

Alaska Felony Sentencing Patterns: 2012 - 2013

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Acknowledgments

The Alaska Judicial Council offers this report on felony sentencing in Alaska as one in a series of studies of Alaska's criminal justice system that began in the 1960s. Alaska's Constitution (Article IV, Section 9) requires the Judicial Council to "conduct studies for the improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature." Members of Alaska's legislature, Alaskan judicial officers, the Criminal Justice Working Group, the Alaska Criminal Justice Commission, and many others will find the report useful for understanding how sentencing is structured and practiced in Alaska. We look forward to using these data as the basis for assessment of recidivism, and of the broader criminal justice process in the next few years.

We thank Larry Cohn, who initiated this work while he was Executive Director of the Alaska Judicial Council (2001 - January 2014) for his leadership in taking on this timely work, and Susanne DiPietro, the Council's current Executive Director, for ably carrying it through to completion. Judicial Council staff, including Rhonda Hala, Emily Marrs, and Jennie Marshall-Hoenack have supported us throughout.

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Dr. Brad Myrstol at the University of Alaska Anchorage Justice Center carried out the multivariate analyses. He was unfailingly thoughtful, clear in his explanations of the data and analytical methods. Working with him has been an exceptional experience, and we look forward to future shared undertakings.

Executive Summary

Alaska Sentencing Patterns: 2012 – 2013

The Alaska Judicial Council (AJC) has published reports documenting the lengths and characteristics of Alaska sentences since 1973. The current study was undertaken in response to major revisions to Alaska’s presumptive sentencing laws in 2005 and 2006, and the passage of time since the publication of Council’s last major sentencing report in 2004.¹ This report is also intended provide information for the work of the legislatively-created Alaska Criminal Justice Commission. The commission, which is currently scheduled to sunset in July 2017, was created to make recommendations for improving criminal sentencing practices and criminal justice practices, including rehabilitation and restitution.”²

Selected Findings of this Report

- In 2005, the Alaska Legislature adopted a new sentencing system with presumptive ranges instead of a single specified presumptive term. It included first offender B and C felony offenses in the presumptive ranges. In 2006, it revised the presumptive ranges for sexual offenses to increase penalties significantly.
- During the same period, the legislature substantially increased the number and types of offenses classified as felonies and increased the severity of a number of existing felonies, making many more offenders potentially subject to felony penalties or to higher penalties within the felony sentencing ranges.
- Only 5% of offenders were convicted of the most serious (Unclassified and Class A) offenses. All Unclassified and Class A offenders were sentenced to time to serve.
- Most offenders (80%) were convicted of the least serious (Class C) offenses.
- Most (71%) offenders were convicted of non-violent offenses (Property, Driving, Drugs, Other).

¹ Alaska Judicial Council, ALASKA FELONY PROCESS: 1999 (February 2004), available at <http://www.ajc.state.ak.us/reports/admin.html#publications>

² AS 44.19.645. The [Commission’s Justice Reinvestment Report](#) to the legislature in December 2015 drew in part on data developed for this sentencing report to recommend statutory and policy changes in various aspects of the criminal justice system.

- Most offenders (79%) had some active time to serve. Sixty-one percent of offenders were sentenced to probation, usually in conjunction with time to serve.
- The type of offenses varied substantially by location within the state. Rural areas had higher percentages (41% combined) of violent and sexual offenses. Southcentral (the Mat-Su Valley and the Kenai Peninsula, excluding Anchorage) and Southeast (Juneau, Sitka and Ketchikan) had larger percentages of drug cases. Southcentral and Fairbanks courts had the highest percentages of driving cases.
- Nearly one-quarter (22%) of the offenders had no prior convictions of any sort. About 67% of the offenders had no prior felony.
- Half (51%) of the more serious (Class A) offenders convicted of non-sexual offenses had active sentences (time imposed, minus time suspended, equaled active time to serve) below the legislatively-determined presumptive ranges, because of mitigating factors agreed on by the defendant and attorneys and approved by the judge.
- Most Sexual offenders had active sentences within the presumptive ranges set by the legislature.
- Within each Class of offense, violent offenses received longer active sentences, on average, than non-violent offenses.
- Within each Class of offense, offenders with prior felony convictions received longer active sentences, on average, than did offenders with no prior felony convictions.
- The report also reviewed the relationship of active sentence length (time imposed, minus time suspended, equaled net active time to serve) and type of probation to a variety of factors. These factors included demographic characteristics of offenders, seriousness of the offense, location of the sentencing court, manner of conviction (plea or trial), and case processing factors like the type of attorney representing an offender, and the filing of a presentence report in the case.
- All other factors being equal, a multivariate analysis showed that in isolated instances some minority offenders and some men were likely to receive longer (or in one case, shorter) sentences than comparable offenders convicted of the same offenses. These differences were not systemic, but should receive continued attention.

Sample and Methodology

The Alaska Judicial Council (AJC) used electronic data provided by the Alaska Court System (ACS) and the Department of Public Safety (DPS) to establish the database for this study. ACS provided a list of all cases sentenced on a felony conviction between January 1, 2012 and December 31, 2013. The AJC cleaned the data, took a random 60% sample, and determined the most recent case and the single most serious charge for all people. The final dataset contained 2,970 cases.

Next, DPS provided demographic information (i.e., gender, race, age) and criminal history for the individuals in the database. AJC staff then merged the two datasets to conduct the analysis. It used the SPSS (Statistical Package for Social Sciences) to carry out an exploratory analysis, focused on multiple independent variables, including but not limited to demographic variables (age, gender, ethnicity), prior criminal history, offense class, and offense type. The dependent variable was active sentence length, which was calculated by subtracting any suspended sentence from the imposed sentence.

The Justice Center at the University of Alaska Anchorage conducted the multivariate analysis in STATA, using multivariate linear regression models to assess the impact of each of the independent variables on active sentence length. The analysis for this study used fixed effect models, to examine the relationship between the independent and dependent variables. Fixed effect models were able to account for overlap in the data and unknown variables. Although fixed effect models could account for omitted variables, they could not estimate their effect size. The findings of this analysis are reported in Part 4 of the report.

Part 1: Introduction

A. Reasons for this Report

The Alaska Judicial Council (AJC) has published reports documenting the lengths and characteristics of Alaska sentences since 1973. The current study was undertaken in response to several events, including major revisions to Alaska’s presumptive sentencing laws in 2005 and 2006, the creation of the Alaska Criminal Justice Commission, and the passage of time since the publication of the Council’s last major sentencing report in 2004.³

In 1978, the Alaska Legislature enacted a presumptive sentencing structure that featured single presumptive terms for most offenses.⁴ One of the major reasons the legislators gave for choosing this sentencing structure was “the elimination of unjustified disparity in sentences and the attainment of reasonable uniformity in sentences can best be achieved through a sentencing framework fixed by statute as provided in this chapter.”⁵ In 1982, the Alaska Court of Appeals also discussed the purpose of presumptive sentencing, stating “[t]he comprehensive and highly regimented provisions of the presumptive sentencing statutes were enacted to assure sentencing would become a predictable process and disparity in sentencing between similarly situated offenders would be eliminated.”⁶ In a second case, the court of appeals explained that “[t]he presumptive sentencing provisions of the Revised Criminal Code, contained in AS 12.55.125 and 12.55.155, thus reflect the legislature’s intent to assure predictability and uniformity in sentencing by the use of fixed and relatively inflexible sentences, statutorily prescribed, for persons convicted of second or subsequent felony offenses.”⁷ The court of appeals further noted before the advent of presumptive sentencing, the concern of uniformity in sentencing had been of “little significance” to the Alaska Supreme Court.⁸

In 2005, the Alaska Legislature acted to amend the sentencing system,⁹ prompted by the U.S. Supreme Court’s 2004 decision in *Blakely v. Washington*.¹⁰ The *Blakely* decision had the effect of imposing new sentencing procedures on systems that featured single, definite presumptive terms, like Alaska’s. In order to minimize or avoid those procedural constraints, the legislature

³ Alaska Judicial Council, ALASKA FELONY PROCESS: 1999 (February 2004), available at <http://www.ajc.state.ak.us/reports/admin.html#publications>

⁴ The new law took effect in 1980.

⁵ AS 12.55.005.

⁶ *Lacquement v. State*, 644 P.2d 856, 861-2 (Alaska App. 1982) *overruled on other grounds by Jones v. State*, 744 P.2d 410 (Alaska Ct. App. 1987).

⁷ *Juneby v. State*, 641 P.2d 823, 830 (Alaska App. 1982) *modified and superceded, by Juneby v. State*, 665 P.2d 30 (Alaska Ct. App. 1983).

⁸ *Id.* at 830.

⁹ Ch. 2 SLA 2005.

¹⁰ 542 U.S.296 (2004).

replaced the specific presumptive terms with a range of permissible sentences for each offense.¹¹ These new ranges typically started at the previous presumptive term (if there was one) and extended several years above that.¹² The legislature made other changes as well, which are discussed in Part 2. Then, in 2006, the legislature substantially increased penalties for sex offenders.¹³ Until now, there has been no systematic examination of the effects of these changes to the sentencing laws. By 2016, sufficient time had passed to allow a description of the sentences being imposed under the new statutes.

This report on recent sentencing patterns also is intended provide a foundation for the work of the legislatively-created Criminal Justice Commission. The Commission, which began its work in July 2014, was created to: “. . . [e]valuate the effect of sentencing laws and criminal justice practices on the criminal justice system to evaluate whether those . . . provide for the protection of the public, community condemnation of the offender . . . and the principle of reformation. The Commission shall make recommendations for improving criminal sentencing practices and criminal justice practices, including rehabilitation and restitution.”¹⁴

Another value for the current work is to provide the basis for studies of recidivism during the next two to three years. With the addition of new data, the database could also illuminate other aspects of the justice system, such as bail practices, charging practices, and court processing of criminal cases.

B. What this Report Covers

The report summarizes important changes in Alaska statutes that have affected sentences imposed since the Judicial Council’s 1999 felony process report. Based on the findings from the data, the report sets out questions for further research and analysis that might be of interest to the Criminal Justice Commission and other policy-setting groups.

The study provides information about and analysis of a random sample of the sentences imposed on offenders who were sentenced on a felony in Alaska in 2012 and 2013, a total of 2,970 sentences. It examines the relationship of sentence length and type of probation¹⁵ to a variety of factors including demographic characteristics of offenders, seriousness of the offense, location of the sentencing court, manner of conviction (plea or trial), and others.

¹¹ Ch. 2, §1, SLA 2005.

¹² See Part 2 for an explanation of the ranges, and tables comparing the new and old sentencing ranges for all offenses, including the 2006 changes to sentences for Sexual offenses described below.

¹³ Ch. 14 SLA 06.

¹⁴ AS 44.19.645.

¹⁵ Probation can be supervised by a probation officer from the Department of Corrections, or unsupervised. It is also a feature of SIS sentences – Suspended Imposition of Sentence, discussed below.

Table 1: Variables Studied¹⁶	
Dependent Variables	
Sentence Length	Imposed sentence length Active sentence length Active time: Yes/No?
Independent Variables	
Demographic characteristics of offenders	Age at time of offense Gender Ethnicity Criminal history
Offense characteristics (for the single most serious offense of conviction)	Class of offense Type of offense Number of felony and misdemeanor charges filed Court location Domestic violence flag
Characteristics of court cases	Type of disposition (plea vs. trial) Type of attorney
Factors related to sentencing	Presentence report filed Probation SIS (suspended imposition of sentence) sentence

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Offender's criminal history: Offenders' histories of convictions were categorized from least to most serious as follows: No prior convictions; 1 - 3 prior misdemeanor convictions only (no felonies); 4 or more prior misdemeanor convictions only (no felonies); 1 prior felony (any number of misdemeanors); 2 or more prior felonies (any number of misdemeanors); and Unknown.

Single most serious offense of conviction (type and class of offense): This item was defined as the current felony conviction that carried the most serious penalty. Generally, this was clear from the level of the offense: Unclassified (most serious level), Class A, Class B, Class C felony. If the offender was convicted of two or more offenses of the same class, two other criteria came into play: type of offense, and length of sentence. All offenses were grouped in seven type categories, shown here in order of most to least serious: Murder/Kidnapping, Sexual, Violent, Drug, Driving, Property, and Other (includes Perjury, Escape, Offenses against Public Order, Failure to Appear, Weapons and other miscellaneous offenses, almost all of which were Class C felonies). If the offender was convicted of two comparable offenses (e.g., two Class C Property offenses), the one with the longer sentence was chosen as the single most serious. If the two convictions were identical, the first one was chosen. Appendix A contains a list of all the offenses included in the analysis.

¹⁶ See Appendix E for a list of variables and their definitions.

Number of felony and misdemeanor charges filed at the beginning of the case. The number of charges filed at the beginning of the case (both misdemeanors and felonies) gave some indication of the scope of the defendant's situation.

Court location where the case was handled: The court location where the case was handled was not necessarily the location of the offense. The analysis looked at the thirteen superior court locations where the case could have been handled (Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Juneau, Kenai, Ketchikan, Kodiak, Kotzebue, Nome, Palmer, and Sitka). It then grouped court locations into five areas: Anchorage, Fairbanks, Southeast (all of the First Judicial District – Juneau, Ketchikan, and Sitka), Southcentral (Kenai and Palmer); and Rural (all of the Second District – Barrow, Kotzebue, and Nome – plus Bethel, Dillingham, and Kodiak). The multivariate analysis used slightly different categories, described in the Appendix D: Detailed Methodology.

Type of attorney representing the offender: Offenders were represented by a private attorney, or an attorney appointed at public expense, either from the Public Defender Agency or from the Office of Public Advocacy. To qualify for a public attorney, a defendant had to meet criteria set out by the court rules and the legislature. A 2012-2013 court system study of public attorney appointments found almost all defendants met these criteria.¹⁷

Suspended Imposition of Sentence (SIS): A judge is authorized to suspend the imposition of a sentence if the offender and the offense meet certain criteria. The conditions of an SIS can include some incarceration, probation and attendant conditions, restitution, and so forth.¹⁸ Offenders who successfully complete the conditions within the probationary term of the SIS can apply to be discharged by the court without an imposition of the sentence, and the court may set aside the conviction. The SIS continues to appear on the defendant's official record.

C. Methodology

The Alaska Judicial Council used electronic data provided by the Alaska Court System (ACS) and the Department of Public Safety (DPS) to establish the database for this study. ACS provided a list of all cases sentenced on a felony conviction between January 1, 2012 and December 31, 2013. The AJC cleaned the data, took a random 60% sample, and determined the most recent case and the single most serious charge for all people. The final dataset contained

¹⁷ The report examined all 373 offenders who were appointed public counsel during one week of arraignments in state courts, and determined that information provided by the defendant in his or her request for an indigence finding was verifiable for all but seven (less than 2% of the total). Alaska Court System: *Study of Public Counsel Appointment Process*, (Nov. 21, 2013).

¹⁸ AS 12.55.085.

2,970 cases. Next, DPS provided demographic information (i.e., gender, race, age) and criminal history for the individuals in the database. AJC staff then merged the two datasets to conduct the analysis.

The AJC used the Statistical Package for the Social Sciences (SPSS) to carry out uni- and bivariate analyses, including frequency distributions, simple and layered cross-tabulations, and simple association tests. Due to the exploratory nature of the analysis, the analyses focused on multiple independent variables, including but not limited to demographic variables (age, gender, ethnicity), prior criminal history, offense class, and offense type. The dependent variable was active sentence length, which was calculated by subtracting any suspended sentence from the imposed sentence. For the purposes of this study, SIS sentences were set to zero days to serve, even if some short incarceration time was required. This was because active time imposed in conjunction with an SIS sentence is, legally speaking, a condition of probation.

To gain a better understanding of the roles of legal factors such as plea agreements, aggravators, mitigators, and contemporaneous cases, the AJC also conducted a paper file review of all Class A felony cases in the sample. This provided an opportunity to record data about offenders' demographics, substance abuse or mental health history, and circumstances of the offense not included in the electronic data. The data were analyzed using SPSS and Microsoft Access. The findings of this analysis are described in Part 3, Section H of the report.

The Justice Center at the University of Alaska Anchorage conducted the multivariate analysis in STATA, using multivariate linear regression models to assess the impact of each of the independent variables on active sentence length. The analysis for this study used fixed effect models to examine the relationship between the independent and dependent variables. Fixed effect models were able to account for overlap in the data and unknown variables. Although fixed effect models could account for omitted variables, they could not estimate their effect size. The findings of this analysis are reported in Part 4 of the report.

As with any analysis, there were limitations that included inconsistencies in the electronic databases such as missing data or incorrectly recorded data. The Judicial Council did its best to ensure data integrity and cleaned the data to the greatest extent possible. Some variables were not available in the electronic data, such as information on substance abuse, mental health, and socioeconomic status. These unknown variables were accounted for in the fixed effects models used in the multivariate analysis. Another limitation of the study was it was not directly comparable to previous Judicial Council studies because of the different methodological approach and the nature of the data. Appendix D contains the detailed methodology for this study.

Part 2: Presumptive Sentencing and Criminal Laws in Alaska

A. Structure of Statutory Sentencing in 2012-2013

In Alaska, most sentences for felony offenses depended on two factors: the seriousness of the offense and any prior felony convictions of the offender. The seriousness of the offense is determined by the legislature's assignment of a "class" to the offense in the offense definition. Classes of felony crimes are, in order of seriousness, Class A, Class B, and Class C. The most serious felonies, such as Murder 1, Kidnapping, and Sexual Assault 1 remain "Unclassified." Classified offenses are subject to presumptive sentencing; most Unclassified offenses are not.¹⁹

1. Presumptive Sentences

In 2012-2013, under AS 12.55.125, the great majority of felony offenses were subject to presumptive sentencing. At the time the data were collected for this study, presumptive sentencing statutes set forth a "presumptive range" of incarceration for the typical offender who committed typical offenses for each class of offense and number of prior offenses of the offender.²⁰ The presumptive range fell within a much wider allowable statutory range. Presumptive ranges and statutory ranges were relatively narrow for less serious offenses and broader for more serious felonies. Most sex felonies were segregated out from other felonies and were given higher presumptive ranges. Table 2 provides the sentencing ranges in effect under AS 12.55.125 for this study, as well as other information.

Alaska judges had the authority to sentence a convicted offender to any term of incarceration within the presumptive range. To impose a sentence above the presumptive range, a jury (or in some circumstances a judge) must find a "factor in aggravation."²¹ If an aggravator is found, a judge may impose any sentence upward to the maximum term allowed by statute. To impose a sentence below the presumptive range, a judge must find a "factor in mitigation." If a mitigator is found and the lower end of the presumptive sentencing range is up to 4 years, the judge may impose any sentence from the lower end of the presumptive range to zero. If a mitigator is found and the lower end of the sentencing range is greater than 4 years, the judge may depart downward from the lower end of the presumptive range by 50%. If both mitigating and aggravating circumstances are found, the judge may impose any term within both applicable boundaries.

¹⁹ The exceptions are Sexual abuse of a minor 1, Sexual assault 1 and Sex trafficking 1 under AS 11.66.110(a)(2).

²⁰ Within Alaska's presumptive sentencing structure, prior felony conviction levels are: no prior felonies, one prior felony, or two or more prior felony convictions. See AS 12.55.125. To affect a sentence, in most cases the prior felony conviction had to have been within ten years of unconditional discharge from custody or probation on the prior offense. See 12.55.145.

²¹ AS 12.55.155.

Additionally, the legislature designated certain circumstances that would subject an offender to enhanced presumptive ranges. These included, for example, enhanced penalties for a first felony offender convicted of a Class A felony who possessed a firearm, used a dangerous instrument, or caused serious physical injury or death.

Table 2: 2012-2013 Alaska Presumptive Sentencing Ranges Compared with Prior Terms

	First Felony	First Felony (special circumstances)	Second Felony	Sex Felony with a Prior Sex Felony	Third+ Felony	Sex Felony with Two Prior Sex Felonies	Max
Unclassified Sex Offense ⁱ	20-30ⁱⁱ (8)	25-35ⁱⁱⁱ (10)	30-40 (15)	35-45 (20)	40-60 (25)	99 (30)	99 (40)
Class A Sex ^{iv}	15-30^v (5)	25-35^{vi} (10)	25-35 (10)	30-40 (15)	35-50 (15)	99 (20)	99 (30)
Class A	5-8 (5)	7-11^{vii} (7)	10-14 (10)	n/a	15-20 (15)	n/a	20 (20)
Class B Sex ^{viii}	5-15 (0)	n/a	10-25 (5)	15-30 (10)	20-35 (10)	99 (15)	99 (20)
Class B	1-3^{ix} (0)	2-4^x	4-7 (4)	n/a	6-10 (6)	n/a	10 (10)
Class C Sex ^{xi}	2-12 (0)	n/a	8-15 (2)	12-20 (3)	15-25 (3)	99 (6)	99 (10)
Class C	0-2^{xii} (0)	1-2^{xiii} (1)	2-4 (2)	n/a	3-5 (3)	n/a	5 (5)

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Numbers in bold are presumptive ranges established in 2005 for non-sex offenses and 2006 for sex offenses and effective in 2012-2013.

Number in parentheses are presumptive terms prior to 2005.

In 2005-2006, different presumptive ranges initially were established for Sex Offenses. These may be found in Table B-2 in Appendix B.

ⁱ Although described here as Unclassified, Class A, Class B, Class C categories for simplicity, AS 12.55.155(i) does not follow strict “Class” categories for sex offense sentences. The specific offenses are thus delineated for each category of penalty. This category includes: Sexual assault 1, Sexual abuse of a minor 1, Sex trafficking 1 under AS 11.66.110(a)(2).

ⁱⁱ The range is 20-30 if the victim is less than 13 years old and 25-35 if the victim is 13 years old or more.

ⁱⁱⁱ The enhanced sentence applies to crimes where the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense.

^{iv} See note i, above. This category includes: Unlawful exploitation of a minor under AS 11.41.455(c)(2), Online enticement of a minor under AS 11.41.452(e), Attempt, Conspiracy, or Solicitation to commit Sexual assault 1, Sexual abuse of a minor 1, or Sex trafficking 1 under AS 11.66.110(a)(2).

^v The range is 15-30 if the victim is less than 13 years old and 20-30 if the victim is 13 years old or more.

^{vi} The enhanced sentence applies to crimes where the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense.

^{vii} The enhanced sentence applies to crimes where the defendant 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.

^{viii} See note i, above. This category includes: Sexual assault 2, Sexual abuse of a minor 2, Online enticement of a minor under AS 11.41.452(d), Unlawful exploitation of a minor under AS 11.41.455(c)(1), and Distribution of child pornography under AS 11.61.125(e)(2).

^{ix} A suspended imposition of sentence (SIS) is available if an active term of imprisonment is imposed as a condition.

^x The enhanced sentence applies to violations of AS 11.41.130 (Criminally negligent homicide) and the victim was a child under 16, and to manufacturing of methamphetamine offenses if reckless within presence of children.

^{xi} See note i, above. This category includes Sexual assault 3, Incest, Indecent exposure 1, Possession of child pornography, Distribution of child pornography under AS 11.61.125(e)(1), or Attempt, Conspiracy, or Solicitation to commit Sexual assault 2, Sexual abuse of a minor 2, Unlawful exploitation of a minor, or Distribution of child pornography. The following Sex offenses are sentenced under typical Class C ranges under AS 12.55.125(e): Failure to register as a sex offender; Indecent viewing or photography (if the person viewed was a minor); Distribution of indecent material to minors; Sexual abuse of a minor in the third degree.

^{xii} An SIS is available.

^{xiii} Felony crimes in AS 08.54.720(a)(15). (Second offense, Waste or Hunt same day in air.)

For example:

Offense/Priors	Maximum	Presumptive range	+Aggravator	+Mitigator	+Both
Class C - First felony conviction	5 years	0-2 years	up to 5 years	down to 0	0-5 years
Class B - Fourth felony conviction	10 years	6-10 years	up to 10 years	down to 3 years	3-10 years

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If no mitigating factors were found, but the judge found imposition of a presumptive sentence would be manifestly unjust, the law allowed a judge to refer the case to a three-judge sentencing panel for consideration of an adjusted sentence.²² Such a referral was exceptionally rare and did not affect any of the sentences in the 2012-13 dataset.

2. Non-Presumptive Sentences

Sentences for Unclassified offenses were not subject to presumptive sentencing.²³ These offenses instead were subject to statutory mandatory minimums and maximums. Within those boundaries, judges had broad sentencing discretion.

Offense	Range
Murder 1, Murder unborn child 11.41.150(a)(1)	20-99 years
Murder 1 (Attempt, Solicitation, Conspiracy), Kidnapping, Misconduct involving controlled substance 1 (MICS1)	5-99 years
Murder 2, Murder unborn child AS 11.41.150(a)(2)-(4)	10-99 years
Murder 2 if committed by a parent/guardian/authority figure who committed a crime in AS 11.41.200 – 11.41.530 against child under 16	20-99 years

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In addition, some Murder 1 crimes carried a mandatory 99-year sentence.²⁴ Also, Alaska's "three strikes" law provided that a person convicted of an Unclassified or Class A felony who previously had been convicted of two or more "most serious felonies" was also subject to a mandatory 99-year sentence.²⁵ Forty-seven Unclassified felony convictions appeared in the data set for this study.

²² AS 12.55.165.

²³ Non-presumptive felony sentences may be found in AS 12.55.125(a)-(b).

²⁴ AS 12.55.125(a)(1)-(5).

²⁵ AS 12.55.125(l). "Most serious felonies" is defined in AS 12.55.185(10) and included: Arson 1, Sex trafficking 1 under AS 11.66.110(a)(2), Online enticement of a minor under AS 11.41.452(e), any Unclassified or Class A felony proscribed under AS 11.41, or any Attempt, Conspiracy to commit, or Criminal solicitation of an Unclassified felony proscribed under AS 11.41.

3. Other Factors

a. Suspended Time

Another important aspect of sentencing in Alaska is the use of “suspended” time under AS 12.55.080.²⁶ When a judge imposed a presumptive sentence that included a term of incarceration, he or she was likely to impose part of that term as “active” time of incarceration to be served immediately, and to “suspend” part of the term, which would be spent on probation. If the defendant did not fulfill his or her obligations of probation, the judge could then revoke the probation and impose any part of the remaining sentence to be served incarcerated. If only part of the suspended time was imposed, the remainder would then be spent on probation again, and so on until the probationary term was successfully satisfied or all the time was served. This study did not examine whether or how much of offenders’ suspended time was actually served. It does report on “active,” “suspended,” and total “imposed” time ordered by the judge.

b. Rule 11 Agreements

No sentencing report could be complete without some discussion of plea agreements. In 2012 and 2013, more than 96% percent of all felony cases in Alaska were resolved without trial.²⁷ Most of those are resolved by a plea agreement negotiated under authority of Rule 11 of the Alaska Criminal Rules of Procedure. Plea agreements can resolve cases with charge agreements (usually reductions or consolidation of charges) or with sentence agreements (agreeing on a certain sentence, or cap for a sentence), a sentence recommendation, or any combination. The court may accept the parties’ agreement or reject it, but may not insert itself into the negotiations. Thus, if a sentence agreement is included in the plea agreement and accepted by the court, a judge’s discretion is limited by the agreement. Sentence agreements, however, are negotiated with the expectation they will fall within the boundaries of statutorily set sentencing minimums and maximums for the offense of conviction. The prevalence of Rule 11 agreements, and particularly sentencing agreements, should be kept in mind when considering the findings in this report.

²⁶ Imprisonment may not be suspended under AS 12.55.080 below the low end of the presumptive range. AS 12.55.125(g)(1). Judges may not suspend time for non-presumptive sentences in AS 12.55.125 (a) or (b). AS 12.55.125(f).

²⁷ *Alaska Court System Annual Report FY 12* at 89 (3.5% for Superior Court Trial sites); *Alaska Court System Annual Report FY 13* at 91 (3.6%). Some cases had all charges dismissed or acquitted.

B. Historical Changes in Sentencing Law from 2000-2013

1. Presumptive Sentencing Ranges, Non-Sex Felonies

When the Alaska Legislature enacted presumptive sentencing in 1978, it set forth specific presumptive terms for classes of offenses and offenders, which could be increased by the finding of aggravators by a judge.²⁸ In 2004, the United States Supreme Court issued its opinion in *Blakely v. Washington*.²⁹ The court held because of the defendant's right to a jury trial, factors, which had the effect of increasing an offender's sentence, must be tried to a jury and found beyond a reasonable doubt.³⁰ As explained in the introduction to this report, *Blakely* had the effect of calling into doubt the legality of Alaska's presumptive sentencing scheme because Alaska law allowed a judge, not a jury, to make findings of aggravators that could increase a sentence.

The Alaska Legislature responded in 2005 by passing a bill amending the presumptive sentencing scheme to conform to the concerns presented by *Blakely*.³¹

The 2005 bill eliminated specific presumptive terms and established presumptive "ranges," instead allowing judges more upwards discretion without the finding of an aggravator by a jury.³² The ranges typically started at the previous presumptive term (if there was one) and maxed out several years above that. Nevertheless, the legislature's stated intent was not to increase sentence lengths but to give judges greater discretion in sentencing while forestalling the need for jury findings in cases with aggravating circumstances.³³

In addition to establishing the ranges, another significant effect of the bill was to bring Class B and Class C first felony offenses within the realm of presumptive sentencing. Before 2005, those offenders were sentenced non-presumptively but with consideration for presumptive sentencing terms, as established by case law.³⁴

²⁸ Ch. 166, § 12, SLA 1978. For example, a presumptive "term" was 5 years for a first felony conviction on a Class A non-sex felony or 8 years on an Unclassified Sex felony.

²⁹ 542 U.S. 296 (2004).

³⁰ See *id.* at 304-305.

³¹ Ch. 2 SLA 2005.

³² For example, a presumptive "range" was now 5-8 years for a first felony conviction on a Class A felony.

³³ The bill stated directly "it is not the intent of this Act . . . to bring about an overall increase in the amount of active imprisonment for felony sentences. Rather this Act is intended to give judges the authority to impose an appropriate sentence, with an appropriate amount of probation supervision, by taking into account the considerations set out in AS 12.55.005 and 12.55.015." Ch. 2, § 1, SLA 2005.

³⁴ See, e.g., *State v. Brinkley*, 681 P.2d 351, 357 (Alaska App. 1984).

2. Presumptive Sentencing Ranges: Sex Felonies

The 2005 bill established presumptive sentencing ranges for Sex felonies, but they were short-lived. In 2006, the legislature revisited felony Sex offense penalties and significantly increased them. As Table 2 indicates, from 2005-2006, the legislature doubled sentences for Sex felonies in some categories and increased them even more in others.

C. Changes in Statutory Crime Definitions and Classifications

Between 2000 and 2013, the legislature made a series of incremental changes to offense definitions and classifications in Title 11 of the Alaska Statutes. A comprehensive review of these changes, along with citations to the changes, is included in this report in Appendix B. Below is a brief summary of the types of changes the legislature enacted. Cumulatively, the changes reflect trends that increased both the scope and severity of felony liability. It should be noted the legislature significantly reduced the scope of liability significantly for only one offense: Misconduct involving weapons 3, a Class C offense, when it changed some affirmative defenses to restrict application of the offense. In contrast, the legislature acted more than eighty times in Title 11, and in Title 28 and Title 4, in ways that increased the scope and/or severity of felony liability.

1. New Offenses

The legislature created twenty new felony offenses in Title 11 between 2000 and 2013. These offenses included: Murder of an unborn child (Unclassified), Manslaughter of an unborn child (Class A), Criminally negligent homicide of an unborn child (Class B), Assault of an unborn child 1 (Class A), Assault of an unborn child 2 (Class B), Human trafficking 1 (Class A), Human trafficking 2 (Class B), Online enticement of a minor (enacted as Class C, later reclassified as Class A/B), Arson 3 (Class C), Criminally negligent burning 1 (Class C), Criminal mischief 3 (Class C), Criminal impersonation 1 (Class B), Aiding non-payment of support 1 (Class C), Unsworn falsification 1 (Class C), Failure to appear (Class C), Unlawful use of DNA samples (Class C), Terroristic threatening 1 (Class B), Terroristic threatening 2 (Class C), Impersonating a public servant 1 (Class C), and Distribution of indecent material to minors (Class C).

As indicated in Appendix A, these added offenses may not have had a big effect on the numbers of convicted felons. The most common of the new offenses in the dataset was Criminal mischief 3 with 59 convictions, which represented about 2% of all felony convictions in the dataset. The second most common was felony Failure to appear, with nine convictions, and the third most common was Unlawful evasion, with eight convictions. Many of the new offenses either were not represented in the 2012-13 data set, or had only one conviction. Although not often

represented in the dataset as convicted offenses, it is unknown what effect on prosecutorial charging and negotiation, or on convictions of misdemeanor offenses, these new felony offenses may have had.

2. Reclassification of Offenses

The legislature increased the severity of some felony conduct by straightforwardly reclassifying some offenses upwards. Examples included: Online enticement of a minor (reclassifying from Class C to Class B/A in 2001); Obtaining an access device or identification document by fraudulent means (reclassifying from Class A misdemeanor to Class C felony in 2000); Violating an order to submit to DNA testing (reclassifying from Class A misdemeanor to Class C felony in 2003); Sex trafficking 2 (reclassifying from Class C to Class B in 2007); and Sex trafficking 3 (reclassifying from Class A misdemeanor to Class C felony in 2007).

Again, these changes may not have had a large effect. Appendix A indicates only one of these offenses, Online enticement of a minor, appearing in the dataset as the single most serious charge of conviction and it appeared only once.

3. Reclassifying Conduct

The legislature also increased both the scope and the severity of felony liability by reclassifying the conduct including some in offenses. For example, in 2004, the legislature removed some types of conduct from Sexual abuse of a minor 4 (a Class A misdemeanor) and inserted it into the definition of Sexual abuse of a minor 3 (a Class C felony). It similarly removed the Theft of an access device from Theft 3 (a Class A misdemeanor) and inserted it into Theft 2 (a Class C felony). In some cases, the legislature created a new degree or subset of an offense and classified it above the previous range, and removed conduct previously classified at a lower level. For example, the legislature reclassified all intentional conduct into Criminal mischief 1 as a Class A felony, and renumbered the less serious conduct degrees accordingly. Similarly, when amending the definition of Deceptive business practices, the legislature reclassified all conduct constituting the offense that used the internet or a computer network as a Class C felony, leaving all other conduct classified as a Class A misdemeanor.

4. Expanding the Range of Prohibited Conduct

Perhaps the most common way the legislature added to the range of prohibited conduct was simply to add provisions to an existing offense definition. For example, the legislature added conduct of knowingly manufacturing or delivering a controlled substance, if person died as a result of its ingestion, to the definition of Manslaughter in 2006. Similarly, in 2001, it expanded the

definition of Vehicle theft by adding a provision that included the loss of use of the vehicle for seven days or more. It expanded the definition of Criminal use of a computer by adding the conduct of installing or using a keystroke logger or similar device or program in 2011. In 2012, it expanded the definition of Endangering the welfare of a child 1 by adding a provision extending Class C felony liability to a person who “recklessly fails to provide an adequate quantity of food or liquids to a child, causing protracted impairment of the child’s health.”

The legislature also increased the scope of felony liability by expanding the range of victims that trigger felony offenses. In some cases, it increased the number of possible victims by changing the age limits. For instance, the legislature changed the age of a child victim from under 10 to under 12 to trigger felony liability for Assault 3. Another example came in 2007 when the legislature amended Sex trafficking 1 to include causing persons to engage in prostitution if the person was under 18 (previously it had been under 16).

In one instance, the legislature acted to decrease the scope of liability for an offense when it amended Misconduct involving weapons 3. In 2010, the legislature repealed several sections and eliminated some affirmative defenses in favor of restricting the application of the offense, a Class C felony, to former felons who carried firearms and who had been pardoned, had their convictions set aside, or whose convictions were over 10 years in the past. Previously, the law provided they were subject to criminal liability until the person proved “affirmatively” they were not guilty due to the pardon, set-aside, or passage of time.

These examples are by no means exhaustive but serve to provide a sense of legislative action in this area.

5. Repeat Offender Provisions

Another way the legislature increased the scope and severity of felony liability was to enact repeat offender provisions. For some offenses, it imposed felony liability for conduct by repeat misdemeanants that would otherwise have been misdemeanor conduct. Perhaps the most well-known example of this came in 2008, when the legislature imposed Class C felony liability on offenders who committed the crime of Assault 4 (otherwise a Class A misdemeanor) and who had been convicted within the preceding ten years of other assaultive conduct that included physical contact or stalking. Another example came in 2005, when the legislature imposed felony liability for Indecent exposure 1 if the person had committed the offense of Indecent exposure 2 (a Class A misdemeanor) and had previously been convicted of Indecent exposure 1 or 2 and the present offense was committed in the presence of a person under 16. Another example came in 2008 for the new offense of Criminally negligent burning 1, when the legislature imposed Class C felony liability for the conduct of Criminally negligent burning 2 (otherwise a Class A misdemeanor) if

the person had previously been convicted two or more times within the preceding ten years for Arson or Criminally negligent burning. Also in 2008, the legislature provided for Class C felony liability for repeat offenders of Animal cruelty, otherwise a Class A misdemeanor.

Other ways the legislature used repeat offender provisions was to increase the severity of a classification of a felony offense if it was committed by a person who previously had been convicted. One example came in 2004, when the legislature created a Class A felony level for Distribution of child pornography for repeat offenders. Another example was when the legislature broadened date ranges to include more repeat offenses, such as in 2001 when the legislature made a significant change to felony DUI and Refusal to submit to a chemical test by changing the “look-back” for prior offenses that triggered felony liability. Previously, felony DUI/Refusal was triggered with two prior offenses in five years; it was lengthened to two prior offenses in ten years.

6. Limiting Defenses to Felony Offenses

In a few statutes, the legislature acted to increase the scope of liability by limiting affirmative defenses available to defendants. Examples included: limiting an affirmative defense to Custodial interference 2; eliminating the statute of limitations defenses for Sexual assault and Sexual abuse of a minor when the victim was under 21 at the time of the offense; and restricting the “mistake of age” defense in AS 11.41.445 for some Sex offenses that had an element of an age of the victim (such as Sexual abuse of a minor 3) by requiring the offender to have taken reasonable measures to verify the victim’s age.

D. Summary

Some of the changes described here and in Appendix B to criminal definitions and classifications would have had the effect of “widening the net” and including more offenders into felony offense classifications. Those changes would have had no direct effect on this study’s analysis and reporting on sentence lengths but could have affected how many offenders were convicted of felony offenses overall. Other changes that reclassified offenses from one felony class upwards to another, or that reclassified or redefined conduct, had the potential to impact sentence length for those offenders. Any comparison of sentence lengths reported in this study to those from previous studies should be considered in light of these legal changes.

Part 3: Description of Offenses, Offenders, and Sentences

One purpose of this report was to describe the characteristics of offenders and the context in which sentencing occurred in 2012 and 2013. Thus, this section of the report gives information about the offenders in the sample, their offenses, and the sentences they received.³⁵ Generally speaking, the offenders in this sample were Caucasian (58%) and male (79%). Most of them had no prior felony record, and were convicted of the less serious felonies (Class C) for crimes that involved non-violent behavior (Drugs, Driving, and Property offenses). While many of these offenders were young, a significant number were 30 years old or older, and many had accumulated prior misdemeanor records.

Overall, 79% of the sample were sentenced to serve some active time of incarceration, but 21% did not have any active time to serve. It is important to keep in mind that for the purposes of this study SIS sentences were set to zero, even if the offender received a term of incarceration as a condition of probation.³⁶ SIS sentences constituted almost 15% of the entire sample. In addition, there were legal limits on the amount of time that could be suspended dependent on the class and type of the offense and the defendant's prior record.³⁷

A. Class and Type of Offense

Offenders were characterized by the single most serious offense of which they had been convicted at the time of sentencing.³⁸ Sorted this way, two percent of the offenders were convicted of an Unclassified felony;³⁹ 3% of a Class A felony;⁴⁰ and 14% of a Class B felony.⁴¹ This distribution is shown in Figure 1. The great majority, 81%, of offenders were sentenced on Class C felonies.⁴² More detailed information about classes and types of offenses in this study is contained in Appendix A.

³⁵ Although the total sample size was 2,970, the totals in some tables may slightly differ due to missing data, mostly about ethnicity.

³⁶ A term of incarceration is allowed as a part of an SIS sentence. AS 12.55.086.

³⁷ See Part 2, *supra*. All sentences for Unclassified non-Sexual offenses must have active time, and all Sexual offenses with the exception of first-time Class C Sexual felonies must have active time.

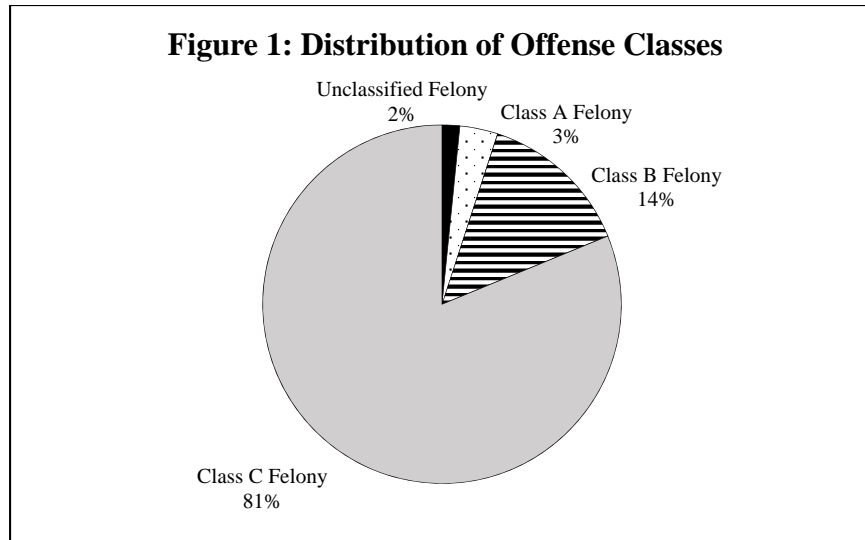
³⁸ The definition of "single most serious offense of conviction" is discussed in Part 1, *supra*.

³⁹ These included Murder, Kidnapping, Attempted Murder, the most serious Sexual offenses, and the most serious Drug offenses. In our sample, only 24 people were convicted of the most violent Unclassified offenses of Murder, Kidnapping, and Attempted Murder.

⁴⁰ These included the most serious assaults, Robbery 1, Manslaughter, other serious crimes against persons and serious drug manufacturing or delivery offenses, excluding Sexual offenses. In our sample of 2,970 felony offenders from 2012 and 2013, 95 had non-Sexual Class A offenses.

⁴¹ These included moderately serious Violent, Sexual, and Drug offenses, and the more serious Property and Other offenses.

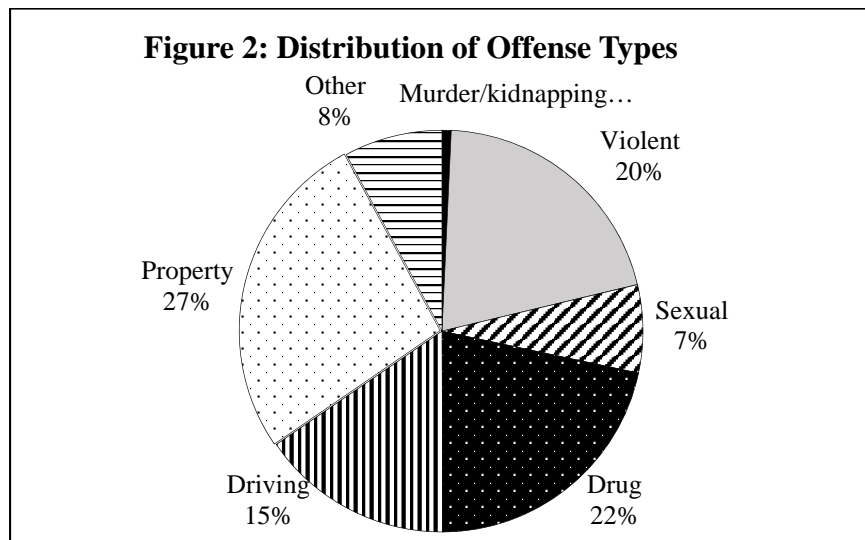
⁴² Class C felonies included DUI, a variety of violent offenses, drugs possession, most property offenses, and a wide range of other types of offenses.



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Looking at the types of offenses, about half fell into the categories of Property and Drug crimes. The next largest offense category was Violent crimes, followed by Driving offenses. Figure 2 shows the distribution graphically.



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Twenty-seven percent of the single most serious offenses were Property offenses, including thefts, frauds, forgeries, and criminal mischiefs.

Twenty-two percent of offenses were Drug offenses, including possession, manufacture, and distribution/sales.

Next came Violent crimes, accounting for 20% of the single most serious offenses, including Manslaughter and Negligent homicide, Assaults, Robberies, and a handful of less-frequently charged offenses (e.g., Arson, Coercion).⁴³

Fifteen percent of the offenses were Driving offenses, mostly DUI. This category also included Failure to stop at the direction of an officer and Leaving the scene of an injury accident.

Eight percent of the single most serious offenses fit into the category of Other, including Perjury, Escapes, Offenses against public order, Bribery, and a wide variety of other relatively uncommon offenses.

Seven percent of offenses were Sexual. These included Sexual assaults, Sexual abuse of a minor, Child pornography and other offenses based on sexually-related behavior.⁴⁴

Only 1% of the single most serious offenses were Murder or Kidnapping.

B. Demographic Characteristics of Offenders

In both past and present studies of sentencing, demographic variables have been shown to have associations with sentencing decisions. Understanding these associations helps to create a more complete picture of sentencing outcomes. This section describes the demographic variables in these cases. The multiple regression analyses in Part 4 focus on the significance of each of these independent variables in their relationships with sentence lengths.

1. Gender, Age, Ethnicity

The sample was split roughly evenly between those under 30 years of age and those older than 30. About half (54%) of the offenders were between 16 and 30 years old, 21% were 31-39 years old, and 25% were 40 or older.⁴⁵ There were no significant differences between men and women in age distributions.

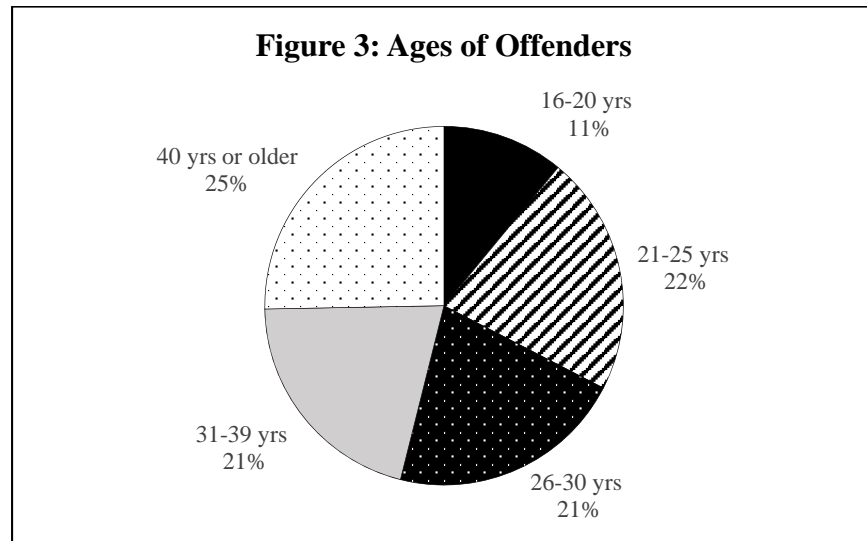
Age distribution varied somewhat by ethnicity. A disproportionately higher percentage of Alaska Native offenders were youthful (under 30 years old), compared to others. For the Alaska Native/American Indian offenders, 38% were 25 years old or younger, compared to 35% of the

⁴³ Also included under Violent offenses were Stalking, Terroristic threatening, and Extortion.

⁴⁴ Seven offenders in our sample were convicted of Class A Sexual offenses. All of them were the Attempted Unclassified offenses of Sexual Assault 1 or Attempted Sexual Abuse of a Minor 1.

⁴⁵ For comparison, 11% of the offenders in both the Judicial Council's 1999 study and the 2012/2013 data set were between 16 and 20 years old. More people in 2012/2013 were between 21 - 29 years old, and 40 or older, compared to 1999. There were fewer in the 31 to 39-year-old group in 2012/2013 (21% now, 31% in 1999).

African American offenders, 32% of the Asian/Pacific Islander (PI) offenders, and 29% of the Caucasian offenders.



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a. Type of Offense was Associated with Age of the Offender

The youngest offenders (16 – 20 years old) were less likely to be convicted of Driving, Drug, and Violent offenses but were more likely to be convicted of Sexual and Property offenses than other age groups. The oldest offenders (40+) were more likely to be convicted of Driving and Sexual offenses, about average in Violent offenses, and not as likely as others to be convicted of Drugs or Property offenses.

Violent offenses (including Murder/Kidnapping) were about 18% of the offenses for the youngest group, and 21% to 23% of the offenses for the other groups.

Twelve percent of the offenses for the youngest offenders and 9% of the offenses for the oldest offenders were Sexual offenses. For other age groups, Sexual offenses were a noticeably smaller percentage.

Drug offenses were least common among the youngest (16-20 year-olds) and oldest (40+ year-olds) groups of offenders – 17% each. For offenders between the ages of 21 and 39, Drug offenses were from 23% to 26% of the total.

As offenders increased in age, Driving offenses increased as a percentage of their offenses, and Property offenses decreased. For example, 46% of the 16-20 year-olds were convicted of a Property offense as their single most serious offense, compared to 20% of the 40+ year-olds. Three

percent of the 16-20 year-olds were convicted of Driving offenses, compared to 25% of the 40+ year-olds.

b. Gender and Ethnicity of Offenders

Most (79%) of the offenders in this sample were male, a lower percentage than the 83% in the 1999 sample.⁴⁶

The percentages of women and men varied by ethnic group. The most striking difference was the smaller number of African American women, who were 11% of all African American offenders, even though 21% of all offenders in the sample were women.⁴⁷ Conversely, 89% of the African American offenders were male, even though 79% of all offenders in the sample were male. Table 5 gives the breakdown of offenders by ethnicity and gender.

	Male	Female	Total
Alaska Native/American Indian	678 (29%)	165 (27%)	843 (28%)
Asian/Pacific Islander	104 (4%)	26 (4%)	130 (4%)
African American	229 (10%)	29 (5%)	258 (9%)
Caucasian	1,326 (56%)	379 (62%)	1,705 (58%)
Unknown	14 (1%)	9 (2%)	23 (1%)
Totals	2,351 (100%)	608 (100%)	2,959 (100%)

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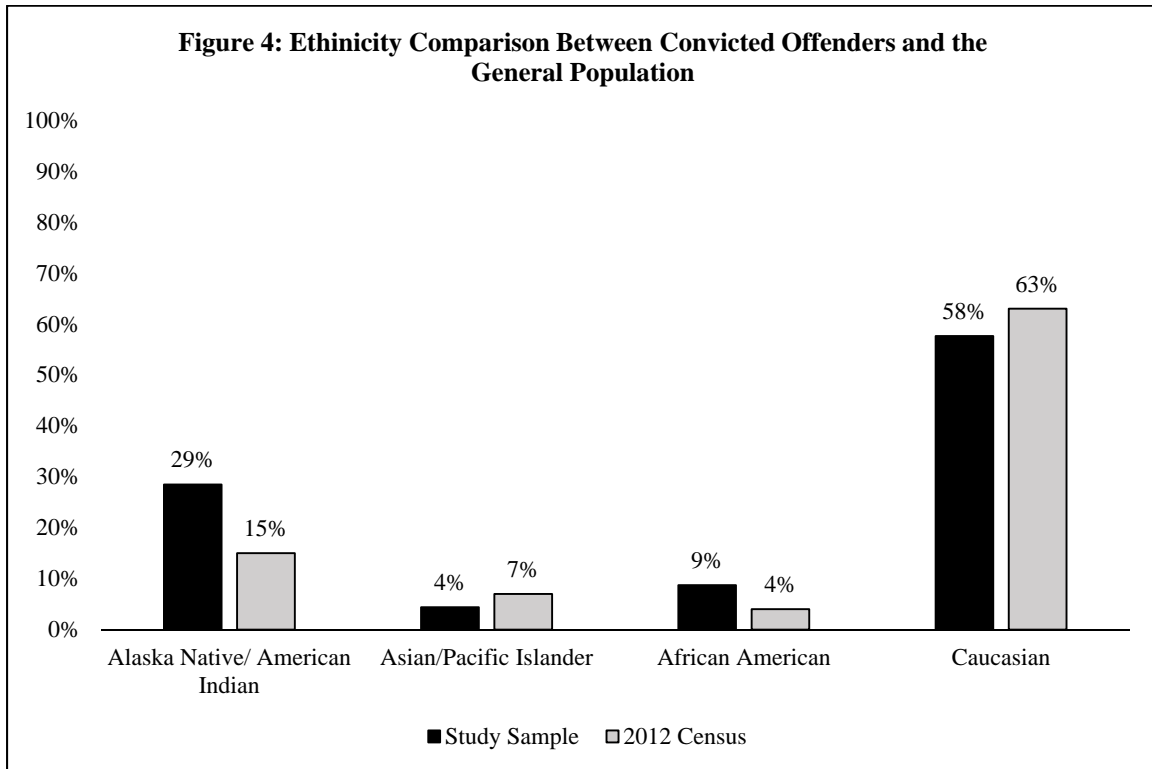
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As was the case in previous studies, this sample of convicted offenders included disproportionate distributions of African American and Alaska Native offenders compared to the general Alaska population (Figure 4). The convicted felony offenders in this sample were 58% Caucasian, 9% African American, 29% Alaska Native/American Indian, and 4% Asian/Pacific

⁴⁶ Alaska Judicial Council, *supra*, note 1.

⁴⁷ Department of Labor data for 2013 Alaska population showed African American men outnumbered African American women in the state population in general, but not by such a large margin. (<http://labor.alaska.gov/research/pop/estimates/pub/popover.pdf>).

Islander.⁴⁸ For reference, the 2012 Alaska Census estimates⁴⁹ were 63% Caucasian, 4% African American, 15% Alaska Native/American Indian, 7% Asian/Pacific Islander, 6% Hispanic/Latino, and 7% Mixed Race.



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⁴⁸ For the 2004 report on 1999 offenders (ALASKA FELONY PROCESS), data on ethnicity was derived from the Department of Corrections files, which included Hispanic as a choice for ethnic identity. The percentages of convicted felons (ALASKA FELONY PROCESS, page 137, Table 27) were 52% Caucasian, 12% African American, 30% Alaska Native, 2% Asian/Pacific Islander, and 3% Hispanic (2% unknown; percentages did not add to 100% due to rounding). For the present report, ethnicity data came from the Department of Public Safety APSIN system, which had only four choices: Caucasian, African American, Alaska Native/American Indian, and Asian/Pacific Islander. The Department of Corrections *2012 Offender Profile* [available at http://www.correct.state.ak.us/admin/docs/2012Profile07_FINAL.pdf, at p. 13] showed 46% of the incarcerated population was Caucasian, 10% African American, 37% Alaska Native/American Indian, 3% Asian/Pacific Islander, and 3% “Hispanic/Latino.” Of the probation/ parolee population, it showed 56% Caucasian, 9% African American, 26% Alaska Native/American Indian, 5% Asian/Pacific Islander, and 3% Hispanic/Latino. *Id.*, at p. 64.

⁴⁹ Available at <http://quickfacts.census.gov/qfd/states/02000.html>.

2. Ethnicity and Gender by Court Location and Type of Offense

a. Court Location and Ethnicity

Offender ethnicity varied by court location (Table 6).⁵⁰ For example, a significant number of the Alaska Native/American Indian offenders' cases (43%) were processed in the more urban areas of Anchorage and Southcentral (Kenai and Palmer), while 39% of them were processed in Rural areas.⁵¹ Offenders processed in the Southcentral courts of Palmer and Kenai were overwhelmingly Caucasian (87%). Thirteen percent of those processed in the rural courts were Caucasian.

Almost all African American offenders were in Anchorage (74%) or Fairbanks (17%). Similarly, the majority of the Asian/Pacific Islander offenders' cases (65%) were processed in Anchorage, with 11% processed in Fairbanks, and another 11% in Rural areas.

	Anchorage	Southcentral	Fairbanks	Southeast	Rural
Caucasian	54%	87%	58%	65%	13%
Alaska Native/American Indian	23%	10%	24%	28%	83%
African American	15%	2%	13%	2%	1%
Asian/Pacific Islander	7%	1%	4%	5%	4%

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For some ethnic groups, gender was closely related to court location (Table 7). Most of the female Asian/Pacific Islander offenders in this sample were in Anchorage (73%), or Fairbanks (19%), with 8% in Southeast and none in Southcentral or Rural areas. All of the African American women were in Anchorage (86%), Fairbanks (10%), or Southcentral (4%). Nearly half of the 165 Native women in the sample (46%) were in Anchorage, with only 27% in Rural areas. The remainder were in Fairbanks (11%), Southcentral (9%), and Southeast (7%). Of the 379 Caucasian women in the sample, the great majority were in Anchorage (41%) or Southcentral (37%). Only 2% were in Rural areas.

⁵⁰ For more discussion of court location, see section D.1, *infra*.

⁵¹ Recall "Rural" court locations included all of the Second Judicial District (Barrow, Kotzebue and Nome) plus Bethel, Dillingham, and Kodiak. The remainder of the Alaska Native/American Indian offenders' cases were processed in Fairbanks (10%) and Southeast Alaska (8%).

		Anchorage	Southcentral	Fairbanks	Southeast	Rural	Total
Alaska Native/ American Indian	Men	219 (32%)	53 (8%)	63 (9%)	58 (9%)	285 (42%)	678
	Women	75 (46%)	15 (9%)	19 (11%)	12 (7%)	44 (27%)	165
Asian/ Pacific Islander	Men	66 (63%)	6 (6%)	9 (9%)	9 (9%)	14 (13%)	104
	Women	19 (73%)	0 (0%)	5 (19%)	2 (8%)	0 (0%)	26
African American	Men	167 (73%)	11 (5%)	42 (18%)	4 (2%)	5 (2%)	229
	Women	25 (86%)	1 (4%)	3 (10%)	0 (0%)	0 (0%)	29
Caucasian	Men	536 (41%)	455 (34%)	155 (12%)	136 (10%)	44 (3%)	1,326
	Women	156 (41%)	141 (37%)	45 (12%)	28 (8%)	9 (2%)	379
Unknown	Men	9 (64%)	3 (22%)	0 (0%)	2 (14%)	0 (0%)	14
	Women	4 (45%)	3 (33%)	1 (11%)	1(11%)	0 (0%)	9
Total		1,276	688	342	252	401	2,959

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b. Seriousness and Type of Offense and Gender

Overall, gender was significantly associated with class of offense, with relatively fewer females than males convicted of the more serious offenses. For example, 85% of women were convicted of Class C offenses, compared to 80% of men. Only one female was convicted of a Sex offense, compared to 192 men. Women also were less likely to be convicted of Violent offenses (13% Violent for women, compared to 23% Violent for men).

	Male	Female	Total
Murder/Kidnapping	18 (82%)	4 (18%)	22
Violent	533 (87%)	77 (13%)	610
Sexual	192 (99%)	1 (1%)	193
Sexual Other	17 (100%)	0 (0%)	17
Drug	470 (73%)	171 (27%)	641
Driving	383 (83%)	78 (17%)	461
Property	564 (71%)	227 (29%)	791
Other	183 (78%)	52 (22%)	235

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More than one-third (37%) of the women were convicted of Property offenses, with Drug offenses (28%) as the second-most common type of conviction. Violent crimes (13%), Driving (13%), and Other (9%) offenses constituted the remainder of women's convictions.

Among men, 23% were convicted of Violent crimes, 8% of Sexual (and 1% Sexual Other), 20% of Drugs, 16% of Driving, and 8% of Other offenses.⁵²

c. Seriousness and Type of Offense by Gender and Ethnicity

Seriousness of offense varied by ethnicity and gender (Table 9). African American (20%) and Asian/Pacific Islander (21%) men had noticeably higher percentages of convictions on Class B offenses than did Caucasians (14%) or Natives (13%). They also had somewhat higher rates of Unclassified and Class A convictions.

Conversely, African American (72%) and Asian/Pacific Islander (70%) men had lower percentages of Class C convictions, compared to Native (82%) and Caucasian (81%) men.

Most women (85% to 86%) were convicted of Class C offenses, regardless of ethnicity.

		Unclassified	Class A	Class B	Class C
Alaska Native/ American Indian	Men (N=678)	15 (2%)	18 (3%)	88 (13%)	557 (82%)
	Women (N=165)	2 (1%)	3 (2%)	18 (11%)	142 (86%)
Asian/ Pacific Islander	Men (N=104)	2 (2%)	7 (7%)	22 (21%)	73 (70%)
	Women (N=26)	0 (0%)	1 (4%)	3 (11%)	22 (85%)
African American	Men (N=229)	6 (3%)	12 (5%)	46 (20%)	165 (72%)
	Women (N=29)	0 (0%)	0 (0%)	4 (14%)	25 (86%)
Caucasian	Men (N=1,326)	18 (1%)	49 (4%)	182 (14%)	1077 (81%)
	Women (N=370)	4 (1%)	11 (3%)	43 (11%)	312 (85%)
Unknown	Men (N=14)	0 (0%)	1 (7%)	1 (7%)	12 (86%)
	Women (N=9)	0 (0%)	0 (0%)	2 (22%)	7 (78%)
Total	Men	41 (2%)	87 (4%)	339 (14%)	1,884 (80%)
	Women	6 (1%)	15 (2%)	70 (12%)	517 (85%)

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⁵² Recall “Other” offenses included offenses against public order such as Misconduct involving weapons, Escape, Failure to register as a sex offender, Failure to appear, Alcohol importation, Tampering with physical evidence, Perjury, and other miscellaneous offenses. Most “Other” offenses were Class C felonies.

Table 10 shows how type of offense varied by ethnicity and gender.

Table 10: Ethnicity and Gender by Offense Type								
		Murder/ Kidnapping	Violent	Sexual	Drug	Driving	Property	Other
Alaska Native/ American Indian	Men (N=678)	6 (1%)	227 (33%)	96 (14%)	58 (9%)	89 (13%)	148 (22%)	54 (8%)
	Women (N=165)	1 (1%)	33 (20%)	1 (1%)	45 (27%)	27 (16%)	38 (23%)	20 (12%)
Asian/ Pacific Islander	Men (N=104)	1 (1%)	25 (24%)	7 (7%)	28 (27%)	16 (15%)	20 (19%)	7 (7%)
	Women (N=26)	0 (0%)	5 (19%)	0 (0%)	1 (4%)	1 (4%)	17 (65%)	2 (8%)
African American	Men (N=229)	3 (1%)	54 (24%)	15 (6%)	59 (26%)	22 (10%)	46 (20%)	30 (13%)
	Women (N=29)	0 (0%)	6 (21%)	0 (0%)	3 (10%)	3 (10%)	15 (52%)	2 (7%)
Caucasian	Men (N=1,326)	8 (1%)	223 (17%)	90 (7%)	320 (24%)	254 (19%)	340 (26%)	91 (7%)
	Women (N=379)	3 (1%)	31 (8%)	0 (0%)	119 (31%)	47 (13%)	151 (40%)	28 (7%)
Unknown	Men (N=14)	0 (0%)	2 (14%)	0 (0%)	4 (29%)	2 (14%)	5 (36%)	1 (7%)
	Women (N=9)	0 (0%)	2 (22%)	0 (0%)	2 (22%)	0 (0%)	5 (56%)	0 (0%)
Total	Men	18 (>1%)	531 (23%)	208 (9%)	469 (20%)	383 (16%)	559 (24%)	183 (8%)
	Women	4 (>1%)	77 (13%)	1 (>1%)	170 (28%)	78 (13%)	226 (37%)	52 (9%)

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The analysis revealed differences between men and women of different ethnicities and likelihood of committing certain types of offenses. Specifically:

For Men:

- **Violent.** Forty-eight percent of Native males were convicted of Violent offenses (including Murder/Kidnapping) or Sexual offenses, compared to 32% of Asian/Pacific Islander, 31% of African American, and 25% of Caucasian men.
- **Drugs.** Asian/Pacific Islander men (27%), African American men (26%), and Caucasian men (24%) were convicted of Drug offenses at similar rates, compared to 9% of Native men.
- **Property.** Caucasian men were more likely to be convicted of Property offenses (26%) than were Native men (22%), African American men (20%), or Asian/Pacific Islander men (19%).

For Women:

- Violent. Minority women - African American (21%), Native (22%), and Asian/Pacific Islander (19%) - were convicted of Violent offenses noticeably more frequently than were Caucasian women (9%).
- Drug. Caucasian (31%) and Native (27%) women were convicted of Drug offenses at higher rates than African American (10%) or Asian/Pacific Islander (4%) women.
- Property. Sixty-five percent of Asian/Pacific Islander women were convicted of Property offenses, as were 52% of African American women, and 40% of Caucasian women. Twenty-three percent of Native women were convicted of Property offenses.

C. Prior Criminal History of Offenders

1. Role of Prior Criminal History in Sentencing

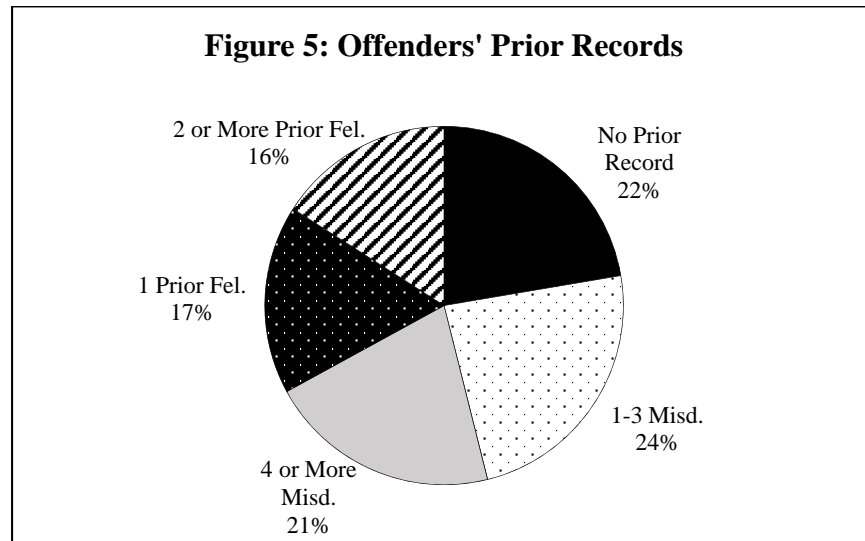
As described in Part 2, prior criminal histories and the type and seriousness of offenses played the major roles in Alaska's sentencing scheme. Prior criminal history affected felony sentences in two ways. First, within each class of offense – Unclassified, Class A, B, and C – the sentence ranges depended on the history of prior felonies. Offenders with no prior felonies fell within the lowest sentence range within each class of offense. Those with one prior felony fell into a range of longer sentences, and those with two or more prior felonies had the longest sentence ranges.

Second, several misdemeanor offenses were subject to graduated penalties leading to a felony conviction if there were repeat offenses of the same kind. For example, a first offender convicted of misdemeanor Driving under the influence (DUI) faced a mandatory minimum of 72 consecutive hours of incarceration and a variety of other penalties.⁵³ A second misdemeanor DUI carried a mandatory minimum 20-day sentence, and more severe penalties. A third DUI offense within ten years was a felony, with a mandatory minimum 120-day sentence.⁵⁴ Other examples included offenders who committed misdemeanor theft (Theft 3) who were convicted of felony theft (Theft 2) because they had prior misdemeanor convictions for the same conduct, and offenders committing misdemeanor assault (Assault 4) who were convicted of felony assault (Assault 3) because of prior misdemeanor assault convictions. Other misdemeanor conduct that could be charged as a felony due to prior convictions of the same or similar conduct included a few other types of Property offenses and some Violent offenses.

⁵³ These other penalties included loss of a driving license for at least 90 days, a fine, and a requirement to drive with an interlocking ignition device while on probation. Penalties were increasingly more severe for subsequent convictions.

⁵⁴ AS 28.35.030(b) and (n).

2. Prior Records of Offenders in Sample



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About two-thirds of this sample (67%) were first-time felony offenders. About a fifth (22%) of the offenders in this sample actually had no prior convictions of any sort (misdemeanor or felony). About 45% had prior misdemeanor convictions but no prior felonies (although some of these had substantial misdemeanor convictions – see Figure 5).⁵⁵ The remaining third of the offenders in this sample had one or more prior felony convictions (and they may have had some prior misdemeanors). Seventeen percent had one prior felony conviction, and 16% had two or more prior felony convictions.

3. Prior Records, Gender, and Ethnicity

Women were more likely to have less serious prior records than men. For example, women in this sample were significantly more likely than men to have no prior offenses (30%) or only 1 to 3 misdemeanors (30%). Thirty-six percent of the men in the sample had at least one prior felony conviction, compared to 21% of women.

⁵⁵ Of particular interest was the 21% of offenders who had four or more prior misdemeanors. The Judicial Council's 2007 report on recidivism found offenders with substantial prior misdemeanor records had one of the highest rates of recidivism among all offenders. After three years, 70% of the offenders with substantial misdemeanor records had been rearrested; compared to 59% of all offenders. *Criminal Recidivism in Alaska* (2007) at page 6, available at <http://www.ajc.state.ak.us/reports/1-07CriminalRecidivism.pdf>.

As illustrated by Table 11, prior criminal history also varied by ethnicity.

	Asian/ Pacific Islander	AK Native/ Am Indian	African American	Caucasian	Unknown*	Total, all persons
No priors, or 1 - 3 misd.	64%	37%	45%	48%	96%	46%
4 or more misd, no fel.	11%	29%	16%	19%	4%	21%
1 or more prior fel.	25%	34%	39%	33%	--	33%

* Unknown prior ethnicity included.

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Asian/Pacific Islanders were the most likely to have only minor prior criminal histories – 64% had no priors or only 1 - 3 misdemeanors, and 25% had one or more prior felonies.

Forty-five percent of African Americans had minor records (no priors or one to three prior misdemeanors), and 39% had one or more prior felonies.

Forty-eight percent of Caucasians had minor prior criminal histories (no priors or one to three prior misdemeanors), and 33% had one or more prior felonies.

Among Alaska Natives, 37% had no priors or one to three prior misdemeanors, and 34% had one or more prior felonies. Twenty-nine percent of Alaska Native offenders had lengthy misdemeanor records (four or more prior misdemeanor convictions), but no prior felony convictions.

4. Other Factors Associated with Criminal History - Type of Attorney and Likelihood of Trial

Prior criminal history was associated with two other factors: type of attorney and likelihood of trial. Offenders with less serious criminal histories were more likely to have a private attorney, compared to those with more serious criminal histories. Thus, 15% of the offenders with no prior criminal history, and 17% of those with only one to three misdemeanors had a private attorney, compared to about 10% of those with four or more misdemeanors or prior felony convictions.

Prior criminal history also was statistically significantly associated with the likelihood of a trial. People with four or more misdemeanors were the least likely to have been convicted after a trial (5%), while people with one prior felony (8%) or two or more prior felonies (11%) were the most likely to have been convicted after a trial. Those with minor criminal histories (one to three misdemeanors, or no priors) were convicted after trial about 6% - 7% of the time.

D. Characteristics of Court Cases

1. Location of Court Case

This report examined the location of the court where each defendant's case was processed in an effort to document any geographical differences in sentencing patterns. The analysis approached the issue in two different ways. First, different court locations were grouped into five categories based on court size and similarity in court caseloads or location: Anchorage, Fairbanks, Southeast (Juneau, Ketchikan, and Sitka), Southcentral (Kenai and Palmer), and Rural (Barrow, Bethel, Dillingham, Kodiak, Kotzebue, and Nome). For the second analysis, the thirteen individual superior court locations were examined independently, to show differences in types of cases filed, and any other different practices (e.g., filing of presentence reports) in each community.

a. Class of Offense Varied by Location

About two-thirds of the cases in this sample came from Anchorage, Palmer, and Kenai (43% were in Anchorage, and 23% were in Palmer and Kenai). Fairbanks had 12% of the cases, Southeast had 9%, and the Rural courts had 13%.

The class of the single most serious offense at conviction varied by location of court. For example, the Rural courts, Fairbanks, and Southeast each had higher percentages (2% of their caseloads) of Unclassified offense cases; Anchorage and Southcentral had a little over 1% each. Unclassified felonies accounted for 2% of the cases in the total sample.

Five percent of Anchorage cases and 4% of Fairbanks cases were Class A offenses, compared to 2% to 3% of the caseload in other areas. Class A offenses accounted for 3% of the cases in the total sample.

Twenty-one percent of Southeast cases were Class B felonies, compared to 11% of Southcentral, 14% of the cases in Anchorage and Fairbanks, and 15% of the cases in Rural courts. Class B felonies accounted for 14% of the total sample.

Southeast had the lowest percentage (75%) of Class C felonies, compared to Southcentral where 86% of the caseload was Class C felonies. In the other areas, about 80% of the caseload consisted of Class C felonies. Class C felonies accounted for 81% of cases in the total sample.

b. Type of Offense Varied by Location

Table 12 shows that the Rural courts in this sample handled a greater percentage of the Violent offenses (including Murder and Kidnapping)⁵⁶ and Sexual offenses compared to the other courts. Thus, Violent and Murder/Kidnapping cases were 41% of the Rural court cases, but only 21% of Anchorage, 20% of the Fairbanks, 16% of Southeast, and 12% of Southcentral cases. Similarly, Sexual offenses⁵⁷ were 16% of the Rural cases but only 7% of the Fairbanks cases, 6% of Anchorage and Southcentral cases, and 4% of Southeast. Figure 6 shows this information graphically.

Table 12: Distribution of Offenses by Location					
	Anchorage	Fairbanks	Southeast	Southcentral	Rural
Murder/Kidnapping	<1%	1%	1%	<1%	1%
Violent	21%	19%	15%	12%	40%
Sexual	6%	6%	3%	5%	15%
Sexual Other	<1%	1%	1%	<1%	1%
Drug	23%	14%	30%	28%	8%
Driving	14%	19%	27%	21%	8%
Property	27%	33%	15%	27%	18%
Other	9%	7%	8%	6%	9%

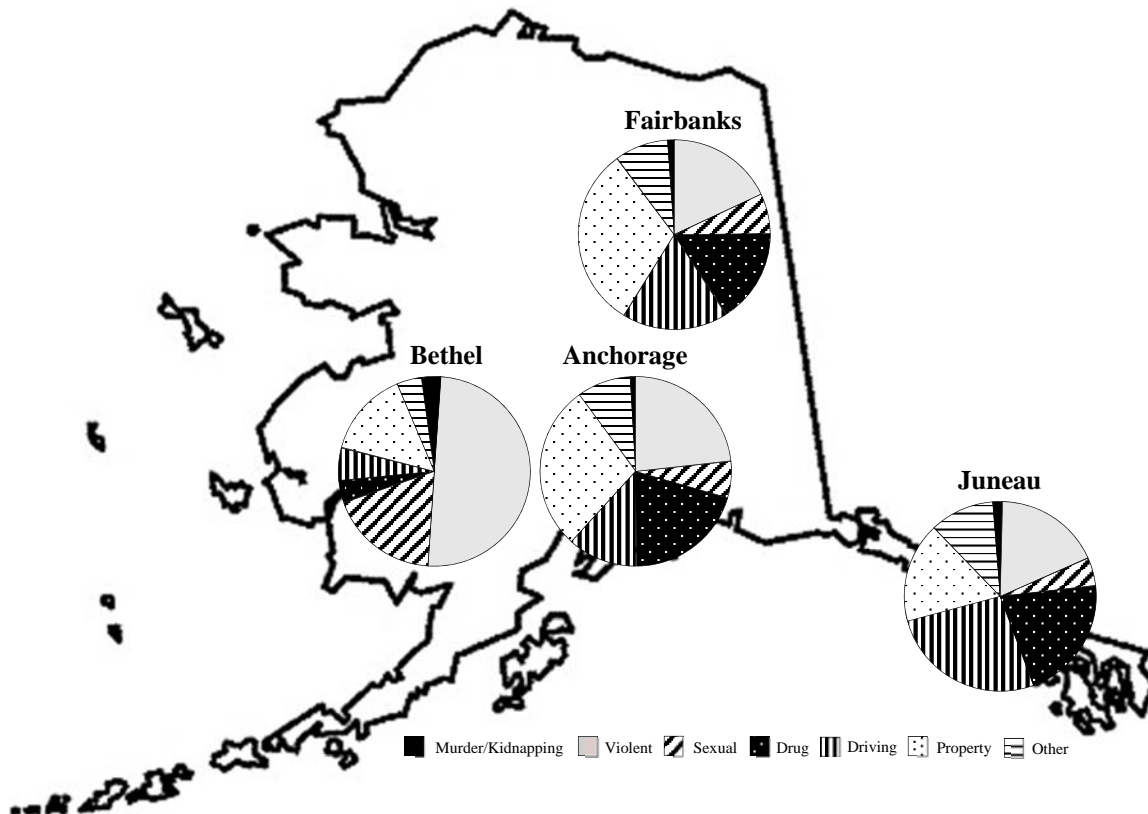
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⁵⁶ Violent offenses included Homicides, Kidnapping, Assaults, Robberies, and Other offenses such as Extortion and Coercion.

⁵⁷ Sexual offenses included Sexual assaults, Sexual abuse of a minor, Pornography, Failure to register as a sex offender, Indecent exposure, Online enticement of a minor, and Incest.

Figure 6: Illustration of Offenses by Location⁵⁸



On the other hand, Rural courts handled fewer Drug offenses compared to other courts. Drug offenses made up 30% of the Southeast and 28% of the Southcentral⁵⁹ caseloads, and 23% of the Anchorage caseload, but only 14% of the Fairbanks and 8% of the Rural caseloads.

Driving offenses were most frequent along the road system, with 21% of the Southcentral and 19% of the Fairbanks convictions in the case sample consisting of driving-related cases. In Anchorage, 14% of the offenses were driving-related, as were 15% of the Southeast offenses, while Rural caseloads were only 8% Driving.

⁵⁸ The locations in Figure 6 were chosen to illustrate the different types of crimes convicted in different locations across the state. They should be understood as examples.

⁵⁹ Recall court locations were grouped into Anchorage, Fairbanks, Southeast (Juneau, Ketchikan, and Sitka), Southcentral (Kenai and Palmer), and Rural (Barrow, Bethel, Dillingham, Kodiak, Kotzebue, and Nome).

2. Type of Attorney

Most (83%) of the offenders were represented by the Public Defender Agency or the Office of Public Advocacy.⁶⁰ Thirteen percent were noted in court records as represented by private attorneys, and 4% had an unknown type of attorney.

The offenders most likely to have had a private attorney were those convicted of the most serious offenses and of Driving offenses. Thus 23% of offenders convicted of Murder/Kidnapping had private attorneys, as did 29% in Sexual Other cases, 19% in Sexual cases, and 16% Driving offenses. Least likely to have a private attorney were those convicted of Property (7%) and Other (9%) offenses. Similarly, when grouped by class of offense, offenders with Unclassified and Class A and B offenses were more likely than Class C offenders to have a private attorney.

Men were significantly more likely than women (13% of men, compared to 9% of women) to have a private attorney, perhaps because they were more likely to have been convicted of the more serious offenses – Violent and Sexual offenses in particular.

Fourteen percent of Caucasian offenders had a private attorney, significantly more than offenders of other ethnicities, who had private attorneys in around 10% of all cases.

Fourteen percent of the offenders with no prior felonies had a private attorney, a significantly higher percentage than offenders with a history of felony convictions. About 8% to 10% of offenders with prior felonies had private attorneys, possibly because convicted felons had fewer personal resources to pay for attorneys.

Private attorneys were present in 16% of the cases in which a presentence report was filed, compared to their presence in 11% of the cases with no presentence report, a significant difference. Presentence reports were more likely to have been filed in the more serious cases.

Private attorneys were more likely to appear in cases in Southeast Alaska (14%), and in Rural courts (15%).⁶¹

⁶⁰ The Public Defender Agency represented all indigent offenders, unless there was a legal conflict or reason why it could not (already representing a co-defendant, for example). In that situation, the Office of Public Advocacy was assigned to the case. For either type of representation, offenders had to meet legislative and court-established criteria for indigency (see footnote 17, *supra*). Generally, convicted offenders were required to repay the agency for costs of representation as part of the judgment against them.

⁶¹ About 14% of the attorneys in rural areas were of “Unknown” type, and about 15% were “Private.”

3. Factors Associated with Case Disposition by Plea or Trial

The likelihood a case would go to trial varied significantly by the class of the offense, the type of offense, and the court location where the case was handled, as well as by the offender's prior criminal history and type of attorney.

More serious cases tended to go to trial more often than less serious cases. Compared to the overall trial rate for all cases in the database of 6%, 55% of Unclassified cases included in the study had gone to trial, compared to 19% of Class A felony cases, 8% of the Class B felony cases, and 5% of the Class C felony cases.

Fifty-nine percent of Murder/Kidnapping cases were convicted after trial. Other types of cases were convicted after trial less frequently: 15% of Sexual cases,⁶² 8% of Violent cases, 7% of Other and Driving cases, 4% of Drug cases, and 3% of Property cases.

Trial rates varied substantially by location. The highest trial rates were seen in Dillingham (14%, N=7 cases), Juneau (11%, N=15 cases), and Palmer (8%, N=36 cases). Lower rates were seen in Barrow (N=1), Nome (N=2), and Fairbanks (N=9), where each had a 3% trial rate. Kodiak had a 2% (N=1) trial rate.

The likelihood of a trial was associated with the offenders' prior criminal histories. Those with prior felony convictions were significantly more likely to go to trial. The offenders least likely to go to trial (5%) were those with four or more prior misdemeanors and no prior felony convictions.

Offenders represented by a private attorney were somewhat more likely to go to trial than those with public attorneys.⁶³ This may have reflected the types of charges against them.

E. Factors Related to Sentences

1. Presentence Report Filed

In cases of Unclassified and Class A felonies, court rules required the judge to order a presentence investigation unless the case involved a negotiated sentencing agreement, and the judge decided to proceed without a presentence report. In any other case, the judge could order a presentence report if either party requested it or if the judge concluded there was good cause to

⁶² None of the Sexual other cases (all Class C felonies, with a substantially lower sentencing range than the more serious Sexual offenses), went to trial.

⁶³ The difference was not statistically significant.

have one.⁶⁴ Presentence reports were filed in 30% of cases in the sample (N=902). Whether a presentence report was filed varied greatly by type and class of offense, community, whether the offender went to trial, type of attorney, and prior criminal history.

Presentence reports tended to be filed in the more serious cases. Presentence reports were filed in 89% of the Unclassified cases, but only 26% of Class C cases. Similarly, presentence reports were filed in 91% of Murder/Kidnapping and 86% of the Sexual cases, but only 21% of Property and 20% of Driving cases.

	Unclassified	Class A	Class B	Class C	Mean within Type
Murder/kidnapping	91%	-	-	-	91%
Violent	-	63%	47%	33%	38%
Sexual	92%	86%	83%	87%	86%
Sexual other	-	-	-	77%	77%
Drug	0%	24%	43%	19%	24%
Driving	-	-	25%	23%	21%
Property	-	-	26%	20%	20%
Other	-	-	23%	27%	26%
Mean within Class	89%	49%	45%	26%	

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Presentence report filings varied significantly by location, being most common in Southeast Alaska, where 77% of cases had them. They were filed in 54% of Rural cases and 35% of Southcentral cases, but only 16% of Anchorage cases, and 14% of Fairbanks cases.⁶⁵

Presentence reports were filed in 93% of the cases disposed by trial.

Thirty-eight percent of the private attorney clients had a presentence report filed, as compared to 29% of the public attorney clients. The difference was statistically significant.

Offenders with no prior record were the most likely to have a presentence report (35%); those with two or more felonies were the least likely to have a report filed (27%). There was no statistically significant relationship between the offender's prior criminal history and the filing of a presentence report.

⁶⁴ Alaska R. Crim. Pro. 32.1 (a)(2).

⁶⁵ Presentence report rates were highest in Southeast (Juneau, 83%, Sitka, 78%, and Ketchikan, 68%). Bethel had 81%, but other rural areas ranged from 9% in Kotzebue to 63% in Nome.

2. Probation and Suspended Imposition of Sentence (SIS)

The report examined whether sentences included probationary terms, and how many sentences involved a suspended imposition of sentence (SIS).

a. Probation

Probation was imposed as part of the sentence for most, but not all, felony offenders. Some offenders had “flat-time” sentences with active time to serve, no time suspended, and no probation.⁶⁶ Others had sentences that included neither time to serve nor probation, but had a requirement of restitution or a fine, performance of community work service, or some other condition. When probation was imposed for felony sentences, it typically was in increments of six months to a year, with a ten-year maximum.⁶⁷ SIS (Suspended Imposition of Sentence) is discussed below; only some first-time B and C felons were eligible for this type of disposition.⁶⁸

Most of the offenders in this sample (79%) were sentenced to serve some time incarcerated, and 61% of these also were sentenced to probation. However, 24% had no probation, and 15% were sentenced to probation as a condition of an SIS (Suspended Imposition of Sentence).

The distribution of “no-probation” sentences varied by gender and ethnicity. Men were more likely than women to have “no-probation” sentences. Also, African American men were more likely than others to have no-probation sentences. Table 14 below shows the associations.

	No probation	Probation	SIS
Asian/Pacific Islander men	26%	63%	11%
African American men	32%	54%	14%
Alaska Native/American Indian men	23%	69%	8%
Caucasian men	26%	61%	13%
Asian/Pacific Islander women	19%	46%	35%
African American women	17%	62%	21%
Alaska Native/American Indian women	13%	67%	20%
Caucasian women	19%	53%	28%

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⁶⁶ If the sentences imposed were more than two years and the offenders earned all of the good time (one-third of the length of the sentence), they could be released and supervised for the remaining amount of time on “mandatory parole,” under the same provisions as supervision of discretionary parolees. If they were released on mandatory parole after serving the required two-thirds of a sentence less than two years, they were not supervised during the parole period.

⁶⁷ Except for Sexual offenses, which had a 25-year maximum. AS 12.55.090(c)(1).

⁶⁸ Sexual offenders and a handful of other B and C first-time felons were not eligible for SIS. See AS 12.55.085(f).

b. Suspended Imposition of Sentence

Suspended Imposition of Sentence (SIS) was a type of probationary sentence in which a judge could suspend imposition of the sentence for a certain amount of time, during which the offender had to comply with any terms and conditions ordered by the court. If the good conduct and reform of the defendant warranted, the judge could then discharge the defendant and “set aside” the conviction.⁶⁹ An SIS was available to most first-time B and C felons (excluding those who were Sexual offenders).⁷⁰ There were 430 SIS sentences in the sample, or 15% of the total.

Caucasians (16%), and Asian/Pacific Islanders and African Americans (15% each) had proportionately more SISs than Natives (10%). In part, this was due to the high percentage of Alaska Native men having been convicted of more serious Violent and Sexual crimes for which SIS was not a possibility.

Although women made up only 21% of the total sample, they were 36% of the offenders with an SIS. Among all women offenders, Alaska Native (20%) and African American (21%) women had the lowest rates of SISs. This could have been due to the fact they were convicted more often of Violent offenses. Thirty-five percent of the Asian/Pacific Islander women in the sample had SISs (all for Property offenses), followed by 28% of the Caucasian women (primarily for Property and Drug offenses).

There were 40 Class B suspended imposition of sentences. Eighteen of these (45%) were Property offenses, 15 (38%) were Drug offenses, and seven were Violent, Driving, or Other.

Class C SISs were concentrated among Property (56%) and Drug (35%) offenses, although together these two types of offenses made up only 50% of the Class C felonies.

F. Sentence Lengths

The length of an offender’s sentence reflected a combination of legislative, judicial, and prosecutorial decisions about the appropriate sanction for a conviction. The sentence length had three main components: the sentence the judge imposed, the amount of time the judge suspended (if any), and the resulting active time (active time equaled the time imposed, minus the time suspended). The following figures show both aspects of sentence length: imposed time and active time.⁷¹

⁶⁹ See AS 12.55.085.

⁷⁰ Sexual offenders and a handful of other B and C first-time felons were not eligible for SIS. See AS 12.55.085(f).

⁷¹ It is important to keep in mind that some people did not have time imposed, and SIS sentences were set to zero (see methodology)

Tables in Appendix C show the mean active sentence length for convicted offenses in this sample. Although active sentence length was a straightforward measure, it did not explain how factors such as the aggravating and/or mitigating factors in the case or an offender's personal characteristics or problems (e.g., substance abuse) might have affected sentences.⁷² The Council did not have the data to show how much time a defendant actually did serve, after good time, and subsequent parole or probation violations (if any) were taken into account. This report only addresses the amount of time imposed, suspended, and active at the time of sentencing.

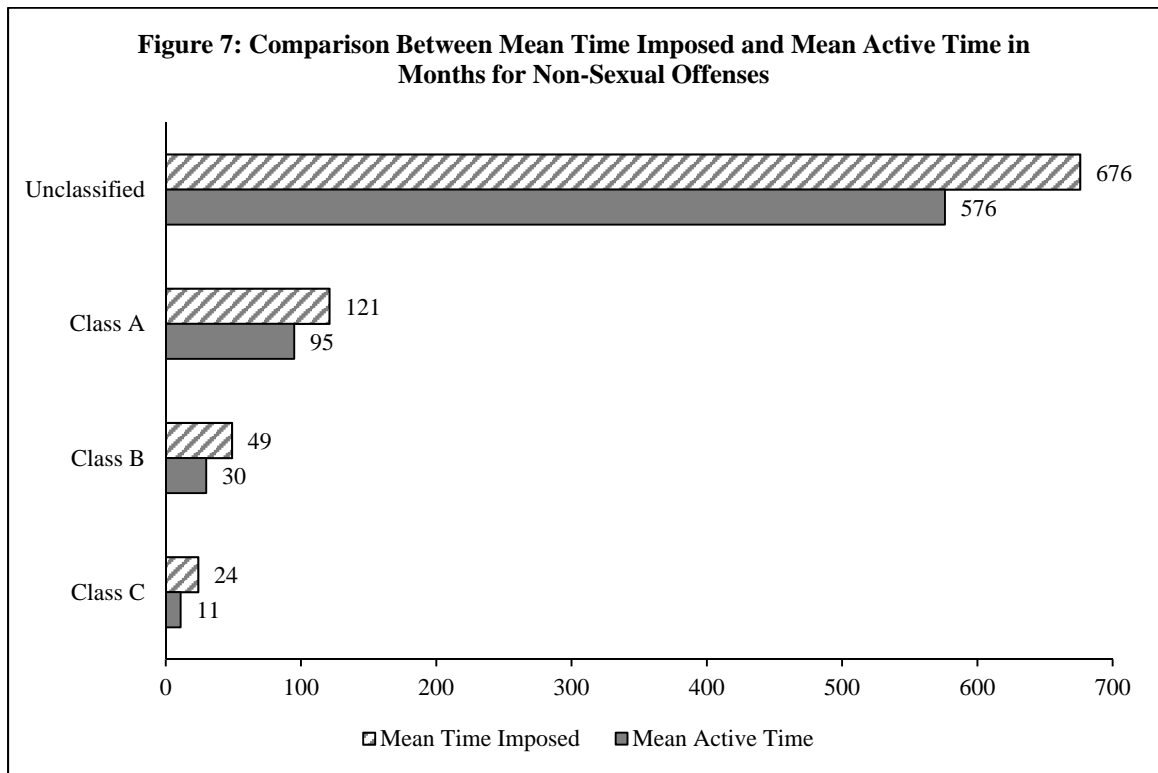
1. Imposed and Active Time by Class (Seriousness) of Offense

The law requires all sentences for unclassified non-sex felonies to include active time. In addition, all sentences for non-sex Class A felonies must have active time (the presumptive range for a first felony is 5-8 years, so the court may suspend only 2.5 years).⁷³ For non-sex Class B felonies, only those with two prior convictions must have active time (the presumptive range is 6-10 years, so the court can suspend only 3 years). For non-sex Class C felonies, active time is not required.

⁷² The influence of those factors is examined for Class A offenses in Part 3, Section H. In addition, the relationships among some of these factors and mean active sentence length for all offenses are described in Part 4 of this report, the multivariate analysis.

⁷³ The three-judge panel can impose any sentence within the statutory ranges if it finds that a sentence within the presumptive range, even with aggravators and mitigators, would be manifestly unjust.

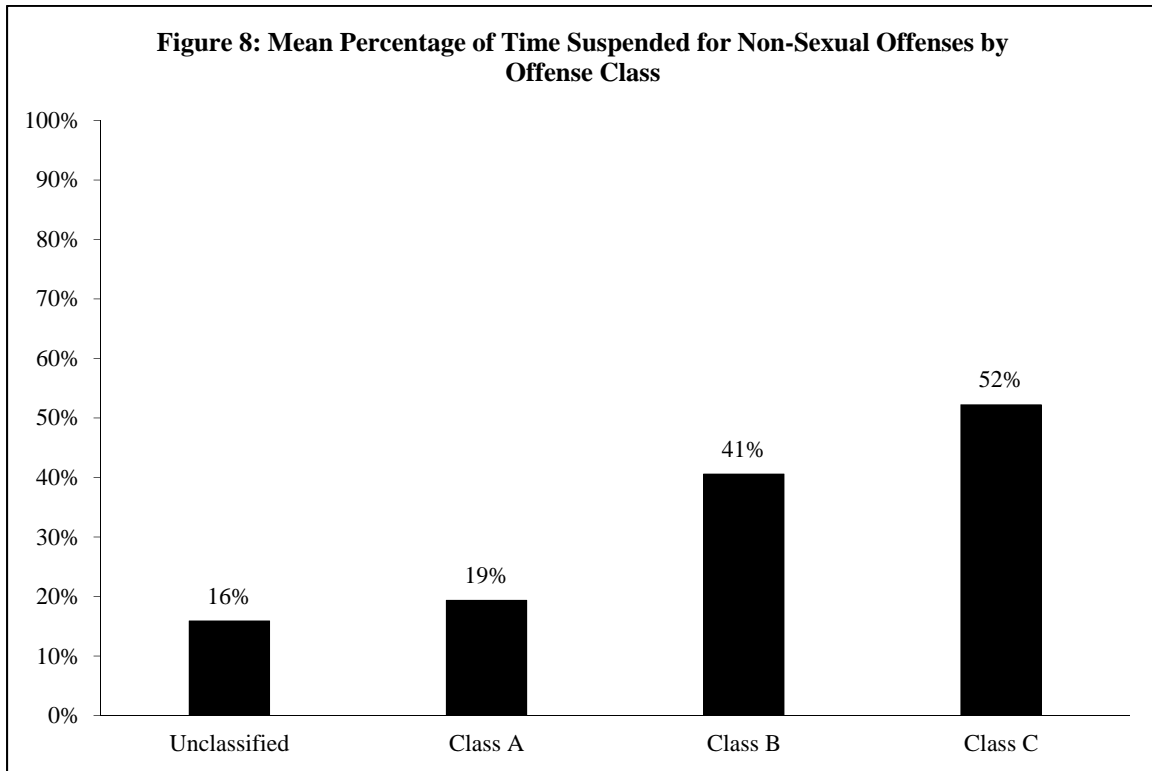
Figure 7 compares the mean time imposed and the mean active time for each level of seriousness (Class) of offense, for non-sexual offenses.



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To determine how much time was suspended from sentences, on average, individual suspension scores were calculated for the cases in which time was imposed.⁷⁴ Figure 8 shows the mean percentage of time suspended by offense class. The figure shows that as offenses decreased in seriousness from Unclassified⁷⁵ to Class C, the proportion of the sentence suspended increased.



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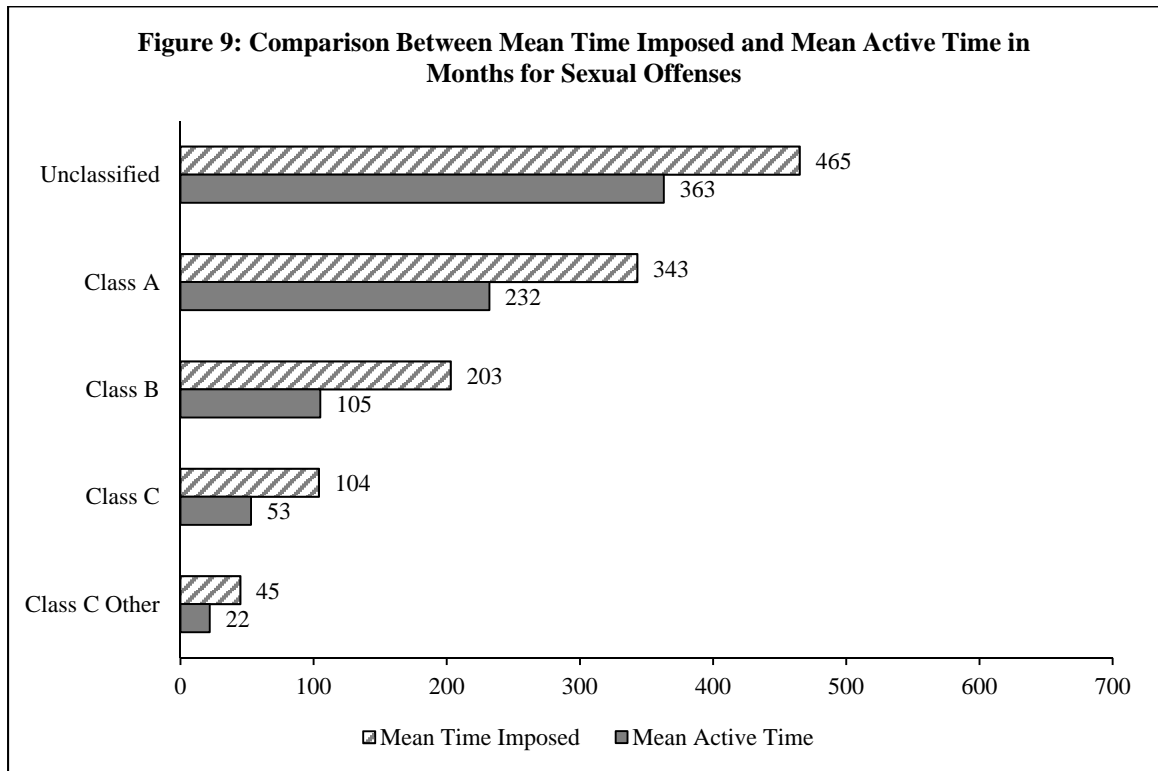
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Unclassified non-sexual offenders had 16% of their imposed time suspended. Class C offenders had 52% of their sentence suspended, on average.

⁷⁴ Suspension scores could not be calculated in cases in which no time was imposed as that was mathematically invalid.

⁷⁵ See Part 2, *supra*. For defendants sentenced under AS 12.55.125(a) or (b), imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080. See AS 12.55.125(f). AS 12.55.125(a) includes Murder 1 and intentional Murder of an unborn child. AS 12.55.125(b) includes Attempt, Solicitation, Conspiracy Murder 1; Kidnapping; MICS1; Murder 2; reckless Murder of an unborn child; and Murder of a child under 16 by a parent/guardian/authority figure.

Figure 9 shows the mean time imposed and the mean active time for sexual offenses.⁷⁶

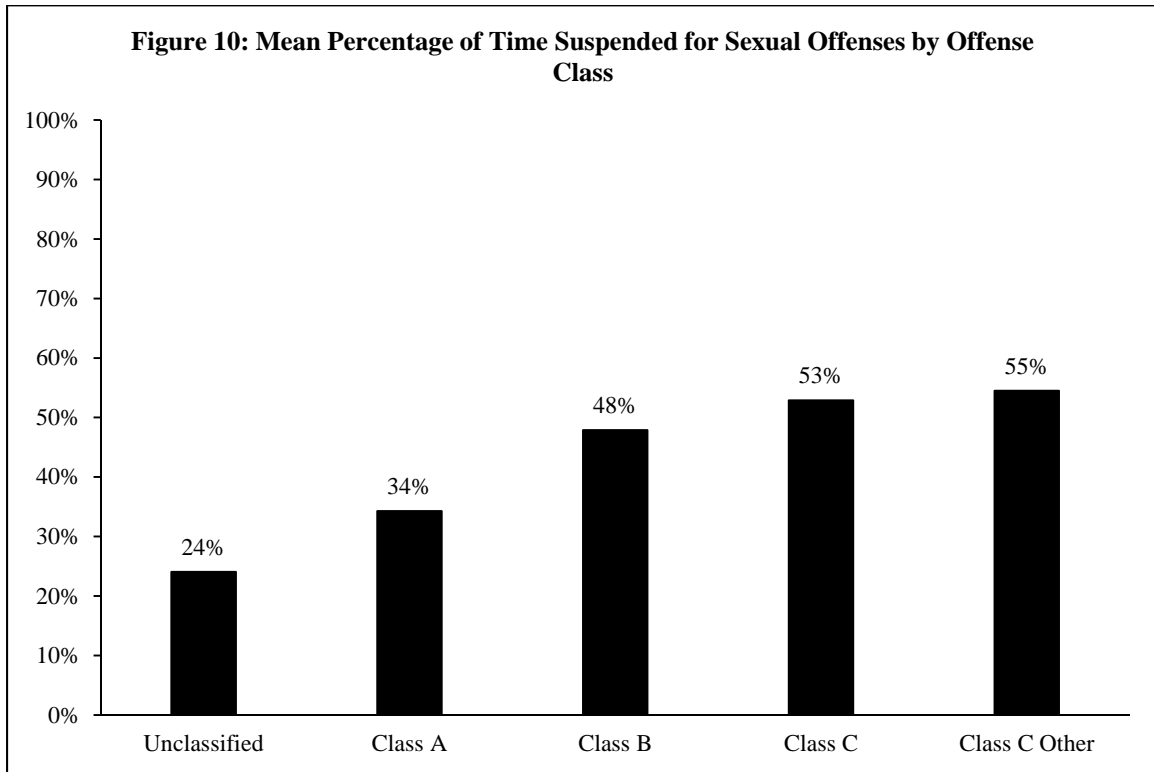


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⁷⁶ Note that all unclassified, Class A, and Class B sex felony sentences must include active time, because imprisonment may not be suspended below the low end of the presumptive range if not aggravated, or below fifty percent of the low end, if mitigated. See AS 12.33.125(g)(1) and AS 12.55.155(a)(2). For example, for Class B sex felonies, the low end of presumptive range is 5 years on a first felony, so the offender will receive at least 2.5 years. All Class C sex felonies with prior felony convictions must have active time (low end of presumptive range on a second felony is 8 years, second sex felony is 12 years).

Figure 10 illustrates the average amount of time suspended by offense class for sexual offenses and shows that the same pattern held true: the more serious the offense, the less time was suspended, and the less serious the offense, the more time was suspended.

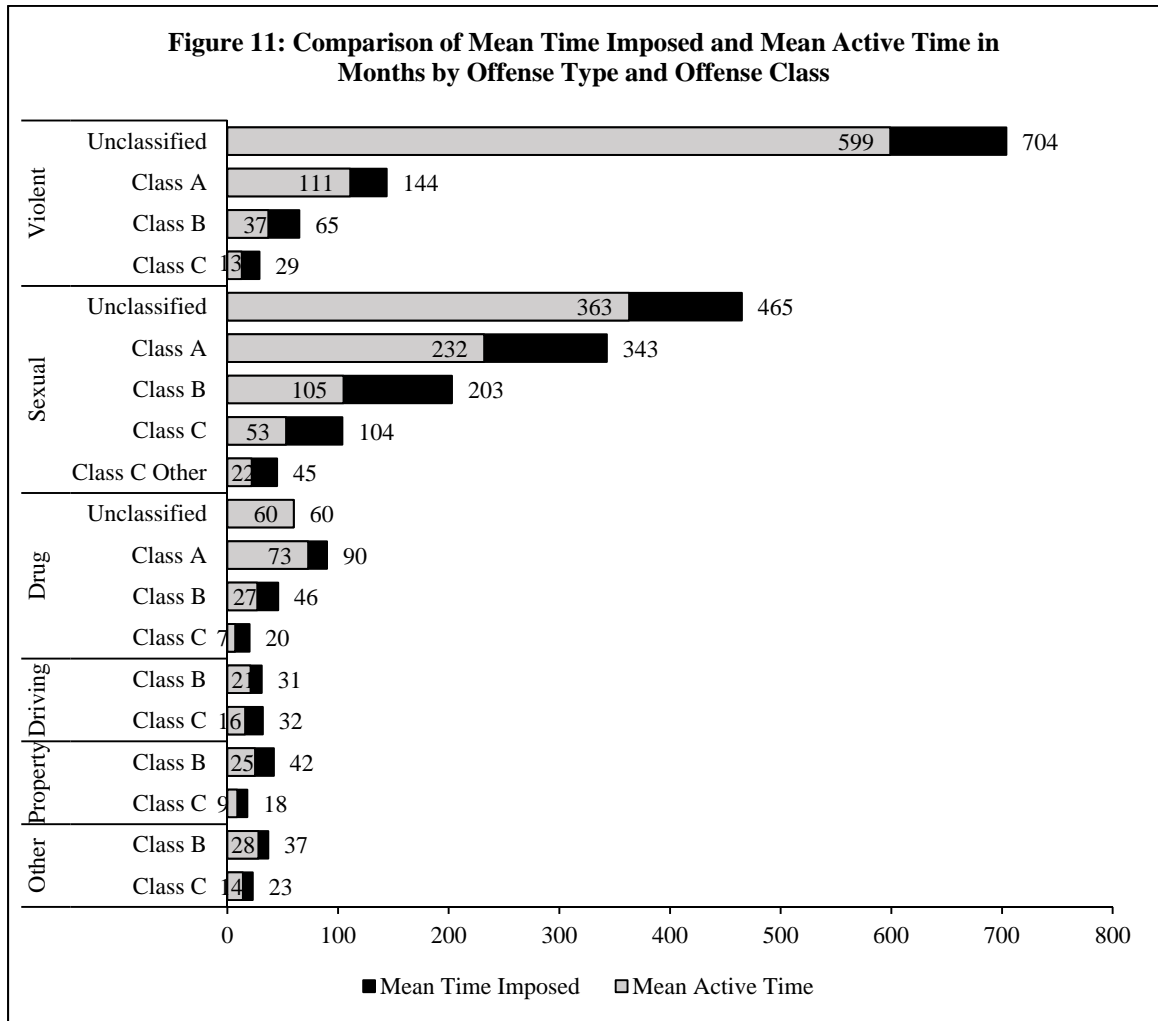


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2. Imposed and Active Time by Type of Offense

Figure 11 shows the mean time imposed and mean active time by class of offense within each type of offense.



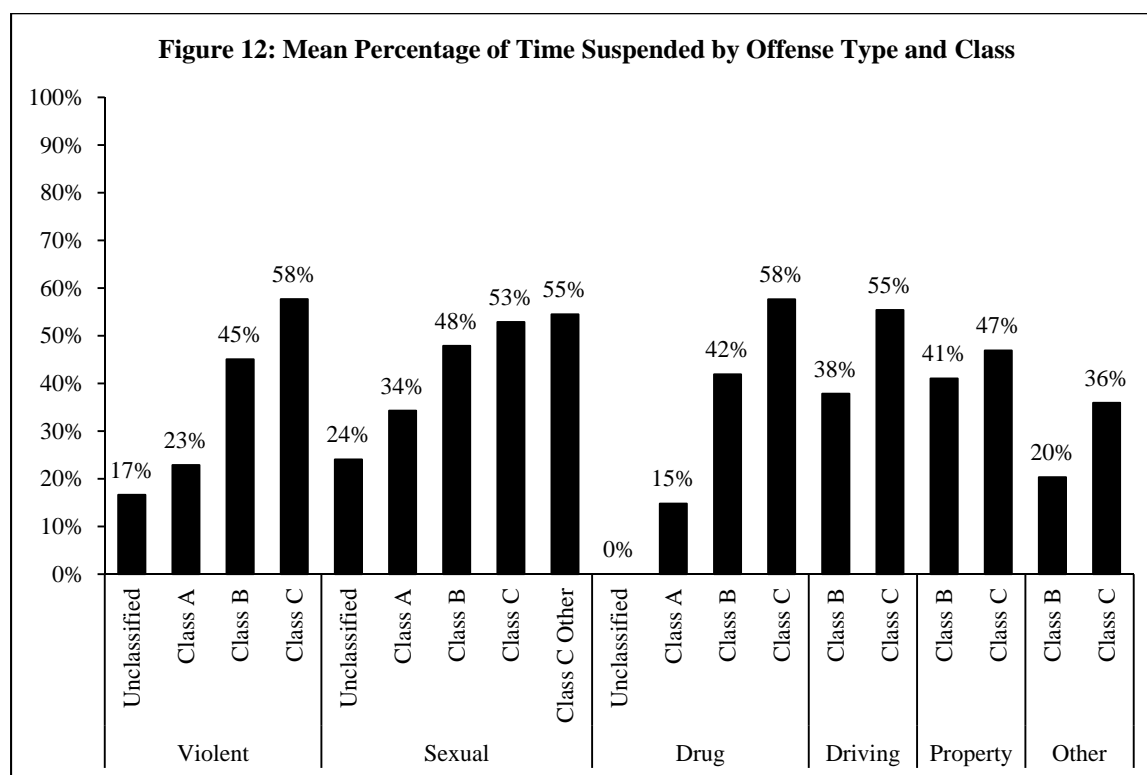
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Figure 12 displays the average percentage of time suspended for each offense class within each offense type and shows that the pattern established for imposed and active sentences by class also held true for each type of offense. Thus, for Unclassified Violent offenses, the mean active time was only 17% less, on average, than the mean imposed time.

For Class A Violent offenses, the active sentence length was 23% less than the imposed time; for Class B offenses, it was 45% less; and for Class C Violent offenses, it was 58% less.

Similarly, for Drug offenses,⁷⁷ the Class A mean active time was 15% less than the mean imposed sentence length; the Class B mean active time was 42% less, and the Class C mean active time was 58% less than the Class C Drug mean imposed sentence length. Property, Driving, and Other offenses all showed the same pattern with Class C offenders having more of their sentences suspended than Class B offenders.



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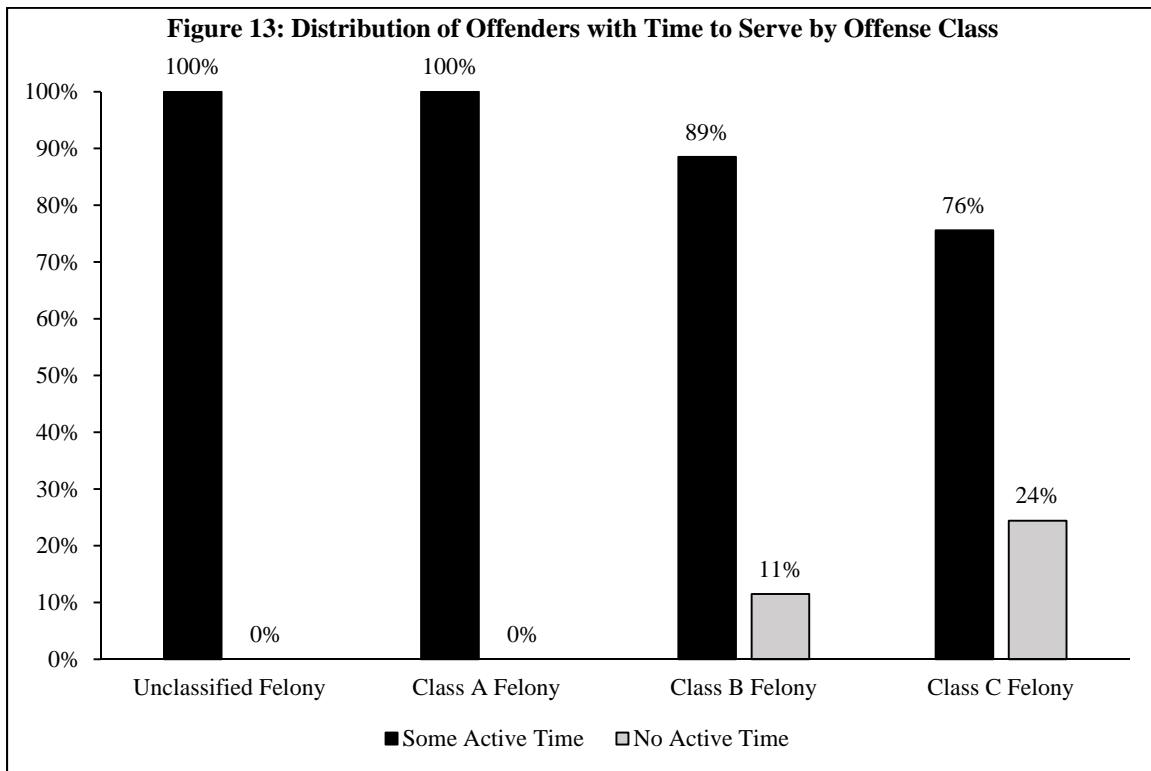
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The net effect of this practice was the more serious offenders were sentenced to longer incarceration times in absolute terms, and also in relative terms because less of their imposed incarceration time was suspended. The converse of this was that less serious offenders were serving less time incarcerated in absolute terms, but were more vulnerable to having suspended time imposed if they violated the terms of their parole or probation.

⁷⁷ The single Unclassified Drug offense received the mandatory minimum sentence of five years to serve.

3. No Active Time to Serve Compared to Active Time to Serve

Based on the legal limitations set out in Part 2, the offense class, the offense type, and an offender's prior record determined whether or not an offender's sentence was required to include active time, and how much time could be suspended from a sentence.⁷⁸ Figure 13 shows all offenders convicted of an Unclassified or a Class A felony were sentenced to serve some active time, as required by statute, whereas 11% of Class B offenders and 24% of Class C offenders did not have any active time to serve.

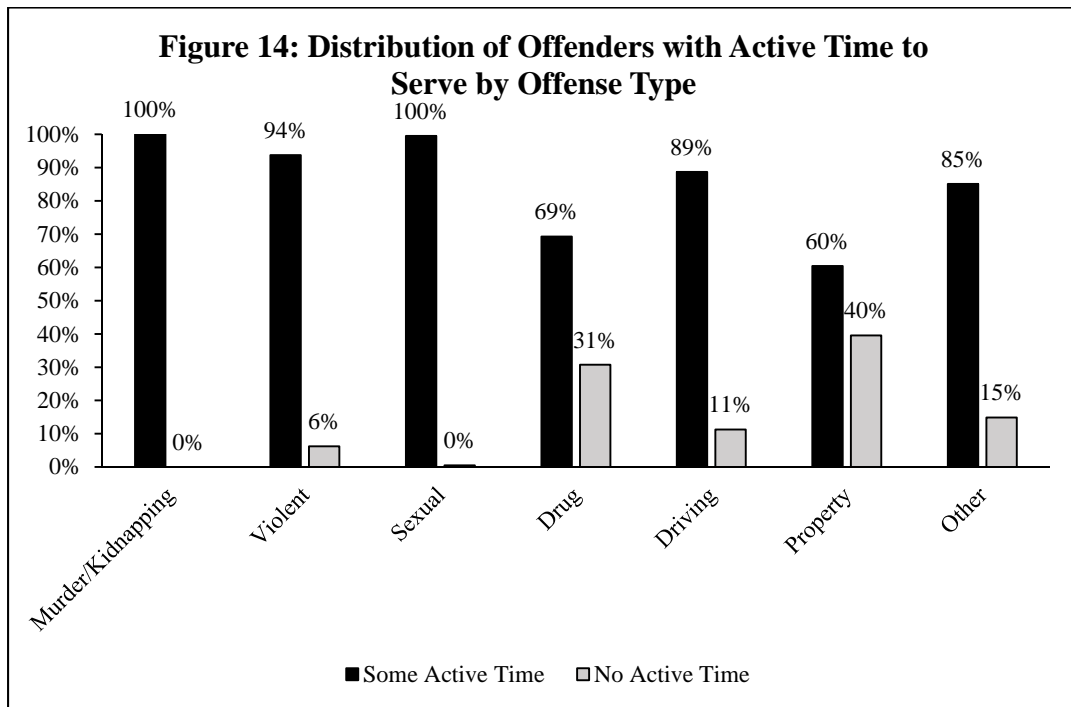


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⁷⁸ See Part 2, *supra*. All sentences for Unclassified non-Sexual offenses must have active time, and all Sexual offenses with the exception of first-time Class C Sexual felonies must have active time. See FN 76 *supra*.

Offenders convicted of non-violent offenses, such as Property and Drug offenses were the least likely to receive an active sentence. Figure 14 shows 40% of Property offenders and 31% of Drug offenders were not sentenced to serve any active time. For Driving⁷⁹ and Other offenses, offenders did not receive active time in 11% and 15% of the cases, respectively.

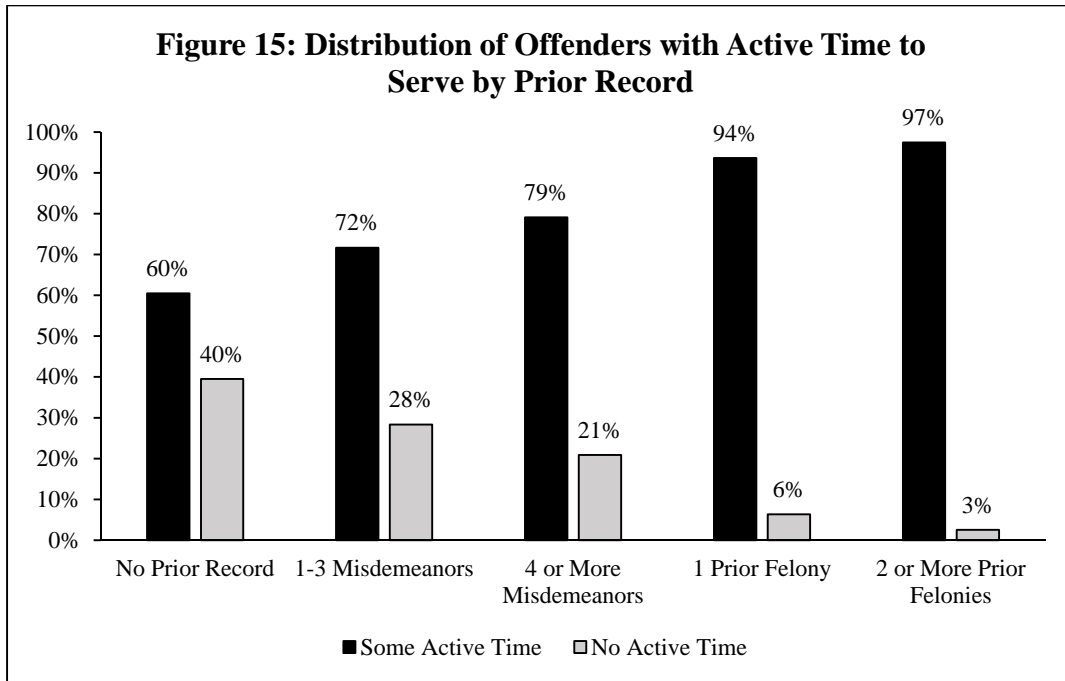


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⁷⁹ Active time is statutorily required for DUI and Refusal offenses. AS 28.35.030(n). Almost all offenders in the category who did not receive active time for these offenses were sentenced to Therapeutic Court.

Lastly, the more extensive an offender’s prior record, the more likely the offender was to receive active time to serve. Figure 15 shows almost all (97%) offenders with two or more prior felonies were sentenced to active time to serve, whereas only 60% of offenders who had no prior record were sentenced to active time.

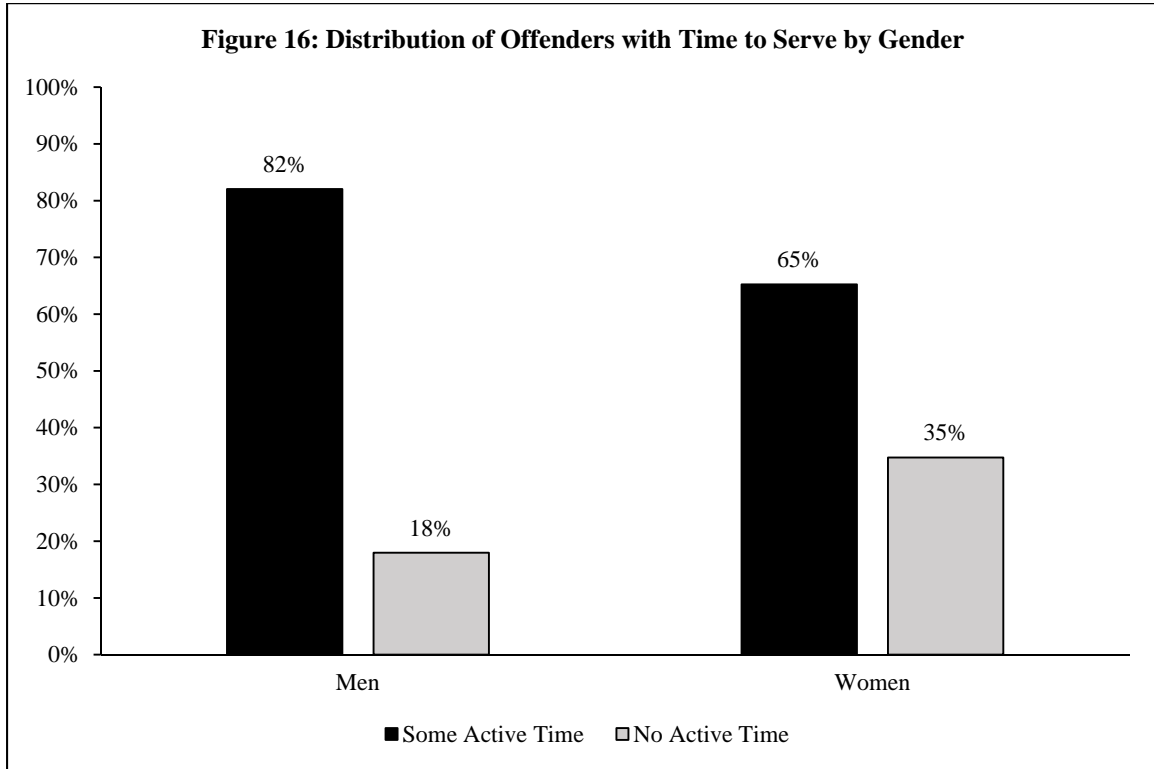


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The findings with regard to offense class, offense type, and prior record reflect the statutory limitations regarding suspended time.

The analysis showed that the likelihood of an offender receiving active time to serve was related to the offender’s gender (Figure 16). Men were significantly more likely to have some active time to serve than women. This could be because women also were more likely to have been convicted of less serious offenses.



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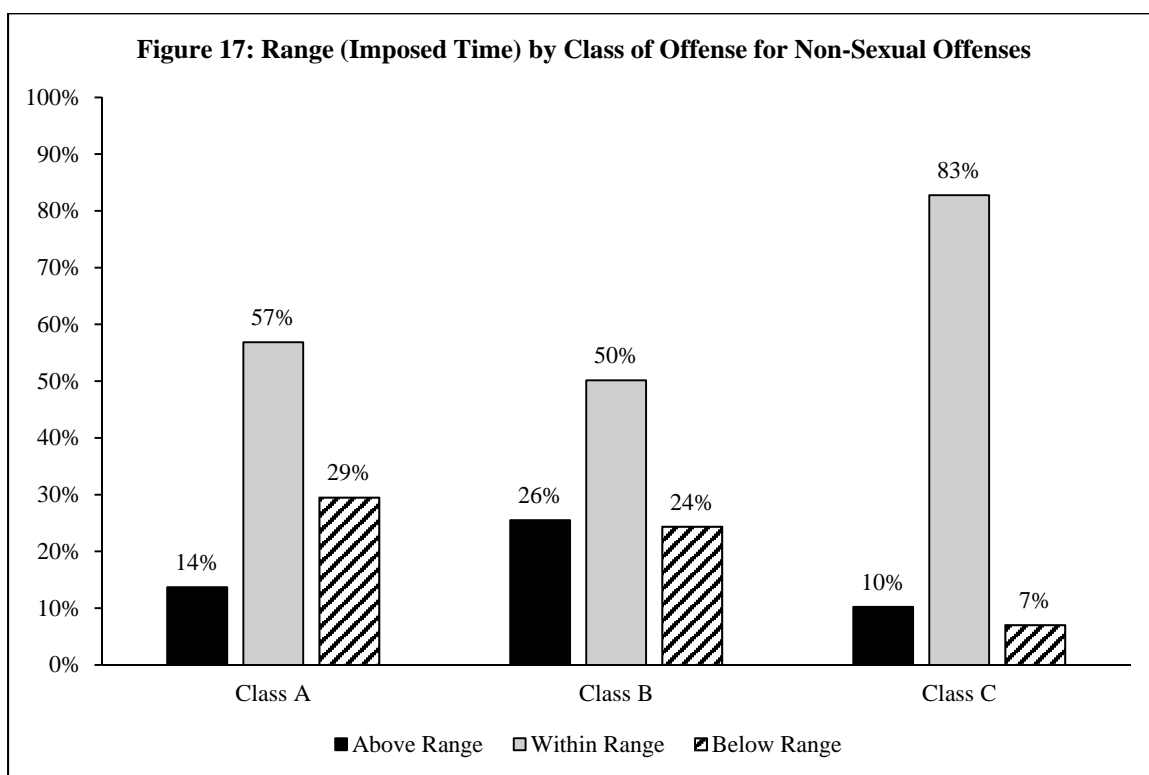
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G. Sentencing Above, Within, or Below the Presumptive Range

The report examined the extent to which actual sentences imposed by judges fit within the presumptive ranges established by the legislature. A rule of thumb used in other jurisdictions was about 85% of the sentences should fall within the established ranges or presumptive sentences.⁸⁰ Recall that Alaska’s sentencing laws permit imposition of sentences above or below the presumptive ranges if aggravating and/or mitigating factors are established, or if the three-judge panel finds that manifest injustice would occur if the offender was sentenced within the presumptive scheme.

1. Presumptive Ranges for Non-Sexual Offenses

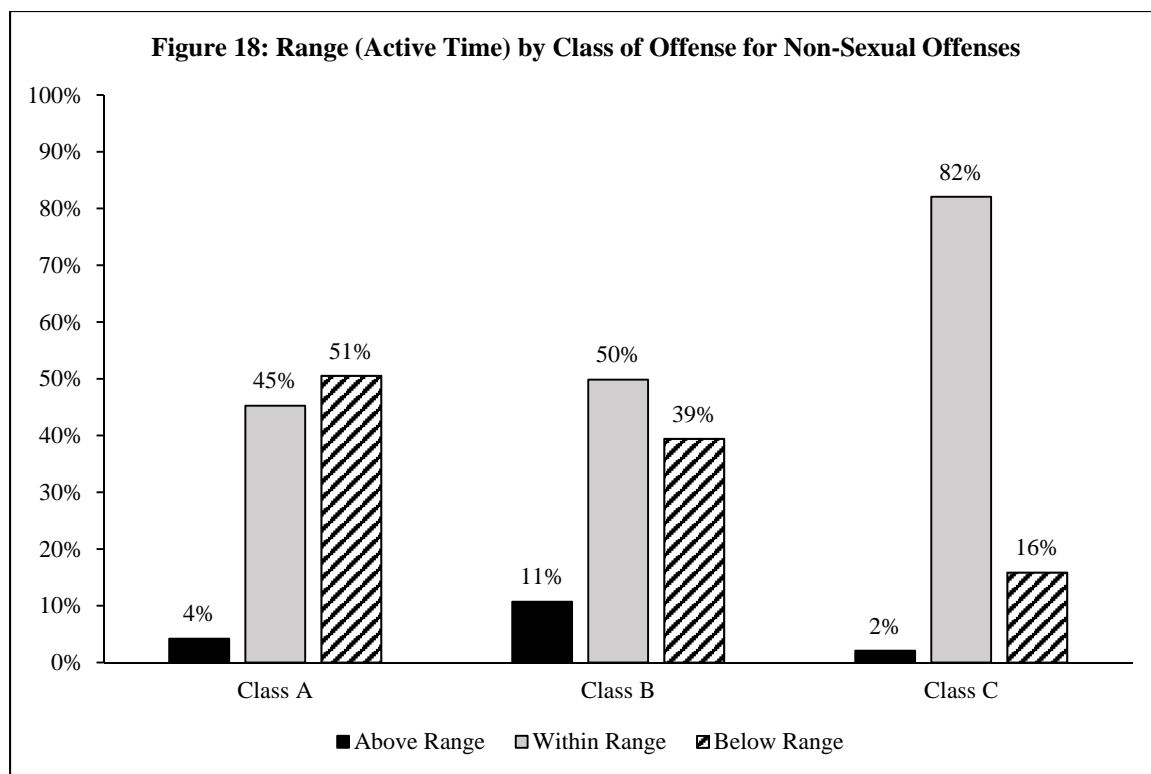
Figures 17 and 18 below show how the sentences for non-sexual offenses in this sample fit into the ranges set by the legislature. Figure 17 shows imposed time, while Figure 18 shows active time.



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⁸⁰ See *supra*, Part 1, for a discussion of the legislature’s reasons for adopting presumptive sentencing. In other jurisdictions, similar policies prevail. For example, the Washington, D.C. sentencing guidelines commission sets as one of its objectives to: “[p]romulgate compliance with the guidelines in at least 85 percent of all felony cases, in recognition that a small number of exceptional cases will merit a judicial departure from the guidelines.” Document available at http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DCSC_FY09PAR.pdf.



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Figure 18 shows the less serious the offense, the more likely the mean active sentences fit within the ranges prescribed by the legislature.⁸¹ Forty-five percent of the Class A sentences were within the range compared to 50% of the Class B sentences and 82% of the Class C sentences. If mean active sentences were out of the presumptive ranges, they were much more likely to be below the range than above it. Just over half (51%) of the Class A sentences were below the prescribed ranges, as were 39% of the Class B sentences and 16% of the Class C sentences.

Table 15 shows more detailed information about the imposed and active sentences broken down by the number of prior felonies an offender had. For the most serious group of first offenders (Class A enhanced⁸² sentences for offenders with no prior felony convictions), 61% of both the imposed and the mean active sentences did fall within the presumptive range. First-time felony offenders with convictions of unenhanced sentences, however, were more likely to have a sentence below the range than within the range (53% of imposed sentences and 76% of active sentences).

Offenders with prior felony convictions had more mean active sentences below the range than within it, and no mean active sentences above the ranges. Only one offender, with any type

⁸¹ Non-Sexual unclassified offenses had mandatory minimum sentences rather than presumptive ranges. See Part 2, *supra* for more information. Recall also, that active sentences over 4 years must be at least half (50%) of the low end of a presumptive range if mitigated.

⁸² Enhanced circumstances are described in Part 2.

of prior record, had an imposed sentence above the Class A presumptive range for unenhanced felonies, and that person had a mean active sentence within the presumptive range.

Table 15⁸³: Distribution of Sentences in Presumptive Sentence Range							
Class A Felony Offenses							
<i>Class A Allowable Range is 0-20 years</i>							
	Imposed Sentence			Active Sentence			Presumptive Range in Months
	N	%	Mean Imposed Sentence in Months	N	%	Mean Active Sentence in Months	
No Prior Felony (<u>enhanced</u>)							
Above Presumptive Range	<i>12</i>	<i>31</i>	<i>194</i>	<i>4</i>	<i>10</i>	<i>194</i>	84-132 (7-11 Years)
At Presumptive Range	<i>23</i>	<i>61</i>	<i>111</i>	<i>23</i>	<i>61</i>	<i>100</i>	
Below Presumptive Range	<i>3</i>	<i>8</i>	<i>64</i>	<i>11</i>	<i>29</i>	<i>51</i>	
No Prior Felony (<u>regular</u>)							
Above Presumptive Range	-	-	-	-	-	-	60-96 Months (5-8 Years)
At Presumptive Range	<i>8</i>	<i>47</i>	<i>72</i>	<i>4</i>	<i>24</i>	<i>60</i>	
Below Presumptive Range	<i>9</i>	<i>53</i>	<i>31</i>	<i>13</i>	<i>76</i>	<i>33</i>	
One Prior Felony							
Above Presumptive Range	<i>1</i>	<i>5</i>	<i>180</i>	-	-	-	120-168 Months (10-14 Years)
At Presumptive Range	<i>12</i>	<i>63</i>	<i>141</i>	<i>8</i>	<i>42</i>	<i>129</i>	
Below Presumptive Range	<i>6</i>	<i>32</i>	<i>61</i>	<i>11</i>	<i>58</i>	<i>64</i>	
Two or More Prior Felonies							
Above Presumptive Range	-	-	-	-	-	-	180-240 Months (15-20 Years)
At Presumptive Range	<i>11</i>	<i>52</i>	<i>216</i>	<i>8</i>	<i>38</i>	<i>215</i>	
Below Presumptive Range	<i>10</i>	<i>48</i>	<i>94</i>	<i>13</i>	<i>62</i>	<i>94</i>	

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More detailed information about Class A offenders may be found in Section H below. With respect to presumptive ranges, the more detailed analysis showed that Class A Violent offenses were more likely to be sentenced within range than Class A Drug offenses. Depending on the prior records, 61%-78% of Class A Violent active sentences were within the presumptive ranges, while only 10%-24% of Class A Drug active sentences were within the presumptive ranges.⁸⁴ A large percentage (72%) of Class A offenders had some type of substance abuse problem, as indicated in court files.

⁸³ Class A, B, and C felony offenders with two prior felony convictions cannot be sentenced above the presumptive range. Additionally, Class C felony offenders with no prior felony convictions cannot be sentenced below the presumptive range.

⁸⁴ See Figures 21 and 22, below.

Table 16 shows the percentage of sentences within the presumptive ranges for Class B felony offenses such as Burglary 1, Assault 2, Theft 1 (of \$25,000 or more), MICS 3, and Robbery 2. For both mean imposed and mean active sentences, the worse the offenders' prior records, the greater was the likelihood the imposed or active sentence would be below the presumptive range. A smaller percentage of the Class B offenders had sentences, imposed or active, below the presumptive range compared to the more serious Class A offenders.

Table 16⁸⁵: Distribution of Sentences in Presumptive Sentence Range							
Class B Felony Offenses							
<i>Class B Allowable Range is 0-10 years</i>							
	Imposed Sentence			Active Sentence			Presumptive Range in Months
	N	%	Mean Imposed Sentence in Months	N	%	Mean Active Sentence in Months	
No Prior Felony							
Above Presumptive Range	<i>80</i>	34	<i>75</i>	<i>34</i>	14	<i>62</i>	12-36 Months (1-3 Years)
At Presumptive Range	<i>104</i>	44	<i>30</i>	<i>124</i>	53	<i>19</i>	
Below Presumptive Range	<i>51</i>	22	<i>1</i>	<i>77</i>	33	<i>2</i>	
One Prior Felony							
Above Presumptive Range	<i>8</i>	14	<i>107</i>	<i>3</i>	5	<i>110</i>	48-84 Months (4-7 Years)
At Presumptive Range	<i>33</i>	60	<i>67</i>	<i>25</i>	46	<i>60</i>	
Below Presumptive Range	<i>14</i>	26	<i>28</i>	<i>27</i>	49	<i>23</i>	
Two or More Prior Felonies							
Above Presumptive Range	-	-	-	-	-	-	72-120 Months (6-10 Years)
At Presumptive Range	<i>36</i>	66	<i>97</i>	<i>23</i>	42	<i>89</i>	
Below Presumptive Range	<i>19</i>	34	<i>45</i>	<i>32</i>	58	<i>38</i>	

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⁸⁵ Includes 47 offenders who did not have any active time to serve.

Table 17 shows the percentages of offenders with mean imposed and mean active sentences in the context of the presumptive ranges for Class C offenses. The range for Class C first-time felony offenders started at zero time to serve and went up to two years.⁸⁶ Because the range started at zero it was not possible for any offender to be sentenced below the range. The great majority of mean imposed sentences (87%) and mean active sentences (97%) for first-time felony offenders were within the presumptive range; and small percentages were above the range. Following the pattern evident for most Class A and Class B second-time felony offenders, the Class C offenders with one prior felony conviction were less likely than first-time offenders to have sentences above the presumptive ranges. Those with two or more prior felony convictions were even more likely to have sentences (imposed and active) below the presumptive ranges.

Table 17⁸⁷: Distribution of Sentences in Presumptive Sentence Range							
Class C Felony Offenses							
<i>Class C Allowable Range is 0-5 years</i>							
	Imposed Sentence			Active Sentence			Presumptive Range in Months
	N	%	Mean Imposed Sentence in Months	N	%	Mean Active Sentence in Months	
No Prior Felony							
Above Presumptive Range	<i>201</i>	13	<i>42</i>	<i>40</i>	3	<i>41</i>	0-24 Months (0-2 Years)
At Presumptive Range	<i>1311</i>	87	<i>14</i>	<i>1472</i>	97	<i>4</i>	
Below Presumptive Range	-	-	-	-	-	-	
One Prior Felony							
Above Presumptive Range	<i>34</i>	8	<i>60</i>	<i>8</i>	2	<i>59</i>	24-48 Months (2-4 Years)
At Presumptive Range	<i>318</i>	78	<i>35</i>	<i>221</i>	54	<i>28</i>	
Below Presumptive Range	<i>58</i>	14	<i>12</i>	<i>181</i>	44	<i>7</i>	
Two or More Prior Felonies							
Above Presumptive Range	-	-	-	-	-	-	36-60 Months (3-5 Years)
At Presumptive Range	<i>272</i>	73	<i>47</i>	<i>192</i>	51	<i>40</i>	
Below Presumptive Range	<i>103</i>	28	<i>19</i>	<i>183</i>	49	<i>14</i>	

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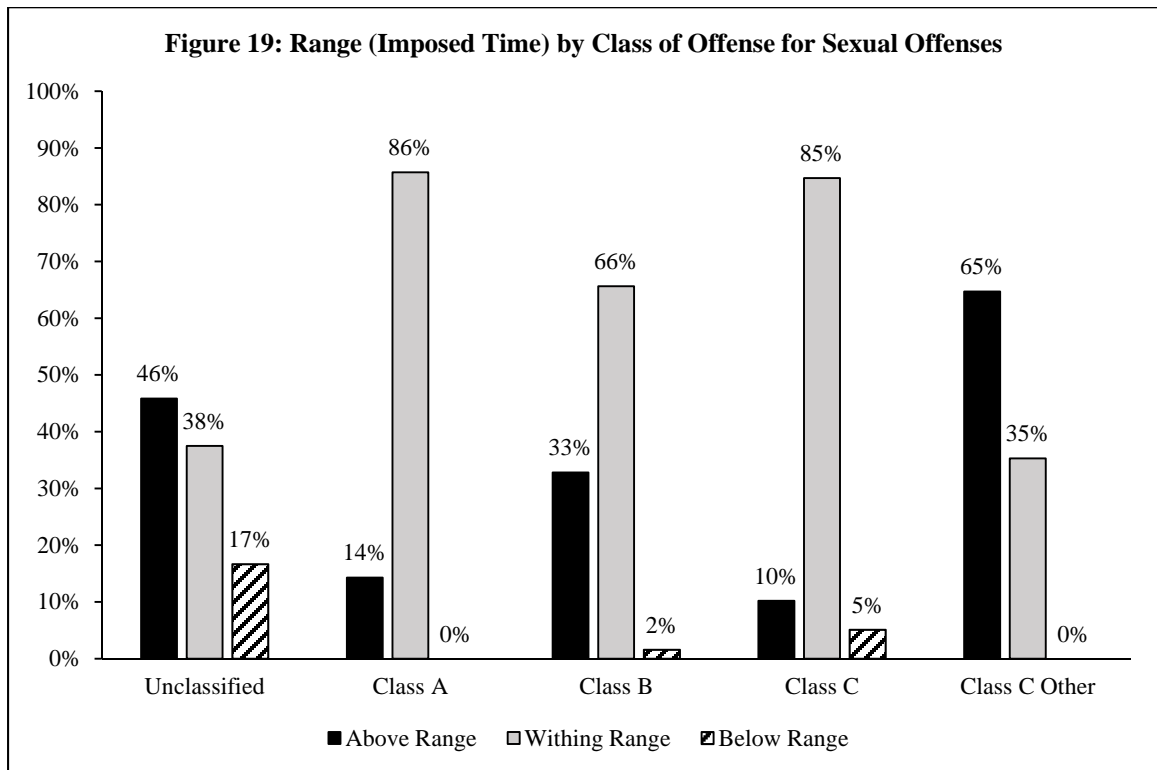
To summarize, the analysis showed many sentences for non-sexual offenders in this sample fell outside the presumptive ranges established by the legislature. Only first-time felony Class C offenders were likely to receive imposed as well as active sentences within the presumptive range. In almost all other categories, a significant percentage of sentences, particularly active time to serve, were below the presumptive ranges. As noted, this may be for a variety of reasons, including negotiated pleas and the presence of mitigating factors.

⁸⁶ If offenders were convicted of Class C felonies and did not receive any time to serve, they often received probation or a suspended imposition of sentence (SIS).

⁸⁷ Includes 588 offenders who did not have any active time to serve.

2. Presumptive Ranges for Sexual Offenses

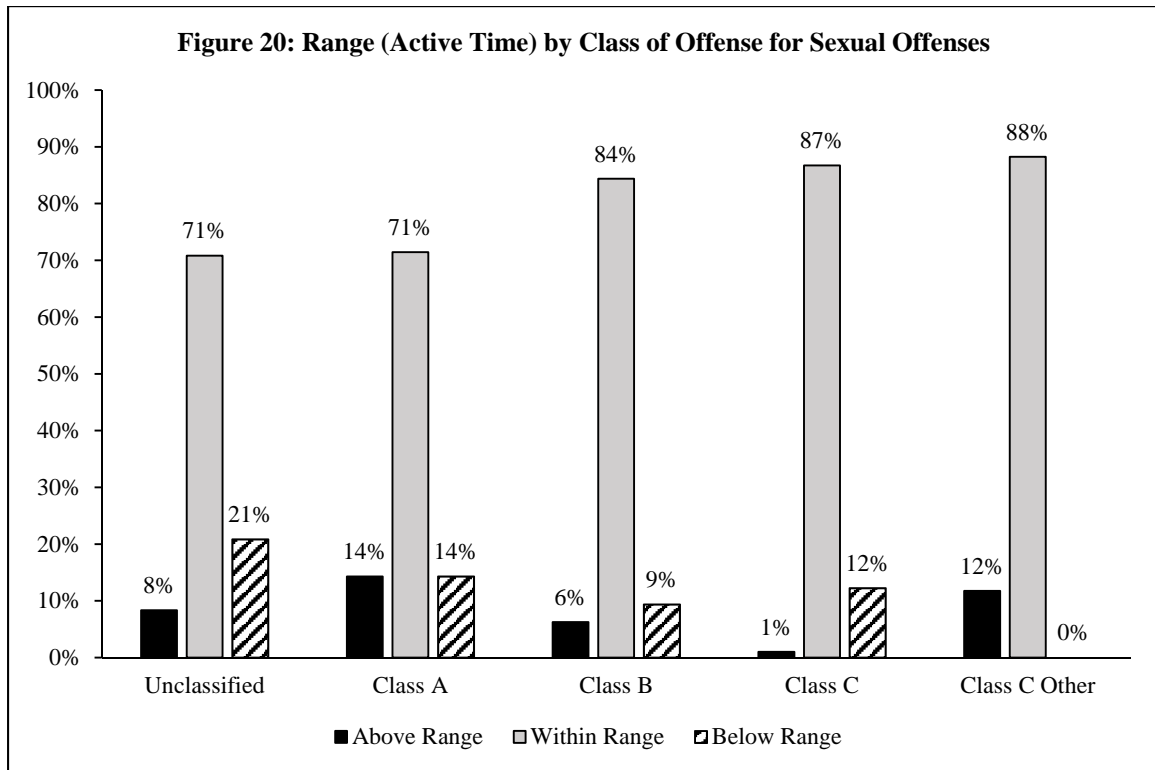
Most of the Sexual offenses had a different set of presumptive ranges, both higher and broader, reflecting the legislative policy that these offenders should be sanctioned more severely, and judges should have a wider latitude in imposing sentences.⁸⁸ Table 2, in Part 2, shows the ranges for the Sexual offenses. Generally, the imposed and active sentences for Sexual offenders fit within the legislatively prescribed ranges more often than was the case for the non-Sexual offenders.



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⁸⁸ The legislature chose to leave several offenses that could be categorized as Sexual, including Sexual abuse of a minor 3 under AS 11.41.438, under the presumptive ranges for other Class C offenses. See Appendix B, FN 203. These are shown separately, on Table 22. While 67% of the sentences imposed for these offenses for first felony offenders were above the 0 to 24 month presumptive range, 90% of the active sentences were within the range.



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Figure 19 shows the distribution of the proportion of Sexual offenders sentenced above, within, and below the range for imposed and active sentences. Figure 20 shows the vast majority of Sexual offenders received an active sentence within the range. However, the analysis shows a slightly smaller proportion of offenders convicted of Unclassified and Class A Sex offenses, 71% in both instances, received an active sentence within the range. Offenders convicted of a Class B or Class C Sex offense were more likely to receive an active sentence within the presumptive range. Eighty-four percent and 87%, respectively, were sentenced within the range. Offenders convicted of Class C Sexual Other⁸⁹ offenses were the most likely to receive an active sentence within the presumptive range; 88% were sentenced within the range.

Tables 18 through 22 show more detailed information about the imposed and active sentences broken down by the number of prior felony convictions. Table 18 shows offenders who committed an Unclassified Sex crime and either had no prior felony conviction or more than two prior felony convictions were the most likely to receive an imposed sentence above the range; 50%

⁸⁹ Class C Sexual Other offenses included offenses, such as Sexual abuse of a minor 3, commonly known as statutory rape. The presumptive range for Class C Sexual Other offenses was different than for regular Class C Sexual offenses. Refer to Part 2 for details.

received an imposed sentence above the range in each instance. Offenders who had more than two prior felony convictions were the most likely to receive an active sentence above the range.

Table 18: Distribution of Sexual Offenses Sentences in Presumptive Sentence Range							
Unclassified Felony Offenses							
Maximum Range is 99 years							
	Imposed Sentence			Active Sentence			Presumptive Range in Months
	N	%	Mean Imposed Sentence in Months	N	%	Mean Active Sentence in Months	
No Prior Felony							
Above Presumptive Range	9	50	524	1	6	1141	240-360 Months (20-30 Years) ("special" offenses 25-35 years)
At Presumptive Range	5	28	327	13	72	304	
Below Presumptive Range	4	22	150	4	22	78	
One Prior Felony							
Above Presumptive Range	-	-	-	-	-	-	360-480 Months (30-40 Years) (with one prior Sex felony, 35-45 years)
At Presumptive Range	2	100	420	2	100	360	
Below Presumptive Range	-	-	-	-	-	-	
Two or More Prior Felonies							
Above Presumptive Range	2	50	1141	1	25	1201	480-720 Months (40-60 Years) (with two prior Sex felonies, mandatory 99 years)
At Presumptive Range	2	50	540	2	50	480	
Below Presumptive Range	-	-	-	1	25	420	

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Table 19 shows that none of the seven Class A felony Sex offenders in our sample had prior felony records. Most offenders received an imposed as well as an active sentence within the range.

Table 19: Distribution of Sexual Offense Sentences in Presumptive Sentence Range							
Class A Felony Offenses							
<i>Maximum Range is 99 years</i>							
	<u>Imposed Sentence</u>			<u>Active Sentence</u>			Presumptive Range in Months
	N	%	Mean Imposed Sentence in Months	N	%	Mean Active Sentence in Months	
No Prior Felony							
Above Presumptive Range	<i>1</i>	14	<i>420</i>	<i>1</i>	14	<i>420</i>	180-360 Months (15-30 Years) ("special" 20-30 or 25 -35 years)
At Presumptive Range	<i>6</i>	86	<i>330</i>	<i>5</i>	72	<i>216</i>	
Below Presumptive Range	-	-	-	<i>1</i>	14	<i>120</i>	
One Prior Felony							
Above Presumptive Range	-	-	-	-	-	-	300-420 Months (25-35 Years) (with one prior Sex felony,30-40 years)
At Presumptive Range	-	-	-	-	-	-	
Below Presumptive Range	-	-	-	-	-	-	
Two or More Prior Felonies							
Above Presumptive Range	-	-	-	-	-	-	420-600 Months (35-50 Years) (with two prior Sex felonies, Mandatory 99 years)
At Presumptive Range	-	-	-	-	-	-	
Below Presumptive Range	-	-	-	-	-	-	

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Table 20 shows that 28% of first-time felony offenders convicted of a Class B Sexual felony received an imposed sentence above the range and 72% received an imposed sentence within the range. Eighty-seven percent of first-time felony offenders received an active sentence within the range. None of the offenders who had at least one prior felony conviction received an active sentence above the range.

Table 20: Distribution of Sexual Offense Sentences in Presumptive Sentence Range Class B Felony Offenses Maximum Range is 99 years							
	Imposed Sentence			Active Sentence			Presumptive Range in Months
	N	%	Mean Imposed Sentence in Months	N	%	Mean Active Sentence in Months	
No Prior Felony							
Above Presumptive Range	<i>15</i>	28	<i>274</i>	<i>4</i>	7	<i>228</i>	60-180 Months (5-15 years)
At Presumptive Range	<i>39</i>	72	<i>139</i>	<i>47</i>	87	<i>81</i>	
Below Presumptive Range	-	-	-	<i>3</i>	6	<i>24</i>	
One Prior Felony							
Above Presumptive Range	<i>3</i>	50	<i>92</i>	-	-	-	120-300 Months (10-25 Years) (with one prior Sex felony, 15-30 years)
At Presumptive Range	<i>2</i>	33	<i>68</i>	<i>4</i>	67	<i>216</i>	
Below Presumptive Range	<i>1</i>	17	<i>60</i>	<i>2</i>	33	<i>51</i>	
Two or More Prior Felonies							
Above Presumptive Range	<i>3</i>	75	<i>480</i>	-	-	-	240-420 Months (20-35 Years) (with two prior Sex felonies, mandatory 99 years)
At Presumptive Range	<i>1</i>	25	<i>240</i>	<i>3</i>	75	<i>260</i>	
Below Presumptive Range	-	-	-	<i>1</i>	25	<i>180</i>	

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Table 21 shows that 90% of first-time felony offenders convicted of a Class C Sexual offense received an imposed sentence within the range, and 93% of first-time offenders received an active sentence within the range. None of the offenders with a prior felony record received an active sentence above the range.

Table 21: Distribution of Sexual Offenses Sentences in Presumptive Sentence Range Class C Felony Offenses Maximum Range is 99 years							
	Imposed Sentence			Active Sentence			Presumptive Range in Months
	N	%	Mean Imposed Sentence in Months	N	%	Mean Active Sentence in Months	
No Prior Felony							
Above Presumptive Range	7	9	199	1	1	180	24-144 Months (2-12 years)
At Presumptive Range	73	90	74	75	93	36	
Below Presumptive Range	1	1	8	5	6	11	
One Prior Felony							
Above Presumptive Range	2	22	240	-	-	-	96-180 Months (8-15 years) (with one prior Sex felony 12-20 years)
At Presumptive Range	5	56	159	6	67	134	
Below Presumptive Range	2	22	44	3	33	27	
Two or More Prior Felonies							
Above Presumptive Range	1	12	420	-	-	-	180-300 Months (15-25 years) (with two prior Sex felonies 99 years mandatory)
At Presumptive Range	5	63	271	4	50	228	
Below Presumptive Range	2	25	135	4	50	116	

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Table 22 shows that 67% of first-time offenders convicted of a Class C Sexual Other offense received an imposed sentence above the range, but 87% of offenders received an active sentence within the range. Again, none of the offenders with a prior felony record received an active sentence above the range.

Table 22⁹⁰: Distribution of Sexual Offenses Sentences in Presumptive Sentence Range							
Class C Sexual Other Felony Offenses							
<i>Allowable Range is 0-5 years</i>							
	Imposed Sentence			Active Sentence			Presumptive Range in Months
	N	%	Mean Imposed Sentence in Months	N	%	Mean Active Sentence in Months	
No Prior Felony							
Above Presumptive Range	<i>10</i>	67		<i>2</i>	13	<i>48</i>	0-24 Months (0-2 years)
At Presumptive Range	<i>5</i>	33		<i>13</i>	87	<i>14</i>	
Below Presumptive Range	-	-		-	-	-	
One Prior Felony							
Above Presumptive Range	<i>1</i>	100		-	-	-	24-48 Months (2-4 years)
At Presumptive Range	-	-		<i>1</i>	100	<i>36</i>	
Below Presumptive Range	-	-		-	-	-	
Two or More Prior Felonies							
Above Presumptive Range	-	-	-	-	-	-	36-60 Months (3-5 years)
At Presumptive Range	<i>1</i>	100	<i>60</i>	<i>1</i>	100	<i>60</i>	
Below Presumptive Range	-	-	-	-	-	-	

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Overall, the analysis showed that Sexual offenders were more likely than non-Sexual offenders to receive an imposed sentence above the range and an active sentence within the range. However, the presumptive ranges for Sexual offenses were wider and higher than the ranges for non-Sexual offenses. In addition, the vast majority of Sex offenders were first-time felony offenders. First-time offenders who were convicted of a Class B Sexual offense were the most likely to receive an imposed sentence above the range. This could be due to plea negotiations in which the original charge was amended from a Class A felony to a Class B felony. The offenders who had prior felony convictions were very unlikely to receive an active sentence above the range; most of them received an active sentence within the range.

⁹⁰ Includes one offender who did not have any active time to serve.

H. Special Analysis of Non-Sexual Class A Offenses

To better understand the factors affecting the sentences for Class A offenders, the Council went beyond the electronic databases and collected information from paper files. Among the factors that could affect a sentence were plea agreements,⁹¹ statutory aggravators and mitigators,⁹² circumstances of the offense, and an offender's mental or substance abuse issues. Presentence reports, log notes, and paper judgments all provided information about these factors.

1. Introduction

Convictions for the most serious offenses in Alaska occurred relatively rarely. In our sample of 2,970 felony offenders from 2012 and 2013, only 95 (3%) people were convicted of non-Sexual Class A offenses (Violent offenses or Drug offenses), and seven were convicted of Class A Sexual offenses (all of them Attempted Sexual assault 1 or Attempted Sexual abuse of a minor 1).

The special analysis of Class A offenses considered legal factors, such as plea bargains and the presence of aggravators and mitigators, as well as offender characteristics such as substance abuse and mental health issues, that appeared to be associated with both imposed⁹³ and active sentence length.⁹⁴ The analysis also reviewed the difference between the imposed and active sentences and the statutory presumptive ranges.

A majority (57%, N=54) of the 95 Class A offenders⁹⁵ considered in this discussion were convicted of Violent crimes including Manslaughter, Assault 1, Robbery 1, Arson 1, and Attempted Kidnapping. The remainder (43%, N=41) were convicted of serious Drug offenses.

⁹¹ A plea bargaining ban for serious Violent offenses imposed by then-Attorney General Mike Geraghty in July 2013 probably affected very few cases in this sample. The ban was rescinded by Attorney General Craig Richards in November, 2015.

⁹² AS 12.55.155(c) through AS 12.55.155(d).

⁹³ AS 12.55.155(a)(2) provides if the presumptive sentence is more than four years long, the judge cannot suspend more than half of it, even if mitigated, thereby guaranteeing the offender will spend some amount of time incarcerated. See Part 2A. for provisions for sentencing outside the presumptive ranges, including three-judge panels.

⁹⁴ As was the case for all presumptive ranges, if the sentence was aggravated, and the judge wished to impose a sentence outside the presumptive range, some aggravating factors could be proven to the judge by clear and convincing evidence, while others had to be proved beyond a reasonable doubt to a jury or judge.

⁹⁵ The seven Class A Sexual offenses were not included in this discussion because of the small sample size and the much different presumptive sentencing ranges.

3. Presumptive Ranges

The presumptive sentencing range for Class A felonies was 5 to 8 years for a person with no prior felony convictions. Seventeen offenders fell into this category. The range increased to 7 to 11 years, if the offender had any one of several enhancements, such as the use of a firearm.⁹⁶ Thirty-eight offenders fell into this category. If the offender had one prior felony conviction, the range increased to 10 to 14 years (19 offenders);⁹⁷ with two or more prior felony convictions, the range was 15 to 20 years (21 offenders).

4. Characteristics of Class A Offenders

a. Demographics

Most Class A offenders were male (84%, N=80). The mean age at the time of the offense was 31 years old, with 12% (N=11) who were between 16 and 20 years old, and 24% (N=23) who were 40 years or older. Of the Class A offenders, the majority (61%, N= 58) were Caucasian; 17% (N=16) were Alaska Native, 13% (N=12) were African American, and 8% (N=8) were Asian/Pacific Islander.

b. Substance Abuse

Information about substance abuse and mental health history was obtained from the presentence report (if available) and other parts of the case file. Most offenders (72%, N=69) had some type of substance abuse problem, whether alcohol, drugs, or a combination of the two. In 16% (N=15) of the cases the court file indicated that the offense had been committed under the influence of alcohol, and in 8% (N=8) of the cases the offense was committed under the influence of other drugs.

A person was defined as having an alcohol problem, if they:

- had previously been convicted of an alcohol offense,
- had been in, or ordered to alcohol abuse treatment,
- had committed the crime under the influence of alcohol, or
- there were any other indications in the file that suggested a history of alcohol abuse.

⁹⁶ Enhancements included possessing a weapon during the crime, causing serious physical injury or death, or assaulting a public peace officer on duty (e.g., law enforcement officers, EMTs, paramedics, firefighters, etc.). A few enhancements were possible for Drug crimes (e.g., manufacturing methamphetamine in the presence of children).

⁹⁷ If the offender had been fully discharged from all sanctions associated with a prior felony for more than ten years, the felony did not count for purposes of these presumptive ranges. We did not have sufficient information about date of discharge for these offenders, so used information about any prior felonies derived from the Department of Public Safety APSIN database. As a result, we may have slightly overestimated the number of offenders in the ranges for prior felony convictions.

A person was defined as having a drug problem, if they:

- had previously been convicted of a drug offense,
- had been in, or ordered to substance abuse treatment,
- had committed the crime under the influence of drugs, or
- there were any other indications in the file that suggested a history of substance abuse.

c. Mental Health

A smaller percentage of offenders (19%, N=18) either had mental health problems, or a history of them was indicated in the case files.⁹⁸

A person was defined as having a mental health problem, if they:

- were mentally ill,
- had a developmental disability, a traumatic brain injury, senile dementia, or
- there were any other indications in the file that suggested a history of a mental health problems.

5. Discussion of Class A Sentences

Overall, very few imposed sentences were above the range. Almost half of the imposed sentences were below the range. The situation was different for active sentences. With the exception of offenders sentenced within the enhanced presumptive range, more than 50% of all active sentences were below the presumptive ranges.

a. Offenders with No Prior Felonies

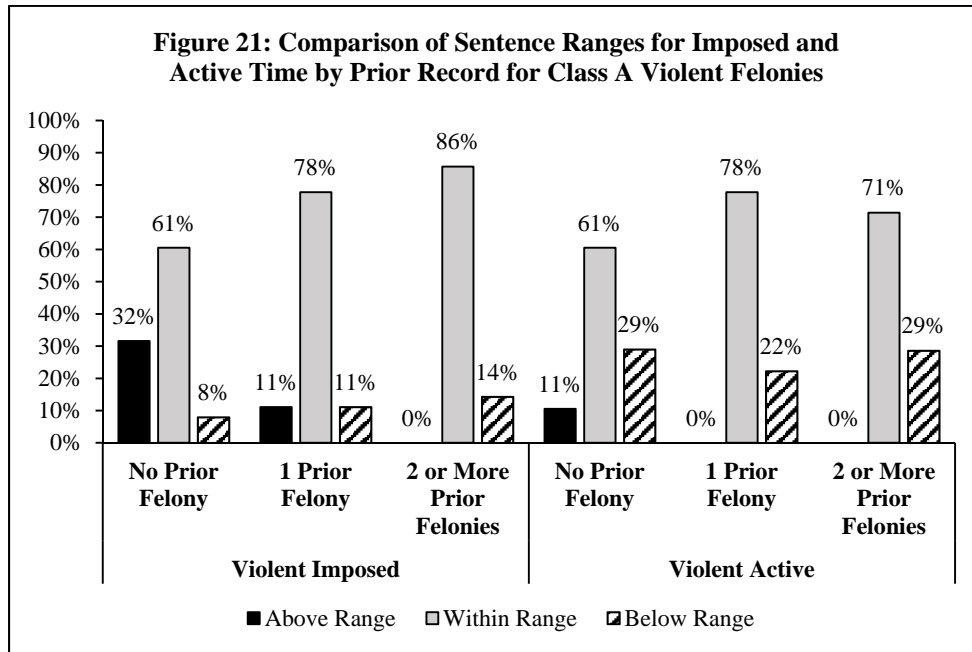
More than half (58%, N=55) of the 95 offenders convicted of non-Sexual Class A felonies included in this analysis had no prior felony convictions.

i. Enhanced Presumptive Range (7 – 11 years)

Thirty-eight (69%) of the first-time felony offenders were convicted of Violent crimes, all of which had enhanced sentences. As Figure 18 shows, offenders subject to the enhanced range were the most likely to have both imposed and active sentences within or above the presumptive ranges, and least likely to have sentences mitigated below the range. Nearly two-thirds (63%,

⁹⁸ A 2014 report, *Trust Beneficiaries in the Alaska's Department of Corrections*, from the Mental Health Trust Authority (Trust) showed 65% of people who were incarcerated in DOC facilities were Trust beneficiaries. The number of Class A offenders known to have mental health problems may be underestimated because the data about mental health was not always considered a significant factor in sentencing, and might not have been recorded in the file.

N=24) of the 38 first-time Violent felony offenders subject to the enhanced range had Rule 11 plea agreements.



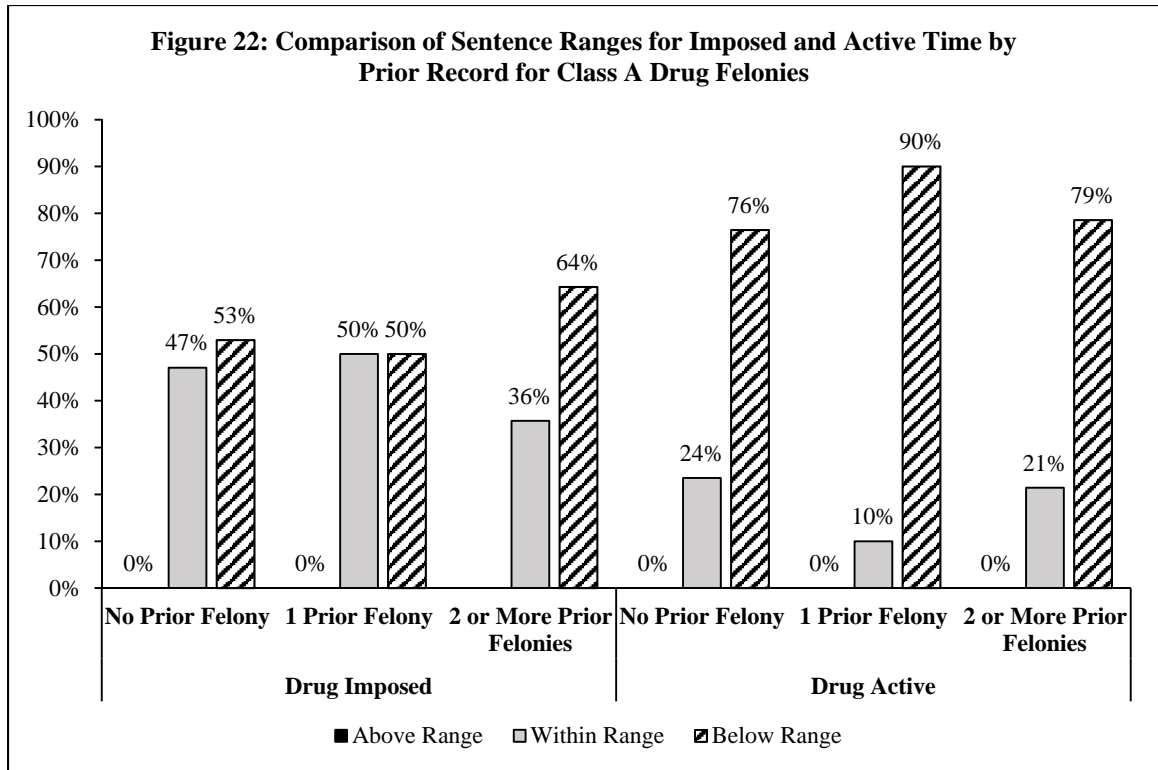
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Most of the offenders with imposed and/or active sentences above the enhanced 7 to 11 year range had aggravators; a few had contemporaneous cases. The presence of aggravators did not necessarily equate to longer sentences. Even cases in which both the imposed and the active sentence were below the enhanced presumptive range had aggravators present.

ii. Regular Presumptive Range (5 – 8 years)

The remaining 17 (29%) of the 55 first-time felony offenders were convicted of Drug offenses subject to the regular presumptive range of 5 to 8 years. Offenders falling into the regular range were more likely to have imposed sentences within the range than offenders within the enhanced range. As Figure 19 shows, none of the first-time felony Drug offenders had imposed or active sentences above the presumptive range. Four offenders (24%) had a mean active sentence of 60 months (5 years) which was the bottom of the range. The remaining thirteen (76%) first-felony Drug offenders had a mean active sentence of 33 months (about 2.8 years) to serve.



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All of these drug cases had Rule 11 plea agreements. In the vast majority (82%, N=13) of these cases, mitigators were established. Aggravators were not established in any of these cases.

b. Offenders with Prior Felonies

i. One Prior Felony (10 – 14 years)

Nineteen offenders (20%) had one prior felony conviction. Most of these offenders (89%, N=17) had Rule 11 plea bargains. Only one of the Rule 11 pleas had an imposed sentence above the presumptive range; that offense was Violent, with aggravators.

Twelve of the nineteen second-felony offenders (63%) had imposed sentences within the presumptive range, with seven of those offenders (58%) also having active sentences within the range and five of them (42%) having both imposed and active sentences below the range. Overall, more than half (58%, N=11) of the nineteen second-time felony offenders had active sentences below the presumptive range.

ii. Two or More Prior Felonies (15 – 20 years)

Twenty-one offenders (22%) had two or more prior felony convictions. None of those offenders could have received a sentence above the presumptive range because the top of the Class A range was 20 years. The mean for the imposed as well as the active sentence was about the same, 216 months and 215 months, respectively, just above the 210-month midpoint of the range. Only 52% had Rule 11 agreements, a noticeably lower percentage than other Class A offenders with less serious prior records.

Two-thirds (67%, N=14) of these offenders were convicted of Class A Drug offenses; most received active sentences below the presumptive range. The remaining one-third (N=7) of the people with two or more prior felonies were convicted of Violent offenses; most received active sentences within the presumptive range. Of those with both imposed and active sentences within the range, three-quarters had aggravators.

6. Conclusions

This analysis of the non-Sexual Class A felony cases showed that within this offense class there were two types of offenders: Violent offenders and Drug offenders. Taking a closer look at their sentences showed that Violent offenders were sentenced differently than Drug offenders.

All of the offenders with an imposed sentence above the range were convicted of Violent crimes. The mean imposed sentence for all Class A Violent offenders, independent of their criminal record, was 144 months (12 years), and the mean active sentence was 111 months (about 9.3 years). Judges found aggravators in 37% (N=20) of the cases, but mitigators in only 20% (N=11) of the cases, in three instances in combination with aggravators. Two-thirds (67%, N=36) of Violent offenders entered Rule 11 plea agreements.

In this sample, none of the Drug offenders received an imposed sentence above the presumptive range. The mean imposed sentence for all Class A Drug offenders, regardless of their criminal record was 90 months (about 7.5 years), and the mean active sentence was 73 months (about 6 years). Most Drug cases (80%, N=33) had mitigators, primarily for small quantities. Aggravators were established in 12% (N=5) of the cases, in two instances in combination with mitigators. Three-quarters (76%, N=32) of the Drug offenders entered Rule 11 plea agreements.

Overall, Drug offenders received lower sentences than Violent offenders, entered Rule 11 plea agreements more often, and were more likely to establish mitigators. These findings were consistent with the findings of multivariate analysis that indicated for Class A felonies none of the demographic variables significantly predicted sentence length. Instead, the analysis showed the

only significant predictors of sentence length for Class A felony offenses were the nature of the crime itself and the presumptive range. The case file review allowed a more nuanced picture of the circumstances of Class A felony cases beyond the information available in the electronic data, including legal circumstances of the case, such as the presence of mitigators and aggravators, or plea agreements that could have affected sentence length.

Part 4: Multivariate Analysis

Many factors affected the length and type of sentence. The data described in Part 3 showed the relationships between these factors, and the sentences imposed for offenders and offenses with different characteristics. Some of these factors overlapped, however, so what looked like an effect from two different factors might have occurred only because they were so closely related.⁹⁹

Multivariate analyses helped to determine how each independent variable affected the dependent variable of active sentence length, while accounting for the effects of other independent variables. The independent variables studied here included demographic characteristics of offenders (age, gender, and ethnicity), the offenders' prior records of felony and misdemeanor convictions, the type of offense, the class of the offense, the total number of charges filed in the case, presence of a domestic violence flag, presentence report filed, type of case disposition (plea or trial), and type of attorney representing the offender at sentencing.¹⁰⁰

For this report, the Council's analyst Dr. Myrstol,¹⁰¹ built several models. The first stage of the analysis found the specific sentencing judge in each case was the only factor among several court processing variables that had "consistent statistically significant effects on the . . . sentence length and the predictor [independent] variables."¹⁰² Because some of the 79 judges included in the database had a handful of cases and others handled hundreds, the fixed effects multivariate models were constructed to take into account judges' varying sentencing patterns. Within that context, the model assumed any omitted information (e.g., about substance use or abuse, mental health issues, or socioeconomic status) had the same effect among the offenders,¹⁰³ and thus was "fixed" for purposes of the analysis.

The model for the entire sample showed overall relationships among the independent variables and the dependent variable of active sentence length. Three sub-analyses looked at associations between active sentence length and the independent variables in the context of a) offense class, b) four of the most common Class C offenses, and c) ethnicity of the offender.

a. Offense Class. Because offense class was the single most important variable that affected sentence length, the second multivariate model looked at the independent variables and

⁹⁹ More information about the methodology and models is contained in Appendix D.

¹⁰⁰ More detailed information about these variables is contained in Part 3, *supra*. See List of Variables, Appendix E.

¹⁰¹ Dr. Myrstol is a professor and researcher at the University of Alaska Anchorage Justice Center who carried out the analysis under a reimbursable services agreement with the Alaska Judicial Council.

¹⁰² See Methodology, Appendix D

¹⁰³ See Appendix D for a detailed description of how the models were built, the underlying assumptions, and the pros and cons of using fixed-effects models.

their interactions within each class, from Unclassified (the most serious offenses), to Classes A, B, and finally C (the least serious felonies).

b. Offense Type. To better understand the relationships among active sentence length and type of offense, a second sub-analysis was carried out for four common types of Class C offenses, each with a sufficiently large number of cases to make valid findings: Theft 2, Assault 3, Misconduct involving controlled substances 4 (MICS 4), and Driving under the influence (DUI).¹⁰⁴

c). Ethnicity. Finally, a third sub-analysis focused on the ethnicity of offenders. This analysis was performed to determine whether ethnicity was associated with sentence length in ways the other analyses might have masked.

A. General Findings

Class and type of offense: The overall multivariate analysis found the class of the offense was the most important factor that influenced an offender's active sentence length. Alaska's system of presumptive ranges was designed to achieve this outcome, so it was useful to have validation from the data that it was working as intended. On average, an offender convicted of a Class B offense received a sentence 889 days (29.6 months) longer than an offender convicted of a Class C offense. Class A felonies received sentences that averaged 2,855 days (95.2 months) longer than the Class C offenders.

The type of offense also was associated with length of active sentence. The more violent felonies within each class of offense tended to receive longer sentences than the non-violent felonies. Murder/Kidnapping, Sexual, Sexual other, and other Violent offenses all had statistically significantly longer sentences than did Property offenses (the reference category for this analysis was Drug offenses). Driving offenses also received significantly longer sentences within each offense class than Property offenses received.

A related finding concerned the presence of a case modifier, a factor that was associated with significant reductions in active sentences. The presence of a case modifier meant the charge was an attempt, conspiracy, or solicitation to commit a crime, and the offense was categorized as one class lower than the same crime would have been if completed. For example, an Assault 1 was a Class A offense; an attempted Assault 1 was a Class B offense. This was also an expected finding given the statutory sentencing framework.

¹⁰⁴ Because the penalties were identical for the two offenses of DUI and Refusing a breath or other test for alcohol blood levels, Refusal was included in the DUI analysis.

Prior felony convictions: The other major consideration in Alaska’s presumptive ranges for sentencing was the offender’s prior history of felony convictions. Offenders with no prior felony convictions (but any number of prior misdemeanors) were sentenced in the lowest range for each class of offense.¹⁰⁵ A higher range was set for offenders with one prior felony, and a range capped at the statutory maximum for each class was set for offenders with two or more prior felony convictions.¹⁰⁶ The analysis found each prior felony conviction significantly increased the active sentence length by about 272 days (about nine months). Prior misdemeanor convictions were not associated with any significant change in the active sentence length.

Demographic factors: The only demographic characteristic of offenders that was significantly associated with the length of the offenders’ active sentences was gender. Men’s active sentences were about five months longer than women’s active sentences. That finding was consistent with other Judicial Council studies;¹⁰⁷ additional analyses below show how it applied in specific situations.

Case processing factors: In this overall analysis, the only case processing-related factor of importance was whether a presentence report was filed in the case. Filing of a presentence report was associated with an increase in active sentence length of 290 days (about ten months).

B. Findings about Important Factors within Each Level of Offense Seriousness

The level of seriousness (Class) of the offense was the single most important factor associated with the length of the active sentence. To see the effects of the independent variables at each level of seriousness, sub-analyses were carried out for Class A, B, and C offenses. The sample size for Unclassified offenses was too small for meaningful analysis.

Table 23 illustrates the statistical significance of each of the independent variables studied. The asterisks represent the “*p*-value” which is a measure of statistical significance, with * = $p < 0.05$; ** = $p < 0.01$, and *** = $p < 0.001$. The *p*-value indicates how likely the findings were due to chance. For example, if the *p*-value equaled < 0.001 , the likelihood that the result was due to chance was less than 0.1%. Hence, the more asterisks the less likely the results were due to chance. In order for results to be considered statistically significant, the likelihood of error has to be below 5.0% equating to a *p*-value of not more than 0.05. If a cell shows only asterisks it

¹⁰⁵ A prior history of similar offenses (misdemeanors or felonies) could be alleged as an aggravating factor for some types of crimes.

¹⁰⁶ Sentences for sexual offenses followed a slightly different pattern. For all Sexual offenses, the statutory maximum was 99 years. The presumptive range maximums for two or more prior non-sexual felonies were less than 99 years; however, a third conviction on a Sexual offense after two prior Sexual offense convictions carried a mandatory 99-year sentence.

¹⁰⁷ See *Alaska Felony Process: 1999*, *supra* note 1, pages 218 - 219, where gender disparities were found for specific types of offenses.

means that this particular factor increased sentence length. If a cell contains asterisks and the word “minus” it means that this factor decreased sentence length.

	Class A	Class B	Class C	All offenses
Gender (male)			*	**
Age				
AK Native/American Indian				
Asian/Pacific Islander				
African American			Minus*	
Driving			***	
Property			Minus*	
Murder/Kidnapping				*
Sexual	***	***	***	***
Sexual Other			***	**
Other Violent	*	*	***	***
All Other offenses				
N prior felony conviction		**	***	***
N prior misd conviction				
N felony charge filed		**	*	
N misd charge file				
DV flag				
Contempt case				
Case modifier				Minus**
Attorney- public			*	
Attorney - unknown				
Trial				
PSR filed			*	*

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* = $p < 0.05$ ** = $p < 0.01$ *** = $p < 0.001$

Table 23 shows that one independent variable (offense type) was associated with sentence length in Class A offenses, three in Class B offenses, and seven in Class C offenses.

In Class A offenses, Violent and Sexual offenders received significantly longer sentences than other types of Class A offenders. This finding can be attributed to two legal factors. First, Sexual offenses had higher presumptive ranges than other offenses. Second, some first-time Violent offenders were sentenced under enhanced presumptive ranges¹⁰⁸ because they possessed a firearm, or other aspects of their offenses brought them into a higher range.

¹⁰⁸ First time felony offenders convicted of Class A Violent offenses were subject to an enhanced range of 7 - 11 years (instead of 5 - 8 years) if the offender possessed a firearm, used a dangerous instrument, or caused serious physical

For Class B offenses, three variables were associated with increased sentence lengths: type of offense (Sexual or Other Violent), number of prior felony convictions, and number of felony charges filed in the case. In both Class A and B sentence lengths, the only variables associated with increased sentence length were directly related to the offense or to the presumptive sentencing ranges.

The situation for Class C offenses was markedly different. For these offenses, seven variables were associated with changes in sentence length. Some of these variables were associated with longer sentences and others with shorter sentences. The seven variables were: offense type, number of prior felony convictions, number of felony charges filed, gender, ethnicity, attorney type, and filing of a presentence report.

Within the Class C sample, the offense type had a greater effect than it did for Class B or Class A offenses, where only Sexual offense and other Violent offense types were significant. Both of those were important in Class C sentence lengths, but when compared to the reference category of Drug offenses, Driving (increased sentenced length), Property (decreased sentence length), and Sexual Other (increased sentence length) offenses were all associated with changes in active sentence length for Class C felonies.

The analysis of demographic characteristic variables (ethnicity, gender, age) revealed that African Americans had shorter active sentence lengths, and males had longer active sentence lengths. Three case-processing variables - the number of felony charges filed, having a public attorney and filing of a presentence report - all were associated with longer active sentences.

The finding that sentence lengths for Class C offenders were associated with more variables than sentence lengths in Class A and Class B offenses suggested that sentencing of more serious offenses focused on characteristics of the offense, while sentencing of the less serious offenses was affected by additional offender or case processing characteristics. The greater variability in Class C sentence lengths might be associated with prosecutors and judges exercising greater discretion when deciding sentences for those offenders.

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. The enhanced range did not apply to offenders convicted of one or more prior felonies.

D. Findings about Important Factors for Four Specific Class C Offenses

Four Class C offenses – Theft 2, Assault 3, Misconduct involving a controlled substance 4 (MICS 4, a Drug offense), and Driving under the influence (DUI)¹⁰⁹ – together constituted 57% (1,683 cases) of the total cases sampled. A multivariate analysis of each of these four offense types permitted a better understanding of the interaction between offense type and sentence length.

The analysis revealed noticeable variation among types of offense (Table 24). For example:

- One variable – the number of prior felony convictions - was associated with active sentence length for all four offense types. It was the only variable associated with MICS4 sentence length.
- For Felony DUI, a reduction in sentence length was also associated with the number of prior misdemeanor convictions. The effect was negative, meaning with each prior misdemeanor conviction, the offender’s sentence was reduced by an additional six days.
- For Assault 3, the only additional factor was an increase in sentence length of about 56 days for each additional felony charge filed.
- For Theft 2, several additional factors – age, number of misdemeanor charges filed, presence of a public attorney, the presence of a DV flag,¹¹⁰ and whether the case went to trial -- were all associated with changes in active sentence length.

Among Class C offenses, Theft 2 might have been considered by some to be the least serious, or the most open to variation. The DUI and MICS4 laws addressed relatively specific behaviors. Assault 3 might have included a wider range of actions, but all were categorized as Violent, and the analysis of appropriate legal responses might have been more consistent among prosecutors and judges, or less influenced by offender characteristics or the case processing actions.

¹⁰⁹ The associated offense of Refusal of Breath/Blood Test was included in this category because the penalties were identical to Driving under the influence.

¹¹⁰ The reduction in sentence length if a domestic violence (DV) flag was associated with the offense was included for completeness; the finding was an outlier and not further analyzed.

Table 24: Multivariate Results for Four Class C Offenses					
	Theft 2	Assault 3	MICS 4	Fel. DUI	All Off.
Gender (male)					**
Age	*				
Alaska Native/American Indian					
Asian/Pacific Islander					
African American					
N prior felony convicted	***	***	***	***	***
N prior misd convicted				Minus **	
N felony charges filed		***			
N misd charges filed	**				
DV flag	Minus ***				
Contempt case					
Case modifier					Minus**
Attorney- public	*				
Attorney – unknown					
Trial	*				
PSR filed					*

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* = $p < 0.05$ ** = $p < 0.01$ *** = $p < 0.001$

Theft 2, in contrast, included a wide variety of offender actions. Thefts of items ranging in value from \$501 to \$24,999¹¹¹ all were sanctioned within the same set of presumptive ranges. The thefts may have occurred in a broad range of circumstances, and local prosecutors' offices may have vested substantial discretion for charging and disposition decisions in these cases with individual prosecutors. The differences in types of behaviors included in Theft 2, and in possible ways of approaching charging and sanctioning for the offense might account for the greater number of factors independently associated with active sentence length for Theft 2, when compared to other common Class C felonies.

E. Findings about Important Factors for Four Ethnic Groups

The Judicial Council has periodically studied associations between ethnicity and sentence length. In this study, a separate analysis was conducted for the offenders included in each ethnic group to identify factors that might be associated with active sentence lengths in one group, but not others. Some findings were consistent for all ethnic groups. Table 25 shows that offenders who were convicted of more serious crimes received longer sentences than those who were convicted

¹¹¹ In 2014, the legislature raised the lower value limit for felony theft offenses to \$750, with the upper limit remaining at \$24,999. Ch. 83 §14 SLA 2014. That change did not affect any of the cases in this sample.

of less serious offenses (except African Americans in Murder/Kidnapping offenses), regardless of their ethnic group. Members of every ethnic group also received longer sentences if they were convicted of a Sexual offense.

Other significant factors differed by ethnic group.

- Additional factors associated with active sentence length for Asians/Pacific Islanders were Class of offense (Unclassified Murder/Kidnapping), the number of prior felony convictions, and the filing of a presentence report.
- Additional factors associated with active sentence length for African Americans were type of offense (Murder/Kidnapping), and the filing of a presentence report. The number of prior felony convictions was not a factor significantly associated with longer active sentences for African Americans.
- Additional factors associated with increased sentence length of Alaska Native/American Indian offenders included class of offense (Murder/Kidnapping), type of offense (Driving offenses, Sexual Other offenses), the number of prior felony convictions, the number of felony charges filed, and the presence of a public attorney in the case.
- Additional factors associated with increased sentence lengths for Caucasian offenders included the class of offense (Murder/Kidnapping), the type of offense (Murder/Kidnapping, Driving, Sexual Other offenses, other Violent offenses), the number of prior felony convictions, and gender (being male).

	<i>AK Native/ American Indian</i>	<i>Asian/Pacific Islander</i>	<i>African American</i>	<i>Caucasian</i>	<i>All offenses</i>
Gender (male)				*	**
Age					
Offense Serious.					
Murder/Kidnapping	**	***		***	***
Other Unclassified	***	***	*	***	***
Class A	***	**	***	***	***
Class B	***	**	*	***	***
Type Offense					
Driving	***			***	***
Property					
Murder/Kidnapping			*	*	*
Sexual	***	***	**	***	***
Sexual Other	**			***	**
Other Violent				***	***
All Other offenses					
N prior felony convictions	***	*		***	***
N prior misd convictions					
N felony charges filed	**				
N misd charges filed					
DV flag					
Contempt case					
Case modifier					Minus**
Attorney- public	*				
Attorney - unknown					
Trial					
PSR filed		*	*		*

Alaska Felony Sentencing Patterns: 2012 – 2013 *Alaska Judicial Council April 2016*

* = $p < 0.05$

** = $p < 0.01$

*** = $p < 0.001$

The only ethnic group for which any demographic factor was important was Caucasian, where being male was associated with significantly longer active sentences. Caucasians also had significantly longer sentences associated with more types of offenses than did other ethnic groups. Process factors like additional charges filed, the presence of a public attorney, trial, or filing of a presentence report did not effect active sentence length for Caucasians, the only group for which this was the case.

The absence of any clear pattern suggested that any disparities in sentencing for different ethnic groups were not the result of systemic disparities in the system. Caucasians, in this analysis, were the most strongly affected by disparities, although all but one Caucasian disparity (gender) was related to the offense of conviction or prior record.

Disparities for the minority groups tended to be mostly related to the offense type or prior record, but for all three of the ethnic minority groups, one or more of the disparities was related to a process variable such as type of attorney (Alaska Native), number of felony charges filed (Alaska Native), or filing of a presentence report (Asian/Pacific Islander, African American).

F. Discussion

The multivariate analysis demonstrated that the seriousness and type of the offense, and the offenders' prior criminal histories were the most important factors associated with the length of the active sentence. Demographic characteristics – gender, ethnicity, and age – also were associated with active sentence lengths, almost always in the context of less serious offenses. Case-processing factors such as having a public attorney and having a presentence report filed were associated with sentence lengths as well, again usually in the context of less serious offenses. The analysis suggested attorneys and judges may have taken factors other than the offense into account more often when deciding appropriate sentences for offenses perceived to be less serious.

Generally, in the more serious offenses only the offense and the offenders' prior records were associated with significant changes in active sentence length. The number of prior felony convictions was often, but not always, associated with longer active sentences. The class of offense was the most important variable related to active sentence length, with longer active sentences for offenders convicted of a more serious class of offense. The type of offense also played a significant role in predicting length of active sentence. Generally, Sexual and Violent offenses were associated with longer active sentences. For Class C offenders, conviction of a Property offense was associated with a shorter active sentence.

In all models, demographic variables such as gender, age, and ethnicity played relatively limited roles. Gender (being male) was associated with longer active sentences in the general model and for Caucasians in the ethnicity model. Ethnicity was associated with shorter active sentences for African Americans in Class C offenses, and minority offenders in the ethnicity models had longer active sentences associated with several case-processing factors.

In all models, one or more case-processing variables (e.g., presence of a public attorney, filing of a presentence report) were associated with active sentence length. In general, it appeared the less serious offenses - Class C offenses, and within Class C offenses, Theft 2 offenses - were more likely to have significant associations with case-processing variables.

Part 5: Summary and Conclusions

This report on sentences imposed for a large sample of felony offenders convicted in 2012 and 2013 was the first since major legislative changes to Alaska's sentencing laws in 2005 and 2006 took effect. Part 5 reviews the major findings from the report, makes conclusions, and proposes suggestions for further work.

A. Summary of Findings

Statutory Changes between 2000 and 2013

- In 2005, the legislature adopted a new sentencing system with presumptive ranges instead of a single specified presumptive term. It included first-offender B and C felons in the presumptive ranges. In 2006, it revised the presumptive ranges for sexual offenses to increase penalties significantly.
- During the same period, the legislature increased the number and types of offenses categorized as felonies, and increased the severity of a number of existing felonies making many more offenders potentially subject to felony penalties or subject to higher penalties within the felony sentencing ranges.

Characteristics of Offenders

- There were proportionately more female offenders in 2012 and 2013 than were in the data sample of 1999 offenders in the Council's 2004 report – 21% of the sample, up from 17% in the earlier sample.
- More offenders were between 21 and 29 years old, fewer between 30 and 39 years old, and more were 40 years old or older, than in the 1999 data set.
- Nearly one-quarter of the offenders (22%) had no prior convictions of any sort. Two-thirds (67%) of the offenders had no prior felony convictions.
- Most offenders in this sample were Caucasian (58%), but over a quarter (28%) were Alaska Native/Native American. Nine percent were African American, and 4% were Asian/Pacific Islander.

Types of Offenses

- The type of offenses varied substantially by location within the state. Rural areas had higher percentages (41% combined) of Violent and Sexual offenses. Southcentral (the Mat-Su

PART 5: SUMMARY AND CONCLUSIONS

Valley and the Kenai Peninsula, excluding Anchorage) and Southeast (Juneau, Sitka and Ketchikan) had larger percentages of Drug cases. Southcentral and Fairbanks courts had the highest percentages of Driving cases.

- Most offenders (81%) were convicted of the least serious (Class C) offenses. Only 5% were convicted of the most serious (Unclassified and Class A) offenses.
- Most (71%) offenders were convicted of non-violent offenses (Property, Driving, Drugs, Other).

Characteristics of Cases

- The great majority of convictions were by plea (94%), rather than by trial. The use of plea agreements to dispose of most felony cases should be considered when reviewing these data. The most serious cases went to trial more frequently – 55% of the Unclassified offenses were convicted after trial, compared to 5% of Class C offenses.
- Most (83%) of the offenders were represented by a public attorney at their sentencing.

Sentences

- Most offenders (79%) were sentenced to some active time incarcerated. Of the 21% with no active time to serve in the sentence, some may have received a Suspended Imposition of Sentence (SIS) that included short incarceration time as a condition of probation. Those were not recorded as active time to serve (see Part 3).
- All Unclassified and Class A offenders were sentenced to some active term of incarceration. Eleven percent of Class B offenders and 24% of Class C offenders had no active time to serve, but most had a term of probation during which they were supervised by probation officers.
- Sixty-one percent of offenders were sentenced to probation, usually in conjunction with time to serve.
- The less serious the class of convicted offense, the greater the proportion of the sentence that was likely to be suspended. Offenders convicted of Unclassified offenses had 15% of the imposed time suspended, while those convicted of Class C offenses had 50% or more of the time imposed suspended.
- Women were 21% of the offenders in the data set overall, but 36% of the offenders who received a Suspended Imposition of Sentence (SIS). The percentages ranged from 35% of Asian/Pacific Islander women with an SIS compared to 8% of Alaska Native/American Indian men.
- Half (51%) of Class A offenders convicted of non-sexual offenses had active sentences (time imposed, minus time suspended, equaled active time to serve) below the legislatively

PART 5: SUMMARY AND CONCLUSIONS

determined presumptive ranges. A large portion of these were Drug offenders whose sentences were mitigated by small quantities.

- Most Sexual offenders had active sentences within the presumptive ranges set by the legislature.
- This report was unable to determine whether sentence lengths increased between 1999 and 2013, because of differences in methods and data sets between the current data and data used for earlier Judicial Council reports. However, a recent study by analysts from the Pew Charitable Trust Public Safety Performance Project¹¹² used data from the Alaska Department of Corrections to reveal that length of actual time incarcerated increased between 2004 and 2014 for all felony offenders. Length of stay for Violent offenders increased by 17%, and for Sex offenders by 86%.¹¹³

Multivariate Analysis of Factors Associated with Sentences

- Within each class of offense, violent offenses received longer sentences, on average, than non-violent offenses.
- Within each class of offense, offenders with prior felony convictions received longer active sentences, on average, than offenders with no prior felony convictions.
- Although ethnicity appeared to be associated in some instances with the length of sentence as shown in the multivariate analyses, there was no evidence of systemic ethnic disparities. For example, ethnicity was not associated with overall sentences. In the analysis of factors associated with Class (seriousness) of offense, however, African Americans were likely to have shorter Class C sentences. In the analysis by ethnicity of offender, some minority offenders had case-processing factors such as type of attorney, and filing of a presentence report associated with longer sentences, while the Caucasian offenders had only one demographic factor (male) and no case-processing factors associated with their sentence lengths.
- Men received longer sentences than similarly situated women offenders in some specific circumstances, but again there was no evidence of systemic disparities. For example, men overall were somewhat more likely to be sentenced to longer terms than women. Specifically, the longer terms were for Class C felonies, but not any of the more serious felonies. Men were likely to receive longer sentences if they were Caucasians, but not if they were other ethnicities.

¹¹² Alaska Criminal Justice Commission Justice Reinvestment Report, Page 10, Figure 4, December 2015. http://www.ajc.state.ak.us/sites/default/files/imported/acjc/AJRI/ak_jri_report_final12-15.pdf.

¹¹³ *Id.*

PART 5: SUMMARY AND CONCLUSIONS

- The less serious the offense, the more likely the sentence would have been associated with factors other than the nature of the offense and the offender's prior record of felony convictions.

B. Conclusions

The first purpose of this report was to provide descriptive information about sentencing patterns in Alaska after the legislature revised the presumptive sentencing provisions in 2005 and 2006. The report showed that the more serious offenders sentenced in 2012 and 2013 using the new presumptive ranges were more likely to have had active time to serve below the presumptive ranges than less serious offenders, although most sentences fell within or above the presumptive ranges. Legally, this must have been a result of mitigating factors proven at sentencing, or agreed to by the attorneys and accepted by the judge.

Sentences imposed on the more serious offenders included a lower proportion of suspended time. For the most serious offenders (Unclassified), only 15% of the sentence was suspended. As much as 50% of the imposed sentence was suspended for the least serious offenders (Class B and Class C). Most (at least 79%) sentences included a term of incarceration, and at least 76% had a term of probation in addition to, or in lieu of, incarceration.

The report also reviewed the types of factors associated with sentence length. The study found some disparities in sentences that were not related to the type and characteristics of the offense or the offenders' prior criminal histories. None of the disparities related to gender or ethnicity were systemic; rather, they seemed to occur in the context of specific types of offenses or case processing practices (e.g., filing of presentence reports).

A second purpose of the report was to assist the work of the Alaska Criminal Justice Commission created by the legislature in 2014 in part to "evaluate the effect of sentencing law and criminal justice practices." In its recent report on Justice Reinvestment,¹¹⁴ the Commission made twenty-one consensus recommendations to the legislature, including a recommendation to focus prison beds on "serious and violent offenders."¹¹⁵ To accomplish this goal, the Commission urged the legislature to "[r]evis[e] drug penalties to focus the most severe punishments on higher-level drug offenders." The finding of this study that most Class A drug offenders received active sentences below the presumptive range suggests that the recommended approach may be consistent with attitudes and practices of attorneys and the public.

¹¹⁴ *Supra*, note 112.

¹¹⁵ *Id.*

PART 5: SUMMARY AND CONCLUSIONS

The Commission also recommended that non-sex felony presumptive ranges be aligned with prior presumptive terms. This recommendation seems consistent with the present findings that about 39% of Class B non-sexual sentences and 51% of Class A non-sexual sentences were below range. The present data and the Commission recommendation suggest that attorneys and judges are already agreeing public safety can be protected with many offenders spending less time incarcerated, for less serious offenders, or entirely in the community under probation supervision.

The Commission also made “non-consensus” recommendations, that is, recommendations that received majority support but not unanimity. As the Commission and policy makers continue discussions of appropriate future criminal justice reforms, it is hoped that data from the Council’s present study of 2012 and 2013 felony sentences can help decision makers assess the ability of various proposals to increase public safety and reduce recidivism among offenders so that they return to Alaskan communities as productive citizens.

C. Suggestions for Further Analysis

This is the first review of the data compiled about offenders sentenced in 2012 and 2013. Judicial Council recommends collecting additional data about these offenders to increase understanding about the current operation of the criminal justice process.

- Adding data about these offenders’ subsequent remands to custody, rearrests, and reconvictions would permit the Council to update its recidivism studies from 2007 and 2011. Substantial changes have occurred in the criminal justice system, including increases in the availability of treatment, better resources for offenders with mental health issues, and the addition of the PACE program for probationers. These and other factors may have changed the likelihood that offenders would recidivate.
- Data about filed charges and subsequent changes in charges throughout the process of a case can shed light on the relationships among charging processes and outcomes.
- The legislature, courts, and executive branch all will be able to use the additional data to assess and propose effective ways of maintaining public safety while responding to Alaska’s changing budget situation.

Appendix A: List of Offenses Included in the Study

Violent Offenses		
Unclassified Violent		
	Attempted Murder	2
	Kidnapping	1
	Murder 1	7
	Murder 2	12
	Total	22
Class A Violent		
	Arson 1	1
	Assault 1	16
	Kidnapping (Attempt)	1
	Manslaughter	14
	Robbery 1	22
	Total	54
Class B Violent		
	Arson 1 (Attempt)	2
	Arson 2	5
	Assault 1 – unborn child (Attempt)	1
	Assault 1 (Attempt)	3
	Assault 2	48
	Crim. neg. homicide	14
	Robbery 1 (Attempt)	1
	Robbery 2	32
	Total	106
Class C Violent		
	Arson 3	1
	Assault 2 (Attempt)	6
	Assault 3	410
	Coercion	24
	Robbery 2 (Attempt)	3
	Stalking 1	4
	Terror threat 2	2
	Total	450
Sexual Offenses		
Unclassified Sexual		
	SAM 1	11
	Sexual assault 1	13
	Total	24

Class A Sexual		
	SAM 1 (Attempt)	4
	Sexual assault 1 (Attempt)	3
	Total	7
Class B Sexual		
	Distribute child pornography	3
	Online enticement of a minor	1
	SAM 2	34
	Sexual assault 2	26
	Total	64
Class C Sexual		
	Incest	3
	Indecent exposure 1	3
	Possession of child pornography	20
	SAM 2 (Attempt)	38
	Sexual assault 2 (Attempt)	21
	Sexual assault 3	13
	Total	98
Class C Sexual Other		
	Distribute indecent material to minor	1
	Indecent view/photo	3
	SAM 3	13
	Total	17
Drug Offenses		
Unclassified Drug		
	MICS 1	1
	Total	1
Class A Drug		
	MICS 2	41
	Total	41
Class B Drug		
	MICS 2 (Attempt)	38
	MICS 2 (Conspiracy)	2
	MICS 3	86
	Total	126

APPENDIX A: LIST OF OFFENSES INCLUDED IN THE STUDY

Class C Drug		
	Manufacture/deliver imitation of controlled substance	1
	MICS 3 (Attempt)	25
	MICS 3 (Conspiracy)	3
	MICS 4	444
	Total	473
Property Offenses		
Class B Property		
	Access device \$25,000	1
	Burglary 1	48
	Forgery 1	2
	Medical asst. fraud \$25,000	1
	Scheme to defraud	5
	Theft 1	13
	Total	70
Class C Property		
	Access device \$50 - \$24,999	18
	Bad check	3
	Burglary 1 (Attempt)	16
	Burglary 2	78
	Conceal merchandise	3
	Criminal mischief 3	59
	Falsify business records	1
	Forgery 2	19
	ID fraud	3
	Misapply property	1
	Scheme to defraud (Attempt)	1
	Theft 2	461
	Vehicle theft 1	58
	Total	721
Driving Offenses		
Class B Driving		
	Leave scene accident w/o assist.	12
	Total	12
Class C Driving		
	Failure to stop	52
	Felony DUI	383
	Felony refusal	14
	Total	449

Other Offenses		
Class B Other		
	Escape 2	22
	Interfere w/officer	1
	Misc. inv. weapons 2 (MIW)	5
	Perjury	2
	Sex trafficking 2	1
	Total	31
Class C Other		
	Alcohol to dry area	3
	Criminal non-support	4
	Criminal use of computer	2
	Cruelty to animals	1
	Custodial interference 1	2
	Escape 2 (Attempt)	17
	Escape 3	9
	Failure to appear (Felony)	9
	Failure to register as sex offender	19
	Furnish alcohol to minor	6
	Hinder prosecution 1	9
	Impersonate public servant	1
	Import alcohol to dry area	14
	Interfere w/officer (Attempt)	1
	MIW 2 (Attempt)	3
	MIW 3	46
	Perjury (Attempt)	1
	Perjury (Solicitation)	1
	Promote contraband 1	12
	Promote prostitution 3	1
	Receive bribe – public servant (Attempt)	1
	Sell alcohol w/o license	9
	Tamper physical evidence	20
	Unlawful evasion	8
	Unsworn falsification	5
	Total	204

Appendix B: Major Changes in Felony Offense Definition, Classification, and Sentencing Statutes, 2000 – 2013

Between 2000 and 2013, the Alaska Legislature made many incremental and several major revisions to felony offense and sentencing laws. First, as was the trend between 1990 and 1999,¹¹⁶ the legislature continued to amend offense definitions and classifications that both broadened the scope of criminal liability and increased penalties. Second (as also described in Part 2 of this report), in 2005, in response to a U.S. Supreme Court case, the Alaska Legislature replaced specific presumptive sentence “terms” with broader “ranges” and implemented the ranges for all classified felony sentences.¹¹⁷ Last, in 2006, the legislature substantially increased most felony sex offense sentence lengths, doubling them for most ranges.

An understanding of these statutory changes may help to give the 2012 and 2013 sentencing data context and may help to explain the data and analysis of the present study. These changes should be considered when comparing the 2012-2013 sentencing trends to any previous studies. This appendix discusses changes in criminal laws from 2000-2013, the years between discussion of the law in the last published study and the collection of data for the present study.

The following summary contains major changes to felony offense definitions, arranged by statute number, and to sentencing statutes. A review of these changes indicates persistent trends to create new felony offenses, reclassify offenses upwards by felony class level, redefine conduct upwards to higher degrees of offenses (making the conduct a higher felony class), implement “repeat offender” provisions that take repeated instances of lower-level conduct and impose felony liability, and include more types of conduct within the felony offense definitions. A review of the sentencing statutes indicates opportunity for increased penalties for felony offenses due to increased presumptive ranges, and the certainty of substantially increased penalties for felony sex offenses.

¹¹⁶ See *Alaska Felony Process: 1999* (Alaska Judicial Council, 2004), *supra note 1*, Appendix A, “Changes in Felony Offense Definition, Classification and Sentencing Statutes, 1990-1999.” The review here of felony offense definitions and sentences picks up where the prior report left off, in 2000.

¹¹⁷ This change was enacted primarily to alleviate the need for a jury trial to prove the facts of an aggravating circumstance that could increase an individual’s sentence beyond the (then) presumptive sentence, in response to the United States Supreme Court opinion in *Blakely v. Washington*. For a comprehensive review, see Carns, Teri W., *Alaska’s Responses to the Blakely Case*, 24 ALASKA L. REV. 1 (2007).

A. Changes in Crime Definition and Classification Laws, 2000 – 2013

From 2000 to 2013, the legislature amended the Alaska statutes in a variety of ways to increase the scope of criminal liability and to increase penalties. It created new offenses and increased the types of prohibited conduct within existing offense definitions. It also increased offense seriousness by raising degree and classification levels. In a few cases, the legislature also limited defenses as a way to increase criminal liability.

Attempt, Solicitation, and Conspiracy

11.31.120. **Conspiracy.** In 2002, the legislature added Terroristic threatening and Criminal mischief to the list of “serious felony offenses” for which a person could be criminally liable under Conspiracy.¹¹⁸

Offenses Against the Person

11.41.100 **Murder in the first degree.** In 2002, the legislature amended Murder in the first degree to add Terroristic threatening and Criminal mischief to the list of offenses for which a person could become criminally liable under a felony murder theory.¹¹⁹

11.41.120. **Manslaughter.** In 2006, the legislature amended Manslaughter by adding a provision for knowingly manufacturing or delivering a Schedule IVA controlled substance in violation of AS 11.71.010 – 11.71.030 or 11.71.040(a)(1), when a person dies as a direct result of its ingestion.¹²⁰

11.41.150 - .11.41.180, 11.41.280 – 11.41.289. **Offenses against unborn children.** In 2006, the legislature enacted a series of offenses relating to unborn children. It added Murder of an unborn child (unclassified), Manslaughter of an unborn child (Class A), Criminally negligent homicide of an unborn child (Class B), Assault of an unborn child in the first degree (Class A), and Assault of an unborn child in the second degree (Class B). The legislature provided that liability does not extend to providers of legal abortion committed under usual and customary standards of medical practice, or to harm committed by a pregnant woman against herself and her own unborn child.¹²¹

¹¹⁸ Ch. 92, § 2, SLA 2002.

¹¹⁹ Ch. 92, § 3, SLA 2002.

¹²⁰ Ch. 53, § 3, SLA 2006.

¹²¹ Ch. 73, §§ 2, 3, SLA 2006.

APPENDIX B: MAJOR CHANGES IN FELONY OFFENSE DEFINITION, CLASSIFICATION, AND SENTENCING, 2000-2013

11.41.220. **Assault in the third degree.** The legislature amended Assault in the third degree several times. In 2004, it added a provision that for the first time included negligent conduct within felony assault, for conduct that “with criminal negligence causes serious physical injury under AS 11.81.900(b)(56)(B) to another person by means of a dangerous instrument.”¹²² In 2005, the legislature clarified 11.41.220(a)(1)(C) to include injuries to children under 10 years old that “would cause a reasonable caregiver to seek medical attention from a health care professional in the form of diagnosis or treatment.”¹²³ In 2008, the legislature broadened Assault 3 to include more negligent conduct by imposing felony liability on offenders who committed the crime of Assault in the fourth degree (a class A misdemeanor) and who had been convicted within the preceding ten years of other assaultive conduct that included physical contact or stalking.¹²⁴ In 2012, the legislature again amended AS 11.41.220(a)(1)(C), changing the age of the child victim from “under 10” to “under 12” throughout. It also added a new section, AS 11.41.255, that defined “serious physical injury” for the purpose of offenses against a child under 12 in AS 11.41.200 - 11.41.250.¹²⁵

11.41.260. **Stalking in the first degree.** In 2002, the legislature amended this offense to add Terroristic threatening to the previous-conviction crimes that would elevate stalking in the second degree to stalking in the first degree.¹²⁶ A 2006 amendment added Harassment in the first and second degrees to the previous-conviction crimes that would elevate Stalking in the second degree to Stalking in the first degree.¹²⁷

11.41.330. **Custodial interference in the second degree.** In 2005, the legislature limited the affirmative defense of necessity to the holding of a child for the shorter of 24 hours or the time necessary to report that the child or incompetent person was abused, neglected, or in imminent physical danger.¹²⁸

11. 41.360-.365. **Human trafficking in the first and second degrees.** The legislature enacted these offenses in 2006, making it a Class A felony to compel or induce another person to engage in sexual conduct, adult entertainment, or labor in the state by force, threat of force, or deception (first degree), and a Class B felony to obtain a benefit of human trafficking by others

¹²² Ch. 124, § 13, SLA 2004. The definition of “serious physical injury” has since been renumbered to AS 11.81.900(b)(57).

¹²³ Ch. 69, § 1, SLA 2005.

¹²⁴ Ch. 96, § 2, 3, SLA 2008.

¹²⁵ Ch. 70, §1, SLA 2012.

¹²⁶ Ch. 92, § 4, SLA 2002.

¹²⁷ Ch. 87, § 1, SLA 2006.

¹²⁸ Ch. 69, § 2, SLA 2005.

APPENDIX B: MAJOR CHANGES IN FELONY OFFENSE DEFINITION, CLASSIFICATION, AND SENTENCING, 2000-2013

(second degree).¹²⁹ Human trafficking in the first degree was amended in 2012 to eliminate the element that the person induce the victim to “come to the state.”¹³⁰

11.41.436 – 11.41.440. **Sexual abuse of a minor in the second and third degree.** In 2004, the legislature elevated some conduct from Sexual abuse of a minor in the fourth degree to Sexual abuse of a minor in the third degree making the conduct a Class C felony: sexual penetration by an offender who is under 16 who engages in sexual penetration with a person who is under 13 years of age and at least three years younger than the offender.”¹³¹

In 2006, the legislature changed the requisite ages in Sexual abuse of a minor in the second degree, AS 11.41.436(a) and Sexual abuse of a minor in the third degree, AS 11.41.438(a), to 17 (formerly 16) for the offender who is at least four years (formerly three years) older than the victim. It also removed from Sexual abuse of a minor in the third degree, and placed into Sexual abuse of a minor in the second degree, provisions proscribing “being 18 years or older, the offender engaged in sexual penetration with a person who is 16 or 17 years of age and at least four years younger than the offender, and the offender occupies a position of authority in relation to the victim; or being under 16 years of age the offender engages in sexual penetration with a person who is under 13 years of age and at least three years younger than the offender,” making that conduct a Class B felony (formerly a Class C felony). In doing so, the legislature also changed the triggering age of the offender for that provision of (now) Sexual abuse of a minor in the second degree from 18 to 20.¹³²

In addition to changing the offense definitions, the legislature also acted to limit some defenses for sex offenses. In 2001, the legislature eliminated the statute of limitations for Sexual assault and Sexual abuse of a minor, and for other sex offenses including Indecent exposure in the first degree, when the victim was under 18 when the offense was committed.¹³³ In 2002, the legislature amended the affirmative defense of “mistake of age” in 11.41.440 to require the defendant “undertook reasonable measures to verify the victim was that age or older.” Formerly there was no requirement of affirming age but there was no defense if the victim was under 13.

11.41.452. **Online enticement of a minor.** The legislature authorized this offense in 2005 to extend Class C liability to persons 18 years of age or older who knowingly use a computer to communicate with another person to entice, solicit, or encourage the person to engage in conduct described in Unlawful exploitation of a minor and the other person is a child under 16, or the

¹²⁹ Ch. 72, § 1, SLA 2006.

¹³⁰ Ch. 1, § 4, TSSLA 2012.

¹³¹ Ch. 124, §§ 14, 15, SLA 2004.

¹³² Ch. 14 §§ 1,2, SLA 2006.

¹³³ Ch. 86, SLA 2001.

APPENDIX B: MAJOR CHANGES IN FELONY OFFENSE DEFINITION, CLASSIFICATION, AND SENTENCING, 2000-2013

person believes that the other person is a child under 16.¹³⁴ In 2011, the legislature reclassified it as a Class B felony for the conduct described above.¹³⁵ At that time it also added a provision making the offense a Class A felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper.¹³⁶

11.41.455. **Unlawful exploitation of a minor.** The legislature amended this offense in 2000 and 2004. The 2000 amendment made minor changes, including adding “video, electronic, or electromagnetic” recordings and material “aurally” depicting the proscribed conduct.¹³⁷ The 2004 amendment classified the offense as a Class A felony for persons who had previously been convicted of distribution of child pornography or similar crime in this or another jurisdiction.¹³⁸

11.41.458. **Indecent exposure in the first degree.** A 2005 amendment added a “repeat conduct” provision. Offenders who had previously been convicted of either Indecent exposure in the first or second degree could now be charged under the first degree section, a Class C felony, if the offense was committed within the observation of a person under 16.¹³⁹

11.41.500 – 11.41.530. The legislature made no changes to **Robbery, Extortion, or Coercion.**

Offenses Against Property

Article 1. Theft and Related Offenses¹⁴⁰

11.46.130. **Theft in the second degree.** In 2005, the legislature amended this section, a Class B felony, to include any theft of an access device (previously defined as Theft in the third degree).

11.46.285. **Fraudulent use of an access device.** In 2000, the legislature changed “credit card” to the more inclusive “access device.” It also added a classification for a class B felony level to the offense for when the value of property or services obtained is \$25,000 or more.¹⁴¹ (Previous

¹³⁴ Ch. 97, § 1, SLA 2005.

¹³⁵ Ch. 20, § 7, SLA 2011.

¹³⁶ Ch. 20, § 8, SLA 2011.

¹³⁷ Ch. 65, §§ 1, 2, SLA 2000.

¹³⁸ Ch. 131, § 1, SLA 2004.

¹³⁹ Ch. 62, § 1, SLA 2005.

¹⁴⁰ In 2014 the legislature amended the amounts triggering felony theft offenses. Ch. 83, §§ 4-19, SLA 2014. These changes did not affect the sentences reviewed in this study and are not discussed in detail here. In general, felony thresholds were increased from \$500 to \$750 for first-time Class C felony offenders and from \$50-\$500 to \$250-\$750 to trigger repeat Class C felony theft offenses where applicable.

¹⁴¹ Ch. 65, § 4, SLA 2000.

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to the amendment all Fraudulent use of an access device more than \$500 was a Class C felony.) In 2005, the legislature reclassified the conduct for obtaining property or services valued between \$50 and \$25,000 as a Class C felony (previously a Class C felony conduct was obtaining property or services between \$500 and \$25,000).¹⁴²

11.48.290. **Obtaining an access device or identification document by fraudulent means.** In 2000, the legislature changed the term “credit card” in favor of “access device” and added “identification document” to the offense. In 2005, the legislature reclassified this conduct as a Class C felony offense (it was previously a Class A misdemeanor).¹⁴³

11.46.300 – 11.46.350. The legislature made no significant changes to the **Burglary** or **Criminal trespass** offenses.

11.46.360. **Vehicle theft.** In 2001, the legislature made a change to include “loss of use” for seven days or more to the definition of “damage of \$500 or more” that would trigger the Class C felony and made minor changes to the definitions of ATVs and watercraft.¹⁴⁴

11.46.410 – 11.46.427. In 2008, the legislature made several changes to the **Arson** and **Burning** offenses. It first amended the *mens rea* for Arson in the first degree, AS 11.46.410, from “intentionally” to “knowingly,” thus including less culpable conduct in the Class B felony offense. It also enacted AS 11.46.420, Arson in the third degree, making it a Class C felony to intentionally damage a motor vehicle by starting a fire or causing an explosion while the vehicle is located on state or municipal land.¹⁴⁵ In 2008, the legislature also enacted AS 11.46.427, Criminally negligent burning in the first degree, as a “repeat offender” provision, imposing Class C felony liability for conduct proscribed in Criminally negligent burning in the second degree and having two or more prior convictions within the preceding 10 years for Arson or Criminally negligent burning.¹⁴⁶

11.46.475 – 11.46.482. In 2001, the legislature added a provision to **Criminal mischief in the third degree**, AS 11.46.482, a Class C felony, dealing with the destruction, desecration, and vandalism of cemeteries and graves.¹⁴⁷ In 2002, the legislature reclassified all intentional conduct within the former Criminal mischief in the first degree to a Class A felony (all conduct was previously a Class B felony), and renumbered the lesser degrees of Criminal mischief accordingly.¹⁴⁸ It also reclassified upwards, from a Class C to Class B felony, conduct of

¹⁴² Ch. 67, § 3, SLA 2005.

¹⁴³ Ch. 64, § 5, SLA 2000; Ch. 67, § 4, SLA 2005.

¹⁴⁴ Ch. 71, § 1, SLA 2001.

¹⁴⁵ Ch. 68, § 1, SLA 2008.

¹⁴⁶ Ch. 75, § 15, SLA 2008.

¹⁴⁷ Ch. 83, §§ 1, 2, SLA 2001.

¹⁴⁸ Ch. 92, § 5, SLA 2002.

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“tampering with a pipeline or supporting facility, or an airplane or helicopter.” Last, it also replaced tampering with “food” with the more inclusive “food, air, water.”¹⁴⁹

11.46.565. In 2000, the legislature enacted **Criminal impersonation in the first degree** as a Class B felony to prohibit conduct constituting identity theft.¹⁵⁰

AS 11.46.710 – 11.46.740. In 2000, the legislature amended **Deceptive business practices**, AS 11.46.710, to classify using the Internet or a computer network to commit the offense as a Class C felony. (All other proscribed conduct is a Class A misdemeanor.) It also amended **Criminal use of computer**, AS 11.46.740, a Class C felony, to include conduct in which the offender accessed or exceeded the person’s authorized access to computer systems or programs for unlawful purposes.¹⁵¹ The legislature again amended that provision in 2011 to include more conduct – that of installing or using a keystroke logger or similar device or program.¹⁵²

Offenses Against the Family and Vulnerable Adults

11.51.100. In 2012, the legislature amended **Endangering the welfare of a child in the first degree**, AS 11.51.100, by extending Class C felony liability to a person who “recklessly fails to provide an adequate quantity of food or liquids to a child, causing protracted impairment of the child’s health.”¹⁵³

In 2004, the legislature amended AS 11.51.120, **Criminal nonsupport**, to impose Class C felony liability when the aggregate child support arrearages are \$20,000 or more, or no payment has been made for 24 months or more, or the person has previously been convicted of nonsupport and the arrearages are over \$5000 or no payment has been made for over six months. It also enacted AS 11.51.121, **Aiding the nonpayment of child support in the first degree**, making it a Class C felony to aid a child obligor who violates the class C felony level of AS 11.51.120.¹⁵⁴

¹⁴⁹ Ch. 92, §§ 6-8, SLA 2002.

¹⁵⁰ Ch. 65, § 6, SLA 2000.

¹⁵¹ Ch. 65, § 11, 12, SLA 2000.

¹⁵² Ch. 20, § 9, SLA 2011.

¹⁵³ Ch. 70, § 3, 4, SLA 2012.

¹⁵⁴ Ch. 108, § 1-4, SLA 2004.

Offenses Against Public Administration

11.56.205. **Unsworn falsification in the first degree.** In 2006, the legislature enacted this offense to impose Class C felony liability on those who commit unsworn falsification when applying for a permanent fund dividend.¹⁵⁵

11.56.310 – 11.56.335. In 2006, the legislature also made several changes to escape statutes. It enacted **Unlawful evasion in the first degree**, 11.56.335, to impose Class C felony liability for a person charged with or convicted of a felony to fail to return to official detention after temporary leave or furlough (previously all Unlawful evasion was a class A misdemeanor). The legislature also amended **Escape in the second degree**, AS 56.310, a Class B felony, to include as proscribed conduct violating the new offense of Unlawful evasion in the first degree while possessing a firearm. Last, the legislature amended **Escape in the third degree**, 11.56.320, a Class C felony, to include violating the new offense of Unlawful evasion in the first degree and attempting to leave or leaving the state to the proscribed conduct.¹⁵⁶ In 2012, the legislature clarified Escape in the second degree to provide that a person must be in a “secure” correctional facility while under detention “for a misdemeanor” in subsection 11.56.310(a)(1)(A), and added a definition of “secure correctional facility.”¹⁵⁷

11.11.56.730. The legislature enacted **Failure to appear** in 2010, creating a criminal offense for failing to appear for a required court appearance. The offense is a Class C felony if the person was charged with a felony, or a Class A misdemeanor if the person was charged with a misdemeanor or was required to appear as a material witness.¹⁵⁸

11.56.760. **Violating an order to submit to DNA testing.** In 2000, the legislature amended this offense by adding orders by juvenile or adult corrections, probation, or parole office, or peace officers to those orders requiring submission to DNA testing.¹⁵⁹ In 2003, the legislature added all those offenders who are required to register as a sex offender or child kidnapper under AS 12.63 to the list of possible offenders. It also reclassified the offense upward to a Class C felony (it was previously a Class A misdemeanor).¹⁶⁰

11.56.762. The legislature enacted **Unlawful use of DNA samples** in 2002, making it a Class C felony to misuse DNA samples collected for the central registry.¹⁶¹

¹⁵⁵ Ch. 42, § 7, SLA 2006.

¹⁵⁶ Ch. 57, § 1-3, SLA 2006.

¹⁵⁷ Ch. 55, § 2, 3, SLA 2012.

¹⁵⁸ Ch. 19, § 2, SLA 2010.

¹⁵⁹ Ch. 44, § 1, SLA 2000.

¹⁶⁰ Ch. 88, § 2, 3, SLA 2003.

¹⁶¹ Ch. 88, § 4, SLA 2003.

11.56.807 – 11.56.810. **Terroristic threatening in the first and second degree.** The legislature enacted Terroristic threatening in the first degree, a Class B felony, in 2002. At the same time it designated the former “Terroristic threatening” as the second degree offense. It also expanded the scope of terroristic threatening in the second degree, a Class C felony, to include false reports that cause the evacuation of public places, areas, business premises or mode of public transportation. It also included false reports of bacterial, biological, chemical or radiological substances and endangerment to oil or gas pipeline or facilities.¹⁶²

11.56.815. **Tampering with public records in the first degree.** This Class C felony was amended in 2003 to include conduct “with the intent to conceal a fact material to an investigation or the provision of services under” title 47 social service benefits.¹⁶³

11.56.827. **Impersonating a public servant in the first degree.** The legislature enacted this Class C felony in 2008, while making the former offense Impersonating a public servant in the second degree.¹⁶⁴ The felony level conduct prohibits impersonation of a peace officer and the use of that purported authority against another person.

Offenses Against Public Order

11.61.125. **Distribution of child pornography.** This section, usually a Class B felony, was amended in 2000 to include the conduct of placing [material] on a computer network or computer system.”¹⁶⁵ In 2003, the legislature expanded the prohibited conduct to “providing billing, collection, or other ancillary services for the distribution activities.”¹⁶⁶ In 2004, the legislature increased the classification for repeat offenses to a Class A felony.¹⁶⁷ It was amended in 2010 to clarify and simplify its language to “distributes in this state or advertises, promotes, solicits, or offers to distribute in this state any material that is proscribed under AS 11.61.127.”¹⁶⁸

11.61.127. **Possession of child pornography.** The legislature amended this Class C felony in 2010 to include the accessing of material on a computer and to eliminate aural depictions. It also expanded the materials to depictions of part of an actual child who by manipulation, creation, or modification, appears to be engaged in the conduct. It also enacted an affirmative defense for those who view fewer than three images and took steps to destroy them or report them to police.¹⁶⁹

¹⁶² Ch. 92, § 17, 18, SLA 2002.

¹⁶³ Ch. 141, § 1, SLA 2003.

¹⁶⁴ Ch. 78, § 1-3, SLA 2008.

¹⁶⁵ Ch. 65, § 15, SLA 2000.

¹⁶⁶ Ch. 41, § 3, SLA 2003.

¹⁶⁷ Ch. 131, § 2, SLA 2004.

¹⁶⁸ Ch. 18, § 5, SLA 2010.

¹⁶⁹ Ch. 18, § 6-8, SLA 2010.

11.61.128. Distribution of indecent material to minors. This provision, regularly a Class C felony and a Class B felony if the defendant was required to register as a sex offender or child kidnapper, was enacted in 2005 to prohibit the distribution of materials that appeals to the “prurient interest in sex” for persons under 16.¹⁷⁰ A 2007 amendment specified particular conduct instead of cross referencing conduct proscribed in 11.41.455 (a)(1)-(7).¹⁷¹ A 2010 amendment eliminated the words “electronic” and “by computer” from the conduct and added the requirement that the material be “harmful to minors.” In 2012, the legislature clarified the *mens rea* element to specify that the person intentionally distributes or possesses with intent to distribute and the person knows the material depicts the proscribed conduct.¹⁷²

11.61.140. Cruelty to animals. In 2008, the legislature imposed Class C felony liability if the person was previously convicted on two or more separate occasions of animal cruelty within 10 years of the present offense.¹⁷³ In 2010, the legislature amended the section again, prohibiting sexual conduct with an animal, the photographing or filming of sexual conduct with an animal, inducing or permitting sexual conduct with animals. The legislature then reduced the “multiple conviction” element for the felony to one previous offense and expanded felony liability to all convictions under (a)(1), (3), and (4), and defined sexual conduct with an animal.¹⁷⁴

11.61.200. Misconduct involving weapons in the third degree. In 2010, the legislature repealed several sections and eliminated some affirmative defenses in favor of restrictions on the application of the section imposing Class C liability on some persons: those who had been pardoned, convictions set aside, or those with convictions over 10 years in the past, except for those who were convicted of crimes against persons in AS 11.41.¹⁷⁵

Offenses Against Public Health and Decency

11.66.100 Prostitution. In 2012, the legislation created Class C felony liability for the offense for patrons when the prostitute is under 18 years of age and the patron is over 18 and at least three years older than the prostitute.¹⁷⁶ The offense is otherwise a Class B misdemeanor.

11.66.110. Sex trafficking in the first degree (formerly Promoting prostitution in the first degree). In 2007, the unclassified level of the offense was amended to include inducing or causing persons to engage in prostitution if the person was under 16 years of age (it was previously under

¹⁷⁰ Ch. 97, § 2, SLA 2005.

¹⁷¹ Ch. 24, § 6, SLA 2007.

¹⁷² Ch. 1, § 5, TSSLA 2012.

¹⁷³ Ch. 96, § 7, SLA 2008.

¹⁷⁴ Ch. 79, § 1-4, SLA 2010.

¹⁷⁵ Ch. 100, §§ 1, 2, SLA 2010.

¹⁷⁶ Ch. 1, §§ 6, 7, TSSLA 2012.

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18 years of age).¹⁷⁷ In 2012, this offense was renamed to Sex trafficking in the first degree; that year the age of the prostitute for prosecution for the unclassified level of offense was also amended from under 18 to under 20.¹⁷⁸

11.66.120. Sex trafficking in the second degree (formerly Promoting prostitution in the second degree). This offense was amended in 2006 to add liability for offering, selling, advertising promoting or facilitating travel that includes commercial sexual conduct as enticement for the travel.¹⁷⁹ In 2007, the legislature reclassified the offense upwards from a Class C felony to a Class B felony.¹⁸⁰ In 2012, the legislature renamed the offense Sex trafficking in the second degree.¹⁸¹

11.66.130. Sex trafficking in the third degree (formerly Promoting prostitution in the third degree). This offense was reclassified in 2007 upwards from a Class A misdemeanor to a Class C felony; the age for inducement into prostitution was changed from 16 or older to 18 or older.¹⁸² In 2012, the legislature renamed the offense Sex trafficking in the third degree and changed the age of the person being induced into prostitution from "over 18" to "over 20."¹⁸³

11.71.020. Misconduct involving a controlled substance in the second degree. This Class A felony was amended in 2000 to add (a)(2) - (4), relating to methamphetamine manufacture or possession of methamphetamine precursors with intent to manufacture.¹⁸⁴ The section was again amended in 2006 to add (a)(5) and (6), again relating to possession of methamphetamine precursors or the delivery of precursors with reckless disregard that they will be used for methamphetamine manufacture. The legislature also added subsection (d), to make the possession of more than six grams of listed chemicals *prima facie* evidence of intended manufacture.¹⁸⁵

11.71.030. Misconduct involving a controlled substance in the third degree. In 2006, the legislature made revisions to this Class B felony that related to the possession of substances involved in the manufacture and delivery of methamphetamines.¹⁸⁶

11.71.040. Misconduct involving a controlled substance in the fourth degree. The legislature amended this Class C felony in 2006 to change the offense from possession of aggregate

¹⁷⁷ Ch. 24, §§ 9-12, SLA 2007.

¹⁷⁸ Ch. 1, § 11, TSSLA 2012.

¹⁷⁹ Ch. 72, § 2, SLA 2006.

¹⁸⁰ Ch. 23, § 13, SLA 2007.

¹⁸¹ Ch. 1, § 11, TSSLA 2012.

¹⁸² Ch. 24, § 14, SLA 2007.

¹⁸³ Ch. 1, § 12, TSSLA 2012.

¹⁸⁴ Ch. 17, §§ 1, 2, SLA 2000.

¹⁸⁵ Ch. 53, §§ 4, 5, SLA 2006.

¹⁸⁶ Ch. 53, § 4, 5, SLA 2006.

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weight of one pound of a schedule IVA drug (marijuana) to possession of four ounces.¹⁸⁷ In 2011, the legislature added possession of more than 12g containing a schedule IIIA controlled substance listed in AS 11.71.160(f)(7) - (16) (synthetic cannabinoids) that has been sprayed on or otherwise applied to tobacco, an herb, or another organic material.¹⁸⁸ A 2012 amendment added possession of 500 mg or more of a schedule IIA controlled substance to the offense, but excluded possession of less than 500mg cathinone and its salts from the offense.¹⁸⁹

Title 4 Offenses

04.16.059. Aggravated penalties for certain violations involving a person under 21 years of age and committed by a sex offender or child kidnapper. This provision was enacted in 2011 to provide that if a person provides alcohol or otherwise makes alcohol available to minors, and is a convicted sex offender, the penalty is increased by one classification level. If the offense was a Class A misdemeanor, the offense becomes a Class C felony; if the offense was a Class C felony, the offense becomes a Class B felony.¹⁹⁰

04.16.200. Penalties for violations of AS 04.11.010 and 04.11.499. In 2001, the legislature reduced the amounts that triggered Class C felony liability for Sale or importation of alcohol into a local option area from more than 12 to more than 10.5 liters of distilled spirits.¹⁹¹ In 2008, the legislature extended Class C felony liability if the quantity of alcohol sent, transported, or brought into a local option area is *less* than 10.5 liter of distilled spirits, 24 liters of wine, or 12 gallons of malt beverages and the person has been previously convicted under (b) two or more times within 15 years of the date of the present offense.¹⁹² In 2010, the legislature amended the quantities relating to malt beverages and increased mandatory sentences to 120 days for a first offense, 240 days for a second offense, and 360 days for a third or greater offense.¹⁹³

Driving Offenses

AS 28.35.030(n). Operating a vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance. In 2001, the legislature changed the “look-back” period for counting previous convictions of felony DUI from two previous

¹⁸⁷ Ch. 53, § 7, SLA 2006.

¹⁸⁸ Ch. 22, § 1, SLA 2011.

¹⁸⁹ Ch. 57, § 1, SLA 2012.

¹⁹⁰ Ch. 21, § 1, SLA 2011.

¹⁹¹ Ch. 63, § 8, SLA 2001.

¹⁹² Ch. 75, §§ 8, 9, SLA 2008.

¹⁹³ Ch. 88, §§ 6, 7, SLA 2010.

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convictions within five years to two within ten years since January 1, 1996. It also changed the allowable blood alcohol level from .10 to .08 percent.¹⁹⁴

28.35.032(p). **Refusal to submit to a chemical test.** In 2001, the same provisions for a ten-year “look-back” were made for felony refusal as for felony DUI, above.¹⁹⁵

28.35.180. **Failure to stop at direction of a police officer.** In 2002, the legislature re-wrote the first degree, Class C felony, section of this offense to specify a person violates it by committing the second degree offense, plus committing reckless driving (AS 28.35.040), or Vehicle theft in the first or second degree, or an accident occurs or a person suffers serious physical injury as a result.¹⁹⁶

Medical Assistance Fraud

47.05.200. **Medical assistance fraud.** In 2003, the legislature enacted this offense, prohibiting the knowing false submission of claims or receipt of benefits from a medical assistance provider, or falsification or destruction of records. The offense ranges from a Class B misdemeanor to a Class B felony depending on the amount of the questioned claim. Claims of over \$25,000 trigger the Class B felony and claims from \$500 to \$25,000 trigger the Class C felony.¹⁹⁷

B. Presumptive Sentencing: Terms to Ranges

In 2005, as discussed in the Introduction and Part 2 of this report, the Alaska Legislature passed sentencing reforms in response to *Blakely v. Washington*. The changes allowed the court and prosecutors more discretion to modify sentences upwards without undergoing a jury trial to prove the facts of an aggravating factor. For most levels of offenses, the legislature started at the previous range and went several years beyond the term. Despite the longer presumptive terms, it was not the intent of the legislature to increase penalties. The bill stated directly:

[I]t is not the intent of this Act . . . to bring about an overall increase in the amount of active imprisonment for felony sentences. Rather this Act is intended to give judges the authority to impose an appropriate sentence, with an appropriate amount of probation supervision, by taking into account the consideration set out in AS 12.55.005 and 12.55.015.”

¹⁹⁴ Ch. 63, §§ 9, 10, SLA 2001.

¹⁹⁵ Ch. 63, § 13, SLA 2001.

¹⁹⁶ Ch. 93, § 1, SLA 2002.

¹⁹⁷ Ch. 66, § 3, SLA 2003.

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The table below sets forth a comparison of presumptive sentences before and after the changes:

Table B-1 Presumptive Sentences Before and After 2005		
	Presumptive Term Before 2005	Presumptive Range After 2005
Class A Range: not more than 20 years		
First felony conviction	5	5-8
First felony conviction/Enhanced	7	7-11
Second felony conviction	10	10-14
Third felony conviction or more	15	15-20
Class B Range: not more than 10 years		
First felony conviction	n/a	1-3
First felony conviction/Enhanced	n/a	2-4
Second felony conviction	4	4-7
Third felony conviction or more	6	6-10
Class C Range: not more than 5 years		
First felony conviction	n/a	0-2
First and violated AS 08.54.720(a)(15)	1	1-2
Second felony conviction	2	2-4
Third felony conviction	3	3-5

The legislature also set ranges for felony sex offenses in 2005.¹⁹⁸ The next year, in 2006, the legislature made significant increases to felony sex offense penalties.¹⁹⁹

¹⁹⁸ Ch. 2, SLA 2005.

¹⁹⁹ Ch. 14, SLA 2006.

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Table B-2 Presumptive Sentences for Sex Offenses Before and After 2005			
	Before 2005	2005-2006	After 2006
Unclassified²⁰⁰	Range: Not more than 40	Range: Not more than 40	Not more than 99
First felony conviction	8	8-12	25-35 if V less than 13 20-30 if V 13 or older
First/Enhanced	10	12-16	25-35
Second felony conviction	15	15-20	30-40
Second sex felony conviction	20	20-30	35-45
Third felony conviction or more	25	25-35	40-60
Third sex felony conviction	30	30-40	99 mandatory
Class A Sex Offense²⁰¹	Range: Not more than 30	Range: Not more than 30	Range: Not more than 99
First felony conviction	5	5-8	20-30 if V less than 13 15-30 if V 13 or older
First felony conviction/Enhanced	10	10-14	25-35
Second felony conviction	10	12-16	25-35
Second sex felony conviction	15	15-20	30-40
Third felony or more conviction	15	15-25	35-50
Third sex felony conviction	20	20-30	99 mandatory
Class B Sex Offense²⁰²	Range: Not more than 20	Range: Not more than 20	Range: Not more than 99
First felony conviction	n/a	2-4	5-15
Second felony conviction	5	5-8	10-25
Second sex felony conviction	10	10-14	15-30
Third felony or more conviction	10	10-14	20-35
Third sex felony conviction	15	15-20	99 mandatory
Class C Sex Offense²⁰³	Range: Not more than 10	Range: Not more than 10	Range: Not more than 99
First felony conviction	n/a	1-2	2-12
Second felony conviction	2	2-5	8-15
Second sex felony conviction	3	3-6	12-20
Third or more felony conviction	3	3-6	15-25
Third sex felony conviction	6	6-10	99 mandatory

²⁰⁰ Although described here in Unclassified, Class A, Class B, Class C categories for simplicity, AS 12.55.155(i) does not follow strict “Class” categories. The “Unclassified” category includes Sexual Assault 1, Sexual Abuse of a Minor 1, and Sex Trafficking 1 under AS 11.66.110(a)(2).

²⁰¹ See FN 200, above. This category includes: Unlawful exploitation of a minor under AS 11.41.455(c)(2), Online enticement of a minor under AS 11.41.452(e), or Attempt, Conspiracy, or Solicitation to commit Sexual assault 1, Sexual abuse of a minor 1, or Sex trafficking 1 under AS 11.66.110(a)(2).

²⁰² See FN 200. This category includes Sexual assault 2, Sexual abuse of a minor 2, Online enticement of a minor under AS 11.41.452(d), Unlawful exploitation of a minor under AS 11.41.455(c)(1), or Distribution of child pornography under AS 11.61.125(e)(2).

²⁰³ See FN 200. This category includes Sexual assault 3, Incest, Indecent exposure 1, Possession of child pornography, Distribution of child pornography under AS 11.61.125(e)(1), or Attempt, Conspiracy, or Solicitation to commit Sexual assault 2, Sexual Abuse of a minor 2, Unlawful exploitation of a minor, or Distribution of child pornography. The following sex offenses are sentenced under typical Class C ranges under AS 12.55.125(e): Failure to Register as a Sex Offender; Indecent viewing or photography (if the person viewed was a minor); Distribution of indecent material to minors; and Sexual abuse of a minor in the third degree.

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As can be seen from Table B-2, in most cases the legislature roughly doubled the previous penalty ranges. Perhaps the most striking increases – and the ones that would affect most offenders – are the increases to Class C sex offenses, which were tripled or quadrupled. For a third-time sex offender convicted of a Class C sex felony, the penalty increased from a presumptive six years prior to 2005 to a mandatory 99 years after 2006.

Appendix C: Mean Active Sentence Lengths for Specific Offenses

Table C-1: Violent Offenses																							
Sentence Length for Single Most Serious Charge At Conviction																							
	Grand Total	Active Time														No Active Time							
		Total		Mean Active Time in Months		Up To 12 Months		13 – 24 Months		25 – 60 Months		61 – 96 Months		Over 96 Months		Total		Probation		SIS		No Active Time and No Probation	
		N	%	M	SD	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Unclassified																							
Attempted Murder	2	2	100	210	127	-	-	-	-	-	-	-	-	2	100	-	-	-	-	-	-	-	
Kidnapping	1	1	100	60	n/a	-	-	-	-	1	100	-	-	-	-	-	-	-	-	-	-	-	
Murder 1	7	7	100	978	204	-	-	-	-	-	-	-	-	7	100	-	-	-	-	-	-	-	
Murder 2	12	12	100	488	319	-	-	-	-	-	-	-	-	12	100	-	-	-	-	-	-	-	
Class A																							
Arson 1	1	1	100	84	n/a	-	-	-	-	-	1	100	-	-	-	-	-	-	-	-	-	-	
Assault 1	16	16	100	111	48	-	-	-	-	3	19	4	25	9	56	-	-	-	-	-	-	-	
Kidnapping (Atpt)	1	1	100	84	n/a	-	-	-	-	-	-	1	100	-	-	-	-	-	-	-	-	-	
Manslaughter	14	14	100	135	65	-	-	-	-	2	14	3	21	9	64	-	-	-	-	-	-	-	
Robbery 1	22	22	100	98	50	1	5	-	-	4	18	9	41	8	36	-	-	-	-	-	-	-	
Class B																							
Arson 1 (Atpt)	2	2	100	12	0	2	100	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Arson 2	5	2	40	12	0	2	100	-	-	-	-	-	-	-	-	3	60	1	33	2	67	-	-
Assault 1 – unborn child (Atpt)	1	1	100	48	n/a	-	-	-	-	1	100	-	-	-	-	-	-	-	-	-	-	-	
Assault 1 (Atpt)	3	3	100	52	18	-	-	-	-	2	67	1	33	-	-	-	-	-	-	-	-	-	
Assault 2	48	48	100	37	28	16	33	8	17	16	33	7	15	1	2	-	-	-	-	-	-	-	
Crim. neg. homicide	14	14	100	45	29	2	14	1	7	8	57	2	14	1	7	-	-	-	-	-	-	-	
Robbery 1 (Atpt)	1	1	100	36	n/a	-	-	-	-	1	100	-	-	-	-	-	-	-	-	-	-	-	
Robbery 2	32	31	97	41	33	9	29	5	16	10	32	4	13	3	10	1	3	-	-	1	100	-	-
Class C																							
Arson 3	1	1	100	12	n/a	1	100	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Assault 2 (Atpt)	6	6	100	11	9	4	67	2	33	-	-	-	-	-	-	-	-	-	-	-	-	-	
Assault 3	410	383	93	14	14	249	65	75	20	59	15	-	-	-	-	27	7	25	93	2	7	-	-
Coercion	24	19	79	23	20	8	42	5	26	6	32	-	-	-	-	5	21	3	60	2	40	-	-
Robbery 2 (Atpt)	3	3	100	13	10	2	67	1	33	-	-	-	-	-	-	-	-	-	-	-	-	-	
Stalking 1	4	2	50	27	30	1	50	-	-	1	50	-	-	-	-	2	50	1	50	1	50	-	-
Terror threat 2	2	2	100	23	18	1	50	-	-	1	50	-	-	-	-	-	-	-	-	-	-	-	

APPENDIX C: MEAN ACTIVE SENTENCE LENGTHS FOR SPECIFIC OFFENSES

Table C-2: Sexual Offenses
Sentence Length for Single Most Serious Charge At Conviction

	Grand Total	Active Time														No Active Time							
		Total		Mean Active Time in Months		Up To 12 Months		13 – 24 Months		25 – 60 Months		61 – 96 Months		Over 96 Months		Total		Probation		SIS		No Active Time and No Probation	
		N	%	M	SD	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Unclassified																							
Sex. Abuse Minor 1	11	11	100	367	276	-	-	-	-	-	-	2	18	9	82	-	-	-	-	-	-	-	-
Sexual assault 1	13	13	100	359	286	-	-	-	-	2	15	-	-	11	85	-	-	-	-	-	-	-	-
Class A																							
SAM 1 (Atpt)	4	4	100	225	30	-	-	-	-	-	-	-	-	4	100	-	-	-	-	-	-	-	-
Sexual assault 1 (Atpt)	3	3	100	240	159	-	-	-	-	-	-	-	-	3	100	-	-	-	-	-	-	-	-
Class B																							
Distribution of child pornography	3	3	100	168	79	-	-	-	-	-	-	1	33	2	67	-	-	-	-	-	-	-	-
Online enticement of a minor	1	1	100	18	n/a	-	-	1	100	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SAM 2	34	34	100	100	58	-	-	-	-	12	35	13	38	9	27	-	-	-	-	-	-	-	-
Sexual assault 2	26	26	100	180	74	-	-	1	4	11	42	5	19	9	35	-	-	-	-	-	-	-	-
Class C																							
Incest	3	3	100	28	7	-	-	2	67	1	33	-	-	-	-	-	-	-	-	-	-	-	-
Indecent exposure 1	3	3	100	19	9	1	33	2	67	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Possession of child pornography	20	20	100	53	55	1	5	9	45	6	30	2	10	2	10	-	-	-	-	-	-	-	-
SAM 2 (Atpt)	38	38	100	44	40	2	5	15	40	16	42	1	3	4	11	-	-	-	-	-	-	-	-
Sexual assault 2 (Atpt)	21	21	100	50	37	1	5	5	24	10	48	3	14	2	10	-	-	-	-	-	-	-	-
Sexual assault 3	13	13	100	100	85	-	-	4	31	2	15	1	8	6	46	-	-	-	-	-	-	-	-
Class C Other																							
Distribute indecent material to minor	1	1	100	6	n/a	1	100	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Indecent view/photo	3	2	67	16	12	1	50	1	50	-	-	-	-	-	-	1	33	-	-	1	100	-	-
SAM 3	13	13	100	26	18	4	31	5	39	4	31	-	-	-	-	-	-	-	-	-	-	-	-

APPENDIX C: MEAN ACTIVE SENTENCE LENGTHS FOR SPECIFIC OFFENSES

Table C-3: Drug Offenses																							
Sentence Length for Single Most Serious Charge At Conviction																							
	<i>Grand Total</i>	Active Time														No Active Time							
		Total		Mean Active Time in Months		Up To 12 Months		13 – 24 Months		25 – 60 Months		61 – 96 Months		Over 96 Months		Total		Probation		SIS		No Active Time and No Probation	
		<i>N</i>	%	<i>M</i>	<i>SD</i>	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%
Unclassified																							
Misconduct Involving Controlled Substance 1	<i>1</i>	<i>1</i>	100	<i>60</i>	n/a	-	-	-	-	<i>1</i>	100	-	-	-	-	-	-	-	-	-	-	-	
Class A																							
MICS 2	<i>41</i>	<i>41</i>	100	<i>73</i>	49	-	-	-	-	<i>26</i>	63	<i>9</i>	22	<i>6</i>	15	-	-	-	-	-	-	-	
Class B																							
MICS 2 (Atp)	<i>38</i>	<i>36</i>	95	<i>32</i>	31	<i>16</i>	44	<i>9</i>	25	<i>5</i>	14	<i>4</i>	11	<i>2</i>	6	<i>2</i>	5	-	-	<i>2</i>	100	-	-
MICS 2 (Conspiracy)	<i>2</i>	<i>2</i>	100	<i>48</i>	34	-	-	<i>1</i>	50	-	-	<i>1</i>	50	-	-	-	-	-	-	-	-	-	-
MICS 3	<i>86</i>	<i>72</i>	84	<i>30</i>	27	<i>27</i>	38	<i>16</i>	22	<i>20</i>	28	<i>6</i>	8	<i>3</i>	4	<i>14</i>	16	<i>1</i>	7	<i>13</i>	93	-	-
Class C																							
Manufacture/Deliver imitation of controlled substance	<i>1</i>	-	-	-	-	-	-	-	-	-	-	-	-	-	-	<i>1</i>	100	<i>1</i>	100	-	-	-	-
MICS 3 (Atp)	<i>25</i>	<i>18</i>	72	<i>18</i>	13	<i>8</i>	44	<i>5</i>	28	<i>5</i>	28	-	-	-	-	<i>7</i>	28	<i>3</i>	43	<i>4</i>	57	-	-
MICS 3 (Conspiracy)	<i>3</i>	<i>2</i>	67	<i>3</i>	0	<i>2</i>	100	-	-	-	-	-	-	-	-	<i>1</i>	33	-	-	<i>1</i>	100	-	-
MICS 4	<i>444</i>	<i>272</i>	61	<i>11</i>	12	<i>206</i>	76	<i>39</i>	14	<i>27</i>	10	-	-	-	-	<i>172</i>	39	<i>38</i>	22	<i>132</i>	77	<i>2</i>	1

Table C-4: Driving Offenses																							
Sentence Length for Single Most Serious Charge At Conviction																							
	<i>Grand Total</i>	Active Time														No Active Time							
		Total		Mean Active Time in Months		Up To 12 Months		13 – 24 Months		25 – 60 Months		61 – 96 Months		Over 96 Months		Total		Probation		SIS		No Active Time and No Probation	
		<i>N</i>	%	<i>M</i>	<i>SD</i>	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%
Class B																							
Leave scene of accident w/o assistance	<i>12</i>	<i>9</i>	75	<i>28</i>	37	<i>5</i>	56	<i>1</i>	11	<i>2</i>	22	-	-	<i>1</i>	11	<i>3</i>	25	-	-	<i>3</i>	10	-	-
Class C																							
Failure to stop	<i>52</i>	<i>42</i>	81	<i>20</i>	14	<i>18</i>	43	<i>11</i>	26	<i>13</i>	31	-	-	-	-	<i>10</i>	19	-	-	<i>10</i>	100	-	-
Felony DUI	<i>383</i>	<i>344</i>	90	<i>18</i>	15	<i>184</i>	54	<i>67</i>	20	<i>93</i>	27	-	-	-	-	<i>39²⁰⁴</i>	10	<i>37</i>	95	<i>1</i>	3	<i>1</i>	3
Felony refusal	<i>14</i>	<i>14</i>	100	<i>22</i>	19	<i>7</i>	50	<i>2</i>	14	<i>5</i>	36	-	-	-	-	-	-	-	-	-	-	-	-

²⁰⁴ Almost all of these offenders were sentenced to Therapeutic Court.

APPENDIX C: MEAN ACTIVE SENTENCE LENGTHS FOR SPECIFIC OFFENSES

Table C-5: Property Offenses
Sentence Length for Single Most Serious Charge At Conviction

	Grand Total	Active Time														No Active Time							
		Total		Mean Active Time in Months		Up To 12 Months		13 – 24 Months		25 – 60 Months		61 – 96 Months		Over 96 Months		Total		Probation		SIS		No Active Time and No Probation	
		N	%	M	SD	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Class B																							
Access device \$25,000 or more	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	100	-	-	-	-	1	100 ²⁰⁵
Burglary 1	48	37	77	39	26	10	27	5	14	16	43	5	14	1	3	11	23	-	-	11	100	-	-
Forgery 1	2	2	100	26	31	1	50	-	-	1	50	-	-	-	-	-	-	-	-	-	-	-	-
Medical asst. fraud \$25,000 or more	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	100	-	-	1	100	-	-
Scheme to defraud	5	3	60	30	36	2	67	-	-	-	-	1	33	-	-	2	40	-	-	2	100	-	-
Theft 1	13	6	46	28	27	3	50	1	17	1	17	1	17	-	-	7	54	3	43	4	57	-	-
Class C																							
Access device \$50 - \$24,999	18	8	44	9	9	6	75	2	25	-	-	-	-	-	-	10	56	5	50	5	50	-	-
Bad check	3	1	33	7	n/a	1	100	-	-	-	-	-	-	-	-	2	67	-	-	2	100	-	-
Burglary 1 (Atp)	16	12	75	19	12	6	50	3	25	3	25	-	-	-	-	4	25	1	25	3	75	-	-
Burglary 2	78	55	71	18	14	27	49	16	29	12	22	-	-	-	-	23	30	4	17	17	74	2	9
Conceal merchandise	3	3	100	17	12	1	33	2	67	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Criminal mischief 3	59	37	63	11	11	29	78	5	14	3	8	-	-	-	-	22	37	5	23	16	73	1	5
Falsify business records	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	100	-	-	1	100	-	-
Forgery 2	19	9	47	17	15	4	44	3	33	2	22	-	-	-	-	10	53	4	40	6	60	-	-
ID fraud	3	1	33	24	n/a	-	-	1	100	-	-	-	-	-	-	2	67	-	-	2	100	-	-
Misapply property	1	1	100	6	n/a	1	100	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Scheme to defraud (Atp)	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	100	-	-	1	100	-	-
Theft 2	461	259	56	14	12	162	63	58	22	39	15	-	-	-	-	202	44	44	22	158	78	-	-
Vehicle theft 1	58	44	76	20	14	21	48	10	23	13	30	-	-	-	-	14	24	4	29	10	71	-	-

²⁰⁵ Unknown

APPENDIX C: MEAN ACTIVE SENTENCE LENGTHS FOR SPECIFIC OFFENSES

Table C-6: Other Offenses
Sentence Length for Single Most Serious Charge At Conviction

	Grand Total	Active Time														No Active Time							
		Total		Mean Active Time in Months		Up To 12 Months		13 – 24 Months		25 – 60 Months		61 – 96 Months		Over 96 Months		Total		Probation		SIS		No Active Time and No Probation	
		N	%	M	SD	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Class B																							
Escape 2	22	21	96	30	21	5	24	5	24	10	48	1	5	-	-	1	5	1	100	-	-	-	-
Interfere w/officer	1	1	100	2	n/a	1	100	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Misconduct involving weapons (MIW) 2	5	4	80	53	32	1	25	-	-	-	-	-	-	-	-	1	20	-	-	1	100	-	-
Perjury	2	2	100	7	7	2	100	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Sex trafficking 2	1	1	100	12	n/a	1	100	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Class C																							
Alcohol to dry area	3	3	100	11	12	2	67	1	33	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Criminal non-support	4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	100	1	25	3	75	-	-
Criminal use of computer	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	100	1	50	1	50	-	-
Cruelty to animals	1	1	100	3	n/a	1	100	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Custodial interference 1	2	1	50	3	n/a	-	-	-	-	1	100	-	-	-	-	1	50	1	100	-	-	-	-
Escape 2 (Atpt)	17	15	88	13	11	10	67	3	20	2	13	-	-	-	-	2	12	2	100	-	-	-	-
Escape 3	9	7	78	15	9	4	57	3	43	-	-	-	-	-	-	2	22	-	-	2	100	-	-
Failure to appear (Felony)	9	9	100	13	11	6	67	2	22	1	11	-	-	-	-	-	-	-	-	-	-	-	-
Failure to register as sex offender	19	18	95	17	11	8	44	7	39	3	17	-	-	-	-	5	1	1	100	-	-	-	-
Furnish alcohol to minor	6	2	33	22	21	1	50	-	-	1	50	-	-	-	-	4	67	1	25	3	75	-	-
Hinder prosecution 1	9	6	67	13	18	4	67	-	-	2	33	-	-	-	-	3	33	1	33	2	67	-	-
Impersonate public servant	1	1	100	1	n/a	1	100	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Import alcohol to dry area	14	13	93	3	1	13	100	-	-	-	-	-	-	-	-	1	7	-	-	1	100	-	-
Interfere w/officer (Atpt)	1	1	100	54	n/a	-	-	-	-	1	100	-	-	-	-	-	-	-	-	-	-	-	-
MIW 2 (Atpt)	3	1	33	4	n/a	1	100	-	-	-	-	-	-	-	-	2	67	-	-	2	100	-	-
MIW 3	46	46	100	24	13	10	22	22	48	14	30	-	-	-	-	-	-	-	-	-	-	-	-
Perjury (Atpt)	1	1	100	42	n/a	-	-	-	-	1	100	-	-	-	-	-	-	-	-	-	-	-	-
Perjury (Solicitation)	1	1	100	36	n/a	-	-	-	-	1	100	-	-	-	-	-	-	-	-	-	-	-	-
Promote contraband 1	12	10	83	14	10	6	60	3	30	1	10	-	-	-	-	2	17	1	50	1	50	-	-
Promote prostitution 3	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	100	1	100	-	-	-	-
Receive bribe – public servant (Atpt)	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	100	-	-	1	100	-	-
Sell alcohol w/o license	9	9	100	15	12	5	56	3	33	1	11	-	-	-	-	-	-	-	-	-	-	-	-
Tamper physical evidence	20	15	75	19	13	6	40	6	40	3	20	-	-	-	-	5	25	1	20	4	80	-	-
Unlawful evasion	8	8	100	19	12	3	38	3	38	2	25	-	-	-	-	-	-	-	-	-	-	-	-
Unsworn falsification	5	3	60	2	1	3	100	-	-	-	-	-	-	-	-	2	40	1	50	1	50	-	-

Appendix D: Detailed Methodology

A. Database

The Alaska Judicial Council (AJC) used electronic data provided by the Alaska Court System (ACS) and the Department of Public Safety (DPS) to establish the database for this study. Using CourtView, the ACS provided a list of all cases sentenced on a felony conviction between January 1, 2012 and December 31, 2013. The AJC performed an initial cleansing of the data to ensure all cases were sentenced in the specified time frame and on at least one felony charge. All unique Alaska Public Safety Information Network (APSIN) identification numbers were determined, and a 60% random sample was taken. The initial dataset contained 4,497 unique individuals and the final sample contained 2,989 people.

Next, the AJC identified all individuals who were sentenced on multiple cases during the two-year period. For each person, the most recent case was chosen based on the filing number. If a person had multiple cases in different court locations in the same year, the case with the most recent offense date was chosen.

The single most serious convicted charge was defined for all the cases in which a defendant had been convicted of more than one felony charge. The single most serious charge was determined based on the offense class (Unclassified felony, Class A felony, Class B felony, Class C felony) and the offense type (Murder/Kidnapping, Violent, Sexual, Drug, Driving, Property, Other). If a person was convicted of two crimes of the same class and type, the charge with the longer sentence was chosen. If the sentence length was the same, the first charge was chosen.

After determining a person's most recent case and single most serious charge, the AJC performed a second round of data cleansing, including the review of selected case files, to ensure there were no illegal sentences or other issues with the data. Based on the review the data were corrected. Some charges changed in offense class, and others had to be deleted from the dataset. The final dataset contained 2,970 cases.

Next, the AJC requested APSIN data from DPS to determine the offenders' demographic information (i.e., gender, race, age) and criminal history. A person's criminal history, particularly their prior felony record, played an important role in presumptive sentencing. The prior record was determined by counting the misdemeanor and felony convictions before the offense date of the crime in the AJC database.

Some limitations about a person's prior criminal history were important to keep in mind. The AJC was not able to determine prior felony convictions outside of the state of Alaska because

they were not recorded in APSIN. Therefore, the prior criminal history might have been under-reported in DPS in some instances.²⁰⁶

In addition, statutes require that a person's prior felony convictions not be considered for the purposes of sentencing, if they were previously convicted of a Class B or Class C felony and they committed the new offense at least 10 years after their unconditional discharge date from the Department of Corrections (DOC) or ACS. The AJC did not have information to be able to determine this date. This rule did not apply if a person had previously been convicted of an Unclassified or Class A felony. Thus, the prior criminal history might have been over-reported for individuals with prior Class B and C felony convictions.

B. Analysis

Before analyzing the data, the AJC determined the representativeness of the sample based on location, disposition year, offense class, and offense type. To do so, the AJC compared the frequency distributions of the specified variables for all initial cases in the original dataset to the frequency distributions of the specified variables in the final dataset. Next, the absolute value of the difference in percentage points was calculated. In most cases, the difference between the initial dataset and the sample was equal to or less than one percentage point. There were some instances in the offense type categories in which the difference was greater than one percentage point, with the greatest difference being 1.8 percentage points. This could have happened because of the way the single most serious charge was selected. Based on these findings, the AJC determined the sample was representative of the initial census of cases and decided not to weight it.

The AJC used Statistical Package for the Social Sciences (SPSS) to carry out uni-, bi-, and multivariate analyses. Univariate analyses examine one variable at a time;²⁰⁷ bivariate analyses examine the relationship of two variables to each other, and multivariate analyses examine the relationship of multiple variables to each other. These may be done as three-way cross-tabulations, or using a variety of multiple regression models. Part 3 of this report shows findings from the Judicial Council's analyses using frequencies and cross-tabulations, with limited significance testing.

The University of Alaska Anchorage Justice Center conducted the multiple regression analyses shown in Part 4 of the report using fixed effects models.

²⁰⁶ In most cases, an offender's national criminal history was available to both parties and to the sentencing judge. For the scope of this study, the AJC only had access to electronic data where this information was not recorded.

²⁰⁷ These are sometimes referred to as "frequencies," or "counts."

The present study was exploratory; the AJC did not start with a hypothesis about the specific factors that might determine sentence length. The analyses focused on multiple independent variables, including demographic variables (age, gender, ethnicity), prior criminal history, location of the court case, offense class, offense type, type of counsel, the presence of a presentence report, contemporaneous cases, or a domestic violence flag. The dependent variable was active sentence length.

Sentence length was analyzed in days and rounded to months for reporting purposes. The conversion from years to months to days was not seamless, which may have resulted in minor rounding errors. Active sentence length was calculated by subtracting any suspended sentence from the imposed sentence. A sentence was assumed to be 0 (zero), if the sentence field was left blank. In this analysis, SIS sentences were set to 0, even if the crime required a mandatory minimum sentence, or some short incarceration time was required.²⁰⁸ Legally, active time imposed in conjunction with an SIS sentence was a condition of probation, not a sentence to incarceration.

C. Limitations

Limitations of the study included limitations of the databases, lack of several variables, and comparability to earlier AJC studies.

- ***Electronic data*** – the Council’s data came from CourtView (the Alaska Court System’s electronic case management system), which provided all of the data except prior criminal history, age, gender, and ethnicity, all of which came from the Alaska Department of Public Safety’s APSIN system. At times data were missing or incorrectly recorded. The Council worked with ACS and DPS to correct these cases as much as possible, (we did not eliminate cases based on missing information).
- ***Missing variables*** – Some variables (particularly substance abuse, mental health issues, and socioeconomic status) shown in past AJC studies to significantly affect sentence length were not available in the electronic data. The fixed effects model accounts for these unknown variables.
- Initially, one goal of the study was to be able to compare the findings to previous studies. Due to the differences in the methodology and the data analysis used in the present study, many of the findings of this study were not directly comparable to the findings of previous AJC studies.

²⁰⁸ Certain offenses can only receive an SIS sentence in combination with a mandatory minimum sentence, usually between 30 and 60 days.

D. Separate Study of Class A Felonies

The AJC reviewed the paper files for all Class A felony cases in the sample (see Part 3, Section H).²⁰⁹ The most important reason for the review was to understand the roles of legal factors such as plea agreements, aggravators, mitigators, and contemporaneous cases not recorded in the electronic data. It also provided an opportunity to record data about offenders' demographics, substance abuse or mental health issues, and circumstances of the offense, such as the use of a weapon and the involvement of drugs or alcohol in the offense. SPSS and Microsoft Access were used to analyze the data.

E. Multivariate Analysis Methodology (Dr. Brad Myrstol)

Model estimation. Multivariate linear regression models were used to assess the impact of each of the independent (predictor) variables on the active sentence lengths for the individuals included in the sample. All models were estimated using STATA (version 14.0) statistical software. These regression models were estimated using a fixed effects estimator. Regression models that use a fixed effects estimator are referred to as fixed effects models.

A fixed effect model provides a way to examine the relationship between proposed independent (predictor) variables and the dependent (outcome) variable of interest when cases are “nested” or “grouped” together. Data that are nested/grouped are often referred to as a panel. Nesting/grouping can occur in many different ways and at many different levels - for example, within individuals, within organizations, and within specific geographies - and can be either cross-sectional or longitudinal.

An issue that arises with panel data is cases that are nested/grouped together tend to be systematically correlated with each other. This correlation is attributable to the grouping itself, independent of the characteristics of the cases themselves. A fixed effects model accounts for the impact of this systematic correlation and adjusts how the standard errors for each measure are then calculated. This adjustment is important because standard errors play an essential role in determining the statistical significance of the impact each predictor variable has on the outcome variable. Using a fixed effects model provides a way to derive consistent and unbiased estimates of the impact each predictor variable has on the outcome variable.

An additional advantage of using a fixed effects model is it also addresses the issue of omitted variable bias. Omitted variable bias occurs when a statistical model is developed that omits one or more predictor variables that impact the outcome variable. When this occurs, the impact of

²⁰⁹ Data for five cases were not analyzed due to technical difficulties.

the predictor variables included in the model may be over-estimated or under-estimated. Because fixed effects models focus on within-group effects, they effectively “control” for potential omitted factors unique to that group, which impact the outcome variable. Whatever variables are omitted are assumed to have the same effect (and are thus “fixed”) for all cases within the same nesting/grouping. Each of the regression models presented in this section were estimated using STATA’s areg command.

A limitation of fixed effects estimation is that while the influence of omitted variables is accounted for, their impact is not specifically measured and is, therefore, not estimated. As a result, fixed effects models cannot directly assess the impact of group-level processes that affect the outcome variable.

Nested felony cases. This study included four levels of nesting/grouping, each of which represented a different version of the concept “court or court community”: (1) the specific sentencing judge in each case; (2) the Superior Court to which each sentencing judge was assigned; (3) the Judicial District within which each case was decided; and, (4) a six-group regional court measure developed by the Alaska Judicial Council.

The Judicial District operationalization consisted of 5 groups: 1 for each of Alaska’s 4 judicial districts, plus an additional grouping for cases decided by Pro Tem judges. The Superior Court operationalization consisted of 14 groups: one for each of Alaska’s 13 superior court locations, plus an additional grouping for cases decided by Pro Tem judges. The regional court variable consisted of 6 groups: Anchorage (only); Fairbanks (only); Juneau (only); South Central (minus Anchorage); Southeast (minus Juneau); and Other/Rural. Finally, the sentencing judge operationalization consisted of 79 groups (individual judges), each of whom was recorded as deciding the final incarceration sentence for one or more defendants’ most serious felony conviction.

Each of these operational definitions represented a court context within which felony cases were decided and sentences handed down. Statistical analyses were conducted to examine overall patterns and the specific impacts each level of grouping had on the predictor and outcome variables. Only one form of grouping demonstrated consistent statistically significant effects on the outcome variable (active sentence length) and predictor variables: the specific sentencing judge in each case. Therefore, the fixed effects regression models presented in this section were fitted using sentencing judge as the nesting/grouping variable.

Measures. The dependent (outcome) variable of interest in each of the regression models estimated was net active sentence length (in days). This measure captures the total incarceration

sentence length for each defendant's single most serious charge/offense (if convicted of multiple charges/offenses), minus any portion of the sentence suspended.

A total of 15 independent (predictor) variables spanning 5 measurement domains (defendant demographic characteristics, offense characteristics, defendant prior criminal history, case characteristics, and case processing) were included in the model.

Defendant demographic characteristics. GENDER was measured as a binary variable, where 0=female and 1=male. AGE was measured as the number of years between each defendant's date of birth and the date of the offense for which they were convicted. RACE/ETHNICITY was measured using a 5-category measure: 1=White/Caucasian, 2-Alaska Native/American Indian, 3=African American, 4=Asian/Pacific Islander, and 5=Unknown/Missing. (White/Caucasian was the reference category.)

Offense characteristics. The study included three items characterizing the nature of the single most serious offense for which each defendant was convicted. OFFENSE SERIOUSNESS was a 5-category measure, where 1=Class C felony, 2=Class B felony, 3=Class A felony, 4=Murder (unclassified felony), and 5=Other unclassified felony. (Class C felony was the reference category.) OFFENSE TYPE was measured using an 8-category measure where 1=Controlled substances offense, 2=Driving offense, 3=offense against Property, 4=Murder/Kidnapping, 5=Sexual offense, 6=Other Sexual offense, 7=Other offense against persons, and 8=all Other offense types. (Controlled substances offense was the reference category.) Finally, a measure was included to capture whether or not the single most serious charge for which a defendant was convicted was tagged with a CASE MODIFIER (0=No; 1=Yes). This measure was coded 1=Yes if the single most serious conviction charge was an attempt, or if the single most serious conviction charge was determined to be conspiracy or solicitation offense.

Defendant prior criminal history. The multivariate study included two measures of official criminal history: the total number of prior misdemeanor convictions, and the total number of prior felony convictions. Both prior criminal history variables - # MISDEMEANOR CONVICTIONS and # FELONY CONVICTIONS - were measured as count variables.

Case characteristics. Several items were used to capture information pertaining to the umbrella case that included the single most serious charge conviction for each defendant. Two items were used to capture the extent to which the single most serious charge for which a defendant was convicted was "bundled" with other offenses/charges. For each defendant, the # FELONY CHARGES and # MISDEMEANOR CHARGES filed in each case were tabulated separately. DOMESTIC VIOLENCE-RELATED was measured as a binary variable, where 0=Not domestic violence-related and 1=Domestic violence-related.

APPENDIX D: DETAILED METHODOLOGY

Case processing. ATTORNEY TYPE was measured using a 3-category variable, where 1=Private attorney, 2=public attorney, and 3=Unknown/unspecified attorney type. TRIAL was measured as a binary variable, where 0=Not a trial, 1=Trial. The PRE-SENTENCE REPORT variable was binary as well, where 0=No pre-sentence report filed and 1=Pre-sentence report filed.

Appendix E: List of Variables²¹⁰

Dependent Variables

Sentence Length

- **Imposed Sentence Length**
The imposed sentence length was measured as the total number of days an offender was sentenced to.
- **Active Sentence Length**
The active sentence length was calculated by subtracting the number of days of the suspended sentence from the number of days of the imposed sentence.
- **Active Time**
The active time variable was recoded from the active sentence length variable. Active time was measured as a binary variable, where 1 = *Active Time*, 2 = *No Active Time*

Independent Variables

Demographic Variables

- **Age at Time of the Offense:**
Age was measured as the number of years between each defendant's date of birth and the date of the offense. For the analysis, the offenders' ages were divided into five groups: 1 = *16-20 years old*, 2 = *21-25 years old*, 3 = *26-30 years old*, 4 = *31-39 years old*, 5 = *40 years old or older*.
- **Gender**
Gender was measured as a two-category measure, where F = *female* and M = *male*.
- **Ethnicity**
Ethnicity was measured using a five-category measure, where 1 = *Asian/Pacific Islander*, 2 = *African American*, 3 = *Alaska Native/American Indian*, 4 = *Caucasian*, 5 = *Unknown*.
- **Criminal History**
A defendant's criminal history was measured as the number of misdemeanor and felony convictions prior to the date of the offense. For the Part 3 analysis, offenders' prior convictions were divided into five groups: 0 = *No prior record*, 1 = *1-3 Misdemeanors*, 2 = *4 or More Misdemeanors*, 3 = *1 Prior Felony*, 4 = *2 or More Prior Felonies*.²¹¹

²¹⁰ In some instances, the variables used for the multivariate analysis slightly differed from this description in the way they were recoded. More detailed information is available upon request.

²¹¹ Prior criminal history was categorized in the multiple regression analysis (Part 4) as Number of prior felony convictions and Number of prior misdemeanor convictions.

Offense Variables

- **Class of Offense**

The class of offense was measured as a four-category measure, where 1 = *Murder/Unclassified Felony*, 2 = *Class A Felony*, 3 = *Class B Felony*, 4 = *Class C Felony*.

- **Type of Offense**

The type of offense was measured using an eight-category measure, where 1 = *Murder/Kidnapping*, 2 = *Violent*, 3 = *Sexual*, 4 = *Sexual other*, 5 = *Drug*, 6 = *Property*, 7 = *Driving*, 8 = *Other*.

- **Number of Charges Filed**

The number of charges filed was measured as two variables: the number of misdemeanor charges filed at the beginning of each case, and the number of felony charges filed at the beginning of each case.

- **Court Location**

The court location was measured as two variables. The first one was a 13-category measure based on the 13 superior court locations, where 1 = *Anchorage*, 2 = *Barrow*, 3 = *Bethel*, 4 = *Dillingham*, 5 = *Fairbanks*, 6 = *Juneau*, 7 = *Ketchikan*, 9 = *Kodiak*, 10 = *Kotzebue*, 11 = *Nome*, 12 = *Palmer*, 13 = *Sitka*. This variable was then recoded into a five-category measure, where 1 = *Anchorage*, 2 = *Fairbanks*, 3 = *Southeast (Juneau, Ketchikan, Sitka)*, 4 = *Southcentral (Kenai, Palmer)*, and 5 = *Rural (Barrow, Bethel, Dillingham, Kodiak, Kotzebue, Nome)*.

- **Domestic Violence Flag**

Whether a case was domestic violence related was measured as a binary variable, where 0 = *Not Domestic Violence-Related*, 1 = *Domestic Violence-Related*.

Case Processing Variables

- **Type of Disposition**

The type of disposition was measured as a binary variable, where 1 = *Guilty After Trial*, 2 = *Guilty After Guilty/Nolo Plea*.

- **Type of Attorney**

The type of attorney was measured as a three-category measure, where 1 = *Public Attorney*, 2 = *Private Attorney*, 999 = *Unknown Type of Attorney*.

- **Presentence Report Filed**

Whether a presentence report was filed in the case was measured as binary variable, where 0 = *No Presentence Report Filed* and 1 = *Presentence Report Filed*.

- **Type of Probation**

The type of probation was measured as a four-category measure, where 0 = *No Probation*, 1 = *Probation*, 2 = *Suspended Imposition of Sentence (SIS)*, 999 = *Unknown*.

APPENDIX E: LIST OF VARIABLES
