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# Alaska Felony Process: 1999

February 2004

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## Executive Summary

alaska judicial council

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Dear Reader:

The Alaska Judicial Council is pleased to send you an executive summary of its report, *Alaska Felony Process: 1999*. Prepared at the recommendation of the Alaska Supreme Court's Advisory Committee on Fairness and Access, the report describes a random sample of about 2,300 cases filed as felonies in the state's superior courts in 1999. The report follows cases through filing, bail decisions, charging changes and plea negotiations to the disposition of the case, and if convicted, sentencing. The Council found that the courts and other agencies were generally successful in creating a process that demonstrated similar treatment for all ethnic groups.

The report begins by finding that the defendants who come to the state's courts are low-income (80% qualify for an appointed public attorney), young males, and minorities. Most have an alcohol, drug, or mental health problem. These disproportions were present when charges were filed and remained fairly consistent throughout the court process. Part II of the report tracks these defendants through bail, charge negotiation or trial, and disposition of each case. Descriptive information about defendant characteristics, offense types, case dispositions, case location, and case processing is included. Present data are compared to past data and to national statistics. Part III of the report describes the findings from the complex analyses of the amount of time that defendants with different characteristics are incarcerated before and after disposition of their cases. These findings showed differences in some outcomes for defendants that appeared to be related to ethnicity. The lack of uniformity in these disparities suggested that they were not the result of intentional discrimination. Other disparities relating to type of attorney, gender, and location in the state were identified.

The Judicial Council has recommended that the court system take affirmative steps to convene an inter-branch working group to collaborate on eliminating unwarranted disparities identified by the study. We encourage you to review this executive summary and share with us your questions and comments. We would be glad to send you a copy of the full report. Soon you will also be able to download the report from our website at [www.ajc.state.ak.us](http://www.ajc.state.ak.us). We look forward to hearing from you.

# Alaska Felony Process: 1999

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## Executive Summary

The Alaska Supreme Court's Advisory Committee on Fairness and Access recommended that the state assess the relationships between defendants' ethnicities and their treatment by the criminal justice system.<sup>1</sup> At the time of the request, the disproportionate numbers of ethnic minorities at all points in Alaska's criminal justice system were well-known.<sup>2</sup> The main purpose of this work was to identify whether those disproportions resulted from unjustifiable reasons and amounted to discrimination. Another purpose was to identify other unwarranted disparities, if they existed, based on the defendant's gender, the defendant's type of attorney, the location of the defendant's case, or other inappropriate characteristics. A third purpose was to update descriptive data about the criminal justice system.

The Judicial Council collected and examined data from Alaska felony cases from 1999, beginning from the time formal charges were filed through case dispositions by way of dismissal, acquittal, or sentencing. At the time charges were initially filed, the Alaska felony defendants in these cases included disproportionately large numbers of young males, Alaska Natives, and Blacks. The report showed that, after charges were filed, justice for felony defendants in Alaska was, in many respects, substantially equal.

A multiple regression analysis of sentencing practices found no systematic ethnic discrimination in the imposition of sentences. Presumptive felony sentences showed no disparities associated with ethnicity, gender, type of attorney or location in the state. In the area of non-presumptive sentencing, sentences were uniformly imposed among ethnic groups in all but Drug offenses. The disparity in this category was limited to Blacks in Anchorage and to Natives outside Anchorage. The isolated nature of these disparities appeared to be inconsistent with conscious discrimination in the imposition of non-presumptive sentences. The analysis also found other unexplained disparities in non-presumptive sentencing associated with defendants' gender, type of attorney, and location in the state.

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<sup>1</sup> ALASKA COURT SYSTEM, REPORT OF THE ALASKA SUPREME COURT ADVISORY COMMITTEE ON FAIRNESS AND ACCESS 43, 77-79 (1997).

<sup>2</sup> *See id.* at 65-73.

Phases of the felony process other than sentencing were analyzed: pre-disposition incarceration; charge reduction; and overall time of incarceration. At these stages the analysis found some disparities associated with ethnicity, gender, type of attorney, and location in the state that could not be explained by legally relevant criteria. The most widespread incidence of unexplained disparities occurred in predisposition incarceration. If more socioeconomic data about defendants had been available to the Council for this study, socioeconomic factors might have helped to explain some of the disparity findings. Although the report's disparity findings do not establish cause and effect relationships, they demonstrate that many variables in criminal cases have important statistical associations with the expected length of incarceration.

The Council was unable to review data about reported crime, arrests, and screening by prosecutors to learn whether disparate treatment of defendants occurred before charges were formally filed.<sup>3</sup> Some disparate treatment in these earlier stages was reported anecdotally.

Although the Council did not have the data needed to review the earlier parts of the criminal justice process for unwarranted disparities, it had some information about defendants' characteristics when charges were filed in court. Analysis of those characteristics showed that the felony defendants differed from the state's general population in many respects. Most had limited resources, represented by the fact that 80% of the sample qualified for public legal representation because of indigency. Substantial percentages of defendants came to court with an alcohol and/or a drug and/or a mental health problem. Most felony defendants had a prior criminal conviction.<sup>4</sup> These and other pre-charge disproportions were reported. The reasons for these disproportions were not addressed by this report, because they fell outside its scope. The magnitude of the pre-charge disproportions strongly suggests the need for further study to determine their origins and to explore potential solutions.

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<sup>3</sup> To analyze whether disparate treatment occurred prior to defendants being charged requires additional data and resources. The Fairness and Access Committee's recommendation included the Judicial Council's estimate that a comprehensive report of Alaska's criminal justice process would cost \$300,000 to \$350,000. *Id.* at 25. The Council did not find additional funds from outside sources for this report, so scaled back the proposed work substantially and used its own funds. Other agencies assisted by providing data and mailing costs, and the legislature made a small amount of funding available through the budget process to carry out the analysis after the Council had collected the data.

<sup>4</sup> Reports from other jurisdictions have shown that people with certain characteristics were more likely to have reports filed against them (particularly in Drug crimes), were more likely to be arrested, and were more likely to be prosecuted. These reports did not show that the characteristics caused people to commit more crimes, but only showed that having those characteristics was associated with a higher likelihood of arrest and court processing. *See* Cassia C. Spohn, *Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process*, 3 POLICIES, PROCESSES AND DECISIONS OF THE CRIMINAL JUSTICE SYSTEM 427, 431 (2000).

The Judicial Council recommends actions that the state could take to address unwarranted disparities once charges have been filed. An inter-branch collaborative approach, initiated by the court system, with meaningful input from community groups and those who work in the criminal justice system also is recommended. To rid the entire criminal justice process of unwarranted disparity, it is essential that data be compiled and that sufficient resources be made available to permit an analysis of what occurs before defendants are charged, and after they are sentenced.

In addition to identifying unexplained disparities in the justice system after defendants were charged, this report provides considerable information about the characteristics of felony defendants, predisposition incarceration, charge reductions and plea negotiations, sentencing, and case processing. The Council hopes that the information in this report will assist policymakers, attorneys, and judges to understand and improve the criminal justice process.

## **A. Summary of Major Findings**

Briefly, the most important findings were:

- By many measures, the report showed that justice for felony defendants in Alaska was evenhanded. Most of the disparities among groups of defendants were not uniformly found among all types of offenses or in all parts of the state. The lack of uniformity suggested that the disparities were not associated with systematic distinctions among defendants based on ethnicity or other inappropriate factors.
- Scattered disparities appeared for different ethnic groups in predisposition incarceration and total time incarcerated in a case. The only disparities associated with ethnicity in sentences occurred for Black defendants in Anchorage non-presumptive Drug cases, and for Native defendants in non-presumptive Drug cases outside Anchorage.
- At the time charges were filed, Alaska felony defendants included disproportionately large numbers of young males, Alaska Natives and Blacks. These disproportions did not change significantly among convicted defendants. Disproportions remained fairly constant between charged and convicted defendants.
- Presumptive sentences did not show any unwarranted disparities associated with ethnicity or other factors.



- Having a private attorney was associated with less time to serve in almost every type of offense, at every point in the process, and in every location in the state.
- Generally, fewer disparities of any sort appeared in Sexual and Driving offenses, suggesting that more emphasis was placed on the actual offense, and that there was more agreement in the criminal justice system about how those offenses should be handled.
- The frequency and degree of charge reductions for virtually all types of offenses have increased substantially since they were last reviewed in the mid-1980s.
- Men tended to receive longer times of incarceration in each of the analyses for Violent and Property crimes. There was generally little difference between men and women in Drug and Driving offenses.
- Eighty-five percent of defendants had prior criminal convictions; 25% had prior felony convictions.
- This was the first analysis done of Felony Driving While Intoxicated and other felony Driving offenses since statutory changes created the offense of Felony DWI in 1995. Most defendants convicted of a felony Driving offense were convicted of the original charge against them and almost none had all of the charges against them dismissed or acquitted.
- This was the first multivariate analysis of predisposition incarceration in Alaska. Most defendants (80%) charged with a felony in 1999 spent more than one day incarcerated before the disposition of their cases. The length of incarceration was significantly associated with a requirement for a third party custodian, the defendant's type of attorney, location of the case in the state, and the defendant's ethnicity and gender. More widespread unexplained disparities occurred in predisposition incarceration than at any other point in the criminal justice process.

## **B. Background of Report**

In 1995, the Alaska Supreme Court created the Advisory Committee to the Supreme Court on Fairness and Access. The Advisory Committee's 1997 report found "a perception that the criminal justice process is unfair to minorities. . . . Policy makers should determine the extent to which this

perception is based in reality and should pinpoint specific problem areas.”<sup>5</sup> The Committee went on to recommend that the state should study bail and that the Judicial Council should study sentencing, among other aspects of the criminal justice system process.<sup>6</sup> That recommendation led to this report about case processing and sentencing for felony charges filed in calendar year 1999.

## 1. Data Sample and Analysis

The Council chose a sample of felony cases from all of the state’s courts. The sample included data from 2,331 felony cases, which constituted about two-thirds of all of the felony cases filed in 1999. The Council collected data from court files, presentence reports, the Department of Public Safety, and the Department of Corrections about defendant’s characteristics, the nature of the charges and court processes, the type of attorney, and the outcomes of each case. The sample design and choices of variables were made by the Council after consultation with the Institute for Social and Economic Research (ISER) at the University of Alaska Anchorage who did the multivariate analysis, and after consultation with the Supreme Court Fairness and Access Implementation Committee.

After all the data were collected, the Council found that less information was available than had been in the past, especially about socioeconomic characteristics of defendants. Past socioeconomic data had often come from presentence reports, of which fewer were filed in 1999. Two changes in felony case processing since the 1980s accounted for much of the difference in the availability of the reports:

- Many more felony charges were reduced to misdemeanors before the disposition of the case, and presentence reports were rarely available for misdemeanor convictions; and
- Over a period of time, changes in state policies and practices have reduced the numbers of presentence reports requested for sentenced felony defendants.

The socioeconomic factors could have helped to explain the differences among defendants, both in predisposition incarceration and in sentences imposed. At bail hearings, judges might have taken into account the defendant’s education, employment history, stability and other relevant socioeconomic factors when considering the defendant’s likelihood of appearance and danger to the community. Judges might have relied on the same factors when weighing rehabilitation potential and other sentencing criteria. Data from previous reviews of felony sentencing suggested that having this

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<sup>5</sup> REPORT OF THE SUPREME COURT ADVISORY COMMITTEE ON FAIRNESS AND ACCESS, *supra* note 1, at 25.

<sup>6</sup> *Id.* at 77-80.

information for the 1999 felonies would have helped explain some of the disparities by ethnicity and type of attorney but would not have accounted for all of them.

Other boundaries on the scope of the report included:

- The Council did not have information about actions in the case before it was filed in court. Two of the primary points at which disproportions might have occurred and been carried over into filed charges were arrests and screening of charges by prosecutors.
- The Council did not have enough defendants of Hispanic and Asian/Pacific Islander ethnicity to analyze possible disparities. The available analysis suggested that these defendants might, like other minority ethnic groups, be experiencing scattered disparities in incarceration times and charge reductions.
- Data were not available in the court case files to accurately track some factors that could have affected the amount of time that defendants spent incarcerated before the disposition of their cases. It was not possible to know how many defendants received credit for time served on other offenses, or credit for time spent in residential treatment programs, for example.
- The Council relied on information in court case files to decide whether a given case had negotiated charges, a negotiated sentence, or both. The high rate of reduction of felony charges to misdemeanors without recorded mention of plea negotiations suggested that plea agreements may have occurred much more frequently than the court case files showed.

Even with these considerations, the Council still had data on more than one hundred variables. These included: the felony charges filed against each defendant; the dates of the offenses; the relationship between the defendant and the victim; contemporaneous cases; the location of the case; the defendant's residence; birth date; ethnicity; prior criminal convictions; the defendant's problems with alcohol or substance abuse, or mental health; some information about the defendant's bail status; the type of attorney; the length of time taken to dispose of the case; the sentence for each charge; and requirements such as restitution, treatment, and fine associated with the sentence.

To see what factors about the defendant and the case were associated with possible disparities in treatment during the felony process, the Council chose to look at the amount of time that a defendant spent incarcerated before the case disposition, the charge reductions in the case, the length of the sentence and likelihood that the defendant would serve any amount of time, and the total time that

a defendant was incarcerated during the case (pre- and post-disposition). Although the report was not structured to show cause and effect relationships,<sup>7</sup> it could show how different characteristics of the defendant or the case were associated with the length of time that a defendant might spend incarcerated during the case. Incarceration is generally used as a measure of the severity of the case or of the defendant's history and qualities. Other measures could have been used, such as the amount of fine or restitution required, or the number of court hearings, but incarceration is the standard method of expressing the severity of offenses.<sup>8</sup>

The Council worked with the ISER at the University of Alaska Anchorage to design the review of the felony process. To provide an objective and independent analysis of the data, ISER performed all of the multivariate analyses on which most of the report's findings were based. The Council carried out most of the less complex analyses, and ISER reviewed them for accuracy and completeness of findings. Information on all of the methods used is available from the main report or from the Council.

## **2. Defendants and Cases in Alaska**

### **a. Alaska compared to other states**

Defendants' ages and genders in Alaska were similar to felony defendants in other states, but ethnicity distribution differed. Eighty-three percent of convicted felons in other states and 85% in Alaska were male. The mean age for convicted felons in other states was 31 years; it was 32 years in Alaska. Caucasians made up about 83% of the population in the other states reported on, and 76% of the adult Alaska population in 1999. In other states and in Alaska, Caucasian defendants made up a little more than half the defendants: 55% in other states and 52% in Alaska. The difference came in the ethnic minorities, with 44% of convicted felons in other states identified as Blacks and 1% as "Other." In Alaska, 12% of convicted felons were Black, and the "Other" included 30% Native, 3% Hispanic and 2% Asian/Pacific Islander.

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<sup>7</sup> Generally, to show cause and effect scientifically, the standard practice is to design a study in which some cases or defendants are randomly assigned to one or more special types of treatment or processing and other defendants are assigned to a control group. This is different from the purpose of the Council's review of the criminal justice system, which was to describe the characteristics of Alaska's system, the characteristics of the defendants in the system, and some of the ways in which the defendants' characteristics appeared to be associated with events in the criminal justice process.

<sup>8</sup> For example, the criminal code characterized the severity of the offense by the amount of incarceration that could be imposed – not more than one year for a misdemeanor, not more than five years for a Class C offense, and so forth. The code specified maximum fines and other sanctions that could be associated with the offense, but the amount of incarceration was the chief sanction described.

Alaska offenses differed significantly from other states. Alaska's rate of reported crime per 100,000 defendants was only slightly higher than that for other states, but the rate of reported Violent offenses was 20% higher than the national rate. Violent offenses were a substantially larger part of overall convictions in Alaska, and Alaska rates for conviction after arrest on Robbery and Assault exceeded the national rates. The rate of reported Rape in Alaska was the highest of any state in the United States. Despite the very high rate of reported Rape, arrests for Rape were about 33% lower than in other parts of the country and convictions of Rape were about half the national average.

Alaska's criminal justice processes for handling felony cases resembled those throughout most of the United States. Defendants were arrested, had bail hearings, and were assigned public attorneys if they were indigent, in Alaska and in other states. A comparison of Alaska felony cases to those in other states' courts showed that in both Alaska and elsewhere about 80% of felony defendants had a public attorney assigned, and that it took about the same amount of time to dispose of cases (arrest or filing to sentencing) in Alaska as it did nationally. Conviction rates in Alaska closely resembled those in other parts of the country, as did times to disposition of the case. More Alaska defendants were sentenced to time to serve, and they were likely to serve more of the time imposed, balancing a finding that time imposed for sentences tended to be somewhat shorter than sentences in other states.

## **b. Cases within Alaska**

The Council sampled 1999 filed felony cases from every court location in the state and for all types of felonies. For this report, location and type of offense were the two primary variables used to define sub-analyses. In addition to their associations with each other, location and type of offense were closely related to the other variables in the report. Type of offense was more often related to defendant characteristics such as gender and age, and to type of attorney, while location of the case was more often associated with type of disposition, length of time to process the case, and predisposition incarceration. Both type of offense and location were related to the defendants' ethnicities.

### **1) Type of offense**

The types of offenses usually were defined as Murder/Kidnaping, Violent, Property, Sexual, Drug and Driving. A group of about 300 "other" offenses<sup>9</sup> was used in some of the analyses, but excluded

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<sup>9</sup> "Other" offenses included Misconduct Involving Weapons, Perjury, Custodial Interference in the First Degree, and many others that were charged infrequently and were too different from each other and other more common offenses to make valid comparisons.

from others. Drug offenses were more frequently associated with private attorney representation than were other types of offenses. Private attorneys represented about 16% of the defendants charged with Violent felonies, about 10% of those charged with Property offenses, and about 28% of those charged with Drug offenses.

Type of offense and ethnicity showed important correlations. Caucasian defendants made up about one-half of all defendants, but were under-represented among Sexual offenses (only 32% of all defendants charged with Sexual offenses) and over-represented among Drug offenses (61% of all defendants charged with Drug offenses). Black defendants were 11% of all defendants, but only 6% of those charged with Sexual offenses. A larger percentage of Black defendants were charged with Other offenses and Drug offenses (16% of all the defendants who were charged with Drug offenses). Natives made up 30% of all defendants but were 55% of all defendants charged with Sexual offenses, 36% of those charged with Driving offenses, and 35% of those charged with Violent offenses.

## **2) Location of case**

Anchorage dominated the case sample, with about 40% of the cases in the sample. Fairbanks had 11%, Palmer had 10%, Bethel had 8%, and the remaining cases came from smaller court locations. Locations were defined as Anchorage, Fairbanks, Juneau, Southcentral (mainly the Matanuska-Susitna Valley (“Mat-Su”) and the Kenai Peninsula), Southeast (locations outside Juneau), and Other (the remainder of the courts) for much of the analysis. Broader groupings were defined for the multivariate analysis as “statewide,” “Anchorage” and “outside Anchorage.” Locations differed from each other by type of attorney, type of offense, the use of predisposition incarceration, ethnicities of defendants, and other variables. The multivariate analyses also showed differences in predisposition incarceration, charge reductions, and non-presumptive sentences by location.

A close association between location and type of offense appeared in the data. Robberies, for example, were more frequent in Anchorage than anywhere else in the state, as were drug sales (Misconduct Involving a Controlled Substance in the Third Degree, MICS 3) and Theft 2 offenses. Possession of drugs and marijuana sales (MICS 4) were substantially higher in Southcentral than elsewhere in the state. Felony DWI cases were more frequent in Southcentral and less frequent in Other (more rural) areas. In the smaller communities, Assaults were more common, as were the lower degrees of Sexual Abuse of a Minor offenses.

**3) Other defendant variables: prior convictions and substance abuse/mental health problems**

Defendants' prior criminal convictions were related to their ethnicities and to the outcomes of their cases. Only about 15% of the defendants had no prior convictions.<sup>10</sup> A total of 25% of the defendants had been convicted of other felonies. Thirteen percent had one prior felony, 6% had two prior felonies and another 6% had three or more prior felonies. About one-quarter of all defendants (24%) had one to three prior misdemeanors and 21% had four or more misdemeanors (but no felonies) on their records. A prior felony conviction meant that conviction on a felony charge in the present sample of cases would result in a presumptive sentence for the defendant.

The defendants' ethnicities were associated with different types of prior convictions. If the defendant was Black, he or she was more likely to have a prior felony conviction (41% had at least one prior felony conviction, compared to 23% of Caucasians and 27% of Native defendants). Native defendants were more likely to have four or more prior misdemeanors (28% did, compared to 16% of Blacks and a statewide average of 21%).

The analysis showed significant differences in offense type when viewed in the context of defendants' prior criminal convictions. For example, Murder and Kidnaping defendants were somewhat more likely to have prior felonies or no prior convictions, but Violent offenders were more likely to have prior misdemeanor convictions. Sexual offenders were less likely to have prior felonies, and more likely to have no prior convictions. Defendants convicted of Other offenses and Driving offenses were significantly more likely to have prior felonies. Driving offenders were also more likely to have prior misdemeanors. Most of the Driving offenders were convicted of Felony DWI or Refusal, offenses that were defined by having prior convictions of the same offense.

Another important set of variables reviewed for 1999 felony charges was the defendant's experience with alcohol, drug, and mental health problems. Overall, more than two-thirds (69%) of the convicted defendants in the group had an alcohol problem, about half (49%) had a drug problem, and about one-third (31%) of convicted defendants were identified as having a mental health problem. Larger than average percentages of Native defendants were identified as having alcohol problems, and larger percentages of Hispanic and Black defendants were identified as having drug problems. Mental health problems appeared to be less associated with particular ethnicities. Although more of each of these problems appeared in Juneau and Southeast data, the finding may have been a result of different reporting practices in those areas, not actual differences among locations.

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<sup>10</sup> For another 15% of the defendants, the criminal history could not be found.

#### **4) Type of attorney**

Eighty percent of charged felony defendants were represented by a public attorney showed that judges determined that the great majority of felony defendants were indigent. Defendants charged with Driving, Other, and Drug offenses were somewhat more likely to be represented by private attorneys. Slightly higher percentages of ethnic minority defendants were represented by public attorneys compared to the percentage of Caucasian defendants represented by public attorneys. Similar percentages of defendants represented by public and private attorneys had substance abuse problems but a higher percentage of convicted defendants represented by public attorneys had a mental health problem (33%) than convicted defendants represented by private attorneys (20%).

Type of attorney was associated with prior convictions. Defendants with more serious prior criminal convictions were more likely to be represented by public attorneys. Twenty-two percent of defendants represented by private attorneys, but only 14% of those represented by public attorneys, had no prior criminal convictions. At the other end of the spectrum, 7% of the defendants represented by public attorneys, but only 3% of those represented by private attorneys, had three or more felony convictions.<sup>11</sup>

The relationships between type of attorney and other variables such as type of offense, ethnicity, substance abuse and mental health problems, and prior convictions did not explain the type of attorney disparities that were identified in this report. For example, the finding that defendants with private attorneys were less likely to have any prior criminal convictions did not explain findings that private attorney defendants were incarcerated for shorter times. The effects of these variables were taken into account in the multivariate analysis.

### **3. Case Processing Findings**

Cases varied by time to disposition, the likelihood that a defendant would plead to the original charge filed, the chance that the defendant would go to trial, and likelihood that all charges against the defendant would be dismissed. Each of these varied by type of attorney and the location of the case in the state. Although the court may have played a part in these variations, many of them were related to decisions made by the attorneys and defendants in the case. Charge reductions and dismissals were the province of the prosecutors and were often made after discussions with the defendants and defense attorneys. The defendants decided whether to plead to the charges without

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<sup>11</sup> This relationship between type of attorney and prior criminal convictions did not account for the multivariate findings that defendants with private attorneys were closely associated with better outcomes in their cases.



an agreement, or accept a plea agreement, or go to trial. These decisions, in turn, were related to the amount of time needed to dispose of a case.

About 85% of charged felony defendants were convicted and about 15% had all the charges against them dismissed or were acquitted after trial. Statewide analysis showed that if all the charges against the defendant were dismissed, the case took about 81 days until its disposition. Fairbanks cases took about 66 days, and Southcentral cases took about 107 days.

Convicted defendants either pled guilty or no contest, or were convicted after trial. A defendant's choice to go to trial appeared to be associated with the location in the state. Fairbanks (7%) and Barrow (14%) defendants chose to take their cases to trial more often than defendants than the statewide average of 4%. Cases that went to trial averaged 312 days to disposition, with trial cases in Southcentral taking 417 days, and trial cases in northern and western Alaska taking 268 days.

If defendants entered a plea, the time to disposition, and their likelihood of pleading to a lesser charge also varied by location. The decisions about reducing charges were made by the prosecutor in the case, not the judge. Statewide, of all convicted defendants, 41% pled to the original charge against them, 41% pled to a misdemeanor, and 14% pled to a lesser felony.<sup>12</sup> In Fairbanks, however, 63% pled to the original charge, 21% pled to a misdemeanor and 8% were convicted after trial. Some smaller communities were associated with higher percentages of defendants who pled to misdemeanors (e.g., Dillingham, 60%; Kodiak, 58%; Sitka, 57%; Bethel, 50%) but for most communities, pleas to misdemeanors made up 40% or more of their dispositions.

Many more charges were reduced in 1999 than in the Council's previous analysis of data from 1984-1987. Many fewer defendants were convicted of the original charge against them in 1999. For most offenses, the difference came in substantially larger percentages of defendants convicted of a misdemeanor. For example, of the Burglary 1 convictions, in 1984-1987, 34% were convicted of a misdemeanor. In 1999, 65% were convicted of a misdemeanor.

Time to disposition also varied by location and the type of plea. Statewide, pleas to misdemeanors took substantially less time (average of 97 days) than did pleas to the most serious original charge (average 184 days). Pleas to lesser felonies averaged 226 days. Anchorage and Southeast defendants tended to have shorter times to case disposition and Fairbanks and Southcentral defendants tended to have longer times, especially for pleas to lesser felonies.

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<sup>12</sup> As noted above, 4% were convicted after trial statewide. Appendix B, Table B-1 of the report shows the charge changes for each of the original felonies filed.

#### **4. Background Predisposition Incarceration Findings**

This review of 1999 felony cases compiled data about defendants' incarceration before the disposition of their cases for the first time since 1973. Most defendants (80%) spent one or more days incarcerated before the disposition of their case. A majority (58%) spent thirty or fewer days incarcerated before release. In 1999, the percentage of unsentenced prisoners among Alaska's inmate population was 36% (including defendants charged with misdemeanors and probation revocations). From 1997 to 2000,<sup>13</sup> the percentage of unsentenced prisoners in Alaska increased from 31% to 41% of the prison population. Analysis by DOC in 2001 suggested that the increase came not from more admissions to the institutions but from defendants spending longer times incarcerated before sentencing.<sup>14</sup>

Two of the major tools used by judges to assure the defendants' appearances for court hearings and to assure public safety were money bonds and the requirement of a third party custodian. These often were used together for a single defendant. Other conditions on release included unsecured bonds and the defendant's own recognizance (the defendant's promise to appear).

Overall, 39% of the defendants posted a money bond to secure their release. Fifty-six of those charged with a Driving felony posted a money bond, but only 24% of those charged with Murder or Kidnaping offenses did. Of the defendants who posted a money bond, 60% also were required to have a third party custodian.

Third party custodian requirements played an important part in defendants' predisposition incarceration. If the third party custodian was required as a condition of release, the defendants were likely to spend more time incarcerated. While 20% of all defendants charged with felonies spent less than one day incarcerated before disposition of the case, only 8% of defendants required to have a third party custodian spent less than a day incarcerated. The multivariate findings also showed a substantial association between the third party custodian requirement and the length of time incarcerated before disposition, even when prior convictions, type of offense, and many other variables were taken into account.

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<sup>13</sup> E-mail from Commissioner Marc Antrim, Alaska Department of Corrections (December 2003).

<sup>14</sup> E-mail from Margaret Pugh, former Commissioner, Alaska Department of Corrections (on file with Alaska Judicial Council) (November 2001).

## **5. Background Sentence Findings**

Sentencing in Alaska could be either presumptive or non-presumptive. Defendants with a presumptive sentence (18% of the convicted defendants) were convicted of a more serious felony or had a prior felony conviction. The non-presumptive sentences included all sentences for defendants originally charged with a felony but convicted of a misdemeanor, and sentences for first-time felony offenders convicted of less serious Class B and C offenses. Forty-one percent of all convicted defendants were convicted of a felony with a non-presumptive sentence and another 41% were convicted of a misdemeanor and therefore also had a non-presumptive sentence.

Most defendants with a presumptive sentence received either the exact presumptive sentence or an aggravated (higher) sentence. The offenders convicted of the more serious Unclassified and Class A offenses had a much smaller chance of receiving a mitigated sentence (14% of the Unclassified and 16% of the Class A offenders). Class B and C offenders with presumptive sentences were, by definition, repeat felony offenders. Larger percentages of those offenders had mitigated sentences, especially in Property and Drug offenses,<sup>15</sup> than did the more serious offenders.

For all sentenced offenders, the Council calculated mean sentences and distribution of sentences by specific offense.<sup>16</sup> The mean sentence and distributions did not take into account the defendant's prior convictions, type of attorney, or any of the other characteristics that were included in the multivariate analyses. These calculations of mean sentence showed that sentences ranged from a mean of 87 years for the two defendants in the sample convicted of Murder 1, to two weeks for two defendants originally charged with a felony but convicted of the misdemeanor Vehicle Theft 2. A handful of defendants charged with felonies but convicted only of misdemeanors did not have any unsuspended incarceration to serve. For each category of Violent offense, the mean sentence included some unsuspended incarceration.

## **C. Major Report Findings from Multivariate Analysis**

This report relied upon a variety of analyses to make its findings. The less complex findings were reported in the earlier sections of this summary. In the multivariate analyses reported in this section, analysts looked at the associations among numerous independent variables (such as ethnicity, gender, and type of attorney) and dependent variables, mainly involving the amount of time that a defendant spent incarcerated at different points in the criminal justice process. The multivariate analyses also

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<sup>15</sup> Most Drug and all Property offenses were Class B and C offenses.

<sup>16</sup> *See infra* Appendix C.

considered the associations between the independent variables and the likelihood and degree of charge reductions.

The multivariate findings resulted from complex equations. The findings are described in the main report with substantial detail about the methods used to quantify the size of the associations between the dependent variable and the independent variables. The methodology discussion will not be repeated in this summary.

The analyses focused on differences in length of predisposition incarceration, post-disposition incarceration, total time to serve, and reductions in charges that were associated with gender, ethnicity, age, type of attorney, type of offense, location in the state, defendant's criminal convictions, number of charges, and so forth. In each of the analyses, the equations took into account all of the variables simultaneously. The analyses could be phrased as, "all other things being equal (treating the defendants as comparable in every respect except the variable (e.g., gender) being considered), the association between (e.g., gender) and predisposition incarceration is statistically significant." None of the findings represent cause and effect relationships; this report was not designed to find cause and effect relationships.

## **1. Lack of Systematic Disparity**

The overriding finding in the multivariate analyses was that none of the disparities found were systematic. Although type of attorney, ethnicity, gender, location in the state, and type of offense, among other variables, were associated with differences in incarceration times, the disparities differed substantially by location and type of offense. The variations suggested that a variety of factors could have been related to the disparities.

## **2. Disparities Associated with Ethnicity**

Disparities associated with ethnicity were found at all points in the process. The multivariate analysis measured the effect of ethnicity while simultaneously accounting for the effects of other variables such as age, gender, type of attorney, location in the state, number of charges, plea agreements, and mental health, alcohol and substance abuse problems. The sentencing disparities were limited to non-presumptive Drug offenses. Specifically, the data showed that being Black in Anchorage and being Native outside Anchorage both were associated with longer sentences for non-presumptive Drug offenses.

In predisposition incarceration, the report found that being Native was associated with longer times of incarceration for Natives statewide and Natives outside Anchorage for All Offenses Combined.

Being Native was associated with longer time incarcerated for Violent offenses statewide, for Property offenses statewide and outside Anchorage and for Driving offenses statewide. If Native defendants were experiencing systematic disparities, the analysis would have found differences in most types of offenses and in most locations. Similarly, being Black was associated with longer predisposition incarceration for All Offenses Combined statewide and for Drug offenses statewide.

The analysis also found ethnic disparities in charge reductions. The disparities in charge reductions appeared only for defendants of Other ethnicities (Hispanic and Asian/Pacific Islander), but there were too few defendants of those ethnicities to do further analysis.

The analysis also found ethnic disparities in “total time.” Some defendants may have spent more time incarcerated before the disposition of their cases than they were sentenced to serve after conviction. To determine the total time incarcerated in the case, the analysis used the longer of predisposition incarceration or sentenced time as the dependent variable. In this analysis, ethnicity continued to have a significant association with length of time required for some types of offenses. Being Native was associated with longer total time incarcerated in Violent and Drug offenses, and in All Offenses Combined at the statewide level. Being Black was associated with longer total time for Drug offenses in Anchorage and Violent offenses outside Anchorage.

### **3. Lack of Disparities in Presumptive Post-disposition Incarceration**

The report found no disparities in presumptive unsuspended post-disposition incarceration.<sup>17</sup> Presumptive post-disposition incarceration was analyzed using the same equations as those used for the non-presumptive post-disposition incarceration. The significant associations with days of unsuspended post-disposition incarceration were only for variables such as the defendant’s prior criminal convictions, sentenced charge, and the class of the convicted charge, that were expected to have an association with post-disposition incarceration. Those few variables accounted for more than 80% of the variation among defendants’ post-disposition incarceration, with no significant variation by type of attorney, ethnicity, gender or other demographic variables.

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<sup>17</sup> The equations used to analyze the amount of time that was imposed on a defendant at the sentencing hearing were designed to account for all time served by the defendant before the disposition of the case, plus to account for the good time credit that the defendant would have received for any days of predisposition incarceration. A formula of 1½ times the actual number of predisposition days was used. For example, if a defendant had 30 days of predisposition incarceration, the defendant appeared in the regression equation with a “censor” of 45 days. For this reason, the variable was described as “post-disposition incarceration” rather than as “sentence.”

#### **4. Type of Attorney Disparities**

The report's findings showed more associations between the variable "type of attorney" and the outcomes of charge reductions and lengths of time incarcerated than were found with any other variable. In general, defendants with private attorneys spent less time incarcerated in all locations for All Offenses Combined, and for Violent and Property offenses. Having an OPA staff or contract attorney or public defender attorney was generally associated with less likelihood of beneficial charge reductions, except in Drug offenses.

For Driving offenses, having a private attorney was associated with significantly fewer days in predisposition incarceration, but was not associated with any differences in non-presumptive post-disposition incarceration or total time incarcerated. Likewise, for Drug offenses, having a private attorney was associated with fewer predisposition incarceration days, but was not associated with any significant differences in non-presumptive post-disposition incarceration or total time incarcerated. The one anomaly was non-presumptive Drug post-disposition incarceration in Anchorage, in which having a private attorney was associated with more estimated days. For Sexual offenses, having a private attorney was not associated with any significant difference in predisposition incarceration, but did appear associated with less non-presumptive post-disposition incarceration statewide and outside Anchorage, and with shorter total incarceration outside Anchorage.

The analysis found that type of attorney differences were independent of ethnicity, age and gender of defendants; defendants' prior convictions; alcohol, drug and mental health problems; and location in the state. Although the analyses reported earlier found associations among type of attorney and several of these factors, the equations held the associations with these variables equal for all defendants. This meant that when the other variables had been taken into account, defendants with private attorneys still spent less time incarcerated than defendants with public attorneys, or received more favorable charge reductions.

The Council reviewed the possibilities that information not available during the data collection such as the defendant's education, employment, economic status, marital status, and so forth could have accounted for the differences among defendants. It reviewed past Alaska reports in which data about those variables had been available to include in the equations. While socioeconomic data occasionally was associated with significant differences in length of incarceration, type of attorney often appeared to be important even when the socioeconomic factors were analyzed. The same held true for ethnicity. In earlier reports that included socioeconomic factors, ethnicity appeared to be associated, in scattered instances, with length of incarceration. For some of the analyses, both socioeconomic factors and ethnicity were simultaneously significant.

Another factor hypothesized to be associated with the type of attorney differences was the amount of resources available to public attorneys. Information from a legislative audit published in 2000 for the year 1998 suggested that the Public Defender Agency had fewer resources with which to manage criminal cases than did the Department of Law.

## **5. Fewer Disparities in Sexual and Driving Offenses than Among Other Offenses**

Throughout the multivariate analyses, the two offense groups with the fewest significant associations between incarceration times and independent variables were Sexual and Driving offenses. Only a few disparity findings for Driving offenses occurred. Most were associated with type of attorney and drug or alcohol problems.

In Sexual offenses, the analysis showed that ethnicity had no association with either length of incarceration or charge reductions at any point in the process. Type of attorney was not associated with the length of predisposition incarceration in Sexual offenses, and had only a few associations with charge reductions and with non-presumptive post-disposition incarceration and total time incarcerated outside Anchorage. Location in the rural areas of the state appeared to be entirely unassociated with length of incarceration and charge reductions for Sexual offenses.

The lack of strong associations in Sexual and Driving offenses with the major multivariate variables suggested that those offenses were handled differently than other offenses. In the regression equations, defendants in both Sexual offenses and Driving offenses were estimated to have spent substantially more time incarcerated than other types of defendants, especially in non-presumptive post-disposition incarceration and total time incarcerated. Post-disposition incarceration, in Driving offenses in particular, may have been affected by mandatory minimum sentences applicable to most defendants convicted of Driving offenses. Attorneys, judges and others in the justice system may have informally arrived at a consensus about how Sexual and Driving offenses should be handled, a consensus that reduced the opportunities for disparities to arise among defendants charged with or convicted of these offenses.

Other sections of the analyses showed that very few charge reductions or dismissals occurred in Driving offenses,<sup>18</sup> in contrast to most other offense types. For example only 11% of Felony DWI offenders had their single most serious charge reduced or dismissed. Sexual offenses, in contrast, had some of the higher charge reduction rates. Ninety-one percent of Sexual Assault 1 single most

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<sup>18</sup> See *infra* Appendix B, at p. B-10.

serious charges ended in reduced charges, or dismissals or acquittals, as did 79% of Sexual Abuse of a Minor 1, and 83% of Sexual Assault 2 offenses. Offenses witnessed by police, like most Driving and Drug offenses, generally resulted in higher conviction rates on the most serious charge than offenses not witnessed by police.

## **6. Changes in Charge Reduction Patterns Between 1984-1987 and 1999 Cases**

The Council published its last major review of felony cases in 1991, using data from the years 1984-1987.<sup>19</sup> A comparison of the data from those years with the 1999 felony outcomes showed that many more charge reductions occurred in 1999. In the 1984-1987 data, a greater percentage of defendants were convicted of the most serious original charge against them in 1999 for all but one category of offense, MICS 4 (Misconduct Involving a Controlled Substance 4, a Class C felony). The percentage of defendants convicted of the same charge rose from 60% in 1984-1987 to 67% in 1999. For example, 43% of the Sexual Assault 1 defendants were convicted of Sexual Assault 1 in 1984-1987, as compared to 12% in 1999. Defendants charged with and convicted of Assault 1 dropped from 25% in 1984-1987 to 12% in 1999; those charged and convicted of Burglary 1 dropped from 45% to 17% in 1999.

The most striking finding was the greatly increased percentage of charges that started as felonies but ended as misdemeanors. In 1984-1987, 7% of the defendants charged with Sexual Assault 1 were convicted of a misdemeanor; in 1999, the percentage was 29%. The percent of Assault 1 offenses that were ultimately convicted of a misdemeanor rose from 18% in the mid-1980s to 27% in 1999, and for Burglary 1, the misdemeanor convictions increased from 34% in the mid-1980s to 65% in 1999. The pattern of changes in charge reduction practices was not as consistent among all offenses for reductions to misdemeanors as it was for reductions from the original felony charge.

The changes in charge reduction patterns could have been associated with changes in charging practices, or in the ways that attorneys handled plea negotiations and reductions. The changes also could have been related to reductions in resources available to the criminal justice system. The appearance of significant disparities in charge reductions based on ethnicity, type of attorney and location in the state suggested that further analysis of the frequency of and reasons for charge reductions is warranted.

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<sup>19</sup> TERESA WHITE CARNS & JOHN KRUSE, ALASKA JUDICIAL COUNCIL, ALASKA'S PLEA BARGAINING BAN RE-EVALUATED (1991).



## **7. Differences Associated with Gender**

Men tended to receive longer times of incarceration in every context, for Violent and Property crimes. Relative to women in Violent and Property cases, being male was associated with more time spent incarcerated prior to disposition of the case, more days imposed for non-presumptive post-disposition incarceration, and more total time incarcerated. In Drug cases, being male was associated with some less favorable charge reductions. Being male was associated with fewer estimated days of non-presumptive Drug post-disposition incarceration in Anchorage, but more estimated days outside Anchorage.

One variable that was unavailable for the analysis that could have influenced the gender disparity findings was whether the defendant had children for whom he or she cared. Judges could have been reluctant to impose more incarceration that could have disturbed a beneficial parental relationship. The gender disparities appeared primarily in Violent and Property offenses, with much less disparity in Drug offenses and none in Driving offenses.<sup>20</sup> The lack of gender disparity across the board suggests that presence of children was not the only possible explanatory factor for the findings.

## **8. Findings About Predisposition Incarceration and Third Party Custodians**

This was the first multivariate review of predisposition incarceration in Alaska. Disparities appeared much more consistently in predisposition incarceration than in post-disposition incarceration or total time incarcerated, and all types of offenses except Sexual. Ethnicity was associated with longer periods of predisposition incarceration for Natives in All Offenses Combined, and in Violent, Property and Driving offenses, and for Blacks in All Offenses Combined, and in Drug and Driving offenses. Defendants with private attorneys were associated with shorter predisposition times for all categories except Sexual. Being male was associated with longer predisposition incarceration for Violent and Property offenses, and being in a rural area was associated with shorter predisposition incarceration for Violent, Property and Driving offenses.

In addition to the factors in the equations, such as ethnicity, type of attorney, rural area, gender, age, presumptive charge, number of charges against the defendant, and so forth, reviewers of the data (including attorneys and judges) suggested that other factors could have affected the length of predisposition incarceration. They mentioned the possible influence of credit for time served in residential treatment programs, of the fact that the defendant could have been serving time on an unrelated charge, and of the importance of socioeconomic factors in shaping the judges' bail

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<sup>20</sup> There was only one woman charged with a Sexual offense in this sample; she was convicted of a non-Sexual misdemeanor. A valid comparison group for analysis of gender in the multivariate equations would have had to be larger.

decisions. Having information about each of these factors, especially the socioeconomic factors, could have helped to understand the findings about predisposition incarceration.

The requirement of a third party custodian before a defendant could be released to await disposition of the case had a significant and unexpected association with the length of predisposition incarceration. Defendants for whom the third party custodian was required were likely to serve more time before the case was disposed of when compared to defendants without the requirement. The finding held true in all types of cases statewide and for most types of cases in Anchorage and outside Anchorage. Holding all other factors equal, the third party requirement contributed substantially to the time incarcerated before disposition for most types of offenses. This association of third party custodian with longer incarceration predisposition occurred independently of the effects of the defendants' prior convictions, type of attorney, alcohol, drug and mental health problems, and all of the other factors in the equations.

## **9. New Felony Driving Offenses**

This report contains the first detailed statistical analyses of the new felony Driving offenses created by the legislature in 1995. They made up about 7% of all charged offenses in the 1999 sample. The defendants tended to be older, and were more likely to be Native or Caucasian than Black. Other findings related to the Driving offenses are found throughout the report.

## **D. Recommendations**

Based on the findings reported here, the Judicial Council made a series of recommendations. These included:

- The court should encourage criminal justice agencies to work together toward the elimination of unwarranted disparities throughout the criminal justice process. The inter-branch working group should meet with representatives of ethnic organizations, community groups, local law enforcement, and others to review policies and procedures that might be associated with disparities. It also should meet with professionals and staff from the agencies that make up the justice system.
- Appropriate agencies should look at current predisposition incarceration practices and consider other options.
- The state and local communities should consider greater use of therapeutic courts to resolve the pervasive problems with alcohol, substance abuse and mental health issues.
- The state should consider the need to increase resources available to public defense attorneys and other criminal justice agencies.
- The state should review charging and charge reduction practices.
- The state should consider better monitoring for defendants convicted of misdemeanors and should provide sufficient resources to carry out its decisions.
- The state should improve collection of data about ethnicity in agency files, court case files, and the court's new case management system for reporting offenses, arrests, prosecutorial screening, and subsequent court actions. Agencies should routinely review data to identify disparities, and the state should provide sufficient resources for independent comprehensive analyses.

## **Part I: Introduction**

### **A. Overview**

At the recommendation of the Supreme Court's Fairness and Access Implementation Committee and of the Criminal Justice Assessment Commission, the Judicial Council began compiling data in 2001 about more than 2,300 selected felony cases from 1999. These cases were approximately two-thirds of the felony cases filed in 1999. The cases were a representative sample from 29 different court locations in which felony cases were filed.

When this report was requested, the disproportionate numbers of ethnic minorities in Alaska's criminal justice system were well known. The main purpose of this work was to identify whether those disproportions resulted from unjustifiable reasons and amounted to discrimination. Another purpose was to identify other unwarranted disparities, if they existed, based on the defendant's gender, the defendant's type of attorney, the location of the defendant's case, or other inappropriate characteristics. A third purpose was to update descriptive data about the criminal justice system.

Data collected from court files included information about the charges, offense characteristics, defendant characteristics, case processing, pre-sentence incarceration and bail conditions, plea negotiations, and sentences and sentencing conditions. Other agencies provided additional data. The Alaska Department of Public Safety sent prior defendant data about criminal convictions and ethnicity, and the Alaska Department of Corrections identified defendants with mental health issues. Data from secondary sources like the Census and the Bureau of Justice Statistics were reviewed. Extensive reports on Alaska's criminal justice system from past Judicial Council reviews of similar issues, and from work by other researchers in Alaska and elsewhere were consulted. National and historical data afforded a more comprehensive context in which to consider the meaning of the findings from Alaska's 1999 felony cases.

To analyze the data, several approaches were used. Basic findings were reported about the types of defendants, the characteristics of their cases, their demographics and their offenses. For data for which national comparisons were available, similarities and differences between Alaska data and that from other states were assessed. Finally, Council staff worked with ISER (the Institute for Social and Economic Research at UAA) whose statisticians did the complex multivariate analyses. Those analyses resulted in findings about lengths of time that defendants were incarcerated at different points in the process and about charge reductions.

By many measures, the report showed that justice for felony defendants in Alaska was evenhanded. Some unexplained ethnic disparities were associated with total amounts of time defendants spent incarcerated, principally in the area of predisposition incarceration, and in post-disposition incarceration for less serious Drug offenses. Some disparate outcomes were associated with the defendant's type of attorney, public or private. Some disparities were associated with gender and some with the rural location of the defendant's case. These findings, in many respects, were consistent with findings from reports in other jurisdictions.<sup>21</sup> Fortunately, the findings of inexplicable disparity, particularly ethnicity findings, lacked the uniformity that might have suggested that discrimination occurred as the result of intentional misconduct.

The data collected enabled examination of the criminal justice process for unwarranted disparities after charges were filed. They also enabled reporting of abundant information about Alaska's criminal justice process. The Council anticipates that policymakers, judges, prosecutors, defense counsel, and the public will find this information useful in determining what needs to be done to insure fairness in Alaska's criminal justice system and to protect the public.

## **B. Boundaries of the Report**

At the outset, it is important to recognize the boundaries of this report. The data collected and the analysis measured only what happened to defendants after prosecutors filed charges in court, which occurred in the latter part of the criminal justice process. Chart 1<sup>22</sup> in this report describes the entire scope of the process, starting with a reported crime, followed by investigation, arrest, screening by the prosecutor, filing of charges in court, disposition of the court case, and (if the defendant was convicted) supervision by the Department of Corrections. The Council was able to compile data

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<sup>21</sup> For a good discussion of other sentencing reports *see* Spohn, *supra* note 4.

<sup>22</sup> *See infra* p. 30, Chart 1.

about disproportions and disparities in the court process but did not have sufficient resources to review the steps leading up to court filing, or the events occurring after case disposition.<sup>23</sup>

Although data were not available to the Council to review the earlier parts of the criminal justice process for unwarranted disparities, the Council had some information about the defendants' characteristics at the beginning of the court process when the charge was filed in court.<sup>24</sup> Analysis of those characteristics showed that the felony defendants differed from the state's general population in many respects.

Most had limited resources, represented by the fact that 80% of the sample qualified for public representation because of indigency. The sample included many more ethnic minorities and young males than the state's general population. Substantial percentages of defendants came to court with alcohol and/or drug and/or mental health problems. To understand the entire criminal justice process, the state should review data that could show the roots of the disproportions that existed before the defendants came to court. For example, a recent survey of reports about sentencing disparities and their roots cited reports showing that "racial minorities have been arrested for drug offenses at a disproportionately high rate . . . ."<sup>25</sup>

This report makes recommendations about actions that the court and other agencies could take to address unwarranted disparities that appear after charges have been filed. To rid the entire criminal justice process of unwarranted disparity, it is essential that data be compiled and that sufficient resources be made available to analyze events that occurred before defendants were charged. To show the full cycle of the criminal justice process, it also would be useful to understand the events in the post-sentencing period when the Department of Corrections is supervising the defendant as an inmate, or on probation or parole.

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<sup>23</sup> The Fairness and Access Committee's recommendation for a comprehensive review of the criminal justice process included the Judicial Council's estimate that such a report would cost \$300,000 to \$350,000. REPORT OF THE ALASKA SUPREME COURT ADVISORY COMMITTEE ON FAIRNESS AND ACCESS *supra* note 1, at 43. In the end the Judicial Council received no additional funding to conduct this report and scaled back the amount and types of data collected to a much smaller review that fit within its own resources. Although the Council received no additional funds for this report, other state agencies made contributions that helped to facilitate the study. The Alaska Court System contributed mailing costs associated with forwarding case files to the Council. The Alaska Departments of Public Safety and Corrections contributed data about defendants' ethnicities and prior criminal histories (DPS), and about defendants' mental health issues (DOC).

<sup>24</sup> The Council could not find complete data about all 2,331 defendants. For example, two defendants lacked age information. On tables that included data about defendants' ages, those two defendants were excluded from the analysis. Similarly, in other analyses with missing data, the defendants were excluded from the tables.

<sup>25</sup> Spohn, *supra* note 4, at 431. A review of arrest and screening decisions would help policy-makers understand why defendants coming to court are already disproportionately persons with prior convictions, substance abuse problems, and low incomes.

As explained in the Methodology section, a representative sample of felony cases from 1999 was examined rather than all of the cases from 1999. Within the scope of this report, the potential significance of some data did not become apparent until the data had been collected and analyzed. For example, data were not readily available to distinguish between predisposition incarceration served by the defendant in the current case and incarceration attributable to another pending matter such as a contemporaneous charge or probation revocation or immigration detainer. Another example was the inability to track credit against the defendant's incarceration for court-ordered residential substance abuse treatment,<sup>26</sup> which might have contributed to findings that defendants represented by private and public attorneys served different amounts of predisposition incarceration.

An often-mentioned point about the report has been the unavailability of socioeconomic data about defendants. The Council understood the potential importance of this data when the study was designed. The Council collected available data about defendants' ethnicity, gender, age, prior convictions, substance abuse and mental health problems and analyzed the effects of these factors. No data were consistently available about defendants' incomes, employment, education,<sup>27</sup> family status, stability in the community, or home ownership although representation by a court-appointed, publicly funded attorney indicated a defendant's indigency.

Socioeconomic data might have helped the Council distinguish between the valid and possibly invalid associations between these factors and specified outcomes. The mere fact of indigency should not have resulted in worse outcomes but a defendant's work history, education, family ties, and stability and support in the community could have been appropriate considerations in decisions about the need to incarcerate the defendant before disposition and after conviction. Socioeconomic data unavailable for analysis might have revealed whether these factors were disproportionately associated with ethnicity, type of attorney, rural locations, or gender. Data could have helped to understand disparity findings in those areas.

At sentencing, a defendant's potential for rehabilitation was among the criteria judges were required to consider.<sup>28</sup> Potential for rehabilitation was weighted more heavily in less serious cases where the defendant was subject to non-presumptive sentencing. Unexplained sentencing disparities only occurred in non-presumptive sentencing cases. Factors relevant to prospects for rehabilitation including the defendant's employment history, education level, and stability in the community, might

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<sup>26</sup> See *Nygren v. State*, 658 P.2d 141 (Alaska App. 1983). See discussion *infra* p. 167.

<sup>27</sup> Data were available for fewer than half of the defendants about education, employment and marital status. See *infra* pp. 47-52.

<sup>28</sup> See AS 12.55.005 (1999); see also *State v. Chaney*, 477 P.2d 441, 443-44 (Alaska 1970).

well have been associated with longer sentences for defendants in these cases. Socioeconomic factors the Council could not measure could have affected some groups of defendants disproportionately and could have justifiably resulted in longer sentences for these defendants that were otherwise unexplained.

Disparity findings for defendants with public attorneys could well have said more about those defendants than they said about the quality of the representation provided by public attorneys. Many judges, prosecutors, and defense attorneys believed that the quality of representation offered by public attorneys was very high. Characteristics of defendants however, could have accounted for some of the disparities highlighted by the analysis.<sup>29</sup>

Sentencing studies in other jurisdictions and on a national level were reviewed. This report includes a comparison with national data. Many studies reviewed by the Council did not include analysis of socioeconomic data, reflecting the difficulty in most jurisdictions of obtaining this potentially important data.

In Alaska, socioeconomic data about defendants should be collected and maintained if policymakers and judges want to use them to help explain incarceration disparities and to help understand the association of more favorable outcomes with private attorney representation. The court system, defense counsel, and defendants would have to cooperate in the collection of socioeconomic data.

In addition to the data that were not available, some data were not recorded completely in the court files. For example, evidence of plea agreements was not always available in court files, in log notes, change-of-plea-hearing paperwork and other sources. Other analyses (for example the analysis of charge reductions) suggested that the frequency of plea agreements was under-reported.

In identifying disparate outcomes, it is important to note that cause and effect relationships were not found. For example, when a defendant's ethnicity was associated with a certain outcome, it did not mean that the defendant's ethnicity caused that outcome. It meant that the association was not explained by any of the many other factors taken into consideration. It is vital to consider the unexplained disparity findings in the context of all of the data that reflected favorably on the criminal justice system in Alaska.

This report affords a better understanding of the big picture. The report's findings could not have been obtained by merely observing courtroom proceedings or by simply interviewing players and

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<sup>29</sup> In an effort to better understand the findings, Council staff sought and obtained feedback from judges, prosecutors, defense counsel, academics, and representatives of ethnic minorities.



those affected by the process. To gain a more useful perspective, the system had to be viewed independently, at a distance, and through the use of statistics. Despite the boundaries of this report, it should advance a better understanding of the criminal justice system in Alaska, identify areas needing improvement, and suggest additional needs for data and analysis.

The information provided here will foster a more accurate perception of Alaska's criminal justice process. Some observers will continue to perceive flaws in the process that are inconsistent with these data. They may attribute perceived unfair treatment to an unfair system. Conversely, other observers will continue to question disparity findings, saying that they are incompatible with their personal experience. For example, a judge may doubt findings about the effects of predisposition incarceration practices that he or she does not use. The statistical analysis in this report provides context for defendants, judges, and other players in the criminal justice process who may overgeneralize based on their personal experience.

At the same time, it is important to recognize that statistical analysis, no matter how precise, cannot eradicate the concerns of every person who perceives inequities in the criminal justice system. The justice system cannot simply confront these concerns with statistical data. All observers of the justice system must continue to attempt to understand why some perceive the criminal justice system to be unfair despite statistical data to the contrary. Public confidence in the criminal justice system requires that the public have a process that is both fair and perceived to be fair.