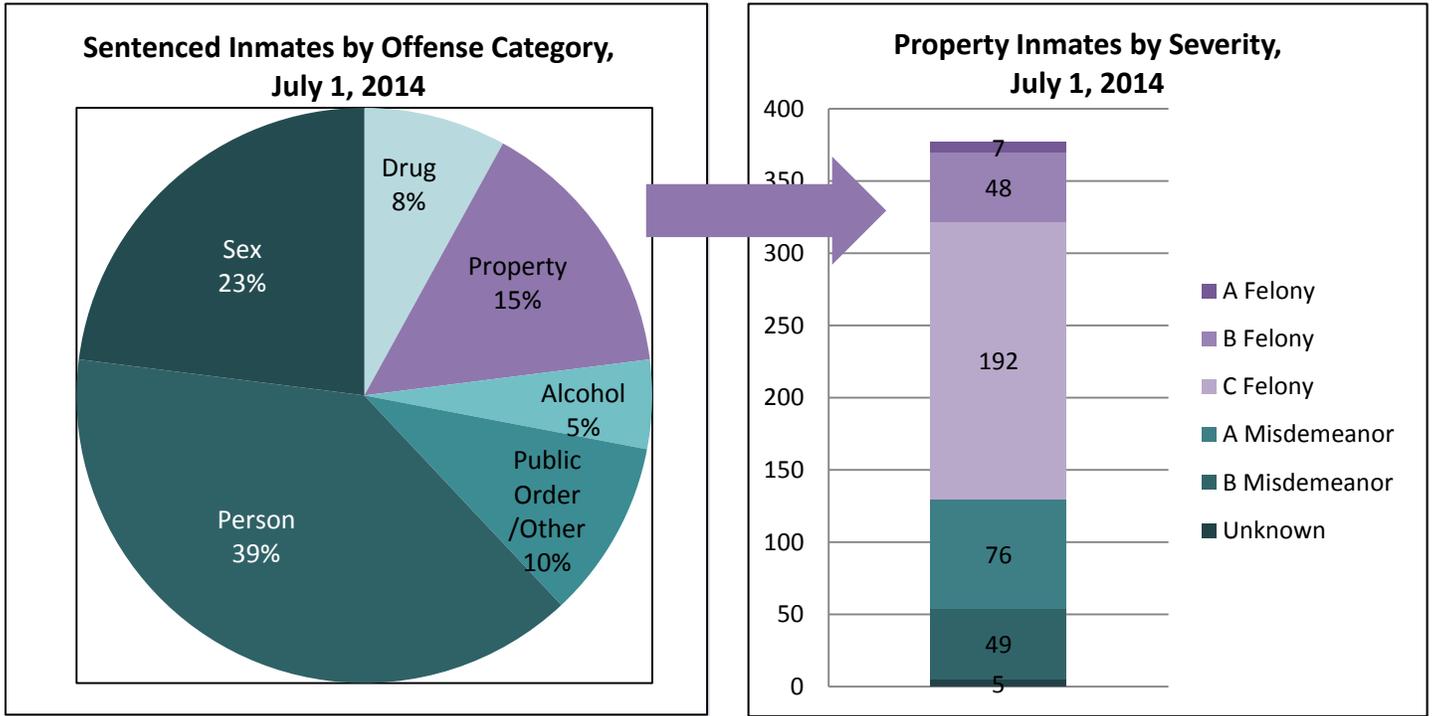
### Equalize penalties for distribution of opiates to those of other serious drugs.—

Alaska currently penalizes distribution of any amount of heroin as a felony a, subject to a presumptive sentence for a first-time felony offender of 5 – 8 years. Distribution of cocaine or methamphetamine, on the other hand, is treated as a felony b, subject to a presumptive sentence for a first-time felony offender of 1 – 3 years.

Heroin dependence appears to be growing, with addiction to the drug making up 7.5 percent of all substance use disorders in 2013, up from 2.8 percent in 2003. However, research indicates that increasing criminal penalties for heroin-related crimes has a limited ability to reduce demand. Instead, targeted law enforcement, alternative sentencing, and treatment offers the best overall approach to reduce the use and consequences of heroin.<sup>15</sup>

# Property Offenses

Overview of Alaska’s property offender population. —



What we know about Alaska’s property offender population. —

- In July 2014, there were 377 people in prison for property related offenses; 66% were in for felony offenses.
- In the past 10 years, admissions to prison for property offenses have grown by 16%, driven in large part by a 56% growth in admissions for theft 2 (felony c) offenders.
- In the past 10 years, length of stay for Alaska’s felony property offenders has increased by 13%.

## What the research says about lengthy property sentences.—

**Property crime rates not linked to severity of punishment.**—States that have recently raised their felony theft thresholds – the monetary amount at which a property offense qualifies as a felony – have not seen an increase in property crime rates. In fact, many states have seen a decline in their property crime rates since raising their felony theft thresholds. Kansas, for example, which raised its felony theft threshold to \$1,000 in 2004, has seen 27 percent decline in its crime rate (to the most recent year for which crime data is available – 2013).<sup>16</sup> South Carolina, which raised its theft threshold to \$2,000 in 2010, saw an 8 percent drop in property crime from 2010 to 2013.<sup>17</sup>

## Comparison property offense grids. —

### Theft

Theft Amount	Alaska <sup>18</sup>	Wisconsin <sup>19</sup>	South Carolina <sup>20</sup>	Utah <sup>21</sup>	
0 - \$250	0 – 30 days (misd)	≤\$2,500 0 – 1 year (misd)	≤\$2,000 0 – 30 days (misd)	≤\$500	
\$250 - \$500	\$250 - \$750			0 – 6 mos (misd)	
\$500 - \$750	0 – 1 year (misd)			\$500 - \$1,500	
\$750 - \$1000	\$750 - \$25,000 0 – 5 years			0 – 1 year (misd)	
\$1000 - \$1250					
\$1250 - \$1500					
\$1500 - \$1750					
\$1750 - \$2000					
\$2000 - \$2250				\$2,000 – \$10,000 0 - 5 years	\$1,500 - \$5,000
\$2250 - \$2500					0 – 5 years
<b>\$2500 - \$5000</b>		0 – 3.5 years	≥\$5,000		
<b>\$5000 - \$10000</b>	0 – 6 years				
<b>&lt;\$10000</b>	0 – 10 years	≥\$10,000	1 – 15 years		
<b>&lt;\$25000</b>		0 – 10 years	≥\$10,000	0 – 10 years	

### Burglary

Conduct	Alaska <sup>22</sup>	North Carolina <sup>23</sup>	Iowa <sup>24</sup>
Person enters or remains unlawfully in a dwelling <b>that is occupied</b> with intent to commit a crime	[1 – 3] – 10 years (base offense)	51 – 64 months (w/no or very limited criminal history)	0 – 10 years (aggravated: 0 – 25 years)
Person enters and remains unlawfully in a dwelling <b>that is unoccupied</b> with intent to commit a crime		10 – 13 months (w/no or very limited criminal history)	0 – 5 years
Person enters or remains unlawfully in <b>any building</b> with intent to commit a crime	[0 -2] – 5 (base offense)	4 – 6 months (w/ no or very limited criminal history)	

*See next page for policy options.*

## Property Offense Policy Options

### Raise the felony theft threshold.—

Alaska currently sets its felony theft threshold at \$750, having raised the threshold from \$500 last year. (This threshold affects the three largest offenses within Alaska’s property offender population – theft, vehicle theft, and criminal mischief.) Even after this raise, Alaska still ranks among the bottom two-thirds of states with the lowest felony thresholds.<sup>25</sup>

Since 2005, at least 26 **states** and the District of Columbia have raised their felony theft threshold, including **Mississippi (2014), South Carolina (2010), and Washington (2009)**.<sup>26</sup>

### Differentiate between burglary of occupied and unoccupied dwellings.—

While Alaska does differentiate burglary of a non-dwelling (i.e. commercial building, garage), Alaska does not currently treat burglaries of occupied residences different from burglaries of unoccupied residences. A number of states (including North Carolina and Iowa – above) have differentiated those crimes to account for the varying severity levels.

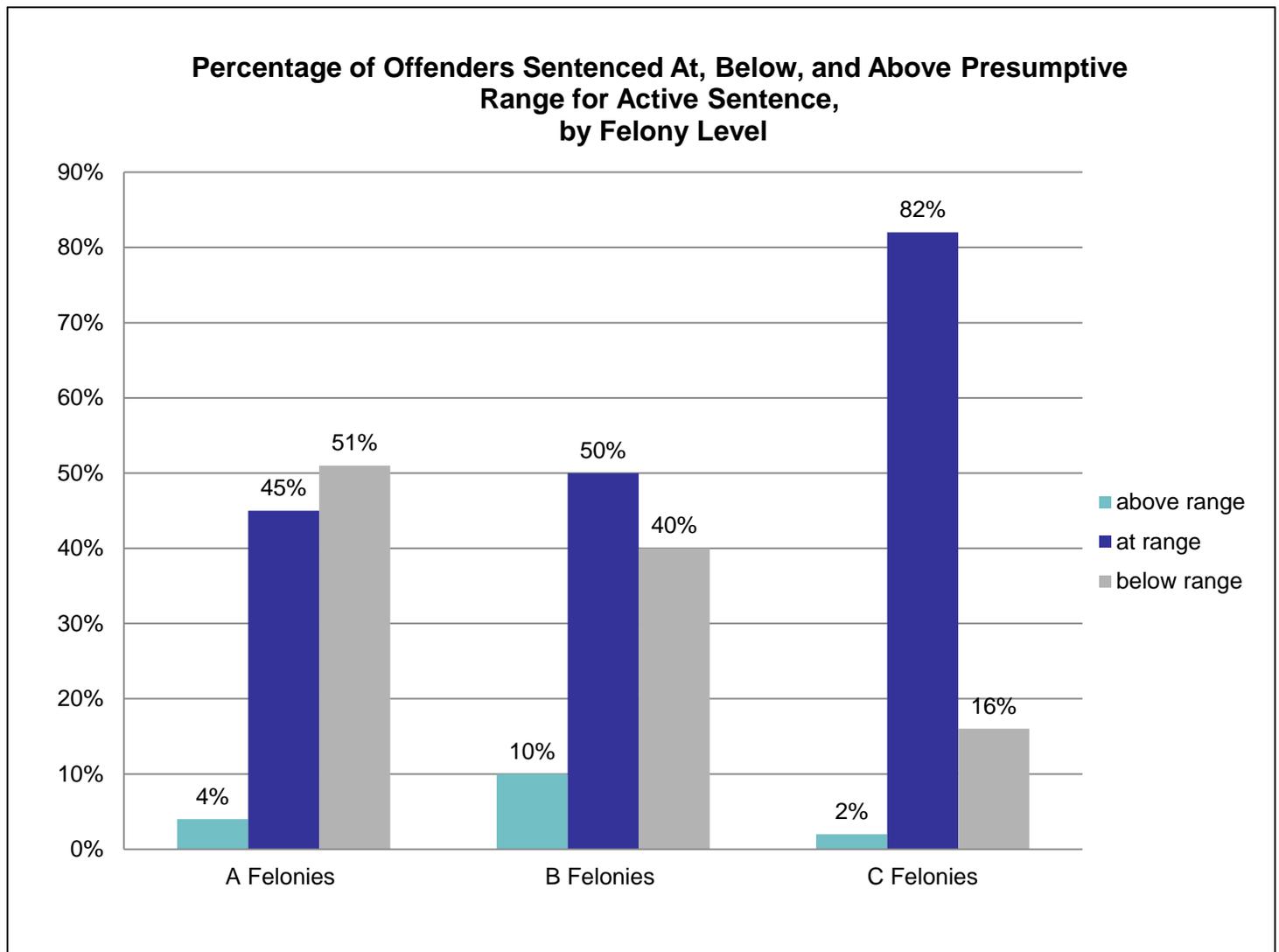
# Alaska's presumptive sentencing system (non-sex offenses)

Overview of Alaska's current presumptive sentencing system.—

*Numbers in brackets indicate the presumptive sentence; numbers out of brackets indicate the statutory range.*

Offense	No prior felony	One prior felony	Two prior felonies
A Felony*	[5 – 8] – 20	[10 – 14] – 20	15 – 20
B Felony	[1 – 3] – 10	[4 – 7] – 10	6 – 10
C Felony	[0 – 2] – 5	[2 – 4] – 5	3 – 5

\* Not including attempted murder 1, misconduct involving a controlled substance 1, kidnapping, murder 2, or murder 1.



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*Note that A, B, and C felony offenders with two prior felony convictions cannot be sentenced above the presumptive range. Additionally, C felony offenders with no prior felony convictions cannot be sentenced below the presumptive range.*

## Options to revise Alaska’s presumptive ranges and statutory maximums

In the last five years, a number of states and other jurisdictions have enacted policies amending their sentencing systems with the intent to reduce offenders’ length of stay in prison. Earlier this year, for example, **Utah (2015)** directed the state’s Sentencing Commission to revise its current guidelines to reduce the recommended length of stay by 4 – 6 months for offenses in lower-level crime categories.<sup>28</sup> Similarly, the **U.S. Sentencing Commission (2014)** lowered the federal drug sentencing guidelines by two levels, affecting an estimated 46,000 drug offenders, and reducing sentences by an average of 19%, or more than 2 years.<sup>29</sup>

### Option 1: Reduce non-sex felony presumptive sentences and statutory ranges by 1 to 2 years for B, C felonies. —

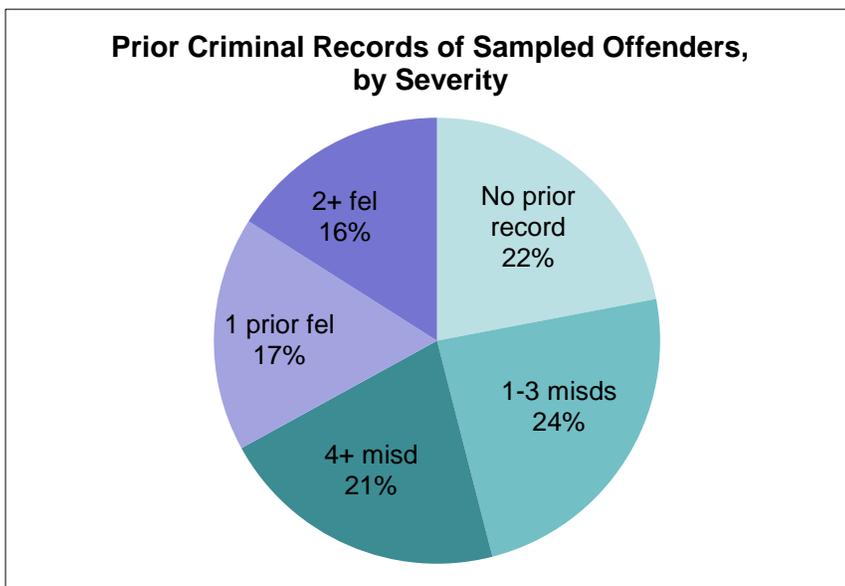
Offense	No prior felony	One prior felony	Two prior felonies
A Felony	[5 – 8] – 20	[10 – 14] – 20	15 – 20
B Felony	[1 – 2] - 8	[3 – 6] – 8	4 – 8
C Felony	[0 – 1] – 4	[1 – 3] – 4	2 – 4

### Option 2: Increase judges’ sentencing discretion by dropping presumptive sentencing floors. —

Offense	No prior felony	One prior felony	Two prior felonies
A Felony	[0 – 8] – 20	[0 – 14] – 20	0 – 20
B Felony	[0 – 3] – 10	[0 – 7] – 10	0 – 10
C Felony	[0 – 2] – 5	[0 – 4] – 5	0 – 5

### Option 3: Maintain sentences for offenders with prior violent offenses, while reducing penalty ranges for offenders with less severe criminal histories. —

# of Felonies	No prior	1 prior nonviolent	2 prior nonviolent	1 prior violent	2 prior violent
A felony	[1 – 3] – 10	[4 – 7] – 15	[5 – 10] – 15	[10 – 14] – 20	15 – 20
B felony	[0 – 2] – 5	[2 - 4] - 8	[3 – 5] – 8	[4 – 7] – 10	6 – 10
C felony	[0 – 1] – 2	[1 – 18mos] - 4	1 – 4	[2 – 4] – 5	3 – 5



# Sex Offenses

## Overview of Alaska's sex offender population.—

- In July 2014, there were 581 people in prison on sex offenses; all but 10 of them were in for felony offenses.
- In the past 10 years, admissions for sex offenses have dropped by 35%
- However, length of stay during that period has grown by 86%, leading to a 38% growth of the sex offender population in prison.

## Alaska's sex offender sentencing system.—

In the past 10 years, sentences for sex offenders in Alaska (both minimums and maximums) have more than doubled.

Offense	2005 <sup>31</sup>	Today
Sexual assault 3, incest, indecent exposure 1, possess child porn; attempt to commit sexual assault 2, sexual assault of a minor 2, exploit minor, or distribution of child pornography		
No prior felony	[1 – 2] – 10 years	[2 – 12] – 99 years
One prior felony	[2 – 5] – 10 years	[8 – 15] – 99 years
<i>Prior felony was a sex offense</i>	[3 – 6] – 10 years	[12 – 20] – 99 years
Two prior felonies	[3 – 6] – 10 years	[15 – 25] – 99 years
<i>Prior felony was a sex offense</i>	6 – 10 years	99 years
Sexual assault 2, sexual assault of a minor 2, exploit minor, distribution of child pornography		
No prior felony	[2 – 4] – 20 years	[5 – 15] – 99 years
One prior felony	[5 – 8] – 20 years	[10 – 25] – 99 years
<i>Prior felony was a sex offense</i>	[10 – 14] – 20 years	[15 – 30] – 99 years
Two prior felonies	[10 – 14] – 20 years	[20 – 35] – 99 years
<i>Prior felony was a sex offense</i>	15 – 20 years	99 years
Attempt, conspiracy, or solicitation of sexual assault 1, sex abuse of a minor 1 <sup>32</sup>		
No prior felony	[5 – 8] – 30 years	[15 – 30] – 99 years if V 13 or more [20 – 30] – 99 if V less than 13
No prior felony aggravated	[10 – 14] – 30 years	[25 – 35] – 99
One prior felony	[12 – 16] – 30 years	[25 – 35] – 99 years
<i>Prior felony was a sex offense</i>	[15 – 20] – 30 years	[30 – 40] – 99 years
Two prior felonies	[15 – 25] – 30 years	[35 – 50] – 99 years
<i>Prior felony was a sex offense</i>	20 – 30 years	99 years
Sexual assault 1, sex abuse minor 1		
No prior felony	[8 – 12] – 99 years	[20 – 30] – 99 years if V 13 or more [25 – 35] – 99 years if V less than 13
No prior felony aggravated	[12 – 16] – 99 years	[25 – 35] – 99 years
One prior felony	[15 – 20] – 99 years	[30 – 40] – 99 years
<i>Prior felony was a sex offense</i>	[20 – 30] – 99 years	[35 – 45] – 99 years
Two prior felonies	[25 – 35] – 99 years	[40 – 60] – 99 years
<i>Prior felony was a sex offense</i>	[30 – 40] – 99 years	99 years

\*Additional sentence aggravators exist for possession with a firearm, use of a dangerous instrument, serious injury, and cases in which the victim was under 13.

See next page for research on sex offender populations.

## What the research says about sex offender populations.—

**Low risk of recidivism compared to other offender types.** Studies have consistently shown that sex offenders recidivate at much lower levels than other types of offenders.<sup>33</sup> An Alaska Judicial Council study of recidivism in Alaska in 2008 and 2009 found that sex offenders had substantially lower rates of rearrest within one year than other offense groups (see chart below). The same study found that sex offenders were reconvicted for a new sex offense within two years at a rate of 2%.<sup>34</sup>

Rearrest rates within one year, according to type of underlying offense

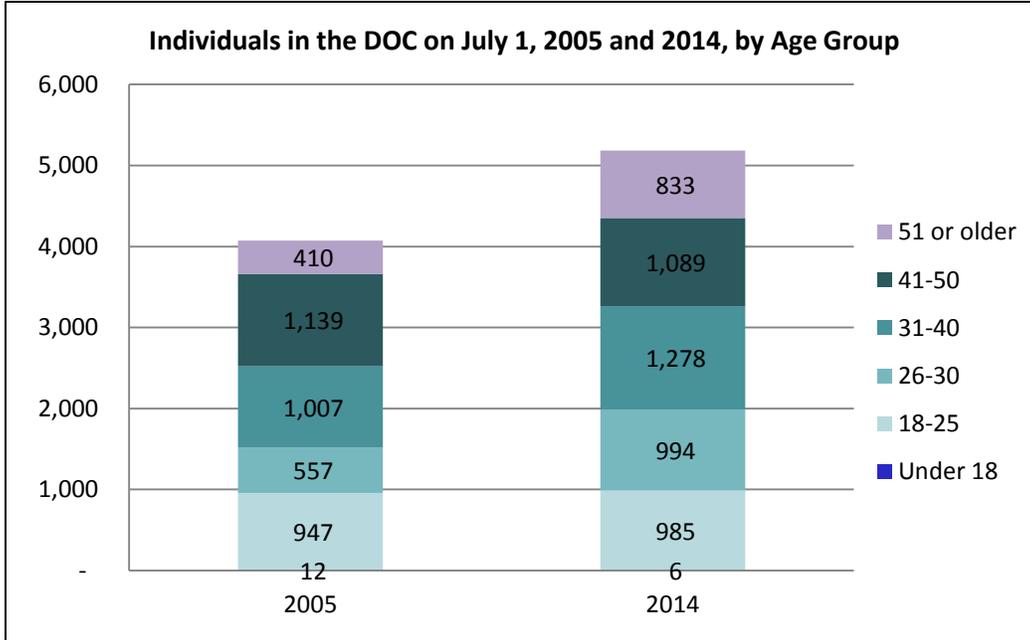
Violent offenses	36%
Other	36%
Property offenses	34%
Drug offenses	24%
Alcohol offenses	21%
Sex offenses	<b>18%</b>

**Treatment interventions have been shown to be successful.** A cost-benefit analysis conducted by the Washington State Institute for Public Policy (WSIPP) compiling all credible evaluations of sex offender treatment found that in-prison treatment had a cost-benefit ratio of \$1.87 (i.e. for every dollar spent on treatment, there was a \$1.87 returned in benefits to the state and state residents), while community-based treatment had greater returns – \$6.36 in benefits.<sup>35</sup> (Note that the WSIPP analyses include outcomes outside of recidivism, including victimization rates).

# Geriatric Inmate Population

Overview of Alaska’s geriatric inmate population.—

The number of offenders aged 51 and older in Alaska’s prisons has more than doubled in the past 10 years, growing faster than any other age group.



What the research says about geriatric inmate populations.—

**Very low risk to recidivate.**—Researchers have consistently found that age is one of the most significant predictors of criminality, with criminal or delinquent activity peaking in late adolescence and decreasing as a person ages. Studies on parolee recidivism find the probability of parole violations decrease with age, with older parolees the least likely group to be re-incarcerated.<sup>36</sup>

**Costly population to incarcerate.**—Compared with their younger peers, older inmates have higher rates of both mild and serious health conditions, leading to much greater medical needs. Because of these increased needs, prisons nationwide spend about two to three times more to incarcerate geriatric individuals than younger inmates.<sup>37</sup>

## Geriatric inmate policy options

Implement a geriatric parole provision. —

Alaska currently has a special medical parole provision for offenders who are “severely medically or cognitively disabled”<sup>38</sup>; however, only 10 inmates have applied under the provision in the last 2 years, and only 2 have been granted parole.<sup>39</sup>

A number of states, including **Virginia, Maryland, and Mississippi**, have implemented geriatric release provisions, whereby offenders over a certain age who have served a set number of years, but who would otherwise not be parole eligible, are automatically brought before the parole board for a geriatric parole hearing. These offenders do not need to prove medical illness or incapacitation to be released under geriatric parole.

In Virginia, eligible offenders are those over age 60 who have served at least 10 years or offenders over age 65 years who have served at least 5 years of their sentence.<sup>40</sup> Mississippi, similarly, establishes geriatric parole for offenders who

are at least 60 years old and have been incarcerated for at least 10 years, as well as having served at least one-fourth of their sentence.<sup>41</sup> In Maryland, eligible prisoners must be 65 and have served at least 15 years of their sentence.<sup>42</sup>

## Endnotes

- <sup>1</sup> G. Matthew Snodgrass et al “Does the Time Cause the Crime? An Examination of the Relationship Between Time Served and Reoffending in the Netherlands,” *Criminology* 49 (2011):1149–1194; Thomas A. Loughran et al “Estimating a Dose-Response Relationship Between Length of Stay and Future Recidivism in Serious Juvenile Offenders,” *Criminology* 47 (2009): 699–740.
- <sup>2</sup> Alaska Stat. § 11.71.010.
- <sup>3</sup> Alaska Stat. § 11.71.020.
- <sup>4</sup> Alaska Stat. § 11.71.030.
- <sup>5</sup> Alaska Stat. § 11.71.040.
- <sup>6</sup> Alaska Stat. § 11.71.050; Alaska Stat. § 11.71.060.
- <sup>7</sup> The Pew Charitable Trusts, “Public Safety Aspects of the Heroin Abuse Epidemic,” June 2015.  
<http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/07/public-safety-aspects-of-the-heroin-abuse-epidemic>.
- <sup>8</sup> The Pew Charitable Trusts, “Public Safety Aspects of the Heroin Abuse Epidemic.”
- <sup>9</sup> Nagin, Daniel, Francis T. Cullen, and Cheryl Leo Jonson (2009). *Imprisonment and Reoffending*, The University of Chicago
- <sup>10</sup> Spohn, Cassia and David Holleran (2002), *The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders*, *Criminology*, 40: 329-358.
- <sup>11</sup> Alaska Stat. § 11.71.020; Alaska Stat. § 11.71.030; Alaska Stat. § 11.71.040.
- <sup>12</sup> N. C. Gen. Stat. § 90-95.
- <sup>13</sup> Iowa Code § 124.401.
- <sup>14</sup> Forest Dunbar, “Reclassifying Nonviolent, Small Quantity Drug Possession as a Misdemeanor: Potential Impacts on Alaska’s Budget and Society,” January 2013. <http://www.ajc.state.ak.us/acjc/drugs/reclassnonviol.pdf>.
- <sup>15</sup> The Pew Charitable Trusts, “Public Safety Aspects of the Heroin Abuse Epidemic.”
- <sup>16</sup> House Bill 2771, 2004-2005; FBI uniform crime reports, <https://www.fbi.gov/about-us/cjis/ucr/ucr>.
- <sup>17</sup> Omnibus Crime Reduction and Sentencing Reform Act of 2010, H.B. 1154, 118<sup>th</sup> session, 2009-2010, [http://www.scstatehouse.gov/sess118\\_2009-2010/bills/1154.html](http://www.scstatehouse.gov/sess118_2009-2010/bills/1154.html); FBI uniform crime reports, <https://www.fbi.gov/about-us/cjis/ucr/ucr>.
- <sup>18</sup> Alaska Stat. § 11-46-120, § 11-46-130, § 11-46-140, § 11-46-150.
- <sup>19</sup> Wis. Stat. Ann. § 943.20.
- <sup>20</sup> S.C. Code Ann. §16-13-30.
- <sup>21</sup> Utah Code § 76-6-404.
- <sup>22</sup> Alaska Stat. § 11.46.300(a)(1)
- <sup>23</sup> North Carolina Code § 14-51.
- <sup>24</sup> Iowa Code § XVI.713
- <sup>25</sup> National Center for State Legislatures, “Making Sense of Sentencing: State Systems and Policies,” June 2015.  
<http://www.ncsl.org/research/civil-and-criminal-justice/making-sense-of-sentencing-state-systems-and-policies.aspx>
- <sup>26</sup> National Center for State Legislatures, “Making Sense of Sentencing: State Systems and Policies.”
- <sup>27</sup> Courtesy of an Alaska Judicial Council study of data on a random sample of 2,970 felony offenders sentenced in 2012 and 2013.
- <sup>28</sup> Pew Charitable Trusts, “Utah’s 2015 Criminal Justice Reforms,” June 2015,  
<http://www.pewtrusts.org/~media/Assets/2015/06/Utahs2015CriminalJusticeReforms.pdf>
- <sup>29</sup> Pew Charitable Trusts, “Federal Drug Sentencing Laws Bring High Cost, Low Return,” August 2015.  
[http://www.pewtrusts.org/~media/Assets/2015/08/PSPP\\_FedDrug\\_brief.pdf](http://www.pewtrusts.org/~media/Assets/2015/08/PSPP_FedDrug_brief.pdf)
- <sup>30</sup> Courtesy of an Alaska Judicial Council study of data on a random sample of 2,970 felony offenders sentenced in 2012 and 2013.
- <sup>31</sup> Alaska Stat. Ch. 2 SLA 20005, codified at 12.55.125
- <sup>32</sup> Unlawful exploitation of a minor under AS 11.41.455(c)(2) and online enticement of a minor under AS 11.41.452€ were removed from the lower category and added to this category in 2011.
- <sup>33</sup> Bureau of Justice Statistics, “Recidivism of Sex Offenders Released from Prison in 1994,” November 2003.  
<http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1136>
- <sup>34</sup> Alaska Judicial Council, “Criminal Recidivism in Alaska, 2008 and 2009,” November 2011.  
<http://www.ajc.state.ak.us/reports/recid2011.pdf>
- <sup>35</sup> Washington State Institute for Public Policy, “What works and what does not?: Cost-Benefit Findings from WSIPP”, February 2015.  
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<sup>37</sup> B Jay Annot et al., *Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates*, U.S. Department of Justice, National Institute of Corrections, 2004.

<sup>38</sup> Alaska Stat. § 33.16.085.

<sup>39</sup> Courtesy of Jeffrey Edwards, Director, Alaska Parole Board.

<sup>40</sup> Va. Code Ann §53.1 – 40.01.

<sup>41</sup> Miss. Code Ann. §47-7-1.

<sup>42</sup> Md. Code Ann., Crim Law § 14-101(g).