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# Alaska Felony Process: 1999

February 2004

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alaska judicial council

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## Executive Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

Briefly, the most important findings were:

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

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

## **B. Background of Report**

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



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

## 1. Data Sample and Analysis

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

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

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

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

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

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

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

Other boundaries on the scope of the report included:

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

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

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

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

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

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

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

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

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

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

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

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

## **b. Cases within Alaska**

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

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

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

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

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

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

## **2) Location of case**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

## **5. Background Sentence Findings**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

## **D. Recommendations**

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

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

## **Part I: Introduction**

### **A. Overview**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## **Part II: Background**

### **A. Brief Description of Alaska Criminal Justice System**

A description of Alaska’s criminal justice system that shows how cases moved in 1999 from the reported felony crime to sentencing of a defendant gives a context for the Alaska Judicial Council’s findings in its 1999 report of felonies. This brief description, accompanied by flow charts, shows the steps followed in most cases (Chart 1). Other Judicial Council publications give more detailed descriptions.<sup>30</sup>

#### **1. Early Stages of the Criminal Justice Process**

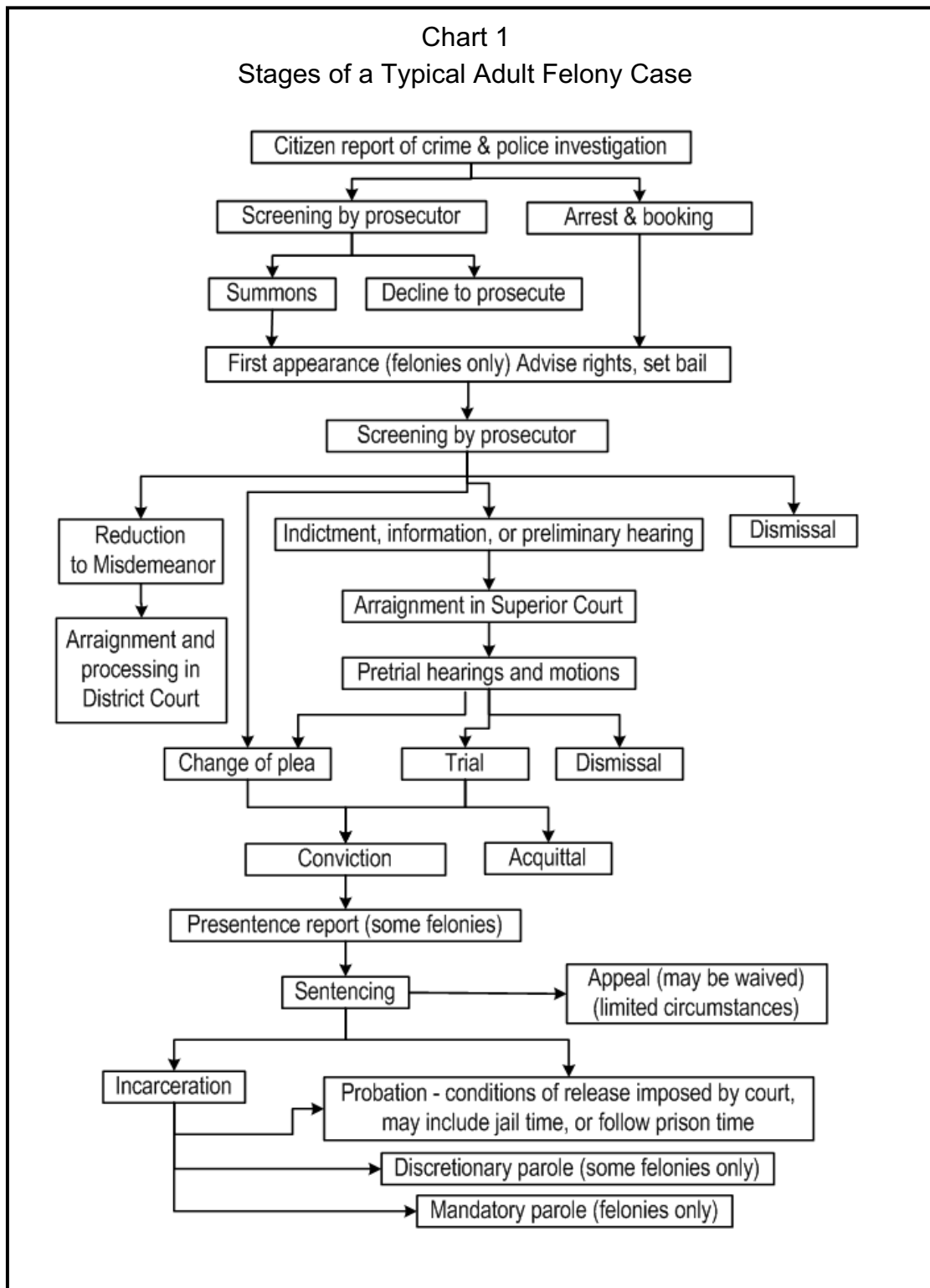
The criminal justice process began when someone committed an offense, and the offense was reported to a law enforcement organization. Police<sup>31</sup> investigated the incident (or may have made an immediate arrest), decided the charges, and either filed a complaint directly with the court,<sup>32</sup> or took it to the prosecutors. Once prosecutors received complaints prepared by law enforcement, they looked over the evidence and the proposed charges, and decided what charges to file in court. This process, “screening,” resulted in prosecutors declining to file charges in some cases and deciding to file lesser charges in other cases (see Chart 1, this section). If the police officer filed the complaint directly with the court, the prosecutors screened the case soon after filing.

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<sup>30</sup> See ALASKA JUDICIAL COUNCIL, A GUIDE TO ALASKA’S CRIMINAL JUSTICE SYSTEM (rev. 1998) ; ALASKA JUDICIAL COUNCIL, A HANDBOOK FOR VICTIMS OF CRIME IN ALASKA (rev. 2001). Both are available to download from the Judicial Council’s web site ([www.ajc.state.ak.us](http://www.ajc.state.ak.us)), or by contacting the Judicial Council.

<sup>31</sup> “Police” in this context included officers in local police departments, Alaska State Troopers, and Village Public Safety Officers (VPSOs) who were part of the Alaska Department of Public Safety.

<sup>32</sup> Officers in smaller communities did this more frequently than in larger communities.



Alaska Judicial Council, 1999 Felony Report

## 2. Cases Filed in Court

If a felony defendant was arrested, the court had 24 hours<sup>33</sup> in which to bring the felony defendant before a judicial officer.<sup>34</sup> Felony defendants appeared before a judge or judicial officer<sup>35</sup> by telephone, by live video conferencing, or in person. At this hearing, the judge set bail and any conditions (e.g., monetary bail, a third party custodian requirement), told the defendants about the charges, told defendants about their rights, and (usually) decided whether the defendants were indigent and appointed public counsel if they were.<sup>36</sup>

Following the defendants' initial hearings, and the appointment of the defendants' attorneys, the next steps varied by community. In Anchorage, defendants often had pre-indictment hearings, occurring within the first week or so,<sup>37</sup> but in most other parts of the state, defendants had preliminary hearings or the grand jury indicted them within the required time frame. Defendants could, and often did, waive their rights to the time frames established by the courts. The first few days or weeks of the case were spent reviewing the conditions of release, if the defendants were not released from jail because they could not meet the court's conditions; sharing evidence in the case (discovery); and in many places, talking about the disposition of the case.

The defendants and the attorneys talked (in most cases) about what charges might be reduced or dismissed by the prosecutor in exchange for the defendants' agreements to do things such as accept a certain sentence, cooperate with authorities in other cases, get treatment for problems, and abide by specified conditions. This process, often called plea bargaining, or plea negotiation could have been formal or informal. If the defendants arrived at specific agreements with prosecutors, they

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<sup>33</sup> Alaska Criminal Rule 5 governed this process.

<sup>34</sup> Although this hearing was often termed an "arraignment," it was not a true arraignment but an initial appearance. Alaska R. Crim. P. 5. A felony defendant must enter a plea at a later arraignment after presentment of an indictment or after the defendant consents to being prosecuted by information. Alaska R. Crim. P. 10. Misdemeanor defendants must enter a plea to the charges in the complaint at an initial appearance. Alaska R. Crim. P. 5(f).

<sup>35</sup> Typically this was a magistrate or a district court judge; in smaller communities, the superior court judge also may share initial appearance duties.

<sup>36</sup> Depending on the defendants' situations, this might have been an assistant public defender or an attorney from the Office of Public Advocacy. *See* section on type of attorney, *infra* pp. 67-72.

<sup>37</sup> Felony defendants are entitled to a preliminary examination (generally in the district court) within 10 days after an initial appearance (if in custody) or within 20 days (if not in custody). Defendants may instead waive the preliminary examination - directly or by consenting to an information being filed in the superior court. Alaska R. Crim. P. 5(e).

usually were written.<sup>38</sup> A few defendants decided to take their cases to trial (in the 1999 sample, 4% of the defendants chose this alternative).

### **3. The End of the Court Case**

A criminal case ended in different ways. The most common was that the defendant went before the judge to enter a plea of guilty or no contest.<sup>39</sup> Throughout the report, the term “pled to” refers to either a plea of guilty or a plea of no contest. The judge inquired to be sure that the defendant was pleading guilty or no contest voluntarily and that the defendant understood the charges to which he or she was pleading, along with all the penalties that applied. Sometimes, the prosecutor dismissed all of the charges against the defendant. The third choice was a trial before a jury with a judge, or a judge sitting alone. The judge or jury could acquit or convict the defendant.

If the defendant was convicted, either by plea or by trial, the next step was sentencing. If the defendant was convicted on a misdemeanor, the sentencing often took place immediately after the conviction. If the defendant was convicted of a felony, sentencing could happen immediately, or be scheduled for a later time.

Some defendants convicted of a felony charge were required by the judge, or chose, to have a presentence report. Probation officers prepared these reports, which detailed the offense, the defendant’s background and prior criminal convictions, and often made recommendations to the judge for sentencing. These reports usually took two to three months to prepare. Some defendants waived their right to the presentence report and went to sentencing with little delay; such waivers usually came about after discussions with the prosecutor.

The Judicial Council looked at the criminal justice process from the time the charges were filed in court until the day that the court case ended with dismissal or acquittal of all charges or with sentencing. After sentencing, the defendant may have been required to serve additional time incarcerated, or been placed directly on probation. Defendants on probation had to comply with conditions set by the judge. Conditions typically included periodic meetings with the probation officer, and could include requirements for restitution, treatment, jobs, education, and a wide variety of other actions or limitations on action. A probation officer could file a petition with the court to end the defendant’s probation because the defendant had broken the commitment to abide by the

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<sup>38</sup> Alaska Criminal Rule 11(e) guided the form of plea agreements but did not require them to be written.

<sup>39</sup> A “no contest” plea (also called a “nolo contendere” or “nolo” plea) meant that the defendant was saying that he or she was not going to argue that the crime was committed but was not agreeing that he or she committed it.

conditions of probation. The Council did not have the resources to review this later part of the criminal justice process, after the defendant was sentenced.

#### 4. Appeal of a Criminal Case

The Judicial Council did not collect data about the events in cases after the sentencing date. For most convicted defendants, sentencing ended the court's involvement in the case. For some, the court saw them again if the prosecutor petitioned the court to revoke or alter probation. A few defendants asked the court to let them withdraw their guilty pleas, and others filed appeals related to the merits of the case or the sentence imposed.<sup>40</sup> If defendants appealed cases, they were entitled to appointed counsel, if indigent, for the first appeal. Defendants convicted of serious offenses, or with a prior conviction for a serious offense, were not entitled to bail on appeal.

Appeals went to the Alaska Court of Appeals by several paths, based on the circumstances in the case and the type of appeal. Appeals of the merits of the case were permitted as a right to defendants who were convicted at trial, and under certain circumstances for defendants who pled guilty or no contest.<sup>41</sup> For example, if a defendant asked the trial court to withdraw a plea because the defendant did not enter it voluntarily and knowingly, the trial judge had the discretion to let the defendant withdraw. If the court allowed the withdrawal, the original charges were reinstated, and the case continued as if the plea had not been entered. If the judge did not permit the withdrawal, the defendant could appeal the judge's decision.

Defendants could appeal their sentences under several different circumstances. Those convicted of a felony and sentenced to a total of two or more years of unsuspended incarceration could appeal. Those convicted of misdemeanors could appeal if the sentence was more than 120 days of unsuspended incarceration. Defendants convicted of felonies or misdemeanors could appeal shorter sentences, but the appellate court could choose not to hear the appeal. Defendants who had accepted the sentence as part of a plea agreement generally could not appeal.<sup>42</sup> The state also was permitted to appeal sentences, on the grounds that the sentence was too lenient. In those rare cases, the court of appeals could approve or disapprove the sentence, but could not increase it.

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<sup>40</sup> See ALASKA COURT SYSTEM, 2000 ANNUAL REPORT. Data from the report showed that 242 merit appeals and 53 sentence appeals were filed in fiscal year 2000 (July 1999-June 2000). *Id.* at 43. Many of the merit appeals also asked for sentencing relief.

<sup>41</sup> See *Cooksey v. State*, 542 P.2d 1251 (Alaska 1974) (holding that defendant may condition a guilty or no contest plea agreement on denial of appeal of dispositive motion).

<sup>42</sup> If the plea agreement set a minimum length of sentence, the defendant could appeal time imposed in excess of the minimum.

If the defendant's appeal to the court of appeals was successful, partly or entirely, the court of appeals remanded the case to the trial court. The remand could require retrial or re-sentencing, or other actions by the trial court. Unsuccessful defendants could ask the Alaska Supreme Court to review the court of appeals decision, but the supreme court rarely granted those petitions.

## **5. How Alaska's Criminal Justice System Differed from Other States' Systems**

Because Alaska became a state in 1959, it had an opportunity to adopt a criminal justice system that differed greatly from most other states by being very highly centralized. For purposes of this report, some of the important differences in 1999 were:

- Alaska had only state courts. The state had no counties so had no county courts, and it had no separate municipal courts.
- Alaska had only state prosecutors for felony charges. All district attorneys and assistant district attorneys were hired by and worked directly for the state attorney general.<sup>43</sup> The state's prosecutors also charged and prosecuted many misdemeanors. Anchorage prosecuted violations of its ordinances (all of which were misdemeanors), and Fairbanks and Juneau prosecuted some municipal offenses. In the rest of the communities, state prosecutors handled all cases, misdemeanor or felony.
- Alaska had only state-run prisons and jails, although it had some limited municipal lock-ups for temporary holding of a few defendants. The state department of corrections contracted with private organizations for some prison cells (in Arizona and a few other states), for all of its halfway house (Community Residential Centers) needs, and for some electronic monitoring of selected defendants.
- Alaska had state-paid, not county, public defense attorneys for all felonies with indigent defendants and most misdemeanors. The public defense attorneys appointed for indigent defendants worked as staff attorneys for the Public Defender Agency, as staff attorneys for the Office of Public Advocacy,<sup>44</sup> or as contract attorneys from the private sector who were hired and paid through OPA. Communities that prosecuted violations of their ordinances also provided their own indigent defense services, but municipal prosecutors were limited to misdemeanor cases.

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<sup>43</sup> The governor appointed the state's attorney general, who then hired the district attorneys, assistant district attorneys, and the assistant attorney generals who handled the state's civil cases.

<sup>44</sup> Office of Public Advocacy attorneys (staff or contract) were appointed to represent defendants with whom the public defenders had conflicts of interest because of past or other current representations.

- Alaska's criminal code and presumptive sentencing system became effective in 1980, with some subsequent revisions. These aspects of the criminal justice process are described elsewhere in the report.<sup>45</sup>

## 6. Structure of Statutory Sentencing in 1999

The statutory range of incarceration for a crime depended both on the class of the crime and the prior convictions of the defendant.<sup>46</sup> Most crimes were assigned a "Class" when they were defined in the statutes. Classes of crimes were Class A, B, and C felonies, and Class A and B misdemeanors. In addition, the most serious felonies were "Unclassified," including Murder I, Sexual Assault I, and Sexual Abuse of a Minor I.

Presumptive sentences applied to most of the more serious felony offenses and to repeat felony offenders convicted of less serious felony offenses. A presumptive sentence was a definite term of years within a sentencing range. For example, a second felony offender convicted of a Class B felony would be subject to a sentencing range of 0-10 years and a four year presumptive sentence. Presumptive sentences were commonly imposed on typical offenders who committed typical offenses within the definitions of those offenses. Some Unclassified crimes carried presumptive sentences, but other Unclassified crimes had a mandatory minimum sentence that could not be judicially adjusted downwards. For instance, Murder I had no presumptive sentence but did have with a mandatory minimum twenty year sentence.

Presumptive sentences did not apply to most first felony offenders convicted of Class B and Class C felony offenses or to offenders convicted of misdemeanors.<sup>47</sup> For instance, a first felony conviction

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<sup>45</sup> See *infra* Appendix A.

<sup>46</sup> Only unsuspended terms of incarceration were considered in most of this analysis. A sentence could also include terms of suspended incarceration, forfeiture, restitution, fines, probation, community work, treatment, contact restrictions, and registration requirements. AS 12.55.015 (1999).

<sup>47</sup> For felony DWI and felony Refusal to Submit to a Chemical Test, Class C felonies, the mandatory minimum sentence was 120, 240, or 360 days depending on whether the defendant had two, three, or four or more prior convictions for either offense in the five years preceding the date of offense. AS 28.35.030(n) (1999) (felony DWI); AS 28.35.030(p)(l) (1999) (felony refusal). In 2001, the legislature amended the look-back period to ten years but this amendment did not apply to sentences considered in this report. Ch. 63, §§ 9-11, SLA 2001. If any of the defendant's prior convictions for these offenses was a felony conviction, then the defendant would have qualified for a presumptive sentence as a repeat felony offender.

For misdemeanor DWI and misdemeanor Refusal to Submit to a Chemical Test, both Class A misdemeanors, the mandatory minimum sentence was 72 hours or 20 days, depending on whether the defendant had no prior convictions or one prior conviction for either offense. Mandatory minimums were 60, 120, 240, and 360 days respectively if the defendant had two, three, or four or more prior convictions that were not within the five year look-back period to qualify for felony prosecution. AS 28.35.030(b)(1) (1999) (giving sentences for misdemeanor DWI); AS 28.35.032(g)(1) (1999) (giving sentences for misdemeanor refusal). (Cont. to next page . . . )

of a Class C felony carried a sentence of 0-5 years. Unless a judge found extraordinary circumstances, Alaska caselaw required that a first offender ordinarily should have had a more favorable sentence than the presumptive term for a second offender convicted of the same class of crime.<sup>48</sup>

A judge could adjust a presumptive sentence upwards or downwards if statutory mitigating or aggravating factors were proven by clear and convincing evidence. There were limits on judges' discretion to reduce presumptive terms. If a presumptive term was four years or less, it could be adjusted downwards to zero. If a presumptive term was greater than four years, it could be adjusted downwards only by 50%. If no aggravating or mitigating factors were found, but the judge found that imposition of a presumptive sentence would be manifestly unjust, the judge could refer the case to a three-judge panel for its consideration of an adjusted sentence. For example, if a judge found a mitigating factor, but determined that imposition of half the presumptive term would have been manifestly unjust, the judge could refer the case to a three-judge panel for its consideration of a further reduction. Presumptive sentences could be adjusted upwards to the maximum term.

To assure uniformity in sentencing, Alaska appellate benchmark sentences provided trial judges with guidance in non-presumptive felony and aggravated presumptive sentencing cases as well as in Unclassified felonies and for consecutively-imposed sentences.<sup>49</sup> Caselaw required that sentences be consistent with sentences imposed on similarly situated offenders.

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A mandatory minimum 20 day sentence applied to defendants convicted of Assault 4, a Class A misdemeanor, if the defendant's offense involved domestic violence committed in violation of a domestic violence order. AS 12.55.135(c) (1999). Mandatory minimum sentences of 30 and 60 days applied to defendants convicted of Assault 4 if the defendant had one, or two or more convictions for crimes against a person or involving domestic violence. AS 12.55.135(g).

Mandatory minimum sentences of 30 or 60 days applied to defendants convicted of Assault 4 if the defendant's conduct was directed at an identifiable peace officer or emergency responder who was engaged in the performance of official duties at the time of the defendant's offense, depending on whether the defendant caused physical injury or merely placed the victim in fear of imminent physical injury. AS 12.55.135(d).

A mandatory minimum 72 hour sentence applied to defendants convicted of Vehicle Theft 2, a misdemeanor. AS 12.55.135(f) (1999).

A mandatory minimum sentence of 35 days applied to defendants convicted of Failure to Register as a Sex Offender or Child Kidnap 2, a misdemeanor. AS 12.55.135(h) (1999).

<sup>48</sup> See *Austin v. State*, 627 P.2d 657, 657-58 (Alaska App. 1981).

<sup>49</sup> See Susanne D. DiPietro, *The Development of Appellate Sentencing Law in Alaska*, 7 ALASKA L.REV. 265, 282-88 (1990). See also discussion *infra* pp. 151-154.



The following chart summarizes the statutory sentencing scheme in Alaska as it was in 1999, when the data for this report were collected.

Summary of Statutory Sentencing Structure in Alaska, 1999

Offense	Statutory Range	Presumptive - 1st felony conviction <sup>a</sup>	Presumptive - 2nd felony conviction	Presumptive - 3rd felony conviction <sup>b</sup>
<b>Unclassified Felonies</b>				
<b>Murder I</b>	20-99; or 99 <sup>c</sup>		N/A	
<b>Murder II</b>	10-99; or 20-99 <sup>d</sup>		N/A	
<b>Other</b>	5-99 years		N/A	
<b>Sexual Assault I; Sexual Abuse of a Minor I</b>	0-30	8 or 10 <sup>e</sup>	15	25
<b>Class A Felony</b>	0-20	5 or 7 <sup>f</sup>	10	15
<b>Class B Felony</b>	0-10	N/A	4	6
<b>Class C Felony</b>	0-5	N/A	2	3
<b>Class A Misdemeanor</b>	0-365 days		N/A	
<b>Class B Misdemeanor</b>	0-90 days		N/A	

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<sup>a</sup> Presumptive terms were subject to adjustments described in AS 12.55.155.

<sup>b</sup> At arraignment, if the prosecutor filed notice of intent to seek a definite sentence under AS 12.55.155(l), a person with two or more prior serious felonies who was then convicted of an Unclassified or Class A felony was subject to a 40-99 year sentence.

<sup>c</sup> 99 years was mandatory when a defendant killed an identifiable peace officer, firefighter or correctional employee who was engaged in the performance of official duties at the time of the murder, or was previously convicted of murder, or the defendant subjected a victim to substantial physical torture.

<sup>d</sup> In most cases, ten years was the mandatory minimum; twenty years was the mandatory minimum if the defendant murdered a child under 16 and was a parent or person in authority over a child, or caused the death of the child by committing a crime against a person prohibited under AS 11.41.200-11.41.530 (effective 9/20/99).

<sup>e</sup> Usually Manslaughter and Class A felonies carried a presumptive sentence of five years. If, for offenses other than Manslaughter, the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, or if conduct resulting in Manslaughter was knowingly directed towards a child under the age of sixteen or toward an identifiable peace officer, correctional employee, or emergency responder, the presumptive sentence was seven years for a first felony offender.

<sup>f</sup> If the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury.

## B. How the Judicial Council Analyzed the 1999 Felony Cases

This section describes the processes that the Council used to put the data into more useful categories (re-coding), and how the Council analyzed the data.

### 1. Re-coding the Data

Statistical analysis collects data into groups and lets patterns of events emerge that did not appear when looking at events one at a time. Taken individually, each case was unique. It was impossible to draw general conclusions by looking only at one case, because it could differ from other cases in important ways. Nor could this report draw general conclusions about data based only on experience in one location or with one type of offense or one gender of defendants. By putting all cases of one type together, and looking at only one or two aspects of them at a time (e.g., all defendants aged 40 or older, and looking only at the general types of offenses), patterns appeared.

For example, looking at each of the cases in the database would have been time-consuming, and would not easily reveal the fact that a significantly larger percentage than would be expected of defendants in Drug cases were more than 40 years old (Table 1, 31%), and a significantly lower percentage were in the age range of 16 to 20 years old (Table 1, 7%).<sup>50</sup> Re-coding the data so that types of offenses were grouped together, and defendants were grouped into a few age categories allowed this pattern to be seen.<sup>51</sup> A simple cross-tabulation of the data, with appropriate statistical tests<sup>52</sup> permitted a further finding that the pattern probably did not occur by chance. To make individual cases more useful in this search for patterns in the data collected, the Council grouped them in different ways. Some examples of different ways of grouping major variables such location, type of offense, periods of time, and defendants' problems are discussed below.<sup>53</sup>

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<sup>50</sup> This report looked only at adult felony defendants, aged 18 or older, unless the defendants were juveniles who were charged in adult court because of the seriousness of their offenses. Two defendants lacked age data and were not included in either Table 1 or Table 3.

<sup>51</sup> See *infra* pp. 52-54, for further discussion of Table 3, which analyzes the same data from a different perspective.

<sup>52</sup> For most of these analyses, the Council used Statistical Package for the Social Sciences (SPSS) and chi-square tests. Multivariate regressions are discussed below. The Council used the standard of "significant" at the .05 level throughout. That meant that there was only a one-in-twenty chance that the result occurred by chance. It is used as the standard throughout social science research for discussions about whether a given finding is meaningful. In this context, and as used throughout this report, the term "significant" only means "statistically significant" using accepted tests and criteria and does not mean "interesting," "important," or any other synonym.

<sup>53</sup> A variable was something that could vary: defendants' ages could be 16-20 years old, 21-25 years old, and so forth. A cross-tabulation showed the changing relationships between two variables as their values changed. A multivariate analysis showed the simultaneous relationships among several variables and a dependent variable (e.g.,

**Table 1**  
**Distribution of Charged Offenses Among Age Groups**

<b>Age at Offense</b>	<b>Murder Kidnap</b>	<b>Violent</b>	<b>Property</b>	<b>Sexual</b>	<b>Drug</b>	<b>Other</b>	<b>Driving</b>	<b>Total, All Offenses</b>
16-20 years	5 14%	109 17%	171 24%	45 17%	33 7%	5 14%	9 5%	377
21-25 years	8 22%	136 22%	154 21%	45 17%	66 14%	7 19%	19 11%	435
26-30 years	7 19%	74 12%	123 17%	39 14%	68 15%	5 14%	33 19%	349
31-39 years	12 32%	177 28%	178 25%	64 24%	155 33%	11 31%	60 35%	657
40 or older	5 14%	129 21%	97 13%	77 29%	143 31%	8 22%	52 30%	511
Total, all ages	37 100%	625 100%	723 100%	270 100%	465 100%	36 100%	173 100%	2,329

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### a. Location

The random sample of cases came from 29 different court locations in which felony cases were filed in 1999. The Council summarized these locations to allow readers to understand the findings better, and to allow the data analysis to be more useful.

#### 1) Location in the multivariate analyses

The most frequently used summaries of the location data in the multiple regression analyses were “Statewide” (all cases in the report, with the six courts defined as “rural”<sup>54</sup> used as an independent variable); and “Anchorage and outside-Anchorage” in which the Anchorage data were in one category and all other locations in the state were outside Anchorage.<sup>55</sup> Those geographic groupings had large enough samples to give reliable analyses of differences between Anchorage and the rest of the state.

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length of incarceration), as their values changed.

<sup>54</sup> "Rural" in the multivariate analyses included only Barrow, Bethel, Dillingham, Kodiak, Kotzebue, and Nome.

<sup>55</sup> The definition of “rural” was the same definition used for the statewide multivariate analysis described in note 54.

## **2) Location in the cross-tabulations**

### **a) Six categories**

For much of the cross-tabulation analysis, a six-category variable was used: Anchorage (935 cases), Fairbanks (260 cases), Juneau (89 cases), Southcentral,<sup>56</sup> Southeast,<sup>57</sup> and Other.<sup>58</sup> The separation into Anchorage, Fairbanks, and Juneau allowed comparisons to reports from the 1970s in which data came only from those three communities.<sup>59</sup> The other groupings reflected similarities in the sizes of the courts and geographical areas served by the courts.

### **b) Superior court locations in the cross-tabulations**

Another variable describing location in the cross-tabulations showed the thirteen superior court locations, with cases from the smaller courts considered together with the cases for the larger court that served them. So, for example, "Anchorage" also included cases from Cordova, Sand Point, Unalaska, and Whittier.<sup>60</sup> This variable was used to show patterns of events, such as charge reductions, that varied significantly by court location. Other analyses used only the thirteen superior court locations, with no cases added from the smaller communities.

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<sup>56</sup> "Southcentral" included Cordova (5 cases), Glennallen (16 cases), Homer (28 cases), Kenai (90 cases), Palmer (231 cases), Seward (12 cases), Valdez (25 cases), and Whittier (1 case); Total=408 cases.

<sup>57</sup> "Southeast" included Craig (6 cases), Haines (2 cases), Ketchikan (93 cases), Petersburg (15 cases), Sitka (24 cases), and Wrangell (7 cases); Total=147 cases.

<sup>58</sup> "Other" included Barrow (57 cases), Bethel (190 cases), Dillingham (19 cases), Healy (2 cases), Kodiak (53 cases), Kotzebue (92 cases), Naknek (8 cases), Nome (52 cases), Sand Point (1 case), Tok (2 cases), Unalaska (15 cases), and Unalakleet (1 case); Total=492 cases.

<sup>59</sup> Only cases filed in that court were included for Anchorage, Fairbanks, and Juneau. Cases filed in smaller courts were tried by judges from larger courts. For example, the two cases from Tok and the two from Healy included in the "Other" category were handled by Fairbanks judges. Cases from Sand Point and Unalaska usually were tried by Anchorage judges. The Council decided that it was more important to make as accurate as possible a comparison to other reports, so it kept Anchorage, Fairbanks, and Juneau cases separate. It also decided that resources for defendants and characteristics of defendants were more likely to be similar among smaller communities so it made more sense to group the smaller communities together.

<sup>60</sup> The variable "Anchorage" included Anchorage (935 cases), plus Cordova (5 cases), Sand Point (1 case), Unalaska (15 cases) and Whittier (1 case); Total=957 cases. The variable "Ketchikan" included Ketchikan (93 cases), plus Craig (6 cases), Petersburg (15 cases), and Wrangell (7 cases); Total=121 cases. The variable "Palmer" included Palmer (231 cases), plus Glennallen (16 cases) and Valdez (25 cases); Total=272 cases. The variable "Juneau" included Juneau (89 cases), plus Haines (2 cases); Total=91 cases. The variable "Fairbanks" included Fairbanks (260 cases), plus Healy (2 cases) and Tok (2 cases); Total=264 cases. The variable "Kenai" included Kenai (90 cases), plus Homer (28 cases) and Seward (12 cases); Total=130 cases. The variable "Dillingham" included Dillingham (19 cases), plus Naknek (8 cases); Total=27 cases. The variable "Nome" included Nome (52 cases), plus Unalakleet (1 case); Total=53 cases. Five other courts had no additional cases: Barrow (57 cases), Bethel (190 cases), Kodiak (53 cases), Kotzebue (92 cases), and Sitka (24 cases).

## b. Offenses

The Council collected data about the most common felonies filed in the state.<sup>61</sup> The Council's original sample of cases included enough different specific offenses that it chose to group them under more general types of offense headings of Murder/Kidnap, Violent, Property, Sexual, Drug, Driving, and Other.<sup>62</sup> Because Other offenses varied so greatly among themselves, and from the more common offenses, they were usually not included in analyses that sorted by type of offense. They were included in other groupings whenever possible.

The Council also analyzed offenses by the level of offense. Most analyses included Unclassified with mandatory minimum,<sup>63</sup> Unclassified with presumptive sentence,<sup>64</sup> Class A, Class B, and Class C felonies. These were the only classes included in analyses of filed charges. When analyzing convicted charges, many of which were misdemeanors, the Council also included Class A and Class B misdemeanors.

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<sup>61</sup> See *infra* Appendix D, describing the specific offenses about which data were collected.

<sup>62</sup> The Council collected data about Murder and Kidnaping cases. Although these were not common cases, they were the most serious felonies in Alaska and the Council believed that it was important to report at least some information about them. They were included in most of the analyses that focused on charged offenses; when they were included they were grouped with Violent offenses. Final charges of Murder 1, Murder 2, Attempted Murder, or Kidnaping were excluded from most analyses of convicted offenses because there were too few of them and because the consequences for those convicted defendants were substantially more severe, due to the nature of the offense, than were consequences for most other defendants. However, when the Murder/Kidnaping charges were reduced to other Violent offenses or other lesser offenses, the final reduced offenses were included in the appropriate categories for the lesser offenses at conviction. When analyzed separately, "Murder" included Murder 1, Murder 2, and Attempted Murder 1. The other homicides, Manslaughter and Negligent Homicide, and attempted homicides were then included with other Violent offenses, as appropriate.

"Other" included offenses such as Misconduct Involving Weapons, Perjury, Custodial Interference in the First Degree, and dozens of others that were infrequently charged.

<sup>63</sup> Alaska statutes limited these offenses to Murder 1, Solicitation to Commit Murder 1, Conspiracy to Commit Murder 1, Murder 2, Attempted Murder 1, Misconduct Involving a Controlled Substance 1, and Kidnaping. AS 12.55.125(a)-(b) (1999). Each of these had a statutorily specified mandatory minimum sentence below which judges could not sentence. Although these often were termed "presumptive" sentences, they differed from presumptive sentences by not being adjustable upwards or downwards through use of statutory mitigators or aggravators, or by referral to a three-judge panel.

The mandatory minimum sentence differed in principle from a presumptive sentence. A presumptive sentence presumed that, absent special circumstances, the defendant would receive that presumptive sentence chosen by the legislature. The mandatory minimum set by the legislature required that the judge impose at least the specified number of days or years, but the judge could impose more. See *generally* AS 12.55.125 (1999).

<sup>64</sup> Only two offenses fell into this category of Unclassified with a presumptive sentence: Sexual Abuse of a Minor 1 and Sexual Assault 1. AS 12.55.125(i) (1999).

For some purposes, the Council chose to analyze specific offenses. A table that showed, for example, Burglary 1, Burglary 2, Theft 1, and Theft 2, included only defendants actually charged with or convicted of those specific offenses, unless otherwise noted.

### **c. Periods of time (predisposition incarceration, sentence length)**

Two of the Council's most important dependent variables were the periods of time that the defendant spent incarcerated before the case was disposed of (sentenced, dismissed or acquitted), and the unsuspended incarceration to which the defendant was sentenced on the judgment. For some predisposition incarceration analyses, the Council grouped cases into categories of "less than one day," "one to five days," "six to thirty days," "31 to 60 days," "61 to 150 days," "151-180 days," "181-364 days," and "One year or more." For the multivariate analyses, the numbers of predisposition and post-disposition incarceration days were treated as continuous variables.

In measuring sentence length, the Council used only time actually imposed, and excluded suspended time. For the analyses of unsuspended incarceration imposed by the judge, most analyses looked at mean sentences for different types of offenses and offenders based on the single most serious charge at conviction. Tables in Appendix C of this report show the mean sentence length for each offense and the number of defendants in categories of "probation," "1 day to 12 months," "13-24 months," "25 to 60 months," "61-96 months," and "Over 96 months."<sup>65</sup>

### **d. Alcohol, drug and mental health problems**

The Council collected a variety of information from court case files, Department of Public Safety computer files, and presentence reports about the defendants' uses of alcohol or drugs at the time of the offenses, the defendants' records of past problems with substances, and the presence of conditions of probation that suggested a substance abuse problem. For parts of the analyses, the several different variables about these problems were merged and summarized. Different summaries were used in the multivariate regression analyses and in the cross-tabulation and frequency analyses.

The most frequently used variable for "alcohol problem" combined information from the defendant's prior convictions of DWI or related offenses, alcohol use at time of offense, prior alcohol-related offenses, information recorded from the court case files and presentence reports, and information

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<sup>65</sup> Again, for multivariate analyses, ISER treated this variable as a continuous variable.

about conditions of probation (e.g., “get substance abuse treatment”).<sup>66</sup> The most frequently used variable for “drug abuse problem” combined similar information: drug use at time of offense, prior drug offenses, information about treatment or problems recorded in the court case file, and information about conditions of probation related to drug use or abuse.

Mental health problem data came from the court case files and presentence reports also. To assist the Council in getting more data, the Department of Corrections offered to have its staff review the DOC files for every defendant in the report, and note whether any entries in the DOC files suggested that the defendant had a mental health problem. Using this process, DOC identified about 519 defendants who may have had mental health issues, based on the initial screening at the time the defendant first was admitted to a DOC facility. Again, for the multiple regression analyses and some of the descriptive work, the Council used a mental health variable that combined the DOC data with the other data from court case files and presentence reports.

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<sup>66</sup> The variable “condition of probation was substance abuse treatment” was used to show any mention in the judgment of treatment for either alcohol problems or drug problems, or could include both. Because the judgments were not always specific about which type of treatment or assessment was needed for the defendant, research associates used the same variable for both. As noted above, the analysis combined this variable with all the others related to alcohol and substance abuse problems to arrive at the variables “any indication of alcohol problem” and “any indication of substance abuse problem.” These summary variables could have overestimated the number of defendants needing substance abuse treatment and underestimated the number of people needing alcohol treatment. *See* (discussion under Characteristics of Defendants) *infra* pp. 64-65. The summary variables that included “condition of probation was substance abuse treatment” were used throughout the multivariate equations and in a number of the cross-tabulations reported in other parts of the report.

For lists of variables in the database, *see* Appendix D, Table D-5. For a list of variables in the multivariate analysis *see* Appendix D, Table D-6.

## 2. Analyzing the Data

The Judicial Council used several techniques and sources of information to analyze the data.

### a. Frequencies

First the Council produced counts of values for each variable. Table 2 below shows an example using the ethnicity of defendants in the statewide defendant population. The values are Caucasian, Black, Native, Asian/Pacific Islander, Hispanic and Unknown. These simple methods of “counting” provide limited information that helped to understand the data at the most fundamental levels.

Ethnicity	Number	Percent
Caucasian	1,167	50%
Black	264	11%
Alaska Native/American Indian	705	30%
Asian/Pacific Islander	57	2%
Hispanic	39	2%
Unknown	99	4%
Total	2,331	99% <sup>a</sup>

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<sup>a</sup> Percents do not add to 100% because of rounding.

### b. Cross-tabulations

The second type of analysis the Council used was cross-tabulations. Table 3 lists the values from one variable in the rows (in this case, age groups), and the columns of the table show the values from another variable (in this case, type of offense). By reporting the data in this way, the Council could show relationships among variables. It also could test the combination of variables for statistical significance. If the ways that the variables were associated with each other had a chance of occurring randomly that was one in twenty or less (expressed in statistical terms as  $p \leq .05$ ), experts term it “statistically significant.” Throughout this report, if a finding was described as “significant,” it was understood to mean, “statistically significant.” Many of the findings in the report were statistically significant; those that were not usually were included to make the report more complete.



### c. Multivariate analyses<sup>67</sup>

These analyses looked at variables in the report in more sophisticated combinations than was possible with cross-tabulations and other analyses that looked at only two variables.

The purpose of the multivariate analysis was to test hypotheses about differences in the criminal justice system. Using literature reviews and meetings with interested parties, the Council and ISER developed a conceptual model of the criminal justice system. They identified key points in the system at which disparities could occur, and hypothesized causes for disparities.

The reviews and discussions identified predisposition incarceration, charge reductions, sentence length and total time incarcerated as points in the system at which disparities might occur. The multivariate analyses tested to see whether disparities persisted after controlling for the factors that were expected to affect predisposition incarceration, charge reductions and sentencing. These factors included the defendant's prior criminal convictions, seriousness of the charge(s) and convictions(s), the number of charges filed and similar information.

Multivariate analysis gave better information than cross tabulations because it took into account the effects of several variables simultaneously. For example, a cross tabulation of ethnicity by the mean length of predisposition incarceration showed differences in days incarcerated for different ethnicities. To test whether this was the whole story, or could be accounted for by other information, the analysis needed to take into account the effects of other variables such as class of charge and type of offense. For predisposition incarceration, which varied from zero days to more than 365 days, variables such as rural, ethnicity, gender and others showed the factors that were associated with longer or shorter periods of incarceration.<sup>68</sup> ISER analysts built models of the criminal justice system using the information in the Council's database, and tested whether models with different variables improved or worsened the ability to explain variation in the data.

However, even the analysis could not measure all the possible factors that could explain or predict the sentence length. In the Council's review of information about 1999 felony defendants, it could not find reliable sources of some socioeconomic information, such as the defendant's marital status, employment or job history - all types of information that other reports showed had significant effects

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<sup>67</sup> The Council's statistical consultants, the Institute for Social and Economic Research (ISER) conducted all of the multivariate analyses reported here.

<sup>68</sup> See *infra* Tables 35, 35a, 35b, 35c.

on sentence length.<sup>69</sup> It was possible to hypothesize that if these factors had been available for this report, the associations with type of attorney or other variables might not have been as significant. In other words, the lack of information about employment and job status might have made type of attorney more significantly important in this equation, when one or more underlying associated socioeconomic factors, if included, might have reduced the significance of attorney type in the equation.

A final, essential note is that this analysis cannot answer the question of whether A caused B. The analysis could show that A was associated with B; that if A occurred (e.g., male gender) it was associated with B (e.g., longer sentence for some types of offenses) more frequently than would have been likely by chance. It could not say that being male caused longer sentences. None of the findings in this report should be interpreted to say that one event or condition caused another condition, only that some factors were statistically associated with other factors. These associations may give information about policies and practices in the state. The findings of the varied disparities suggested the need for additional thought and analysis.

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<sup>69</sup> MICHAEL L. RUBINSTEIN, ET AL., ALASKA JUDICIAL COUNCIL, THE EFFECT OF THE OFFICIAL PROHIBITION OF PLEA BARGAINING ON THE DISPOSITION OF FELONY CASES IN ALASKA CRIMINAL COURTS [hereinafter ALASKA BANS PLEA BARGAINING] Appendix B, Tables VII-3 through VII-8 (1978). That report found the data in sources such as arrest reports and presentence reports that were not as easily available for this report, given the Council's limited resources. *See infra* p. 51.

## **C. Characteristics of Alaska Felony Defendants**

The focus of this report was what happened to felony defendants after charges were formally filed in court. It was important to examine the characteristics of newly charged defendants, in part, to identify disproportions that existed when charges were filed. This section discusses characteristics of charged defendants. Some characteristics of convicted defendants are discussed also. Generally, there was little variation between charged and convicted defendants for many defendant characteristics. Many disproportions that appeared when defendants were convicted tracked disproportions that existed when defendants first came to court.

### **1. Socioeconomic Characteristics**

One possible explanation proposed for the Council's findings was that socioeconomic factors could account for most or all of the disparities found in the analysis of 1999 charged felonies. The Council had limited reliable socioeconomic information about defendants available to it for this report. This section describes the Council's use of socioeconomic factors in prior reports, their effects in the context of earlier findings about type of attorney, the availability of those factors in the 1999 data collection, and their possible effects had they been available.

The Council has assessed the effects of socioeconomic factors in several of its reviews of sentencing practices in earlier years. During the data collection for those reports, the Council had access to data sources that were not as available for the 1999 felonies. For some reports, the Council had access to police reports, either directly, or through their inclusion in prosecutors' files. The police reports may have included information about marital status and employment. The Council did not have the resources to gather information from those reports so the data was not available for the 1999 report. In addition, although the Council had access to all presentence reports for 1999 cases, many more cases had presentence reports in prior years than in 1999.

**a. Prior Council reports**

In the 1978 report *Alaska Bans Plea Bargaining*,<sup>70</sup> the Council was able to measure the effects of socioeconomic factors because it had more complete data sources.<sup>71</sup> Even at that, the report notes that “information on the defendant’s use of alcohol, and the defendant’s education . . . was available only in a small proportion of the cases.”<sup>72</sup> The report notes that defendant’s income was missing in about half the cases, but was estimated using the defendant’s age, employment status and occupation.<sup>73</sup> Because the Council did not have either occupation or employment status for the 1999 felonies, it could not make any valid estimates, as was done in the 1978 report.

The 1978 report captured enough data about marital status, employment status, income (with the proviso described above), and type of attorney to use in its regression analyses.<sup>74</sup> Those multivariate regression analyses showed that marital status (if divorced or separated) was associated with longer sentences in Violent offenses, but had no effect in any other type of offense.<sup>75</sup> A higher income was associated with a shorter sentence in Violent offenses.<sup>76</sup> Defendants who had private or prepaid attorneys had shorter sentences for Violent offenses.<sup>77</sup> In Property offense convictions, private or prepaid counsel was associated with shorter sentences.<sup>78</sup> If the defendant was unemployed, that fact

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<sup>70</sup> ALASKA BANS PLEA BARGAINING, *supra* note 69. The data for this report came only from Anchorage, Fairbanks and Juneau. *Id.* at 129. They were collected for two years, August 15, 1974 through August 14, 1976. *Id.* Type of attorney included pre-paid (through the union plans for union members primarily employed in building the Alaska Pipeline) and private attorneys in one category, public defender employees, court-appointed attorneys, and self-represented defendants. *Id.* at 133. The offense categories were defined similarly to those used in the 1999 felony report. *Id.* at 131-32. Violent offenses were defined nearly identically in 1978, but included rapes (that were the equivalent of the current Sexual Assault 1 and 2). *Id.* at 131. Drug offenses also were nearly identical. *Id.* Property and Fraud offenses were split into two categories. *Id.* Sexual offenses other than the highest levels of rape were categorized as “morals” offenses in a distinct category. *Id.* at 131-32. There was no category of felony driving offenses. *Id.*

<sup>71</sup> *Id.* at 129. The report notes use of “data from police, jail, and court records on every felony case that originated during this period.” *Id.*

<sup>72</sup> *Id.* at 132.

<sup>73</sup> *Id.* at 133.

<sup>74</sup> *Id.* at 197, 200.

<sup>75</sup> *Id.* at 197, 200.

<sup>76</sup> *Id.* at 197.

<sup>77</sup> *Id.* The multivariate regression analyses in 1978, as in 1999, looked at the independent effects of each variable holding all other variables equal. This meant the finding that higher income was associated with a shorter sentence was independent of the finding that a private or pre-paid attorney also was associated with a shorter sentence.

<sup>78</sup> *Id.* at 199, fig. 7 and Appendix B, Table VII-4.

was associated with a longer sentence in Burglary, Larceny and Receiving offenses.<sup>79</sup> In Fraud and Forgery convictions, having an appointed counsel<sup>80</sup> (as distinct from public defender, private or prepaid) was associated with longer sentences.<sup>81</sup> The findings about socioeconomic variables were independent of those about the type of attorney.

In its 1978 report, the Council also separately analyzed the likelihood that a defendant would spend 30 days or fewer in jail as part of the sentence.<sup>82</sup> In Violent and Property offenses, if the defendant was unemployed or had a court-appointed attorney, the defendant was more likely to spend more than 30 days in jail.<sup>83</sup> Those analyses used different equations and did not control for the independent effects of each factor.

The Council's next report about felonies, *Alaska Felony Sentences: 1976-1979*, was undertaken at the request of the Alaska Supreme Court and funded by the Alaska Legislature.<sup>84</sup> It also found that socioeconomic factors had an effect independent of the type of attorney. For Fraud and Forgery offenses, both type of attorney (longer sentence for court-appointed attorney) and monthly income (shorter sentence if monthly income was less than \$500) played roles.<sup>85</sup> In that group of offenses, the socioeconomic factor had an effect of reducing the sentence length rather than, as hypothesized by many, increasing the sentence length.<sup>86</sup> In "rural" cases in that report<sup>87</sup> defendants with incomes less than \$500 received longer sentence in Violent offenses; and in Property offenses, defendants

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<sup>79</sup> *Id.* at 200.

<sup>80</sup> During the 1974-1976 period covered by the data, the court appointed attorneys from the private sector to represent defendants who were indigent but could not be represented by the Public Defender Agency for various reasons. *Id.* at 38.

<sup>81</sup> *Id.* at Appendix B, Table VII-6.

<sup>82</sup> *Id.* at 207-12.

<sup>83</sup> *Id.* at Appendix B, Table VII-8.

<sup>84</sup> NICHOLAS MAROULES & TERESA J. WHITE, ALASKA JUDICIAL COUNCIL, ALASKA FELONY SENTENCES: 1976-1979 at i (1980).

<sup>85</sup> *Id.* at 36-37.

<sup>86</sup> *Id.* at 37.

<sup>87</sup> "Rural" was defined as Barrow, Bethel, Nome, Kenai, Kodiak, Sitka and Ketchikan. Kotzebue, Palmer and Dillingham superior courts were created several years later.

unemployed for thirty days or more or those with seasonal jobs had shorter sentences, while type of attorney played no role in any of the rural analyses.<sup>88</sup>

In 1982, the Council published a report on felony cases filed during the first year after the revised criminal code and presumptive sentencing took effect, *Alaska Felony Sentences: 1980*.<sup>89</sup> That report found that having a job was associated with shorter sentences for defendants in Property cases in the urban areas.<sup>90</sup> Because that report had presentence reports for a majority of the defendants, other factors such as the presentence reporter's characterization of the defendant (as cooperative, habitual criminal, etc.) and the presentence reporter's recommendation for sentence played a more significant role than some of the socioeconomic data also included in the equations.<sup>91</sup>

The most recent report was published in 1991, *Alaska's Plea Bargaining Ban Re-evaluated*.<sup>92</sup> Because the focus of that report was on an evaluation of the ban on plea bargaining, the report contained little description of multivariate analysis of sentence lengths. The multivariate analyses were conducted, but did not find significant ethnic disparities in any of the sentences.<sup>93</sup>

The analysis also considered the effects of various factors on the likelihood that a defendant would be sentenced to some time incarcerated. The analysis found that defendants who were unemployed were significantly more likely to spend some time incarcerated, as were those with less than a high school education.<sup>94</sup> The socioeconomic data in that report came from a combination of sources, including presentence reports and police reports.<sup>95</sup> The Council attempted to collect income, marital status and employment status for that report, but either did not use it or did not find it significant.<sup>96</sup>

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<sup>88</sup> ALASKA FELONY SENTENCES: 1976-1979, *supra* note 84, at 60-63.

<sup>89</sup> ALASKA JUDICIAL COUNCIL, ALASKA FELONY SENTENCES: 1980 (1982).

<sup>90</sup> *Id.* at Appendix B, Table II-7.

<sup>91</sup> *Id.*

<sup>92</sup> ALASKA'S PLEA BARGAINING BAN RE-EVALUATED *supra* note 19, at 146, Table 31. The analysis was a bivariate rather than a multivariate analysis. The Council conducted multivariate analyses of sentences, but not finding any significant ethnic disparities, chose not to report the findings from the multivariate analyses in any detail.

<sup>93</sup> *Id.* at 145-52.

<sup>94</sup> *Id.* at 146, Table 31.

<sup>95</sup> *Id.* at Appendix B. The report had access to prosecutors' files, which included the police report. The presentence reports came from the court case files. Between those two sources, the Council was able to compile sufficient data about the socioeconomic characteristics mentioned to use them in analysis.

<sup>96</sup> *Id.* at Appendix B-II.

**b. 1999 cases with charged felonies**

In 1999, presentence reports were available for only about 31% of defendants with a non-presumptive conviction, as compared to 60% of defendants with a presumptive felony conviction. The primary reason for the difference was that over half (52%) of those convicted of a non-presumptive charge had only a misdemeanor for the single most serious charge of conviction.<sup>97</sup> Of the defendants convicted of a misdemeanor, twenty defendants<sup>98</sup> (3% of the defendants convicted of misdemeanors), had a presentence report, because they had a prior felony conviction for which a presentence report had been prepared. Of the defendants convicted of a non-presumptive felony charge, 61% (N=450) had a presentence report, almost exactly the same as the percentage of defendants convicted of a presumptive charge (60% of the defendants with a presumptive charge had a presentence report, N=213).

Of the total group of non-presumptive defendants, information about education was available for 31%,<sup>99</sup> information about employment was available for 38%,<sup>100</sup> and information about marital status was available for 43%.<sup>101</sup> No attempt was made to collect data about income because the Council assessed the availability and quality of income data in past data collection efforts and decided that useful data were not available. The Council and analysts decided that the fact that some socioeconomic information was available for substantially fewer than half of the defendants meant that no valid analysis could be done for the defendants who did have the information.

**c. Comparison of prior reports and the 1999 charged felonies report**

A review of the earlier findings showed that if the socioeconomic data were available to analyze in the same equations with type of attorney, both types of information were important. The socioeconomic data had scattered effects in the equations. The type of attorney also had scattered effects in the equations. The fact that some socioeconomic data was important in an equation did not

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<sup>97</sup> The substantially higher number of misdemeanor convictions for the 1999 charged felonies, as compared to earlier reports, is discussed *infra* pp. 93-95.

<sup>98</sup> This was 3% of the defendants convicted of misdemeanors, considering only the defendants with non-presumptive convictions (N=1,537).

<sup>99</sup> The Education variable included values of 8<sup>th</sup> grade or less, some high school, GED or diploma, some voc/tech, some college, and college degree.

<sup>100</sup> The Employment variable included steady employment for more than one year, partial employment during the past year, full time student, disabled, subsistence, unemployed, and employed but with no other information.

<sup>101</sup> The Marital Status variable included yes/no/unknown choices only.

eliminate the possibility that type of attorney would be significant in the same equation, meaning that the information about socioeconomic data did not reduce the significance of the type of attorney data. Both were occasionally important in the same equation, but far more frequently neither were important.

The same analysis applied to ethnicity and socioeconomic data. Both socioeconomic data and ethnicity were included in the earlier equations. In a few scattered instances, ethnicity was important in the equation. In a few scattered instances socioeconomic factors were important in the equation. The presence of both types of information, did not, as hypothesized, eliminate the effects of ethnicity. The equations still showed ethnic disparities in some instances, occasionally at the same time that socioeconomic data also were measured as having significant effects.<sup>102</sup>

These findings suggest that having additional socioeconomic data for the 1999 defendants charged with felonies would have affected the type of attorney and ethnicity findings to some extent. The Council would have preferred to have these data available for the analysis, because of their importance in some instances in the earlier reports. Had they been available, it is uncertain how the Council's findings in this report would have been affected.

## **2. Age**

Defendants in Alaska's felony population in 1999, like felony populations in other states,<sup>103</sup> were relatively young. About one-third (31%) were less than 25 years old, and nearly half (47%) were less than 30 years old. Another 31% (one-third) were between 30 and 39 years old, and 22% were 40 years or older. Within each age group, nearly identical percentages of defendants were charged with felonies, convicted of felonies, and convicted of misdemeanors. For example, defendants aged 25 to 29 years old made up 16% of charged felony defendants, 16% of defendants convicted of a felony, and 15% of defendants initially charged with a felony and convicted of a misdemeanor.

Young people were felony defendants in numbers disproportionate to their percentage of Alaska's population.<sup>104</sup> Seventeen to twenty-nine year-olds made up 22% of the Alaskans aged 17 and older,

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<sup>102</sup> It should be noted that the earlier equations were different multivariate equations and included different information for analysis (often from the presentence reports) than did the equations used in 1999. Often the information from the presentence reports about the probation officer's assessment of the defendant was more important than ethnicity, type of attorney, or socioeconomic factors.

<sup>103</sup> See discussion *infra* pp. 139-140.

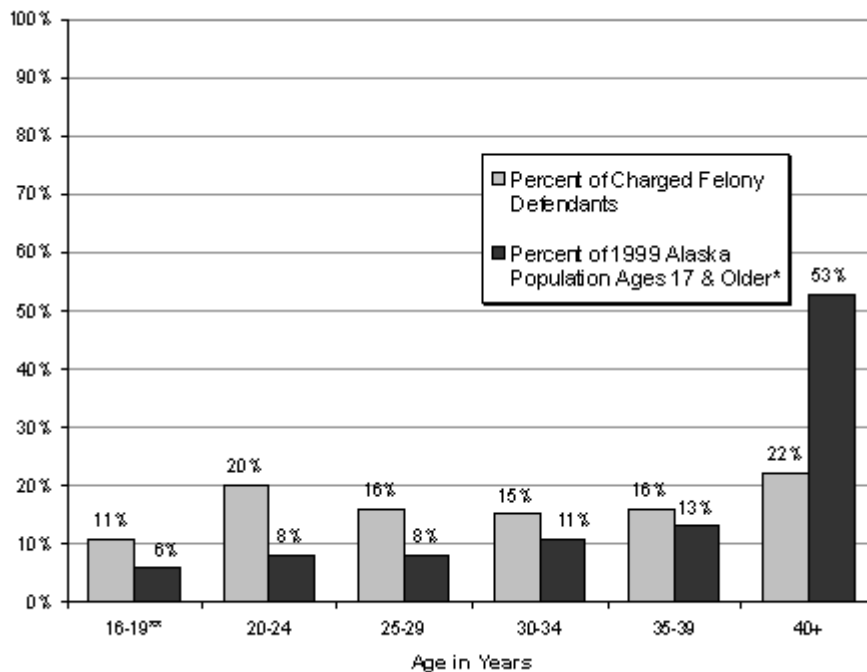
<sup>104</sup> ALASKA DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, ALASKA POPULATION OVERVIEW: 1999 ESTIMATES 32-33, Table 1.12 (2000).



but 47% of persons charged with felonies in the 1999 sample.<sup>105</sup> Persons aged 20-24 years old were the most disproportionately represented. They were 20% of the charged felons, but only 8% of the general population measured.

Figure 1 illustrates the distribution of defendants by age group. The chart shows the percentage of defendants from each age group among charged felony defendants and compares that percentage to the percentage that the age group comprised of Alaska’s population in 1999.

Figure 1  
Distribution of Charged Felony Defendants by Age  
and Comparison with Alaska Population in 1999



Alaska Judicial Council, 1999 Felony Report

\* ALASKA POPULATION OVERVIEW: 1999 ESTIMATES *supra* note 104, at 32-33, Table 1.12.

\*\* Because there were only two 16 year old defendants charged as adults in the Council’s representative sample of felony defendants, the census percentage shown for this age group is for 17-19 year olds.

<sup>105</sup> The database only included defendants in the adult justice system which generally served persons 18 years and older. Alaska statutes permitted some younger defendants charged with serious offenses to be charged and tried as adults. The 1999 felony sample included eleven 16- and 17-year old defendants. In most places, they are categorized with 18-year-old defendants.

Table 3 shows a relationship between the type of offense committed and the age of the defendant at the time of the offense.<sup>106</sup> The table shows significantly different patterns in offense types by age. For example, a higher percentage of younger defendants was charged with Property offenses, and a higher percentage of older defendants was charged with felony Driving offenses. Sexual offenses appeared to be evenly distributed among all age groups. For Drug offenses, the percentages appear to increase steadily with age. Only 9% of the defendants 16-20 years old were charged with Drug offenses, but 28% of the defendants aged 40 years and older were charged with Drug offenses.

A few 16 and 17 year old defendants were charged with felonies and prosecuted as adults. They were included in the sample and appear on Figure 1 and Tables 1 and 3. Many more 16 and 17 year olds were prosecuted in the juvenile justice system for conduct that would have been charged as a felony if committed by an adult. They were not included in the sample.

Age at Offense	Murder Kidnap	Violent	Property	Sexual	Drug	Other	Driving	Total
16-20 years	5 1%	109 29%	171 45%	45 12%	33 9%	5 1%	9 2%	377 100%
21-25 years	8 2%	136 31%	154 35%	45 10%	66 15%	7 2%	19 4%	435 100%
26-30 years	7 2%	74 21%	123 35%	39 11%	68 20%	5 1%	33 10%	349 100%
31-39 years	12 2%	177 27%	178 27%	64 10%	155 24%	11 2%	60 9%	657 100%
40 or older	5 1%	129 25%	97 19%	77 15%	143 28%	8 2%	52 10%	511 100%
	37	625	723	270	465	36	173	2,329

Alaska Judicial Council, 1999 Felony Report

<sup>106</sup> This same data is similarly presented in Table 1, *supra* p. 39.

<sup>107</sup> The numbers on Tables 1 and 3 are identical. The percentages are calculated differently. On Table 1, *supra*, p. 39, the percentages are calculated by columns, so the table shows how many defendants within each age group were charged with a Murder/Kidnap offense (e.g., 14% of Murder/Kidnap charges were 16-20 year-olds; 22% of Murder/Kidnap charges were against 21-25 year-olds). Table 3, however, shows that among 16-20-year old defendants, 1% were charged with Murder/Kidnap, 29% were charged with Violent offenses, and so forth. Looking down the column on Table 3 shows that a smaller percentage of Drug charges were filed against 16-20-year-old defendants (9%) and a larger percentage against persons 40 years or older (28%).

### 3. Gender

In 1999, of all defendants both charged and convicted, five times more were males than females. The state's 17 and older population was 52% male and 48% female.<sup>108</sup> Men accounted for 83% of defendants charged with felonies, compared to women, who made up 17%.<sup>109</sup> Although males and females were brought into the process at disproportionate rates, there appeared to be no disparity in the rates at which they were convicted.

### 4. Ethnicity

The disproportionate numbers of ethnic minorities in Alaska's criminal justice system when compared to Alaska's population overall<sup>110</sup> were the principal impetus for this report. This section reviews the disproportions for charged felony defendants from the 1999 sample.<sup>111</sup> It also describes the proportions of the charged felony defendants by types of offenses. There was little variation in ethnic disproportions between charged and convicted defendants. The ethnic disproportions that existed for convicted defendants existed at the beginning of the process that this report evaluated; from the time of formal charge to time of disposition.

#### a. Ethnicity of felony defendants compared to Alaska population

Figure 2 shows that Caucasians were about 76% of Alaska's adult population, but only 50% of the defendants charged with felonies. For all ethnicities, the percentages of each group charged with a felony and convicted of any offense varied little from each other. This discussion presents only the data for charged defendants.

Blacks were 4% of Alaskan adults, but 11% of charged felony defendants. The over-representation of Blacks among charged felony defendants was the greatest rate of ethnic disproportion in this sample. Hispanics also were 4% of the state's adult population, but 2% of those charged with

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<sup>108</sup> ALASKA POPULATION OVERVIEW: 1999 ESTIMATES, *supra* note 104, at 26, Table 1.6.

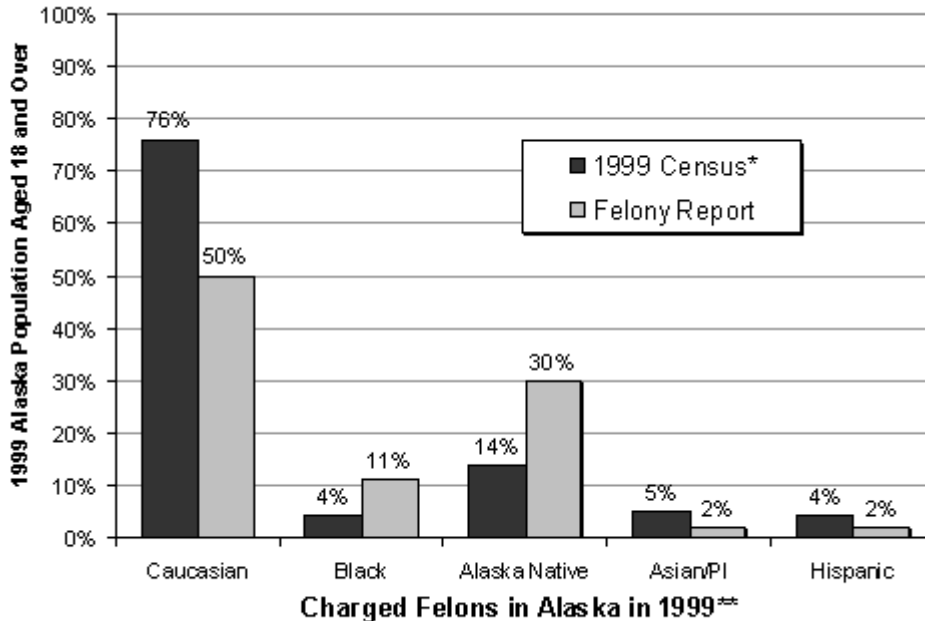
<sup>109</sup> Men were 85% of those convicted of felonies and 82% of the defendants charged with felonies and convicted of misdemeanors.

<sup>110</sup> ALASKA POPULATION OVERVIEW: 1999 ESTIMATES, *supra* note 104.

<sup>111</sup> *See infra* pp. 137-139, comparing ethnic distributions of Alaska felons to those in other state courts nationwide.

felonies.<sup>112</sup> Asians and Pacific Islanders, grouped together, were 5% of Alaska’s residents and 2% of the defendants in this sample charged with felonies. Alaska Natives<sup>113</sup> were 14% of Alaska’s adult population and 30% of those charged with felonies.

Figure 2  
1999 Alaska Population Compared to  
Charged Felons, by Ethnicity



Alaska Judicial Council, 1999 Felony Report

\* Based on representative two-thirds sample of all 1999 felony cases. Four percent unknown ethnicity for charged felons in the sample.

\*\* ALASKA POPULATION OVERVIEW: 1999 ESTIMATES *supra* note 104, at 32-33, Table 1.12.

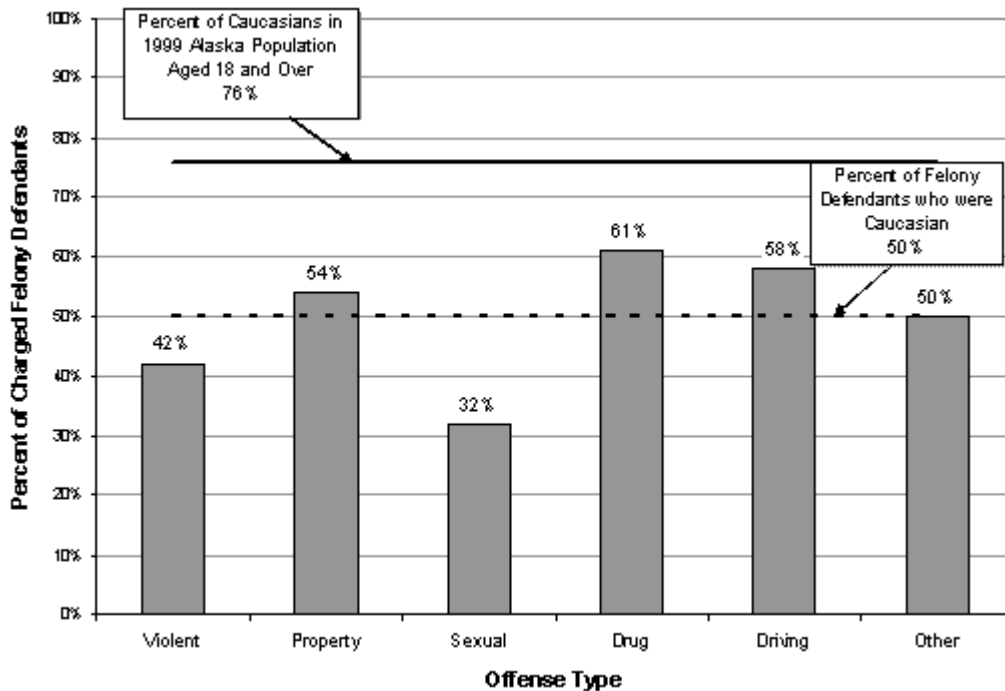
<sup>112</sup> Because ethnicity was a focus of this report, Hispanic ethnicity was recorded without regard to race in the analysis, defining Hispanic ethnicity as having a Hispanic last name. Census figures identified Hispanics by both the specific racial group (e.g., Black, Caucasian, Hispanic) to which the individual belonged and by Hispanic ethnicity (characterized as Hispanic last name). The Census data on this table show Hispanics twice, both as a separate category, and simultaneously within the racial groups as defined by the Census. The Council’s data included only the 39 defendants who were identified as the specific racial group of Hispanic. Because the number of defendants was small, the Council’s disproportion numbers were not affected by this difference in characterization.

<sup>113</sup> Throughout this report, the term “Alaska Native” includes all defendants identified as American Indians.

**b. Ethnicity by type of offense**

Figures 3, 4, and 5 show the distribution of ethnicities within the sample of felony defendants by the type of offense charged.<sup>114</sup> Ethnicity and type of offense appeared to be related in some ways. For example, Figure 3 shows that while Caucasians were 76% of the state’s adult population and 50% of the charged felons, they were 32% of those charged with Sexual offenses and 42% of those charged with Violent offenses. They appeared more frequently than expected among defendants charged with Drug offenses (61%) and Driving offenses (58%).

**Figure 3**  
**Percentage of Charged Felony Defendants**  
**Who Were Caucasian by Offense Type**

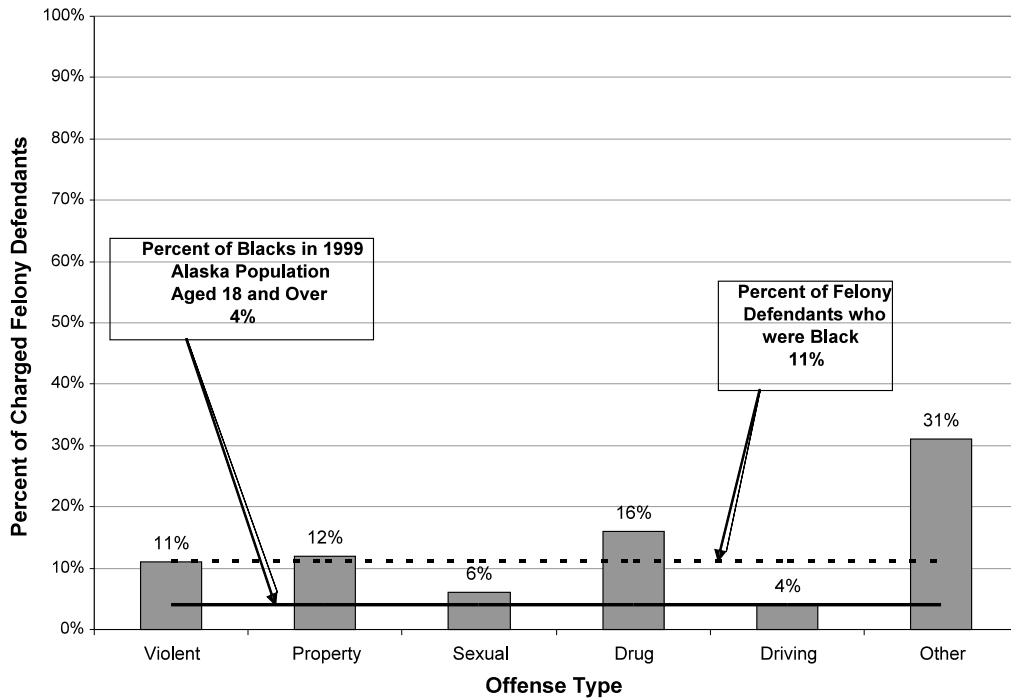


*Alaska Judicial Council, 1999 Felony Report*

<sup>114</sup> Hispanic and Asian/Pacific Islander defendants had numbers too small to show graphically. Murder and Kidnaping defendants also were too few to graph. Asians and Pacific Islanders were 2% of charged defendants, but 11% of all defendants charged with Murder/Kidnaping offenses (N=4 Asian/Pacific Islanders). Hispanics were 2% of the charged defendants. Forty-one percent of the Hispanics were charged with Drug offenses.

Figure 4 shows a different pattern of charged offenses among Black defendants.<sup>115</sup> They appeared least frequently in Driving offenses (4% of the Black defendants were charged with Driving offenses) and Sexual offenses (6% of the Black defendants were charged with Sexual offenses). Sixteen percent of the Blacks were charged with Drug offenses, and 31% with Other offenses.<sup>116</sup>

Figure 4  
Percentage of Charged Felony Defendants Who Were Black  
by Offense Type



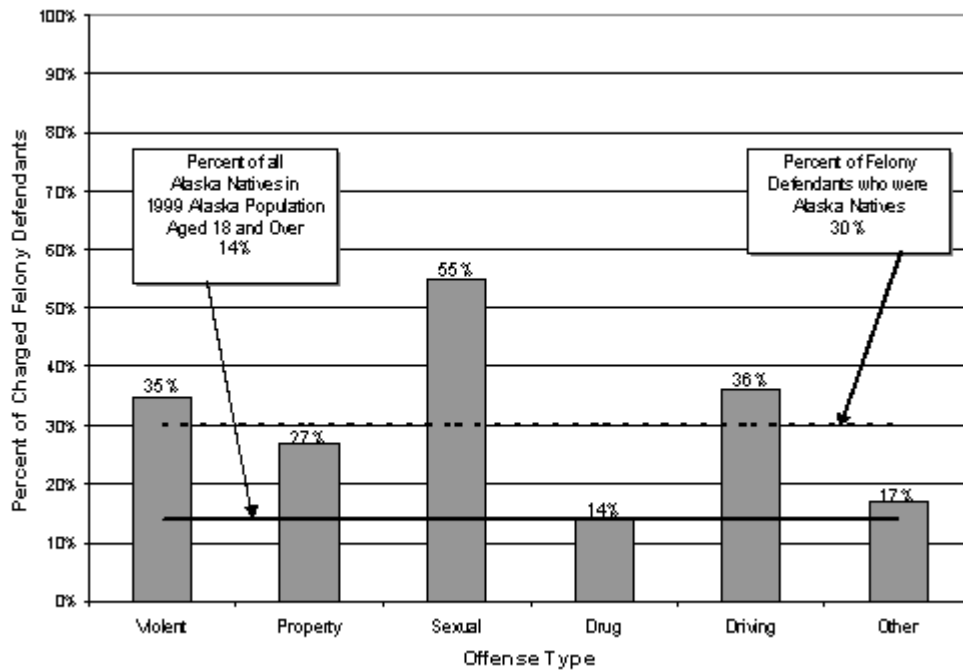
Alaska Judicial Council, 1999 Felony Report

<sup>115</sup> Only one Black defendant was charged with Murder or Kidnaping, which was less than 3% of the defendants charged with those crimes.

<sup>116</sup> Other offenses included a wide range of charges such as Perjury, Contributing to the Delinquency of a Minor, and others that could not be easily grouped among the major types of offenses.

Native defendants (Figure 5) made up 30% of the 1999 felony defendant sample. They appeared least often with Drug charges (14%) and Other charges (17%). The three categories in which they appeared most frequently were Violent offenses (35%), Driving offenses (36%), and Sexual offenses (55%).<sup>117</sup>

Figure 5  
Percentage of Charged Felony Defendants Who Were Alaska Native  
by Offense Type



*Alaska Judicial Council, 1999 Felony Report*

### c. Ethnicity by type of offense and specific offense for convicted defendants

The Council also analyzed relationships between the defendant's ethnicity and the specific offense of which the defendant was convicted. Most specific offenses had too few cases to look at the relationships, but for those that did, differences in convictions occurred that appeared related to ethnicity.<sup>118</sup>

<sup>117</sup> As noted in the general discussion of ethnic disproportions, the percentages of convicted defendants were too similar to the percentages of charged defendants to need more analysis.

<sup>118</sup> Table 27, *infra* p. 137, shows overall findings for ethnicity by general type of convicted offense for Alaska felony convictions compared to national data for felony convictions. The data for the following findings about specific convicted offenses are available from the Judicial Council.

Caucasians were 56% of defendants convicted of a Property offense. They made up 71% of defendants convicted of Forgery 2 (N=30 out of 42 Forgery 2 convictions), and 63% of defendants convicted of the misdemeanor, Forgery 3 (N=10 of the 16 Forgery 3 convictions).

Blacks were 15% of defendants convicted of Drug offenses. They were 24% of defendants convicted of MICS 3 (N=11 of the 46 defendants). They also seemed to be convicted of specific Property offenses at disproportionate rates. They constituted 11% of defendants convicted of Property offenses, but 20% of defendants convicted of Theft 2 (N=22 of 110 defendants).

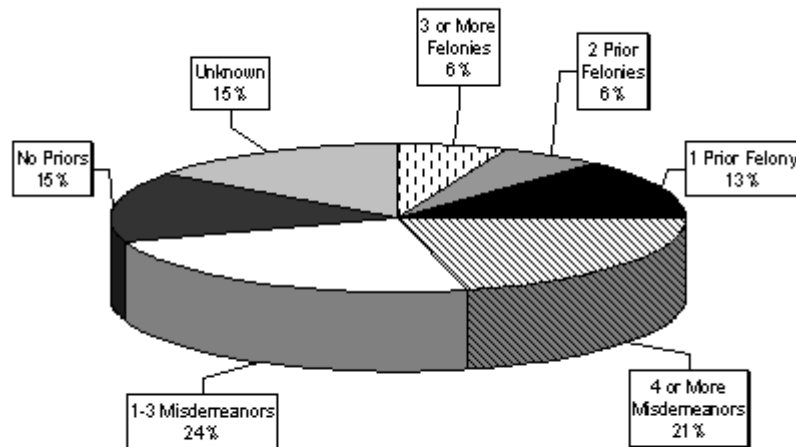
Native disproportions included those convicted of some Property offenses. Natives were 25% of the Property convictions, but 47% of the defendants convicted of Burglary 2 (N=21 of 45 defendants). They were 37% of the defendants convicted of Driving offenses, but made up 43% of the defendants convicted of felony DWI (N=55 of 127 convictions), and 50% of those convicted of misdemeanor DWI (N=21 of 42). They were 41% of defendants convicted of Other offenses (including Weapons offenses), but 78% of defendants convicted of the misdemeanor Misconduct Involving a Weapon 4 (N=14 of 18). Natives were 56% of the defendants convicted of Sexual offenses, but 72% of those convicted of Sexual Abuse of a Minor 3 (N=13 of 18), and 92% of those convicted of Sexual Assault 3 (N=11 of 12).



## 5. Prior Criminal Convictions

Information about defendants' prior criminal convictions was available in 85% of the cases reviewed by the Council. In 25% of all cases, charged felony defendants had at least one prior felony conviction (Figure 6) including 6% who had two prior felony convictions and 6% who had three or more prior felony convictions. In 45% of the cases, felony defendants had no prior felony convictions but at least one prior misdemeanor conviction, including 21% who had four or more prior misdemeanor convictions. Fifteen percent of defendants had no prior criminal convictions.

Figure 6  
Distribution of Charged Felony Defendants  
by Prior Criminal Convictions



*Alaska Judicial Council, 1999 Felony Report*

**a. Prior convictions by ethnicity**

Defendants' prior criminal convictions varied to some extent by ethnicity. Caucasian felony defendants were just about as likely to have prior convictions as non-Caucasian defendants (16% of Caucasians had no priors, as compared to 13% of Blacks and 11% of Natives). However, the type of prior conviction if a defendant had one, was different, depending on ethnicity. About 23% of Caucasian defendants, 27% of Native defendants, and 41% of Black defendants had one or more prior felony convictions.

Statewide, 12% of felony defendants had two or more prior felony convictions. Black defendants were twice as likely (24%) to have had two or more felony convictions. They were slightly more likely (17%) to have one prior felony conviction than defendants statewide (13%). Black defendants were less likely (16%) to have four or more misdemeanor convictions than the statewide average (21%). Blacks were also slightly less likely (22%) to have one to three misdemeanor convictions than the statewide average (24%).

Alaska Natives were more likely (28%) to have four or more misdemeanor convictions than were defendants statewide (21%). Like Blacks, Alaska Natives were a little less likely (11%) than defendants statewide (15%) to have no prior criminal convictions.

### b. Prior convictions by type of offense

The analysis showed significant differences in offense type when viewed in the context of defendants' prior criminal convictions (Table 4). For example, Murder and Kidnaping defendants were somewhat more likely to have prior felonies or no prior convictions, but Violent offenders were more likely to have prior misdemeanor convictions. Sexual offenders were less likely to have prior felonies, and more likely to have no prior convictions. Defendants convicted of Other offenses and Driving offenses were significantly more likely to have prior felonies. Driving offenders were also more likely to have prior misdemeanors. Most of the Driving offenders were convicted of Felony DWI or Refusal, offenses that were defined by having prior convictions of the same offense.

	Prior Criminal Convictions								Total	
	Any Prior Felony		Only Prior Misdemeanors		No Prior Convictions		Unknown Record			
Type of Offense	N	%	N	%	N	%	N	%		
<b>Murder/Kidnap</b>	4	31%	4	31%	3	23%	2	15%	13	100%
<b>Violent</b>	108	21%	270	52%	85	16%	59	11%	522	100%
<b>Property</b>	145	24%	261	44%	111	19%	79	13%	596	100%
<b>Sexual</b>	40	21%	87	46%	44	23%	17	9%	188	100%
<b>Drug</b>	81	26%	131	42%	44	14%	58	19%	314	100%
<b>Other</b>	36	37%	30	31%	13	13%	18	19%	97	100%
<b>Driving</b>	72	31%	129	55%	9	4%	23	10%	233	100%
<b>Total</b>	486	25%	912	47%	309	16%	256	13%	1,963	100%

*Alaska Judicial Council 1999 Felony Report*

## **6. Defendants with Alcohol, Drug, and Mental Health Problems**

Many defendants had alcohol, drug, and/or mental health problems. To gather data about these problems, the Council reviewed case files. The Council also obtained criminal history data from the Alaska Department of Public Safety. The Alaska Department of Corrections screened incarcerated defendants for mental health issues and provided the Council with data on defendants' mental health. Other information about defendant substance abuse or mental health might have been evident in the log notes of court hearings, in the presentence report, the judgment, or elsewhere in the file.

### **a. Alcohol and drugs**

Several pieces of data were used to identify defendants as having alcohol or drug problems. One indication was whether the defendant was under the influence of alcohol or drugs at the time of the offense. Among charged felony defendants, 34% were under the influence of alcohol at the time of their offense. In fact, the percentage may have been higher because there was insufficient information available on 12% of charged defendants to make this determination. Among charged felony defendants, 7% were under the influence of drugs at the time of their offense. Being under the influence of alcohol at the time of offense was associated with an increased likelihood of conviction, while being under the influence of an illegal drug at the time of offense was not associated with an increased likelihood of conviction.

Another indication of an alcohol or drug problem was the defendant's prior criminal history. Among charged defendants, 20% had two or more prior convictions in which alcohol use was an element of the offense and 14% had one or more prior convictions in which an illicit drug was an element of the offense.<sup>119</sup>

A third indication of substance abuse difficulties was the conditions of probation. Data collectors reviewed conditions of probation for convicted defendants for referral to substance abuse treatment. They frequently could not find detailed information in the case file that showed whether substance abuse treatment was ordered to address the defendant's alcohol problem or drug problem or both. Consequently, when substance abuse treatment was ordered as a condition of probation, a defendant was counted as having both an alcohol and a drug problem. This may have contributed to an over-reporting of the occurrence of these problems, especially drug problems which other data suggested were less common than alcohol problems. Judges ordered 35% of all convicted offenders to get substance abuse assessment or treatment as a condition of probation.

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<sup>119</sup> The percentages were virtually the same for convicted defendants for referral to substance abuse treatment.

A fourth indication of substance abuse came from DOC records. Department of Corrections staff screened all defendants at the time of initial incarceration for mental health problems. They identified some defendants as having substance abuse problems at that time.

A fifth indication of substance abuse was that 34% of convicted defendants received a condition of probation that restricted their consumption of alcohol. To the extent that these defendants were not already included among defendants having alcohol problems, this condition identified these defendants as having a problem. Finally, case files were reviewed for other indications that the defendant had a history of alcohol or drug-related arrests or had received any alcohol or drug treatment, past or present.

Using these various means to identify defendants with alcohol and drug problems, the Council found that 63% of charged felony defendants and 69% of convicted defendants initially charged with a felony in 1999 had an alcohol problem. Forty-five percent of charged felony defendants and 49% of convicted defendants initially charged with a felony in 1999 were identified as having a drug problem.

These methods of identifying defendants with alcohol and drug problems were not definitive. The Council could not find information about drug and alcohol problems in every case file. Other data suggested that the information available led more often to under-reporting of alcohol and substance abuse problems.<sup>120</sup>

Noticeably higher percentages of charged (80%) and convicted (83%) Native defendants had alcohol problems than charged (63%) and convicted (69%) defendants overall. Charged (60%) and convicted (67%) Caucasian defendants, and charged (59%) and convicted (66%) Hispanic defendants had alcohol problems at slightly lower rates than the averages for all defendants. Charged (44%) and convicted (50%) Black defendants, and charged (32%) and convicted (35%) Asian/Pacific Islander defendants had alcohol problems at considerably lower rates than defendants overall.

The distribution of defendants with drug problems was somewhat different among ethnic groups of defendants. Higher percentages of charged (59%) and convicted (63%) Hispanic defendants and charged (51%) and convicted (54%) Black defendants had drug problems than charged (45%) and

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<sup>120</sup> See ALASKA CRIMINAL JUSTICE ASSESSMENT COMMISSION, FINAL REPORT 25-26 (2000) (“A 1994 report estimated that alcohol was a primary or contributing factor in 80% to 95% of all criminal offenses in Alaska.”) The CJAC report is available from Alaska Judicial Council. See also Brad Myrstol, *Drug Use Trends Among Anchorage Arrestees*, 19 no. 4 ALASKA JUSTICE FORUM (University of Alaska Anchorage Justice Center) Winter 2003, at 1. (“Roughly one out of every two arrestees in Anchorage tests positive for recent drug use.”) (The tests did not include alcohol use.) The Alaska Justice Forum is available at [www.uaa.alaska.edu/just/forum](http://www.uaa.alaska.edu/just/forum).

convicted (49%) defendants overall. Charged (46%) and convicted (51%) Caucasian defendants and charged (44%) and convicted (47%) Native defendants had drug problems similar to averages for defendants overall. Lower percentages of charged (32%) and convicted (35%) Asian/Pacific Islander defendants had drug problems.

There was some variation by location in the incidence of defendants with alcohol and drug problems. Alcohol problems were more prevalent among defendants in Juneau (78%), other parts of Alaska (76%), and Southeast (71%). Juneau (54%) and Southeast (53%) also had higher percentages of defendants with drug problems.<sup>121</sup>

### **b. Mental health**

Information about defendants' mental health status came from court case files. The Department of Corrections also provided data about their screening of defendants for mental health problems. They showed that 24% of convicted defendants initially charged with a felony in 1999 had a mental health problem. The combined data sources suggested that 31% of convicted defendants had mental health problems.<sup>122</sup> Defendants with mental health problems might have had co-occurring alcohol or drug problems that were recorded separately.

There was less variation by ethnicity in the distribution of defendants with mental health problems than for defendants with alcohol and drug problems. A slightly higher percentage (34%) of convicted Caucasian defendants were identified as having mental health problems compared to the average for all convicted defendants (31%). Smaller percentages of other ethnic groups were identified as having mental health problems (Blacks and Natives, 30% each; Asian/Pacific Islanders, 21%, and Hispanics 20%).

In Juneau, 53% of charged felony defendants were identified as having a mental health problem, exceeding the statewide average of 29%. The lowest percentage (23%) occurred in rural areas. Further investigation might reveal whether the high Juneau rates reflected better reporting and/or more available treatment in some locations, or whether the rate of defendants with mental health issues actually did vary by location.<sup>123</sup>

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<sup>121</sup> See discussion *infra* pp. 111-112.

<sup>122</sup> Thirty seven percent of incarcerated defendants had mental health problems in a 1997 Alaska Department of Corrections study. See ALASKA CRIMINAL JUSTICE ASSESSMENT COMMISSION, *supra* note 120, at 34.

<sup>123</sup> See discussion *infra* p. 112.

## 7. Type of Attorney

### a. Appointment of public attorneys

When a defendant qualified for public representation because of indigency, the judge appointed the Public Defender Agency. If the Public Defender Agency had a conflict or could not otherwise represent the defendant, the judge assigned the Office of Public Advocacy to represent the defendant.<sup>124</sup> If the Office of Public Advocacy could not represent a defendant due to a conflict of interest or a lack of available staff, it hired an attorney from among lists of attorneys with whom it contracted. Most contract attorneys served only in their own communities.

Eighty percent of charged felony defendants were represented by a public attorney including 63% represented by the Public Defender Agency, 5% represented by OPA staff attorneys, and 12% represented by contract attorneys hired by OPA.<sup>125</sup> Privately paid attorneys represented 17% of defendants.

### b. Socioeconomic characteristics

As noted earlier in this report, some socioeconomic data about defendants were not available for analysis. Because the appointment of public counsel was based on a defendant's ability to pay for counsel, a defendant's representation by public counsel could be considered a proxy for the defendant's low income level.<sup>126</sup>

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<sup>124</sup> The Public Defender had offices in 13 locations around the state. The Office of Public Advocacy had staff attorneys in offices in Anchorage and Fairbanks and used contract attorneys in the rest of the state.

<sup>125</sup> For 3% of defendants (N=65), information about representation was not available. Only 13 felony defendants, less than 1% of the Council's sample, represented themselves.

<sup>126</sup> Until May 15, 1999, approximately mid-way during the period encompassed in this report, judges did not have a uniform set of criteria to appoint public counsel. At that time, an Alaska Supreme Court rule amendment providing specific eligibility criteria became effective. Alaska R. Crim P. 39.1; *see also* Alaska Supreme Court Order 1351 (eff. May 15, 1999). The amendment was in response to a recommendation of the Alaska Legislative Audit Division which had concluded that judges may have appointed public attorneys for persons who were ineligible for the services. In its response to the audit, the court system recognized that, prior to the enactment of the rule amendment, judges had been appointing public counsel without consistent, statewide guidelines for determining defendants' eligibility. Letter from C. S. Christensen III, Alaska Court System Staff Counsel, to Pat Davidson, Legislative Auditor (Feb. 18, 2000) published in LEGISLATIVE AUDIT DIVISION, ALASKA LEGISLATURE, DEPARTMENT OF ADMINISTRATION, PUBLIC DEFENDER AGENCY CASE MANAGEMENT TIME STUDY AND PERFORMANCE REVIEW 136 (MAY 15, 1998) [hereinafter PUBLIC DEFENDER REVIEW] (on file at Alaska Judicial Council). No evidence was provided in the audit that the lack of uniform standards permitted any significant number of non-indigent defendants to obtain court appointed counsel. *Id.* Whether different judges employed different income eligibility criteria during some of the time under consideration should not affect the overall assumption that defendants represented by public counsel were indigent.

Overwhelmingly, felony defendants were indigent. The extent to which indigent people were disproportionately represented among felony defendants in relation to their percentage of the Alaska population was not within the scope of this report. Data were not available to measure whether indigent defendants were arrested or charged at disparate rates compared to wealthier defendants.



### c. Type of offense

The rates at which defendants were represented by public attorneys varied somewhat by type of charged offense, as illustrated in Table 5. A higher percentage (95%) of defendants charged with Murder/Kidnaping were represented by public attorneys than for All Offenses Combined (80%). Defendants charged with Property offenses (86%), Sexual offenses (82%), and Violent offenses (81%) were represented by public attorneys at rates slightly above the average rate for all offenses. Defendants charged with Driving offenses (79%), Other offenses (72%), and Drug offenses (68%) were represented less frequently by public attorneys.

Type of Charged Offense	Percent with Public Attorney
Murder/Kidnap	95%
Violent	81%
Property	86%
Sexual	82%
Drug	68%
Other	72%
Driving	79%
All Offenses Combined	80%

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### d. Ethnicity

Slightly higher percentages of ethnic minority defendants were represented by public attorneys when compared to the percentage of Caucasian defendants represented by public attorneys. Seventy-three percent of Caucasian defendants were represented by public attorneys. Eighty-eight percent of Blacks, a little less than 90% of Alaska Natives, and 75% of Asian/Pacific Islanders and Hispanics were represented by public attorneys.

It is important to note that the relationship between ethnicity and type of attorney did not explain ethnic and type of attorney disparities identified in multivariate analysis and discussed later in this

report. For example, multivariate analysis found that Native defendants served more predisposition incarceration in some instances. The analysis also found that defendants with public attorneys served more predisposition incarceration for most offenses.<sup>127</sup> The Native disparity was not explained by the fact that more Natives were represented by public attorneys. Similarly, the public attorney disparity was not explained by the fact that public attorneys represented more Natives. The multivariate analysis took into account the effect of one factor when analyzing the significance of all the other factors. The multivariate analysis also took into account many other factors like the defendant's prior convictions and the seriousness of the charge in analyzing the associations between ethnicity and type of attorney.

#### **e. Alcohol, drug and mental health problems**

Nearly the same percentage of all charged defendants represented by a public attorney had substance abuse problems compared to defendants with a private attorney. Sixty-four percent of defendants represented by a public attorney had an alcohol problem while 62% of defendants with a private attorney had a problem. Forty-five percent of defendants represented by a public attorney had a drug problem as compared to 47% with a private attorney.

There was a much more pronounced difference with respect to defendants with mental health problems. Thirty-three percent of convicted defendants represented by public attorneys had a mental health problem while only 20% of convicted defendants represented by private attorneys had a problem. As with the other factors described above, the type of attorney disparities identified in the multivariate analysis discussed later in this report were not explained by the fact that a higher percentage of defendants represented by a public attorney had mental health problems. Whether a defendant had a mental health problem was taken into account in the multivariate analysis.

#### **f. Prior criminal convictions**

Defendants represented by a public attorney were somewhat more likely to have had a prior conviction than defendants represented by a private attorney. Among defendants with prior convictions, defendants represented by a public attorney were more likely to have had a more serious criminal history. Fourteen percent of defendants represented by a public attorney and 22% of defendants represented by a private attorney had no prior criminal convictions. Twenty-three percent of defendants represented by a public attorney and 26% of defendants represented by a private attorney had one to three misdemeanor convictions. Twenty-two percent of defendants represented

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<sup>127</sup> See *infra* pp. 165-169.

by a public attorney and 16% of defendants represented by a private attorney had four or more misdemeanor convictions. Fourteen percent of defendants represented by a public attorney and 9% of defendants represented by a private attorney had one prior felony conviction. Six per cent of defendants represented by a public attorney and 3% of defendants represented by a private attorney had two prior felony convictions. Seven percent of defendants represented by a public attorney and 3% of defendants represented by a public attorney had three or more prior felony convictions.<sup>128</sup>

As was true for the other factors described above, defendants' prior convictions were taken into account in the multivariate analysis. That public attorney clients were more likely to have a prior criminal conviction did not explain type of attorney disparities identified in the multivariate analysis.

#### **g. Location of case**

There was some variation by location in the types of attorneys who represented felony defendants.<sup>129</sup> In rural areas, public defenders represented a higher percentage of felony defendants than in other areas of the state. Almost all felony defendants represented by OPA staff attorneys were in Anchorage or Fairbanks. More defendants were represented by OPA contract attorneys in Southeast than in other areas of the state. Private attorneys in Southcentral represented a higher percentage of defendants than in other areas of the state.

#### **h. Repayment of attorney fees**

Convicted defendants represented by appointed counsel were required to repay the state for the cost of their representation,<sup>130</sup> according to a schedule of costs. The cost depended on whether the conviction was on a felony or misdemeanor and, if a felony, the class of felony.<sup>131</sup> The cost also depended on the stage of the proceedings at which the case was resolved.

In the Council's sample, case files had records of judicial orders for 95% of the convicted defendants represented by public attorneys, requiring them to reimburse the state for part or all of their

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<sup>128</sup> Data available from the Judicial Council.

<sup>129</sup> See discussion *infra* pp. 112-113.

<sup>130</sup> Alaska R. Crim. P. 39(c).

<sup>131</sup> If the conviction was on a misdemeanor, the defendant paid the State at the rate used for a misdemeanor, even if the original charge was a felony.

representation.<sup>132</sup> A majority (57%, N=906) were required to pay an amount of \$499 or less. Twenty-nine percent (N=458) were required to pay \$500 or more.<sup>133</sup>

## **8. Predisposition Release**

The court's decisions about the defendant's activities prior to the disposition of the case were an essential stage of the criminal justice process.<sup>134</sup> The court made a decision about the defendant's bail status within 24 hours after the defendant was arrested, or at the first court appearance. The court also could consider the defendant's status at additional hearings during the course of the case. The Council collected data about the amount of time defendants served before disposition (defined as dismissal, acquittal or sentencing), and the types of conditions required for release.

This study represents the most comprehensive examination of predisposition practices in Alaska to date. Multivariate analyses discussed in Part III of this report revealed more widespread ethnic, type of attorney, and gender disparities during the predisposition period than at any other point in the criminal justice process. Additionally, the percentage of the predisposition inmate population in Alaska has become increasingly significant<sup>135</sup> For all of these reasons, predisposition practices should be reviewed for fairness and to insure that the most efficient and cost effective practices are being pursued, consistent with public safety and defendants' rights.

### **a. Amount of time served**

Most charged felony defendants (80%) spent one or more days incarcerated before the disposition of their cases. A majority (58%) spent thirty days or fewer.<sup>136</sup> The amount of time varied by location<sup>137</sup> and other factors.

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<sup>132</sup> Case files showed that 5% of the convicted defendants with public attorneys (N=87) were not required to make any payments.

<sup>133</sup> For 9% of the defendants (N=149) the case file had no information about whether the defendant was required to pay any amount.

<sup>134</sup> See discussion of the criminal justice process *supra* pp. 29-31.

<sup>135</sup> See discussion *infra* pp. 156-157.

<sup>136</sup> Data were not available for a precise comparison with national figures. In a study of the nation's 75 largest counties in 1998, the Bureau of Justice Statistics found that 64% of felony defendants were released at some point prior to the final disposition of their case. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 1998 16 (2001).

<sup>137</sup> See discussion of location and predisposition incarceration *infra* p. 114.

### b. Type of offense

Mean predisposition times varied by the type of charged offense.<sup>138</sup> Table 6 shows mean predisposition times by type of offense. These were the mean times based on the most serious charged offense, though the defendant may have been convicted of a lesser offense or no offense at all. The longest mean predisposition time was 257 days for Murder and Kidnaping offenses. The next longest mean time was 109 days for Sexual offenses. Defendants charged with Other offenses had a mean predisposition time of 99 days. The mean predisposition time for Violent offenses (other than Murder and Kidnaping) was 70 days. Defendants charged with Driving offenses had a mean predisposition time of 71 days. The lowest mean predisposition times occurred in Property offenses (44 days) and Drug offenses (35 days). The mean predisposition time for some offenses, particularly Drug offenses, could have been higher had data been consistently available to include time spent by a defendant in court-ordered mandatory treatment.<sup>139</sup>

Offense Category	Number of Charged Defendants	Mean Predisposition Time
Murder & Kidnaping	37	257 days
Violent Offenses	617	70 days
Property Offenses	712	44 days
Sexual Offenses	266	109 days
Drug Offenses	457	35 days
Other Offenses	34	99 days
Driving Offenses	170	71 days

<sup>138</sup> Mean predisposition times are not the same as the estimates of predisposition times for hypothetical defendants created for the multivariate analysis of predisposition incarceration discussed in Part III of this report. See discussion *infra* p. 159.

<sup>139</sup> See discussion of “Nygren credit” *infra* p. 167.

### **c. Monetary bail**

Among the conditions that could be set for the defendant's release were monetary bonds and third-party custodians. Thirty-nine percent of charged felony defendants posted monetary bonds to secure their release.<sup>140</sup> Table 6a shows the rates at which defendants posted monetary bonds by the type of offense charged. Defendants charged with Driving offenses posted bonds most frequently (56%), and those charged with Murder/Kidnaping least frequently (24%).

Higher percentages of Asian/Pacific Islander (49%), Hispanic (46%), and Caucasian (42%) defendants posted a money bond compared to the average for all defendants (39%). Lower percentages of Blacks (37%) and Natives (35%) posted a bond. These percentages, like other cross-tabulations discussed in this section of the report, simply relate how often one variable occurred in relation to another variable. The percentages should not be used to infer a cause and effect relationship, e.g., that ethnicity affected the amount of the defendant's bond or the defendant's ability to post a bond. The amount of a defendant's bail and the defendant's ability to post it, could have been affected by many factors like the seriousness of the charge and the defendant's prior convictions.

A higher percentage of defendants represented by private attorneys (54%) posted a bond than did defendants represented by public attorneys (36%). The mere fact of indigency could have affected a defendant's ability to post bond. However, no cause and effect relationship should be inferred from these percentages. Many factors other than ethnicity and indigency could have affected bail, and probably did.

If a defendant did not post a monetary bond, it did not mean that the defendant failed to be released prior to disposition. A defendant could have been released on his or her own recognizance or by posting an unsecured bond, essentially a promise to pay for failing to appear or violating a condition of release. A defendant could have been released to the custody of a third person, with or without a contemporaneous requirement to post a monetary bail.

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<sup>140</sup> The Council did not have data on how many defendants initially had a requirement for monetary bail. Most defendants had a money bail set at the earliest stages of the case, but after the defendant appeared in court, the money bail requirement often changed. Sometimes the judge increased the amount required or eliminated it in favor of an own recognizance release. More often the judge reduced it and/or supplemented it with a requirement for a third-party custodian. Judges often released defendants with other requirements, including unsecured bonds or cash only bonds, or may have released them on their own recognizance.

Offense Category	Number of Charged Defendants	Number of Defendants Who Posted Bond	Percentage of Defendants Who Posted Bond
Murder/Kidnaping	37	9	24%
Violent	626	262	42%
Property	723	252	35%
Sexual	270	84	31%
Drug	465	199	43%
Other	36	14	39%
Driving	174	98	56%
Total	2,331	918	39%

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#### d. Third party custodian requirement

A third-party custodian was a person, proposed by the defendant and approved by the judge, who agreed to supervise the defendant's compliance with the conditions of release and to insure the defendant's appearances in court. Often, judges required the defendant to be within the sight or sound of the third party custodian 24 hours a day. If the defendant failed to comply with the conditions of release, the third party custodian was required to report to the judge or prosecutor. Judges required over half of the charged felony defendants (54%) to have a third party custodian as a condition of release.<sup>141</sup> Judges required 56% of defendants with public attorneys and 49% of defendants with private attorneys to have a third party custodian.

The requirement for a third party custodian usually was in addition to the requirement for monetary bail. Although information about the rate at which defendants were required to post monetary bonds was missing, the court files showed that close to half (44%) of defendants who were required to have a third party custodian actually posted a monetary bond. Looking from the standpoint of defendants who posted a monetary bond, 60% also were required to have a third party custodian as a condition of release.

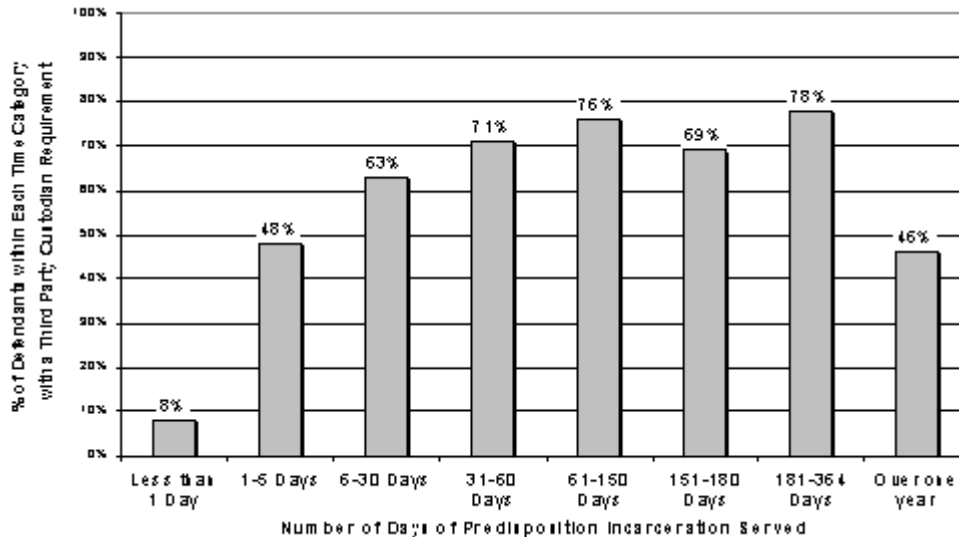
The requirement for a third party custodian was one of the most important influences on the length of time that defendants spent incarcerated before the disposition of their cases.<sup>142</sup> Twenty percent of all charged felony defendants spent less than one day in jail before disposition, but only 8% of those

<sup>141</sup> Of the convicted defendants in this sample, 56% had been required to have a third party custodian.

<sup>142</sup> See discussion of findings, *infra* p. 162 and pp. 176-177.

defendants had been required to have a third party custodian (Figure 7). Nearly half of the defendants (48%) who were released within one to five days had been required to have a third party custodian.

Figure 7  
Percentage of Defendants with Third Party Custodian Requirement  
by Days of Predisposition Time Served.



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Judges in some locations used the third party requirement more frequently than did others.<sup>143</sup> In Anchorage, judges required about 59% of the charged felony defendants to have custodians, while in Fairbanks, judges imposed the requirement for 41% of the felony defendants.

## 9. Sentencing

This report discusses sentencing in several places. The present section reviews frequencies of some sentencing practices. More detailed analyses of factors affecting sentencing is provided later in this report. Appendix C provides detailed information about mean sentence lengths and distribution of cases by specific offense of conviction for all convicted offenders. Appendix D, Table D-3 has information about mean sentences grouped by types of offense.

<sup>143</sup> See more detailed discussion of predisposition incarceration and location *infra* pp. 114-116.



**a. Presentence reports**

At the time guilt was established in a felony conviction by verdict or plea, the judge was required to order the Department of Corrections to conduct a presentence investigation. The Department was required in many instances to file the presentence report in court at least thirty days prior to sentencing. The report described the current offense(s), the defendant's prior criminal convictions and findings of delinquency, and included a victim impact statement, and other information about the defendant's characteristics, financial condition, and circumstances that might have affected the defendant's behavior, to help the judge impose an appropriate sentence. Presentence reports were not required for first felony offenders convicted of felony DWI, Refusal to Take a Chemical Test, and Vehicle Theft 1.<sup>144</sup> If the defendant had a sentencing agreement with the state as part of a negotiated plea, the judge could impose sentence without a presentence investigation or report.<sup>145</sup>

The Council collected data from presentence reports in all court locations. Because court filing procedures varied by location, the Council could not precisely determine the actual rate at which presentence reports were filed, except in Anchorage. The Anchorage data showed that DOC prepared presentence reports for 47% of defendants convicted of felonies, and 29% of all the convicted cases, including a few misdemeanors.

**b. Distribution of non-presumptive and presumptive sentences among convicted defendants**

Eighty-five percent of defendants charged with a felony were convicted of some offense. Fifty percent of charged felony defendants were convicted of a felony, 35% were convicted of a misdemeanor, and 15% were acquitted or had all charges dismissed.

Chart 2 shows the distribution of non-presumptive and presumptive sentences among convicted defendants. Eighty-two percent of convicted defendants, defendants initially charged with a felony but convicted of any offense, were subject to non-presumptive sentencing.<sup>146</sup> Among felony defendants convicted of any offense, 18% were convicted of a felony and subject to a presumptive sentence. Among defendants subject to non-presumptive sentencing, half were convicted of a felony

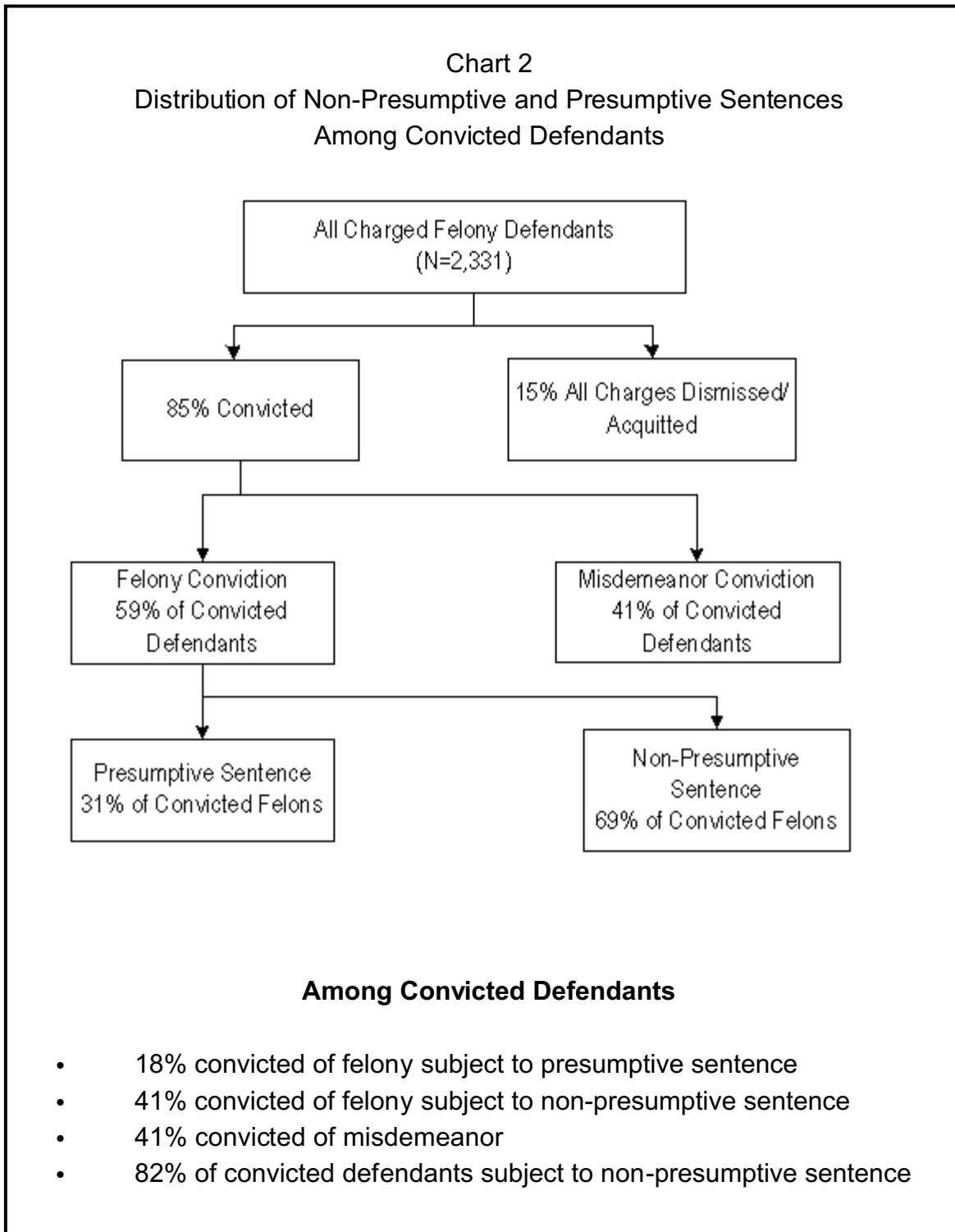
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<sup>144</sup> See Alaska R. Crim. P. 32.1.

<sup>145</sup> Presentence reports were not required for misdemeanor convictions, although a few defendants convicted of misdemeanors had them from earlier felony convictions.

<sup>146</sup> Among convicted defendants, 59% were convicted of a felony; 31% of convicted felons were subject to presumptive sentencing.

(or 41% of all convicted defendants) and half were convicted of a misdemeanor (or 41% of all convicted defendants).



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### c. Presumptive sentencing

Among defendants convicted of felonies, 31% were subject to presumptive sentencing. Table 7 shows how often judges imposed the exact presumptive sentence in those cases rather than an aggravated or mitigated presumptive sentence. The table lists the presumptive sentences applicable in each category, based on the prior convictions, and includes mean sentence lengths for each type of sentence by category of offense and offender. Figures 8 and 9 supplement Table 7 by showing the data by offense class (Figure 8) and by offender prior convictions (Figure 9).<sup>147</sup>

Figure 8 shows that judges imposed exact presumptive sentences half or more of the time for each category of offense.<sup>148</sup> Variation from the presumptive sentences came more often in aggravated presumptive sentences for the more serious Unclassified and Class A offenses, and in mitigated sentences for less serious Class B and C offenders.

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<sup>147</sup> Sentence lengths do not include any additional incarceration that was suspended at the time of sentencing pending the defendant's successful completion of probation.

<sup>148</sup> Class B offenders with two or more prior felonies had exact presumptive sentences 45% of the time. Unclassified offenders with two or more prior felonies had two aggravated presumptive sentences and one mitigated presumptive sentence.

	No Prior Felony				One Prior Felony				Two or More Prior Felonies			
	N	%	Mean Sentence in Months	Presumptive Sentence in Months	N	%	Mean Sentence in Months	Presumptive Sentence in Months	N	%	Mean Sentence in Months	Presumptive Sentence in Months
<b>Unclassified</b>												
Above Presumptive	2	22%	114	96	-	-	-	180	2	67%	360	300
At Presumptive	7	78%	96	96	-	-	-	180	-	-	-	300
Below Presumptive	-	-	-	96	1	100%	96	180	1	33%	240	300
<b>Class A - without weapon<sup>a</sup></b>												
Above Presumptive	5	23%	114	60	-	-	-	120	2	20%	228	180
At Presumptive	17	77%	60	60	3	60%	120	120	5	50%	180	180
Below Presumptive	-	-	-	60	2	40%	72	120	3	30%	124	180
<b>Class B</b>												
Above Presumptive	-	-	-	0	4	22%	67	48	1	5%	96	72
At Presumptive	-	-	-	0	12	67%	48	48	9	45%	72	72
Below Presumptive	-	-	-	0	2	11%	39	48	10	50%	48	72
<b>Class C</b>												
Above Presumptive	-	-	-	0	27	21%	37	24	21	18%	52	36
At Presumptive	-	-	-	0	69	55%	24	24	63	53%	36	36
Below Presumptive	-	-	-	0	30	24%	12	24	35	29%	20	36

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<sup>a</sup> With or without a weapon, a manslaughter defendant with no prior felonies was subject to a 60-month presumptive sentence.

	N	%	Mean Sentence in Months	Presumptive Sentence in Months
<b>Unclassified With Weapon</b>				
Above Presumptive	-	-	-	120
At Presumptive	1	100%	120	120
Below Presumptive	-	-	-	120
<b>Class A With Weapon</b>				
Above Presumptive	4	29%	122	84
At Presumptive	7	50%	84	84
Below Presumptive	3	21%	56	84

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Figure 8  
Distribution of Sentences in Presumptive Sentencing Cases

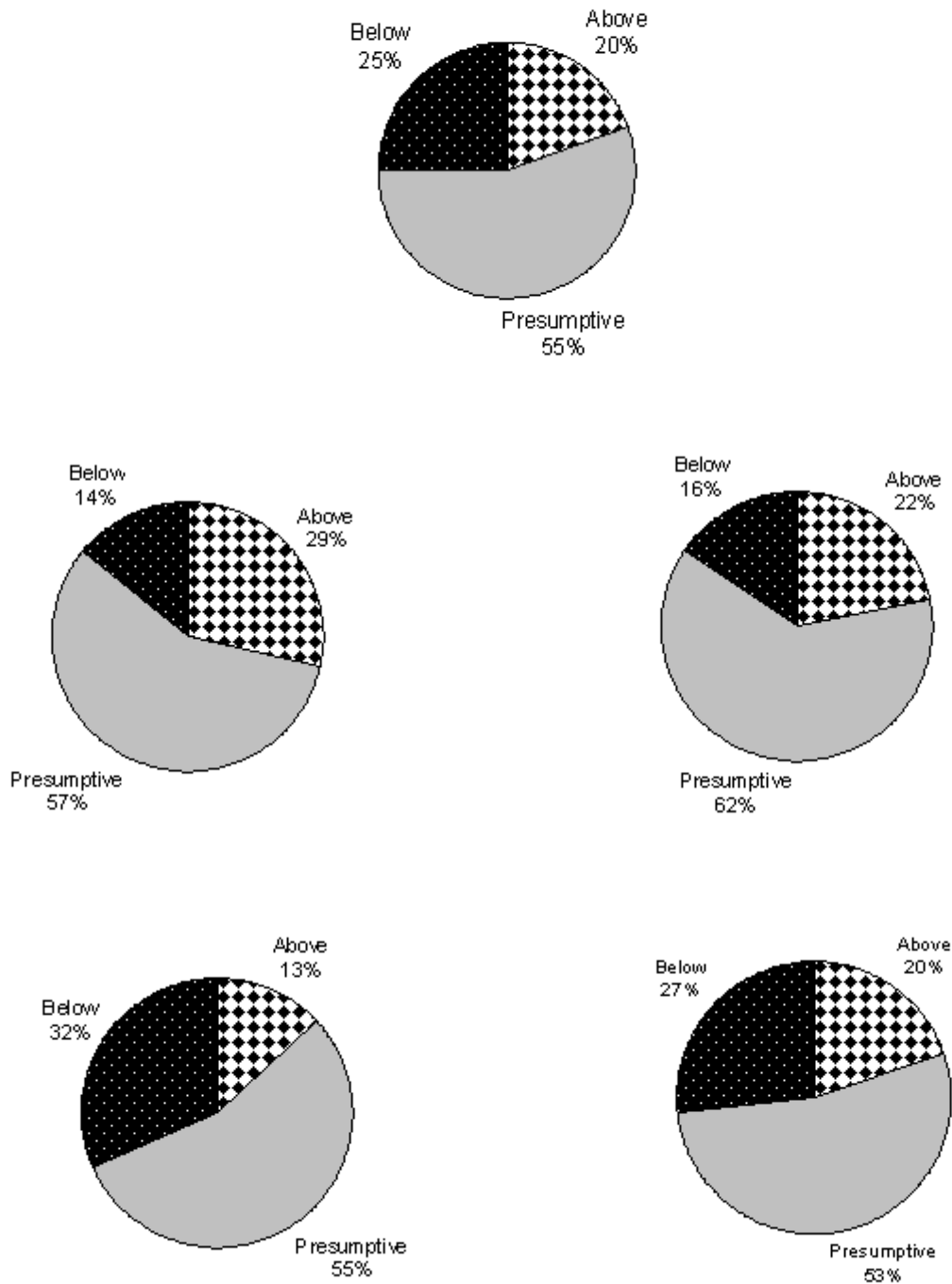
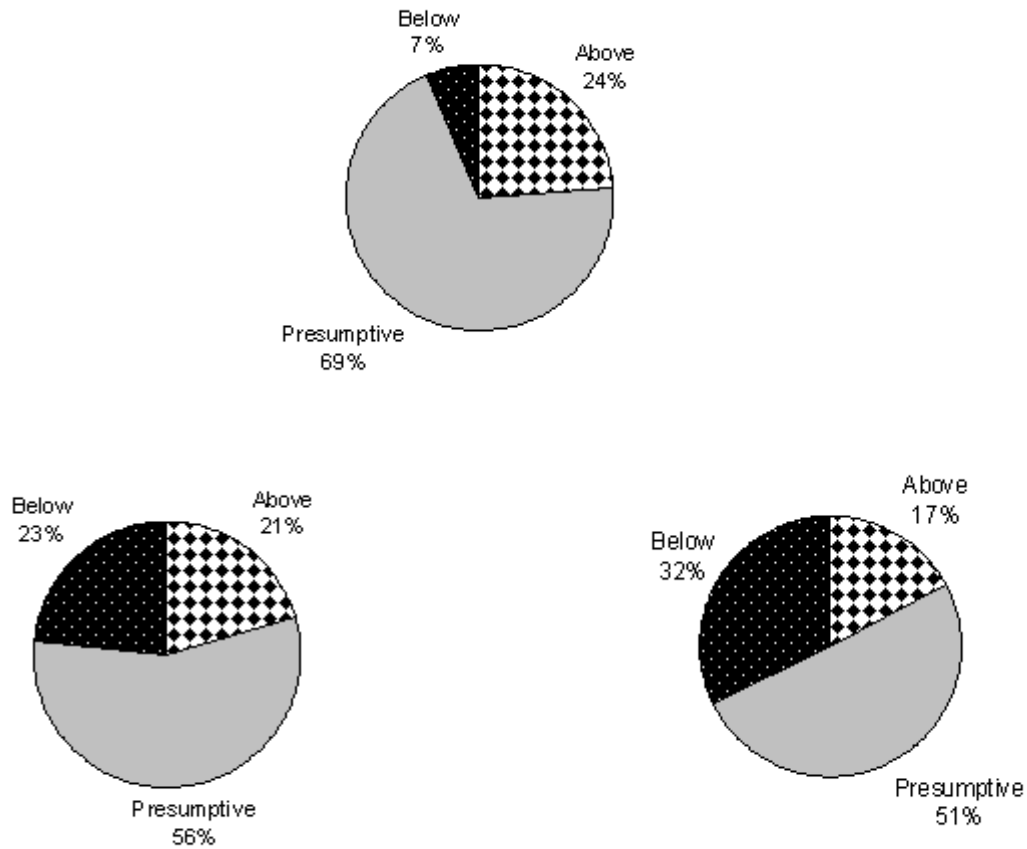


Figure 9  
Distribution of Presumptive Sentences  
by Defendant's Prior Convictions



For first offenders, judges used the exact presumptive sentences most frequently (Figure 9). Sixty-nine percent of first felony offenders received the presumptive sentence, 24% percent had aggravated presumptive sentences, and only 7% received a mitigated sentence. Convicted felony offenders with one prior felony conviction were more likely than first offenders to have a mitigated sentence. Fifty-six percent received the presumptive sentence, 21% received an aggravated presumptive sentence, and 23% received a mitigated presumptive sentence. Of those with two or more prior felony convictions, 51% received the presumptive sentence, 17% received an aggravated presumptive sentence, and 32% received a mitigated presumptive sentence.

Higher rates of mitigated sentences occurred in Class B offenders with two or more prior felonies (50%) and Class C offenders with one or more prior felonies (24%, if one prior felony and 29%, if two or more) (Table 11). Many of the defendants in those groups were convicted of Drug and Property offenses. Six of the ten Class B felony offenders with two or more prior felony convictions

who received mitigated presumptive sentences were sentenced for Drug offenses. Among the 30 Class C felony offenders with one prior felony conviction who received mitigated presumptive sentences, 43% were sentenced for Drug offenses and 47% were sentenced for Property offenses. Among the 35 Class C felony offenders with two or more prior felony convictions who received mitigated presumptive sentences, 40% were sentenced for Drug offenses and 26% were sentenced for Property offenses.

#### **d. Probation**

In addition to ordering a defendant to serve a term of incarceration, judges could suspend additional incarceration that was imposed on the defendant and place the defendant on probation for a specified period of time.<sup>149</sup> In 1999, the maximum term of probation was 10 years.<sup>150</sup> Defendants on probation were ordered to comply with conditions on their actions. If the defendant failed to comply, the state could file a petition to revoke the defendant's probation. If the judge found that the defendant violated a condition of probation, the judge could require the defendant to serve part or all of the suspended incarceration.<sup>151</sup>

In the 1999 felony sample, 80% of defendants convicted of felonies and 86% of defendants convicted of misdemeanors were placed on probation. The probation rate was lower for defendants convicted of felonies than for defendants convicted of misdemeanors because the presumptive sentences imposed on felony defendants in non-aggravated cases did not always warrant imposition of suspended incarceration or additional probation.

Judges imposed longer probationary terms for defendants convicted of felonies than for those convicted of misdemeanors. Approximately two-thirds (65%) of defendants convicted of felonies and two-fifths (39%) of defendants convicted of misdemeanors were placed on probation for three or more years of probation. Twenty-eight percent of convicted misdemeanants but only 2% of convicted felons had a probationary term of one year or less. Table 8 shows the distribution of probationary terms for defendants convicted of felonies and defendants convicted of misdemeanors.

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<sup>149</sup> Judges also could impose a term of incarceration and suspend the whole term, leaving the defendant on probation with no jail time. However, judges could not suspend a mandatory minimum sentence or an initial presumptive sentence.

<sup>150</sup> AS 12.55.090 (1999).

<sup>151</sup> Resources limited the Council's ability to track defendants after their sentencing date. There has been one small report on probation conditions and revocations. *See* Probation Conditions and Revocations by Ethnicity *in* REPORT OF THE ALASKA SUPREME COURT ADVISORY COMMITTEE ON FAIRNESS AND ACCESS, *supra* note 1, at Appendix E.

Table 8 Terms of Probation for Defendants Convicted of Felonies and Defendants Convicted of Misdemeanors		
Term of Probation	Defendants Convicted of Felony	Defendants Convicted of Misdemeanor
No Probation	20%	14%
1 month - 1 year	2%	28%
13 months - 35 months	13%	17%
3 years - 59 months	32%	20%
5 years	22%	20%
61 months - 10 years	11%	1%

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**e. Restitution**

Judges could order defendants to pay restitution to a crime victim.<sup>152</sup> Thirty-three percent of defendants convicted of a felony and 28% of defendants convicted of a misdemeanor were required to pay restitution. Table 9 shows the distribution of restitution amounts that convicted felons and misdemeanants were required to pay.

Table 9 Amounts of Restitution Required by Conviction on Felony or Misdemeanor <sup>a</sup>		
Amount of Restitution	Felony Conviction	Misdemeanor Conviction
None	67%	72%
\$1 to \$100	2%	2%
\$101 to \$500	5%	8%
\$501 to \$1,000	5%	5%
\$1,001 to \$10,000	14%	10%
more than \$10,000	5%	1%
Amount Unknown	4%	3%

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<sup>a</sup> Amounts do not equal 100% due to rounding.

<sup>152</sup> See AS 12.55.045 (1999).



## D. Analysis of Charging and Disposition Patterns

### 1. Distribution of Charged and Final Offenses by Class of Charge

The present report included a sample of 1999 defendants against whom prosecutors filed one or more felony charges. Figure 10 shows that for nearly two-thirds (65%) of these defendants, a Class C felony was the most serious charge filed. About a quarter (23%) of the defendants were charged with a Class B felony offense. Defendants charged with Unclassified and Class A felonies each comprised about 6% of the total number of felony defendants.

Figure 10  
Single Most Serious Charged Offenses  
by Class of Offense  
N=2,331

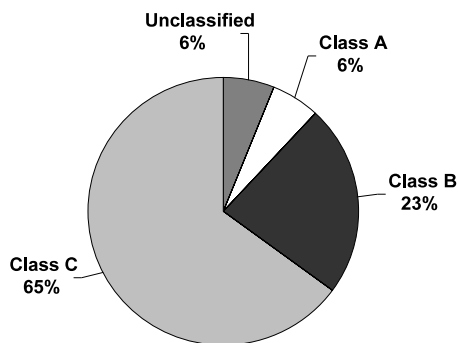
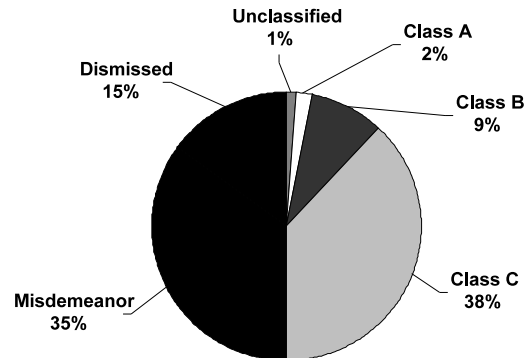


Figure 11  
Single Most Serious Final Offenses  
by Class of Offense  
N=2,331



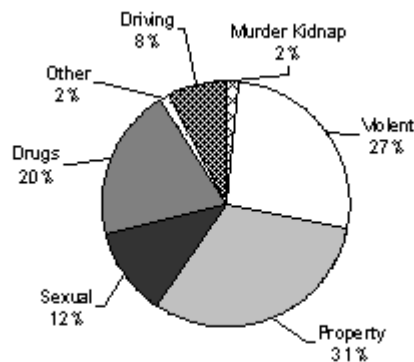
*Alaska Judicial Council, 1999 Felony Report*

Nearly 85% of all defendants were convicted of some offense, whether felony (50%) or misdemeanor (35%). Figure 11 shows that about 15% were acquitted or had all their charges dismissed. Slightly more than one-third of the felony convictions (38%) were for Class C felony offenses, and about 9% were convicted of Class B felony offenses. Convictions for Unclassified and Class A felony offenses comprised 1% and 2% of all final offenses respectively. The remaining charged defendants (35%) were convicted of a misdemeanor as their most serious offense.

## 2. Distribution of Charged Offenses by Type of Offense

Figure 12 shows the single most serious type of charge for each of the 2,331 defendants. The single most frequent offense type was a Property offense<sup>153</sup> for 31% of the defendants. Violent offenses<sup>154</sup> comprised 27% and Drug offenses<sup>155</sup> were 20% of the most serious charges. Twelve percent of the most serious charges were for Sexual offenses.<sup>156</sup> When Murder,<sup>157</sup> Kidnaping, and Sexual offenses were combined with other Violent offenses, they made up 41% of the most serious felony charges filed against felony defendants in 1999. The most serious charge filed against nearly 8% of felony defendants was a Driving offense, principally Felony DWI.

Figure 12  
Most Serious Charged Offenses  
by Type of Offense



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<sup>153</sup> Charged Property offenses included Arson 2, Criminal Mischief 1 and 2, Forgery 1, Scheme to Defraud, Theft 1 and 2, Vehicle Theft 1, Bad Check, Burglary 2, Defraud/Credit Card, Falsifying Business Records, and Misapplication of Property. Attempted offenses for all types of offenses were felonies if the attempted offense was a Class B felony offense or higher. AS 11.31.100. See Appendix D for list of offenses.

<sup>154</sup> Charged Violent offenses included Arson 1, Assault 1, 2, and 3, Manslaughter, Misconduct Involving a Weapon 1, Robbery 1 and 2, Conspiracy to Commit Robbery, Extortion, Criminally Negligent Homicide, Stalking 1, and Terroristic Threatening.

<sup>155</sup> Charged Drug offenses included Misconduct Involving a Controlled Substance 1, 2, 3, and 4.

<sup>156</sup> Charged Sexual offenses included Sexual Assault 1, 2, and 3, Sexual Abuse of a Minor 1, 2, and 3, Exploitation of a Minor, and Indecent Exposure 1.

<sup>157</sup> Murder included Murder 1 and 2, and Attempted Murder 1.

### 3. Types of Case Dispositions

Figure 13 shows the distribution of case dispositions, and Figure 14 shows the distribution for convicted defendants only. About one-third (35%) of the defendants charged with felonies pled to the most serious felony charge against them. Twelve per cent pled to a lesser felony, and one-third (34%) pled to a misdemeanor offense. About 4% were convicted of an offense after trial. Fifteen percent of felony defendants were acquitted at trial or had all charges against them dismissed. The type of case disposition varied by location.<sup>158</sup>

Figure 13  
Case Dispositions for All Defendants  
(N=2,331)

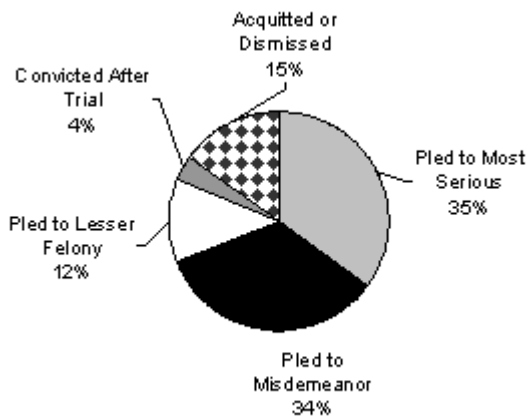
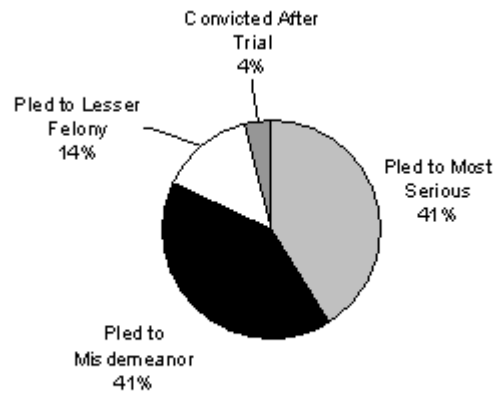


Figure 14  
Case Dispositions for Convicted Defendants Only  
(N=1,963)



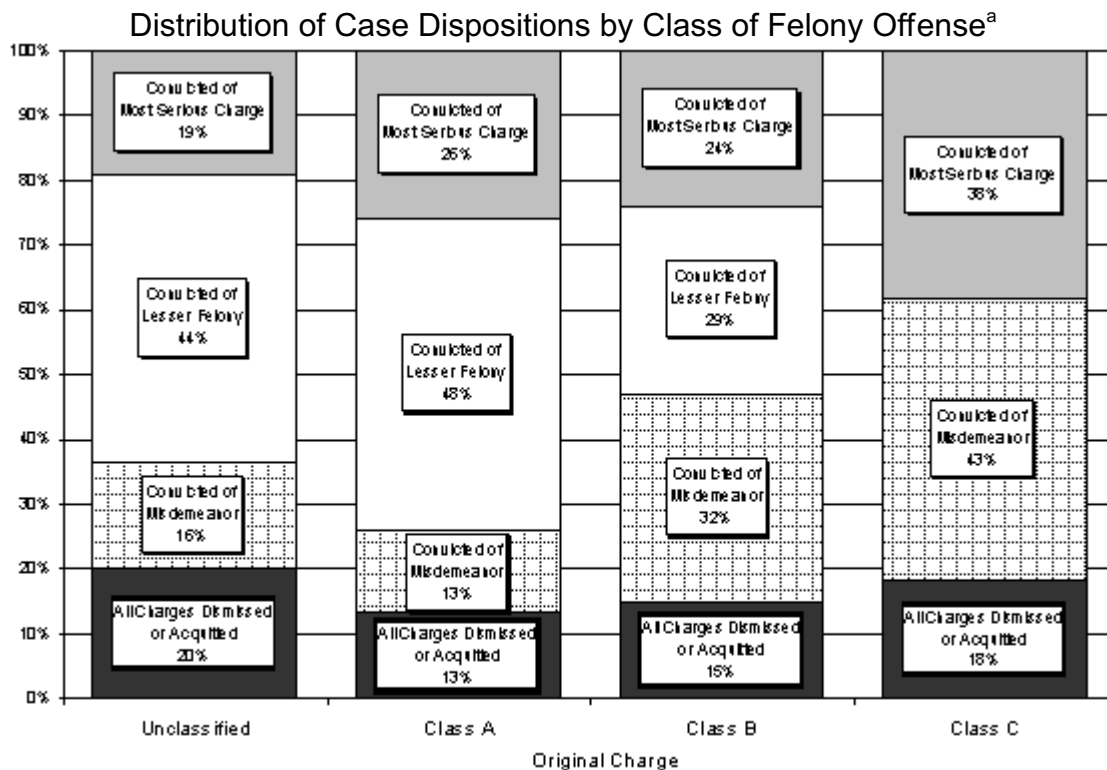
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<sup>158</sup> See discussion *infra* pp. 117-121. See also discussion, *supra* p. 40, of the Judicial Council's definitions of locations for this analysis.

#### 4. Case Dispositions by Class and Type of Offense

The type of case disposition varied considerably depending on the most serious felony offense charged.<sup>159</sup> Figure 15 shows that defendants charged with less serious felonies were more likely to be convicted of their original offenses. Charge reductions for Unclassified and Class A felonies tended to be reductions to lesser felonies; reductions for Class B and C<sup>160</sup> offenses tended to be misdemeanors. The likelihood of a defendant having all charges dismissed (including acquittals) varied little, ranging from 20% for Unclassified offenses to 13% for Class A felonies. Offenses witnessed by police, like most Driving and Drug offenses, generally resulted in higher conviction rates on the most serious charge than offenses not witnessed by police.

Figure 15



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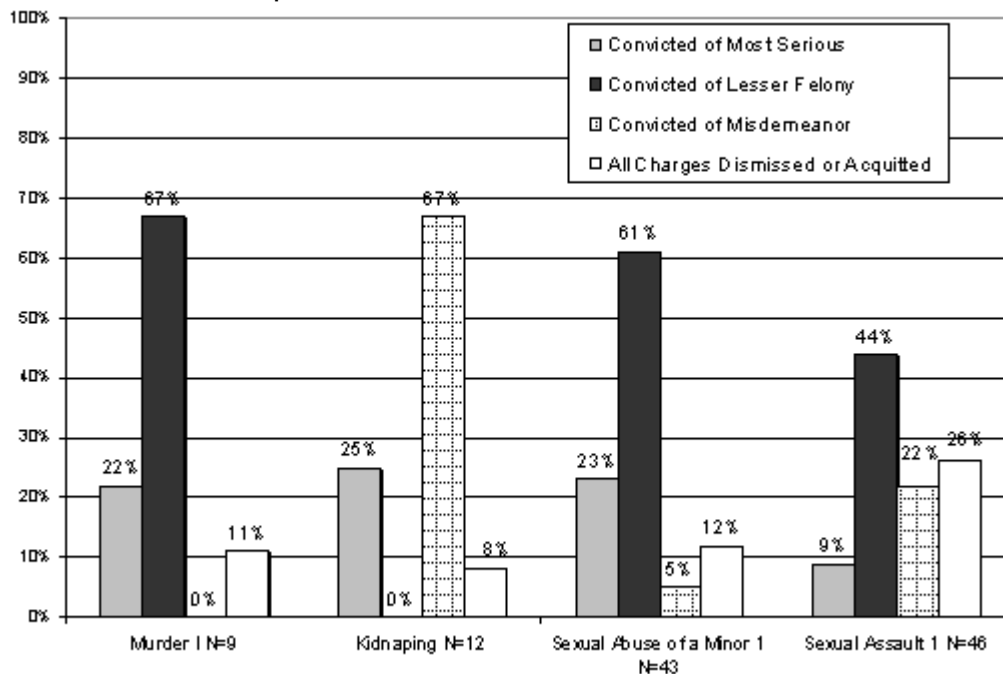
<sup>a</sup> Class C felonies were the lowest class of felony offenses. A defendant whose most serious charge was a Class C felony could not be convicted of a lesser felony.

<sup>159</sup> Appendix B at B-1 summarizes the final charge changes for every case in this report.

<sup>160</sup> Class C felonies were the lowest class of felony offenses. A defendant whose most serious charge was a Class C felony could not be convicted of a lesser felony.

Dispositions also varied by specific offense as shown in Figures 16-19. Figure 16 shows that most defendants charged with Murder 1 or Sexual Abuse of a Minor 1 were convicted of a felony (89% for Murder 1 and 84% for SAM 1). These were typically a lesser felony (67% of Murder 1 and 61% of SAM 1). Slightly more than half of defendants charged with Sexual Assault 1 were convicted of a felony (53%) but only 9% were convicted of the most serious charge. For the few defendants whose most serious charge was Kidnaping,<sup>161</sup> 25% were convicted of the most serious charge, and none were convicted of lesser felonies. Among defendants whose most serious charge was Kidnaping but who were convicted of a lesser charge, most were convicted of Assault 4.<sup>162</sup>

Figure 16  
Dispositions for Selected Unclassified Felonies

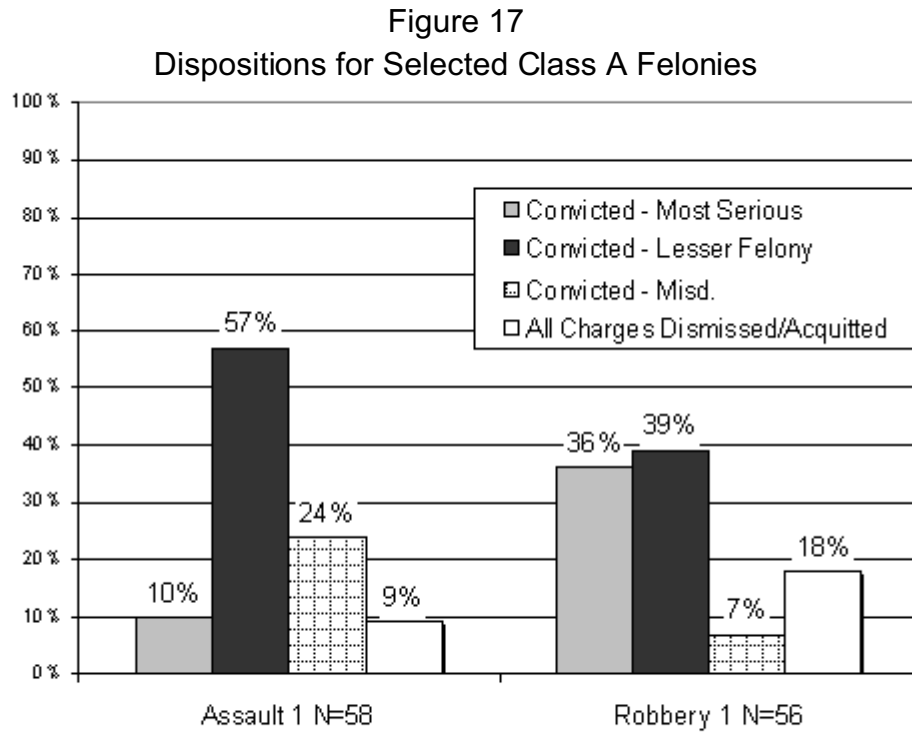


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<sup>161</sup> Because the total number of offenses for Murder 1 and Kidnaping was very small, the patterns of dispositions could change significantly with the addition of a few cases.

<sup>162</sup> Of the twelve defendants whose most serious charge was Kidnaping, three were convicted of Kidnaping. Five were convicted of Assault 4, and three were convicted of other misdemeanors. One defendant had all charges dismissed or was acquitted.

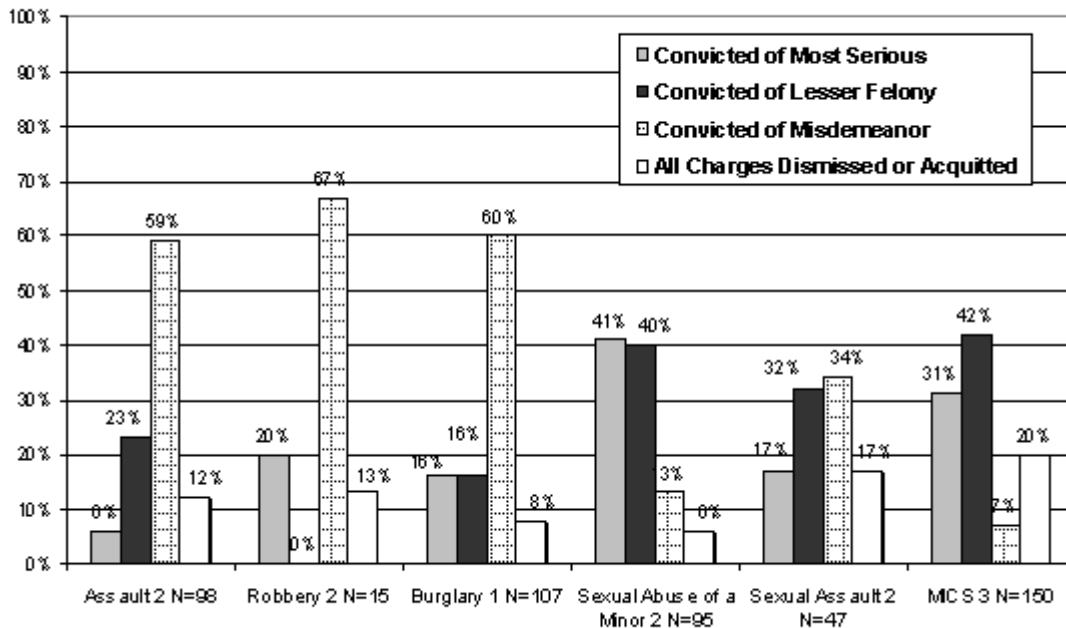
Figure 17 shows that a majority of the selected Class A defendants were convicted of felonies (Assault 1 (67%) and Robbery 1 (75%)). Defendants charged with Robbery 1 were more likely (36%) to be convicted of the most serious charge than defendants charged with Assault 1 (10%).



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The selected Class B felonies in Figure 18 also showed variation in case dispositions by type of offense. Defendants charged with Sexual Abuse of a Minor 2 (80%), Sexual Assault 2 (49%), and MICS 3 (73%) were considerably more likely to be convicted of a felony than defendants charged with Assault 2 (28%), Robbery 2 (33%), and Burglary 1 (31%). Defendants charged with Sexual Abuse of a Minor 2 were most likely among this group to be convicted of the most serious charge (44%). Defendants charged with Assault 2 were the least likely to be convicted of the most serious charge (6%). The lowest incidence of dismissals or acquittals occurred in cases involving Sexual Abuse of a Minor 2 (7%) and Burglary 1 (8%).

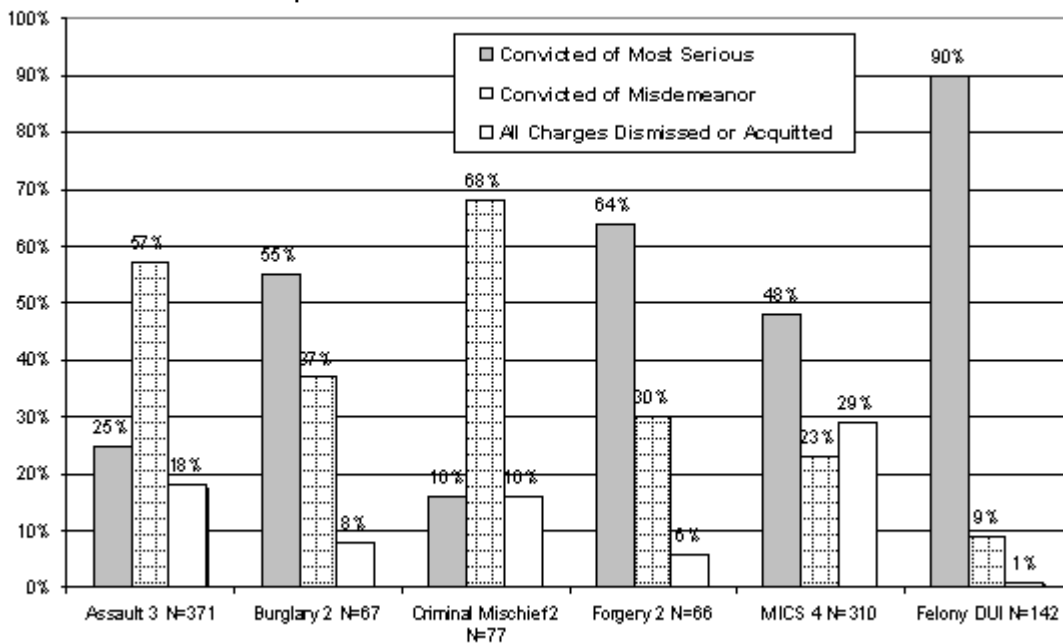
Figure 18  
Dispositions for Selected Class B Felonies



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Defendants whose most serious charge was a Class C felony offense (Figure 19) tended to be convicted more frequently of the most serious charge filed against them than defendants in other classes. About 23%<sup>163</sup> of defendants charged with Class C felony offenses who were convicted of the most serious charge against them were defendants charged with felony Driving offenses, principally felony DWI. In felony DWI cases, 90% of defendants were convicted of the most serious charge against them. Only 1% of felony driving cases resulted in dismissals or acquittals. Defendants charged with Assault 3 (23%) and Criminal Mischief 2 (16%) were the least likely to be convicted of a felony. Except for DWI, cases involving Forgery 2 (6%) and Burglary 2 (8%) had the lowest rate of dismissals or acquittals.

Figure 19  
Dispositions for Selected Class C Felonies



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<sup>163</sup> N=153 out of 669.



## 5. Comparison of 1984-1987 and 1999 Charge Reductions<sup>164</sup>

The Judicial Council last reviewed charge reduction practices using 1984-1987 data. A comparison of charge reductions in 1999 with charge reductions in 1984-1987 showed that charge reductions were much more common in 1999. Table 10 provides data for selected common offenses with enough data to make comparisons. Percentages of defendants convicted of their single most serious original charge were compared by period as were defendants charged with a felony but convicted of a misdemeanor.

Table 10 Comparison of 1984-1987 and 1999 Charge Reductions, Selected Offenses				
Most Serious Charge	Percent Convicted of Original Charge		Percent Convicted of Misdemeanor	
	1984-1987	1999	1984-1987	1999
<b>Unclassified Offenses</b>				
Sexual Assault 1	43%	12%	7%	29%
Sexual Abuse Minor 1	42%	24%	2%	5%
<b>Class A Offenses</b>				
Assault 1	25%	11%	18%	26%
Robbery 1	61%	44%	9%	9%
<b>Class B Offenses</b>				
Assault 2	16%	8%	56%	67%
Burglary 1	45%	17%	34%	65%
Sexual Assault 2	23%	21%	42%	41%
Sexual Abuse Minor 2	63%	44%	9%	13%
Misconduct Involving a Controlled Substance 3	77%	38%	8%	9%
<b>Class C Offenses</b>				
Assault 3	29%	28%	70%	70%
Burglary 2	62%	55%	30%	45%
Criminal Mischief 2	33%	20%	64%	80%
Forgery 2	82%	66%	12%	32%
Theft 2	56%	46%	38%	53%
Misconduct Involving a Controlled Substance 4	60%	67%	37%	32%

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<sup>164</sup> Appendix B contains information on charge changes in 1999, and those from 1984-1987. Table B-1 in Appendix B includes charge changes for 1999 defendants charged with the more common offenses. The table includes defendants who were acquitted or who had all charges dismissed. Table B-2 in Appendix B provides charge changes for 1984-1987 defendants. Table B-2 does not include defendants who were acquitted or who had all charges dismissed. Table B-2 originally appeared as Table C-1 of the Council's 1991 report, *ALASKA'S PLEA BARGAINING BAN RE-EVALUATED*, *supra* note 19. To facilitate the comparison of 1999 to 1984-1987 data on charge changes discussed below, 1999 percentages in Table B-1 were recalculated on Table 10, *infra*, using only convicted defendants.

For all offenses except MICS 4, a higher percentage of defendants was convicted of the most serious felony charge in 1984-1987 compared to 1999. Generally, the largest differences between 1984-1987 and 1999 data occurred in the more serious offenses. Table 11 ranked offenses by the magnitude of the difference from 1984-1987 to 1999 in the percentage of defendants convicted of the most serious charge.

<b>Table 11</b> <b>Change in Percentages of Felony Defendants</b> <b>Convicted of Most Serious Charged Offense from 1984-1987 to 1999</b> <b>Selected Offenses</b>		
<b>Most Serious Charge</b>	<b>Class of Charged Felony Offense</b>	<b>Change in Percentage of Felony Defendants Convicted of Most Serious Charge From 1984-1987 to 1999</b>
Sexual Assault 1	Unclassified	72% reduction
Burglary 1	Class B	62% reduction
Assault 1	Class A	56% reduction
MICS 3 <sup>a</sup>	Class B	51% reduction
Assault 2	Class B	50% reduction
Sexual Abuse of Minor 1	Unclassified	43% reduction
Criminal Mischief 2	Class C	39% reduction
Sexual Abuse Minor 2	Class B	30% reduction
Robbery 1	Class A	28% reduction
Forgery 2	Class C	20% reduction
Theft 2	Class C	18% reduction
Burglary 2	Class C	11% reduction
Sexual Assault 2	Class B	9% reduction
Assault 3	Class C	3% reduction
MICS 4 <sup>b</sup>	Class C	12% increase

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<sup>a</sup> Misconduct Involving a Controlled Substance 3.

<sup>b</sup> Misconduct Involving a Controlled Substance 4.

A similar pattern appeared when comparing the percentages of felony offenders convicted of misdemeanors between 1984-1987 and 1999 (Table 12). Differences were substantial although the pattern was not as uniform. For most offenses, higher percentages of felony defendants in 1999 than in 1984-1987 pled to misdemeanors for the offenses studied. Again, many of the largest differences occurred in the more serious offenses, including Sexual Assault 1, Sexual Abuse of a Minor 1, and Assault 1. The importance of these differences was enhanced because a misdemeanor conviction for these offenses represented a larger reduction from the initial felony charge.

<b>Most Serious Charge</b>	<b>Class of Charged Felony Offense</b>	<b>Change in Percentage of Defendants Convicted of Misdemeanors From 1984-1987 to 1999</b>
Sexual Assault 1	Unclassified	314% increase
Forgery 2	Class C	167% increase
Sexual Abuse Minor 1	Unclassified	150% increase
Burglary 1	Class B	91% increase
Burglary 2	Class C	50% increase
Assault 1	Class A	44% increase
Sexual Abuse Minor 2	Class B	44% increase
Theft 2	Class C	40% increase
Criminal Mischief 2	Class C	25% increase
Assault 2	Class B	20% increase
MICS 3	Class B	13% increase
Robbery 1	Class A	no change
Assault 3	Class C	no change
MICS 4	Class C	14% reduction
Sexual Assault 2	Class B	2% reduction

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Charge reduction patterns changed substantially between 1984-1987 and 1999. The increases in charge reductions could have been associated with changes in charging practices, charge reduction practices, or other factors. The amount of charge reductions could have been affected by the substantial increase in felony case filings from 1984 to 1999 and the reduced amount of resources available to justice system agencies to process these cases.<sup>165</sup> Further analysis would help illuminate reasons for the increase in charge reductions since 1984-1987.

<sup>165</sup> See discussion *infra* p. 99.

## 6. Case Processing Time

Differences in case processing times were associated with the type of case disposition, the type of offense, and to a lesser extent, by the type of attorney. Variation in case processing times by location was also observed.<sup>166</sup>

### a. Case processing time by type of disposition

The amount of time needed to resolve a felony case in the 1999 sample varied by the type of disposition. Statewide, cases in which all charges were dismissed averaged 81 days to disposition, compared to tried cases which averaged 312 days to disposition.<sup>167</sup> If defendants pled guilty or no contest, the case averaged 154 days to disposition, with disposition defined as the date of sentencing.<sup>168</sup>

Times to disposition in cases resolved by pleas varied depending on whether defendants pled to the most serious felony charged, pled to a lesser felony, or pled to a misdemeanor. The cases that took the longest to resolve within this category were those in which defendants pled to lesser felonies (226 days average, statewide). Cases with defendants who pled to the most serious felony charged took an average of 184 days to disposition. Defendants who pled to misdemeanors took the least amount of time, averaging 97 days to disposition. This supports prior Council data showing that plea bargaining increased case disposition time for some types of dispositions.<sup>169</sup> Charge bargaining, particularly in more serious felony cases, appeared to increase time to disposition.

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<sup>166</sup> Variation in case processing time by location is discussed *infra* pp. 122-124.

<sup>167</sup> The date of disposition was defined as the date of dismissal or acquittal, or the date of sentencing, whichever applied.

<sup>168</sup> In analyzing case processing times, the Council included acquittals with trials. In other analyses of types of case dispositions, acquittals were included with dismissals.

<sup>169</sup> 1999 felony data showed that cases resolved by plea bargains, either a charge bargain or a sentence bargain or both, took longer to disposition than cases resolved by pleas without bargains. The data suggested that cases involving plea bargains took about 25% longer to disposition than cases resolved by pleas without bargains. Prior Council studies also showed relationships between types of dispositions and case processing time. *See, e.g., ALASKA BANS PLEA BARGAINING, supra* note 69, at 103-106, 114-120, and Fig. 3. Many charge reductions in this sample took place with no evidence in the case file that the parties had agreed on the disposition of the case. This suggested that court case files may have understated the number of agreements. This factor compromised the Council's ability to precisely compare cases resolved by pleas with bargains with cases resolved by pleas without bargains.

**b. Case processing time by type of charged offense**

Case processing times varied depending on the type of charged offense. Mean case processing times ranged from 323 days for defendants charged with Murder/Kidnaping to 122 days for defendants charged with Property offenses. Other mean case processing times were 216 days in Sexual offense cases, 188 days for Other offenses, 171 days in Driving cases, 141 days for Violent offenses, and 140 days for Drug offenses.

**c. Case processing time by type of attorney**

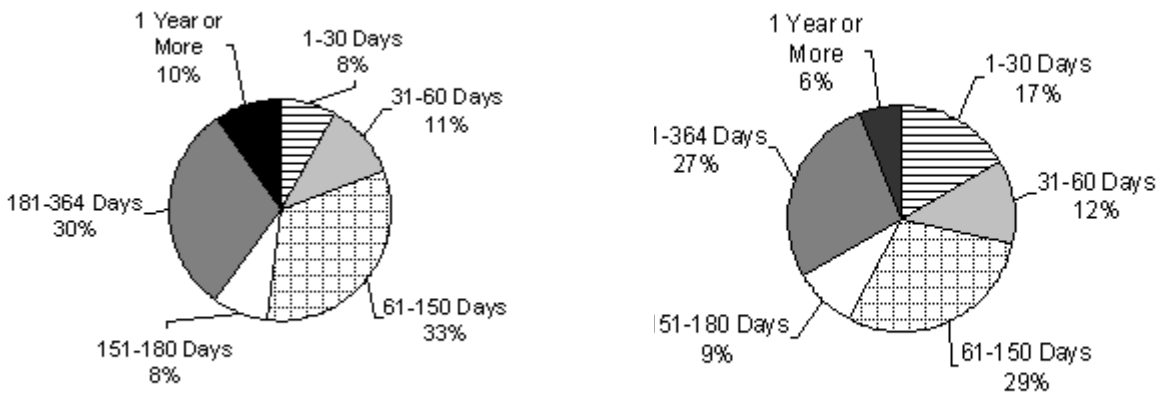
Some judges speculated that the workload of public attorneys might have created scheduling difficulties and delayed the resolution of cases. They suggested that any such delay might have contributed to findings that defendants represented by public attorneys served more predisposition incarceration for most charged offenses and were sentenced to longer terms of post-disposition incarceration in non-presumptive cases for most types of offenses.<sup>170</sup> However, there was little variation observed when times to disposition were compared for defendants represented by private attorneys with times to disposition for defendants represented by public attorneys. When variation occurred, times to disposition were actually longer for defendants represented by private attorneys.

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<sup>170</sup> See discussion *infra* pp. 214-218.

Figure 19a compares times to disposition for charged defendants represented by private attorneys with times to disposition for charged defendants represented by public attorneys. Nearly 17% of defendants represented by public attorneys, but only 8% of defendants represented by private attorneys had their cases resolved in 30 days or less. This may have been associated with possible delays encountered by defendants in retaining private counsel. Slightly more than 27% of defendants represented by public attorneys and slightly more than 30% of defendants represented by private attorneys had their cases resolved in 181 to 364 days. Six percent of defendants represented by public attorneys but nearly 10% of defendants represented by private attorneys had their cases resolved in one year or more.

Figure 19a  
Case Processing Times for Defendants Represented by:  
**Private Attorneys**                      **Public Attorneys**



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**d. 1999 processing time compared to 1984-1987 case processing time**

Case processing times in 1999 were substantially different than case processing times in 1984-1987 when the Council last reviewed them. For cases in which all charges were dismissed, the mean time to disposition in 1984-1987 (131 days) was noticeably longer than in 1999 (81 days). For cases in which the defendant entered a guilty or no contest plea, time to disposition was noticeably shorter in 1984-1987 (96 days) than in 1999 (154 days). The biggest difference occurred in cases that went to trial. It took almost twice as long in 1999 (312 days) to get a case to trial as it took in 1984-1987 (168 days).<sup>171</sup>

<sup>171</sup> See ALASKA'S PLEA BARGAINING BAN RE-EVALUATED, *supra* note 19, at Table C-8.

The much longer times to disposition in 1999 for most cases in which the defendant pled or went to trial might have been associated with a larger increase in felony case filings than in the resources to handle the cases. From fiscal year 1984 (N of filed cases=1,846) to fiscal year 1999 (N of filed cases=3,429), felony filings in Alaska increased 86%.<sup>172</sup> But from 1984 to 1999, Alaska justice system resources to process criminal cases increased by only 21% when adjusted for inflation.<sup>173</sup> There were many more felony cases in 1999, and fewer resources to process them than there had been fifteen years earlier.<sup>174</sup>

At least two factors aside from increased numbers of arrests or lower screening rates by prosecutors could have helped increase the felony filing rates. First, as described elsewhere,<sup>175</sup> value limits for Property crimes remained unchanged from 1978 until 1999. Property worth \$9,784 in 1978 would have been worth \$25,000 in 1999, allowing prosecutors to file a Theft 1 (Class B) felony instead of a Theft 2 (Class C felony). Property worth \$196 in 1978 would have been worth \$500 (the felony dividing line) in 1999, making many more offenses felonies in 1999 than would have been felonies in 1978.

Second, the legislature created several new felony offenses between 1984 and 1999.<sup>176</sup> Chief among these were Stalking 1 (N=7 charges in sample), Felony Driving While Intoxicated (N=142), Felony Refusal of Alcohol Test (N=15) and Felony Fail to Stop (N=15). In addition to the 179 cases in the sample that were new felonies, another 137 most serious charges filed were Vehicle Theft 1. Some of the Vehicle Theft 1 offenses would have been felonies under the previous statutes, but there is no

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<sup>172</sup> ALASKA COURT SYSTEM, 1984 ANNUAL REPORT; ALASKA COURT SYSTEM, 1999 ANNUAL REPORT.

<sup>173</sup> It was difficult to precisely measure justice system resources attributable only to criminal cases. Many agencies, like the Public Defender Agency, the Office of Public Advocacy, the Department of Public Safety, and the Court System, were responsible for civil matters as well as criminal cases. The civil division of the Department of Law handled some matters related to criminal prosecution. Information was not readily available to segregate criminal from civil expenses. The operating budgets of the Court System, Department of Corrections, Department of Public Safety (State Trooper and Village Public Safety Officer), Department of Law's Criminal Division, the Public Defender Agency, and Office of Public Advocacy (which did not exist in fiscal year 1984) were added to obtain the figures in this analysis. The 1999 total was converted into 1984 dollars using the Consumer Price Index Calculator, Bureau of Labor Statistics, U.S. Dep't of Labor, available at [www.bls.gov/cpi/](http://www.bls.gov/cpi/).

<sup>174</sup> B. OSTROM & N. KAUDER, EXAMINING THE WORK OF STATE COURTS, 1999-2000: A NATIONAL PERSPECTIVE FROM THE COURT STATISTICS PROJECT 71 (National Center for State Courts (2000)). Figure includes calendar year data from 43 states. *Id.* at 71.

<sup>175</sup> See *infra* Appendix A, page A-3.

<sup>176</sup> See Appendix A, *Changes in Felony Offense Definition, Classification and Sentencing Statutes, 1990-1999*, *infra*.

information to distinguish between those and the offenses that would have been misdemeanors or not charged.<sup>177</sup>

## **E. Location**

### **1. Location Methodology**

The Council sampled cases from 29 different court locations in which felony cases were filed in 1999. No superior court operated in 16 of these locations, each of which was served by one of the 13 superior court locations in Alaska. For much of the analysis in this section, cases were divided into six locations: Anchorage (935 cases), Fairbanks (260 cases), Juneau (89 cases), Southcentral,<sup>178</sup> Southeast,<sup>179</sup> and Other.<sup>180</sup> The separation into Anchorage, Fairbanks, and Juneau permitted comparisons to reports from the 1970s in which data came only from those three communities. The other three groupings reflected similarities in the sizes of the courts and geographical areas served by the courts.

Sometimes data were analyzed using the thirteen superior court locations, with cases from the smaller courts considered together with the cases for the larger courts that served them.<sup>181</sup> This grouping was useful to show patterns of events, such as amounts of predisposition incarceration, charge reduction practices, and types of case dispositions, that varied significantly by court location. Where data from one of the 29 court locations were sufficiently interesting, those data were noted.

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<sup>177</sup> See *infra* Appendix A.

<sup>178</sup> Southcentral included Cordova (5 cases), Glennallen (16 cases), Homer (28 cases), Kenai (90 cases), Palmer (231 cases), Seward (12 cases), Valdez (25 cases), and Whittier (1 case); Total=408 cases.

<sup>179</sup> Southeast included Craig (6 cases), Haines (2 cases), Ketchikan (93 cases), Petersburg (15 cases), Sitka (24 cases), and Wrangell (7 cases); Total=147 cases.

<sup>180</sup> Other included Barrow (57 cases), Bethel (190 cases), Dillingham (19 cases), Healy (2 cases), Kodiak (53 cases), Kotzebue (92 cases), Naknek (8 cases), Nome (52 cases), Sand Point (1 case), Tok (2 cases), Unalaska (15 cases), and Unalakleet (1 case); Total=492 cases.

<sup>181</sup> Anchorage (935 cases), plus Cordova (5 cases), Sand Point (1 case), Unalaska (15 cases) and Whittier (1 case); Total=957 cases. Ketchikan (93 cases), plus Craig (6 cases), Petersburg (15 cases), and Wrangell (7 cases); Total=121 cases. Palmer (231 cases), plus Glennallen (16 cases) and Valdez (25 cases); Total=272 cases. Juneau (89 cases), plus Haines (2 cases); Total=91 cases. Fairbanks (260 cases), plus Healy (2 cases) and Tok (2 cases); Total=264 cases. Kenai (90 cases), plus Homer (28 cases) and Seward (12 cases); Total=130 cases. Dillingham (19 cases), plus Naknek (8 cases); Total=27 cases. Nome (52 cases), plus Unalakleet (1 case); Total=53 cases. Barrow; Total=57 cases. Bethel; Total=190 cases. Kotzebue; Total=92 cases. Kodiak; Total=53 cases. Sitka; Total=24 cases.



## 2. Distribution of Felony Defendants

In the Council's representative statewide sample of Alaska felony cases filed in 1999, 40% of defendants were charged in cases filed in Anchorage. The next highest percentages of felony defendants were charged in Fairbanks (11%), Palmer (10%), and Bethel (8%). Table 13 shows the distribution of felony defendants by location.<sup>182</sup>

Anchorage	40%
Barrow	2%
Bethel	8%
Dillingham	1%
Fairbanks	11%
Juneau	4%
Kenai	4%
Ketchikan	4%
Kodiak	2%
Kotzebue	4%
Nome	2%
Palmer	10%
Sitka	1%
Non-Superior Ct Locations	6%

*Alaska Judicial Council 1999 Felony Report*

<sup>182</sup> These percentages were very similar to the percentages of all felonies filed in the state courts. In fiscal year 2000, the Court System's annual report showed that 35% of the felony filings for July 1, 1999 - June 30, 2000 were in Anchorage, 13% were in Fairbanks, and 10% were in Bethel. ALASKA COURT SYSTEM 2000 ANNUAL REPORT at S-21. The distribution of cases in other court locations was almost identical to the distribution in this sample.

### **3. Type of Most Serious Offense Charged**

Table 14 shows the relative frequency of some of the more common offenses included in the 1999 sample. Assaults taken together (not including Sexual Assaults) were the most numerous offenses, accounting for 26% of the most serious offenses charged against the Council's selected defendants.<sup>183</sup> The second most common (15%) offense charged was Misconduct Involving a Controlled Substance in the 4<sup>th</sup> degree (MICS 4). Theft in the 2<sup>nd</sup> degree was the third most commonly (12%) charged offense.

Table 14 also shows that offenses were not spread evenly among all locations. Each area had a distinct pattern of offenses, relative to the other areas. Anchorage, for example, had more Robberies and more serious Drug offenses (MICS 3), while "Other" areas (mainly rural) had more Assaults and Burglaries.

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<sup>183</sup> In reviewing the distribution of charged offenses by location, the Council did not analyze 302 selected defendants out of the Council's representative sample of 2,331 statewide defendants because those defendants were charged with offenses that were too uncommon to permit comparison. The Council grouped certain offenses into categories to permit a more useful comparison.

**Table 14**  
**Distribution of Selected Most Serious Charged Felony Offenses by Location**

	<b>Anchorage<sup>a</sup></b>	<b>Fairbanks<sup>b</sup></b>	<b>Juneau<sup>c</sup></b>	<b>Southcentral<sup>d</sup></b>	<b>Southeast<sup>e</sup></b>	<b>Other<sup>f</sup></b>	<b>State Total<sup>g</sup></b>
<b>Assaults</b>	189 <b>22%</b>	54 24%	22 27%	90 24%	32 24%	140 <b>30%</b>	527 24%
<b>Robberies</b>	53 <b>6%</b>	7 3%	1 1%	4 1%	1 1%	5 1%	71 3%
<b>Burglaries</b>	45 <b>5%</b>	16 7%	11 <b>13%</b>	31 8%	11 8%	60 <b>13%</b>	174 8%
<b>Criminal Mischief</b>	22 3%	7 3%	3 4%	15 4%	5 4%	27 <b>6%</b>	79 4%
<b>Felony DWI</b>	52 6%	16 7%	5 6%	37 <b>10%</b>	9 7%	23 <b>5%</b>	142 7%
<b>Forgery</b>	34 4%	8 4%	6 <b>7%</b>	10 3%	7 5%	3 <b>1%</b>	68 3%
<b>MICS 3</b>	83 <b>10%</b>	17 7%	1 <b>1%</b>	20 5%	8 6%	21 <b>5%</b>	150 7%
<b>MICS 4</b>	130 15%	35 15%	10 12%	94 <b>25%</b>	18 13%	23 <b>5%</b>	310 14%
<b>Sex. Abuse Minor 1</b>	19 2%	6 3%	1 1%	5 1%	3 2%	9 2%	43 2%
<b>Sex. Abuse Minor 2/3</b>	18 <b>2%</b>	13 6%	6 7%	16 4%	11 <b>8%</b>	55 <b>12%</b>	119 6%
<b>Sexual Assault 1</b>	10 1%	4 2%	3 <b>4%</b>	3 1%	2 2%	24 <b>5%</b>	46 2%
<b>Sexual Assault 2/3</b>	12 1%	4 2%	4 <b>5%</b>	1 <1%	5 4%	32 <b>7%</b>	58 3%
<b>Theft 2</b>	143 <b>17%</b>	26 11%	6 <b>7%</b>	33 <b>9%</b>	13 10%	21 <b>5%</b>	242 11%
<b>Vehicle Theft 1</b>	57 7%	17 7%	3 4%	22 6%	10 7%	27 6%	136 6%
<b>Total<sup>h</sup></b>	867 <b>100%</b>	230 <b>100%</b>	82 <b>100%</b>	381 <b>100%</b>	135 <b>100%</b>	470 <b>100%</b>	2,165 <b>100%</b>

*Alaska Judicial Council 1999 Felony Report*

<sup>a</sup> Anchorage: 935 cases in the sample; 867 cases in Table 14.

<sup>b</sup> Fairbanks: 260 cases in the sample; 230 cases in Table 14.

<sup>c</sup> Juneau: 89 cases in the sample; 82 cases in Table 14.

<sup>d</sup> Southcentral: Cordova (5 cases), Glennallen (16 cases), Homer (28 cases), Kenai (90 cases), Palmer (231 cases), Seward (12 cases), Valdez (25 cases), and Whittier (1 case); Total=408 cases in the sample; 381 cases in Table 14.

<sup>e</sup> Southeast: Craig (6 cases), Haines (2 cases), Ketchikan (93 cases), Petersburg (15 cases), Sitka (24 cases), and Wrangell (7 cases); Total=147 cases in the sample; 135 cases in Table 14.

<sup>f</sup> Other: Barrow (57 cases), Bethel (190 cases), Dillingham (19 cases), Healy (2 cases), Kodiak (53 cases), Kotzebue (92 cases), Naknek (8 cases), Nome (52 cases), Sand Point (1 case), Tok (2 cases), Unalaska (15 cases), and Unalakleet (1 case); Total=492 cases in the sample; 470 cases in Table 14. Tok and Healy are included in "Other" for this analysis because the focus is on where the case arose. The cases were probably handled by Fairbanks judges.

<sup>g</sup> The percentage that each offense category comprised of the total statewide most serious charged offenses is found in the "Total" column at the right of the table for each offense category. The percentage that each offense category comprised for each of six location groups is also provided. Where an offense category comprised a noticeably higher percentage of a particular location's caseload than that same offense category comprised in the statewide total, the percentage is in bold type. Where an offense category comprised a noticeably lower percentage of a particular location's caseload than that same offense category comprised in the statewide total, the percentage is in bold type and italics.

<sup>h</sup> Totals may not equal 100% due to rounding.

**a. Anchorage**

Robberies, MICS 3, and Theft 2 offenses appeared to be more frequently charged in Anchorage than elsewhere. Burglaries and some Sexual offenses tended to be charged less often in Anchorage than elsewhere.

**b. Fairbanks**

In all offense categories, the distribution of most serious charged offenses tracked statewide averages.

**c. Juneau**

Assaults, burglaries, Forgery, and some Sexual Assault offenses tended to be charged more often in Juneau than statewide. Drug and Theft 2 charges were less common in Juneau than statewide. In patterns of most serious charged offenses, Juneau resembled rural areas more than it did urban or semi-urban areas.

**d. Southcentral**

Felony DWI and MICS 4 were charged more often in Southcentral locations than statewide. Theft 2 and Sexual Assault 2 and 3 appeared to be less often charged in Southcentral than in Anchorage or Fairbanks.

**e. Southeast**

The distribution of most serious charged offenses tracked statewide averages.

**f. Other**

Other locations, mostly rural, showed the broadest variation from statewide averages. Assaults, Burglaries, and most Sexual offenses (except Sexual Abuse of a Minor 1) comprised a higher percentage of most serious charged offenses in rural Alaska than they did statewide. Drug offenses, Theft 2, and to a lesser extent, Robberies and Felony DWI were a lower percentage of most serious charged offenses in rural Alaska than they were statewide.

#### 4. Ethnicity

The distribution of ethnic groups among charged felony defendants varied considerably by location. The Council examined the distribution of ethnic groups among charged felony defendants for the six location categories used above. The data represent disproportions that existed among defendants when formally charged. The Council compared the percentage of charged felony defendants that the ethnic group comprised in a location with the percentage that the ethnic group comprised of the general population for that location to determine the extent of any disproportion within that location. The findings are shown in Table 15<sup>184</sup> and Figures 20, 21, and 22.

Overall, Caucasians constituted about 74% of Alaska's total population. In specific areas, Caucasians made up 77% of the Anchorage population, 80% of Juneau, 82% of Fairbanks, and 90% of South-central. Blacks were found mainly in urban areas, with 7% of the Anchorage population and 8% of the Fairbanks population being Black, but 1% or less of the population in any other area.<sup>185</sup> Hispanic and Asian/Pacific Islanders, identified as "Other" on the table, tended to live in Anchorage (7% of the Anchorage population), Juneau (6%) and the Other (mainly rural) areas (6%).<sup>186</sup> Other areas had a Caucasian percentage of only 34%, with the majority (60%) of their populations being Alaska Native residents. Alaska Natives constituted sizable percentages of the populations in Juneau and Southeast as well.

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<sup>184</sup> Census figures used in this analysis were based on total population, including all ages. When discussing ethnic disproportions on a statewide basis earlier, the Council used Census data for Alaskans ages 18 and older for a more exact comparison to its felony data. *See* discussion *supra* pp. 52-54. Census data by age and location were less readily available. The most noticeable difference between statewide total population and population limited to ages 18 and older was in the Alaska Native population. Alaska Natives made up 17% of Alaska's total population but only 14% of those ages 18 and older. Slight changes in the ways communities were grouped (see notes for Table 14) could change these data slightly. The differences were not large enough to affect the analysis and discussion.

<sup>185</sup> Historically, this was related to the fact that many Blacks came to Alaska with the military and served at bases in Fairbanks and Anchorage.

<sup>186</sup> One hypothesis for this distribution of "Other" defendants was that members of these groups often clustered in coastal parts of the state because of fishing-related jobs there. More recently, Hispanics may have come to those areas, particularly Juneau, for work in the tourist industry, e.g., with cruise ships, restaurants, and hotels.

Table 15 Ethnic Disproportions Among Charged Defendants by Location <sup>a</sup>							
	Anchorage	Fairbanks	Juneau	Southcentral	Southeast	Other	Statewide
<b>Caucasians</b>							
<b>Census<sup>b</sup></b>	77%	82%	80%	90%	72%	34%	74%
<b>Felony Report</b>	51%	60%	56%	85%	51%	13%	50%
<b>Ratio<sup>d</sup></b>	.66	.73	.70	.94	.71	.38	.68
<b>Blacks</b>							
<b>Census</b>	7%	8%	1%	1%	<1%	1%	4%
<b>Felony Report</b>	23%	13%	5% <sup>c</sup>	2%	2% <sup>c</sup>	1%	11%
<b>Ratio</b>	3.29	1.6	5	2	5	1	2.75
<b>Alaska Natives</b>							
<b>Census</b>	8%	8%	13%	7%	25%	60%	17%
<b>Felony Report</b>	16%	23%	34%	10%	39%	75%	30%
<b>Ratio</b>	2	2.88	2.62	1.43	1.56	1.25	1.76
<b>Other Ethnicities</b>							
<b>Census</b>	7%	3%	6%	1%	3%	6%	5%
<b>Felony Report</b>	10%	4%	5% <sup>c</sup>	3% <sup>c</sup>	8%	11%	9%
<b>Ratio</b>	1.43	1.33	.83	3	2.67	1.83	1.8

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<sup>a</sup>Census data has been compiled to track location categories as defined by the Judicial Council. See discussion *supra* pp. 39-40. Ethnicity information was not available for 4% of charged defendants. ALASKA DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, ALASKA POPULATION OVERVIEW: 1999 ESTIMATES 32, Table 1.12 (2000).

<sup>b</sup>Census figures used here are based on total population including all ages.

<sup>c</sup>Five or fewer defendants.

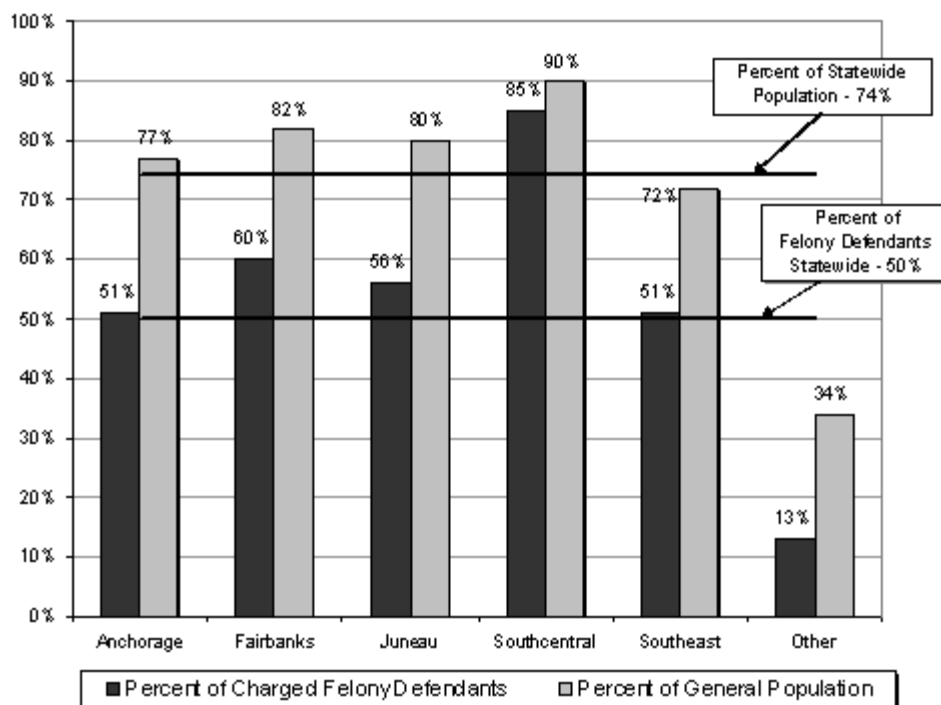
<sup>d</sup>Ratio compares the rate of representation in the felony data to the rate of representation in the census population. For example, Blacks were 3.3 times more likely to appear as felony defendants in Anchorage than their representation in the Anchorage population would predict.

Asians and Pacific Islanders combined represented 2.4% of charged felony defendants statewide. Hispanics represented 1.7% of charged felony defendants. These defendants were fairly evenly distributed statewide but the low number of defendants made a more specific comparison impossible. No ethnicity information was available for 4.3% of charged defendants statewide (N=100).

### a. Caucasian defendants

In 1999, Caucasians comprised 50% of charged felony defendants in the Council's report. In Southcentral, Caucasians were a much higher percentage (85%) of charged defendants than statewide. The percentage of Caucasians among charged felony defendants also exceeded statewide averages in Fairbanks (60%) and Juneau (56%). In rural areas, Caucasians made up only 13% of charged felony defendants (see Figure 20).

Figure 20  
Ethnic Disproportions Among Charged Defendants by Location  
Caucasians



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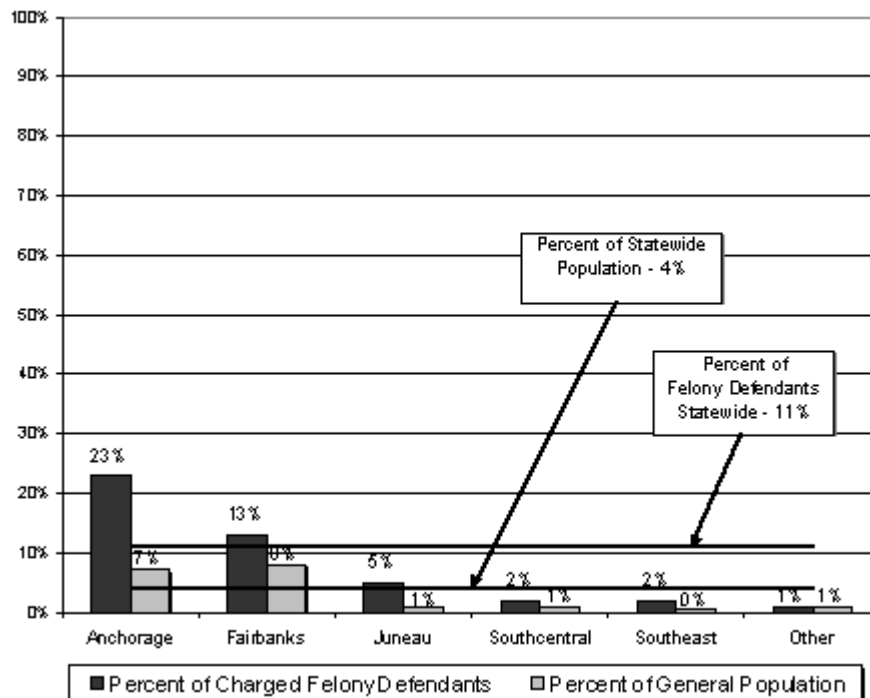
To identify disproportions, it was necessary to compare the percent of Caucasians in the felony data to the percent of Caucasians in the various populations (see Table 15). Caucasians comprised 74% percent of the Alaska population. Expressed as a ratio, Caucasians appeared as felony defendants statewide at .68 times the rate that they occurred in Alaska's population. The under-representation of Caucasians in the felony data was most pronounced in Other areas of Alaska, mostly rural, where Caucasians appeared as felony defendants at .38 times the rate that they occurred in the Other (rural) population. Caucasian under-representation was least pronounced in Southcentral where Caucasians were felony defendants at .94 times their representation in that population. The ratios in Anchorage

(.66 times), Fairbanks (.73 times), Juneau (.70 times), and Southeast (.71 times) were similar and tracked the statewide average.

**b. Blacks**

In 1999 Blacks comprised 4% of the Alaska population. Blacks were 11% of charged felony defendants statewide. Very few Black defendants lived in locations outside of Anchorage and Fairbanks. In Anchorage, Blacks comprised 23% of charged felony defendants but 7% of the city’s general population. In Fairbanks, Blacks were 13% of charged defendants (see Figure 21). Eighty percent of all Black felony defendants statewide were charged in Anchorage cases.

Figure 21  
Ethnic Disproportions Among Charged Defendants by Location  
Blacks



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Blacks made up 4% of the Alaska population in 1999, but appeared as felony defendants statewide at 2.75 times the rate that they occurred in the state population. Blacks were most over-represented in Anchorage felony cases, where they appeared as felony defendants at 3.29 times the rate that they occurred in the Anchorage population. Other areas of the state with more than five Black defendants and rates of over-representation were Fairbanks (1.60 times) and Southcentral (2.00 times), although

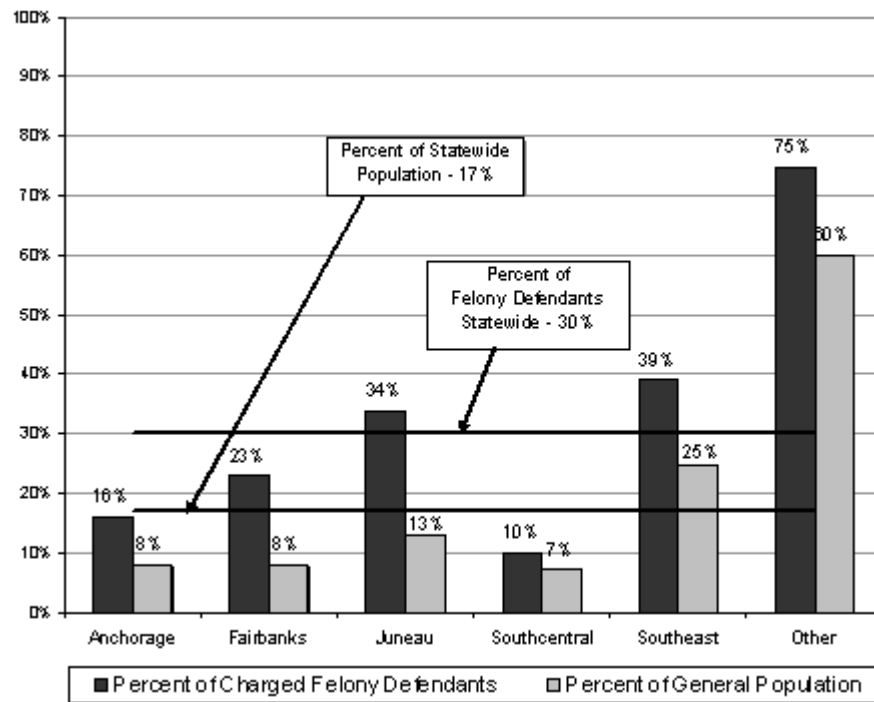


those rates were lower than the statewide average. Blacks appeared as defendants in Other areas at the same rate that they occurred in the Other population (see Table 15).<sup>187</sup>

**c. Alaska Natives**

Statewide, Alaska Natives were 30% of charged felony defendants. In Other (Mainly rural) areas, Alaska Natives made up three quarters (75%) of charged felony defendants but 60% of the Other population. In Southeast (39%) and Juneau (34%), Native representation among charged felony defendants more modestly exceeded the statewide average. In Anchorage (16%), Fairbanks (23%), and Southcentral (10%), the percentage of Alaska Natives among charged felony defendants was lower than statewide (see Figure 22).

Figure 22  
Ethnic Disproportions Among Charged Defendants by Location  
Alaska Natives



*Alaska Judicial Council, 1999 Felony Report*

In 1999, Alaska Natives comprised 17% of the Alaska population. Alaska Natives appeared as felony defendants at 1.76 times the rate that they occurred in Alaska’s population. The over-representation of Alaska Natives in the felony data was most pronounced in urban locations including Anchorage

<sup>187</sup> Blacks were over-represented in the felony populations of Juneau and Southeast at 5.00 times their population, but in the Council’s data there were only four Black defendants for Juneau and three Black defendants for Southeast.

(2.00 times), Fairbanks (2.88 times) and Juneau (2.62 times). Alaska Natives were over-represented in the felony populations of Southcentral (1.43 times) and Southeast (1.56 times) at rates lower than the statewide average. The lowest rate of over-representation occurred in Other areas where Alaska Natives appeared as felony defendants at 1.25 times their population rate (see Table 15).

**d. Other ethnicities**

Other ethnicities (Asians, Pacific Islanders, Hispanics) were 9% of charged felony defendants statewide. In rural areas (11%) and in Anchorage (10%), Other ethnicities occurred as felony defendants at slightly higher rates. In Fairbanks (4%), Other ethnicities occurred as felony defendants at about half the statewide rate.<sup>188</sup>

Other ethnicities were 5% of the Alaska population in 1999. Other ethnicities appeared as felony defendants at 1.80 times the rate that they occurred in Alaska's population. The over-representation of Other ethnicities in the felony data was most pronounced in Southeast where Other ethnicities appeared in the felony population at 2.67 times their population rate. The rate of over-representation was less than the statewide average in Anchorage (1.43 times) and Fairbanks (1.33 times). Other ethnicities were over-represented as felony defendants in Other (mainly rural) areas (1.83 times) at approximately the same rate as the statewide average (see Table 15).<sup>189</sup>

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<sup>188</sup> In Juneau (5%) and Southcentral (3%) there were five or fewer defendants of Other ethnicities in the Council's data.

<sup>189</sup> Other ethnicities were over-represented in Southcentral (3.00 times) but there were only five Southcentral Other defendants in the Council's data. Other ethnicities were under-represented in Juneau (.83 times) but there were only two defendants.

## 5. Defendants with Alcohol, Drug, and Mental Health Problems<sup>190</sup>

Statewide, the Council identified 63% of charged felony defendants as having alcohol problems. Alcohol problems were more prevalent among defendants in northern and western<sup>191</sup> Alaska (76%), a finding supported by other known data.<sup>192</sup> The percentages of defendants with alcohol problems exceeded the statewide average in Juneau (78%) and Southeast (71%). The percentage of defendants identified as having alcohol problems in Anchorage (54%) was lower than the statewide average. The percentage in Fairbanks (63%) was the same as the statewide average.

Location	Defendants in this Location with Alcohol Problems		Defendants in this Location with Drug Problems		Defendants in this Location with Mental Health Problems	
	N	%	N	%	N	%
Anchorage	500	54%	412	44%	267	29%
Fairbanks	163	63%	119	46%	74	29%
Juneau	69	78%	48	54%	47	53%
Southcentral	261	64%	197	48%	122	30%
Southeast	105	71%	77	52%	43	29%
Other	374	76%	184	37%	111	23%
Statewide	1,472	63%	1,037	45%	664	29%

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Statewide, 45% of charged felony defendants were identified as having drug problems.<sup>193</sup> In Juneau (54%) and Southeast (52%), higher percentages of defendants had drug problems. In northern and western (Other) areas (37%), a lower percentage of defendants had drug problems. Percentages in Anchorage (44%), Fairbanks (46%), and Southcentral (48%) resembled the statewide average.

Twenty-nine percent of defendants statewide were identified as having mental health problems. In Juneau, 53% of charged felony defendants were identified as having a mental health problem. The

<sup>190</sup> See discussion *supra* pp. 64-66.

<sup>191</sup> These are identified as Other on Table 16, and described on Table 14, *supra* p. 103.

<sup>192</sup> ALASKA CRIMINAL JUSTICE ASSESSMENT COMMISSION, FINAL REPORT, *supra* note 120, at 27 (Citations omitted.)

<sup>193</sup> The method of identifying these defendants may have resulted in an over-reporting of defendants with drug problems.

lowest percentage (23%) occurred in other areas. Anchorage (29%), Fairbanks (29%), Southcentral (30%), and Southeast (29%) tracked the statewide average.

Juneau also had higher than average percentages of defendants with drug problems and mental health problems and Southeast had a higher than average percentage of defendants with drug problems. These problems may actually occur at higher rates in these locations, or the percentages may have been a product of more available data in those locations, i.e., better reporting and/or more resources for treatment. The issue requires further investigation.

## 6. Type of Attorney

The types of attorneys used by defendants appeared to vary by location in the state.<sup>194</sup> In Other areas (northern and western parts of the state) public defenders represented a higher percentage (70%) of felony defendants (Table 17). Among specific court locations with more than five felony defendants represented by public defenders, Barrow (79%), Bethel (75%), Dillingham (79%), Glennallen (75%), and Naknek (75%) had the highest percentages of defendants represented by an attorney from the Public Defender Agency.<sup>195</sup> Public defenders represented a lower percentage of defendants than the statewide average in Fairbanks (58%) and Southcentral (55%). Among specific court locations with more than five felony defendants represented by public defenders, Fairbanks (58%), Ketchikan (55%), Kenai (52%), Kodiak (55%), and Palmer (54%) had the lowest percentages of defendants represented by an attorney from the Public Defender Agency.

Location	Public Defender		OPA Staff		OPA Contractor		Private Attorney		Self-Represented		Unknown	
	N	%	N	%	N	%	N	%	N	%	N	%
Anchorage	597	64%	67	7%	94	10%	159	17%	2	<1%	16	2%
Fairbanks	151	58%	34	13%	28	11%	35	14%	2	1%	10	4%
Juneau	56	63%	0	0%	11	12%	15	17%	0	0%	7	8%
Southcentral	226	55%	1	<1%	57	14%	104	26%	6	2%	14	3%
Southeast	90	61%	0	0%	30	20%	24	16%	0	0%	3	2%
Other	346	70%	4	1%	69	14%	55	11%	3	1%	15	3%
Statewide	1,466	63%	106	5%	289	12%	392	17%	13	1%	65	3%

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<sup>194</sup> See discussion *supra* pp. 67-72, for data about type of attorney.

<sup>195</sup> Data available on request from the Judicial Council.

Seven percent of felony defendants in Anchorage and 13% of defendants in Fairbanks were represented by OPA staff attorneys. OPA staff represented only five defendants in this sample who were not in Anchorage or Fairbanks.

In contrast, OPA contract attorneys represented about 12% of the felony defendants, spread throughout the state. Southeast, with 20% of defendants represented by OPA contract attorneys, used OPA contractors most often. Locations that had the lowest percentage of defendants represented by an attorney from the Public Defender Agency, tended to have the highest percentage of defendants represented by an OPA contract attorney. Ketchikan (22%), Kenai (18%), Kodiak (19%), and Palmer (15%) had the highest percentage of defendants represented by an OPA contract attorney among specific court locations with more than five such defendants. In Fairbanks, another location with a relatively low percentage of defendants represented by a public defender, a greater share of public representation was provided by OPA staff attorneys rather than OPA contract attorneys.

Private attorneys in Southcentral represented a higher percentage of defendants (26%) than in other areas of the state. Statewide, private attorneys represented 17% of felony defendants. Among specific court locations with more than five such defendants in the Council's data, locations with the highest percentage of felony defendants represented by private attorneys were Homer (25%), Ketchikan (20%), Kenai (21%), Kodiak (21%), and Palmer (28%). Among specific court locations with more than five such defendants, lower percentages of defendants were represented by private attorneys in Barrow (11%), Bethel (10%), Fairbanks (14%), Kotzebue (13%), and in rural areas (11%).

## **7. Predisposition Release and Third Party Custodians by Location**

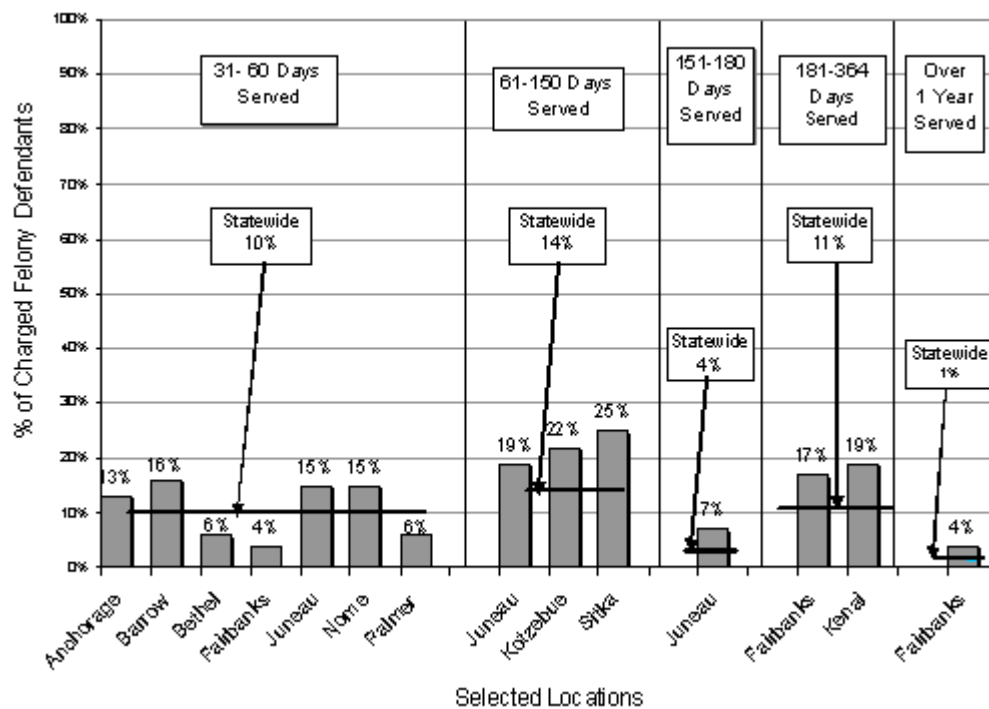
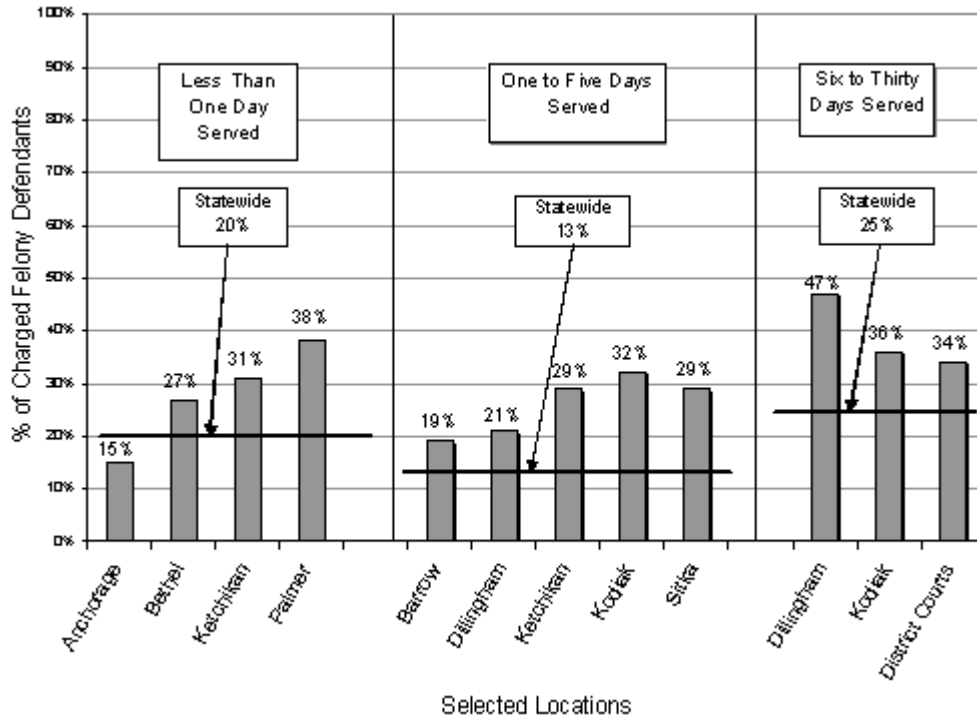
### **a. Variation in predisposition incarceration by location**

Overall, in all locations, 80% of defendants were incarcerated for one or more days before their disposition. Figure 23 shows that the percentage of defendants incarcerated before the dispositions of their cases varied by location. The percentage of felony defendants who were incarcerated for less than one day prior to disposition varied by location. In Anchorage, only 15% of defendants spent less than one day incarcerated prior to disposition. This was consistent with a higher incidence of third party requirements in Anchorage than in other areas of the state (see discussion below). In Palmer (38%), Ketchikan (31%), and Bethel (27%), more defendants were released having served less than one day prior to disposition, compared to other areas of the state.

Fifty-nine percent of felony defendants statewide spent zero to thirty days in predisposition incarceration. Many of these defendants were in smaller communities. Thirteen percent of felony defendants statewide served from one to five days of predisposition incarceration. In Kodiak (32%), Ketchikan (29%), Sitka (29%), Dillingham (21%), and Barrow (19%), higher percentages of defendants served from one to five days of predisposition incarceration than in other areas of the state. Statewide, 25% of felony defendants served from six to thirty days of predisposition incarceration. In Dillingham (47%), Kodiak (36%), and areas with only a district court presence (34%), higher percentages of defendants served from six to thirty days of predisposition incarceration.

Disproportions by location involving defendants who served more than thirty days of predisposition incarceration occurred. Statewide, 10% of defendants served from 31-60 days, but in Anchorage (13%), Barrow (16%), Juneau (15%) and Nome (15%), higher percentages of defendants served predisposition time within this range. Statewide, 14% of defendants served from 61-150 days of predisposition time, but in Kotzebue (22%), Juneau (19%), and Sitka (25%), higher percentages were observed. Eleven percent of defendants statewide served from six months to a year of predisposition time. Higher percentages were observed in Kenai (19%) and Fairbanks (18%). The percentage of defendants serving more than one year of predisposition time in Fairbanks (4%) also exceeded the statewide percentage (1%).

Figure 23  
Amount of Time Served Predisposition Statewide  
and in Selected Locations

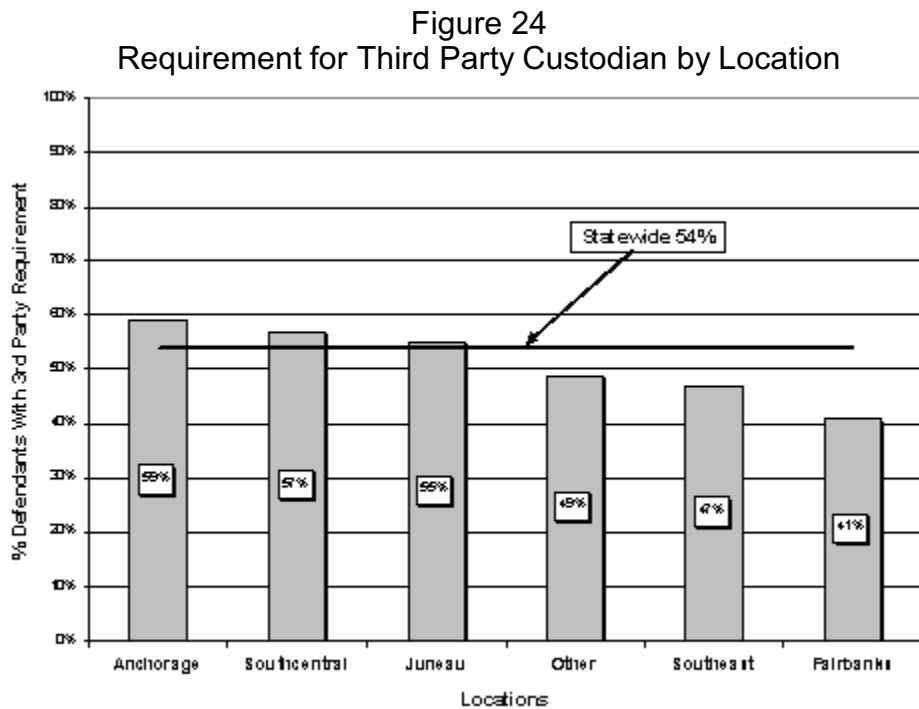


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**b. Variations in third party custodian requirements by location**

The use of the third party custodian requirement varied by location (see Figure 24). In Anchorage, judges required 59% (about three of every five charged felony defendants) in the sample to have a third party custodian. Among the six location categories used above, this was the highest rate in the state. In Fairbanks, where third party requirements were imposed least often among the six location categories, 41% (about two of every five felony defendants) needed a third party custodian. It is important to note that although the third party custodian requirement was less common in some locations, it was no less significant in its effect on the amount of predisposition incarceration served by defendants.<sup>196</sup>

Some communities varied more from the statewide average.<sup>197</sup> In Dillingham (95%), Kenai (70%), Kodiak (62%), Valdez (68%), and Unalaska (80%), noticeably higher percentages of felony defendants were required to have third party custodians. In Bethel (45%), Kotzebue (35%), Nome (42%), and Homer (36%), judges required lower percentages of defendants to have third party custodians.



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<sup>196</sup> See discussion *infra* pp. 176-177.

<sup>197</sup> Data available from Judicial Council.



## 8. Charge Reduction and Type of Disposition<sup>198</sup>

Patterns of charge reductions and case dispositions differed among Alaska communities, as shown on Table 18. Each of the thirteen court locations on the table had its own pattern of trials, dismissals, and pleas, making generalization difficult.

### a. All charged defendants

About one-third (35%) of defendants charged with felonies statewide pled to the most serious felony charge against them. In Fairbanks, a higher percentage (55%) of defendants pled to the most serious charge. In Bethel (19%) and Sitka (17%), a lower percentage of defendants pled to the most serious charge.

	Pled to Original Most Serious Charge	Pled to Lesser Felony	Pled to Misdemeanor	Convicted After Trial	Acquitted, Dismissed
<b>Anchorage</b>	33%	13%	33%	3%	19%
<b>Fairbanks</b>	55%	8%	19%	7%	12%
<b>Juneau</b>	39%	13%	39%	6%*	3%*
<b>Barrow</b>	32%	2%*	30%	14%	23%
<b>Bethel</b>	19%	18%	40%	4%	20%
<b>Dillingham</b>	7%*	19%*	44%	4%*	26%
<b>Kenai</b>	36%	7%	40%	2%	16%
<b>Ketchikan</b>	38%	11%	39%	2%*	10%
<b>Kodiak</b>	32%	8%	55%	0%*	6%*
<b>Kotzebue</b>	33%	13%	42%	5%*	8%
<b>Nome</b>	27%	31%	40%	0%*	2%*
<b>Palmer</b>	39%	9%	35%	2%*	16%
<b>Sitka</b>	17%	13%	54%	13%*	4%*
<b>Total Statewide</b>	<b>35%</b>	<b>12%</b>	<b>34%</b>	<b>4%</b>	<b>15%</b>

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\* N=Five or fewer cases.

<sup>a</sup> For this analysis, statewide data were grouped into thirteen locations. See discussion on methodology, *supra* p. 40. There were 2,331 defendants.

<sup>198</sup> See also *supra* pp. 88-95.

Statewide, 12% of defendants pled to a lesser felony. In Nome (31%) and Bethel (18%), higher percentages of defendants pled to a lesser felony. In Fairbanks (8%), Kenai (7%), Kodiak (8%), and Palmer (9%), lower percentages of defendants pled to a lesser felony.

One-third (34%) of charged felony defendants statewide pled to a misdemeanor offense. The most widespread variation from statewide averages occurred in this type of disposition. In Bethel (40%), Dillingham (44%), Kenai (40%), Ketchikan (39%), Kodiak (55%), Kotzebue (42%), Nome (40%), and Sitka (54%), noticeably higher percentages of defendants initially charged with a felony pled to a misdemeanor. In Fairbanks, only 19% of felony defendants ended their cases with a plea to a misdemeanor.

Statewide, 4% of felony defendants were convicted of an offense after trial, usually by a jury. In most locations, five or fewer felony defendants were convicted after trial making comparisons among locations difficult. Barrow (14%) and Fairbanks (7%) had the highest trial rates. In Anchorage (3%) and Kenai (2%), trial rates dropped below the statewide average of 4%.

Fifteen percent of felony defendants statewide were acquitted or had all charges against them dismissed. In Anchorage (19%), Barrow (23%), Bethel (20%), and Dillingham (26%), higher percentages of defendants were acquitted or had all charges dismissed. In Fairbanks (12%), Ketchikan (10%), and Kotzebue (8%), lower percentages of defendants were acquitted or had all charges dismissed. Juneau (3%), Kodiak (6%), Nome (2%), and Sitka (4%) also had lower percentages of defendants who were acquitted or had all charges dismissed but these locations each had five or fewer defendants fall within this category.

### b. Convicted defendants only

Looking only at convicted defendants, types of case dispositions continued to vary by location. Table 19 shows the distribution of dispositions by location for all convicted defendants.

Statewide, 41% of convicted defendants in this sample pled to the original most serious charge against them. In Fairbanks (63%) and Palmer (46%), higher percentages of defendants pled to the most serious charge against them. In Bethel (23%), Kodiak (34%), Kotzebue (36%), Nome (28%), and Sitka (17%), lower percentages of defendants pled to the most serious felony charge.

Among convicted defendants, 14% pled to a felony offense less serious than the one with which they were initially charged. Nome (31%) and Bethel (22%) had higher percentages of defendants who pled to a lesser felony offense. Fairbanks (9%), Kenai (8%), Kodiak (8%), and Palmer (10%) had lower percentages of defendants who pled to lesser felony offenses.

	Pled to Original Most Serious Charge	Pled to Lesser Felony	Pled to Misdemeanor	Convicted After Trial
<b>Anchorage</b>	40%	16%	40%	3%
<b>Fairbanks</b>	63%	9%	21%	8%
<b>Juneau</b>	40%	14%	40%	6%*
<b>Barrow</b>	41%	2%*	39%	18%
<b>Bethel</b>	23%	22%	50%	5%
<b>Dillingham</b>	10%*	25%*	60%	5%*
<b>Kenai</b>	42%	8%	48%	2%*
<b>Ketchikan</b>	43%	12%	44%	2%*
<b>Kodiak</b>	34%	8%	58%	0%*
<b>Kotzebue</b>	36%	14%	46%	5%*
<b>Nome</b>	28%	31%	41%	0%*
<b>Palmer</b>	46%	10%	42%	2%*
<b>Sitka</b>	17%*	13%*	57%	13%*
<b>Total Statewide</b>	<b>41%</b>	<b>14%</b>	<b>41%</b>	<b>4%</b>

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<sup>a</sup> For this analysis, statewide data were grouped into thirteen locations. See discussion on methodology *supra* p. 40.

\* N=Five or fewer convictions

Statewide, 41% of convicted defendants initially charged with a felony pled to a misdemeanor, the same as the percent of convicted defendants who pled to the most serious charge originally filed. In Bethel (50%), Dillingham (60%), Kenai (48%), Kodiak (58%), and Sitka (57%), higher percentages of defendants pled to a misdemeanor. Fairbanks had the lowest percentage (21%).

About 4% of convicted defendants were convicted after trial statewide. The patterns of trial dispositions by location were nearly identical to those for charged defendants.

### **c. Comparison of 1984-1987 and 1999**

Table 20 compares types of case dispositions by location in 1999 with those in 1984-1987,<sup>199</sup> for selected communities. In most locations, smaller percentages of defendants pled to the most serious charge filed against them in 1999 than during 1984-1987. Decreases in the percentages of defendants pleading to the most serious charge filed against them occurred in Anchorage (11% fewer), Juneau (25% fewer), Barrow (11% fewer), Bethel (30% fewer), Kenai (18% fewer), Kodiak (3% fewer), Nome (26% fewer), and Palmer (12% fewer). Contrary to this trend, Fairbanks (2% more) and Ketchikan (19% more) had higher percentages of defendants who pled to the most serious charge filed against them in 1999 than during 1984-1987.

In most locations, smaller percentages of defendants pled to lesser felonies in 1999 than during 1984-1987. Decreases in the percentages of defendants who pled to lesser felonies occurred in Fairbanks (25% fewer), Bethel (31% fewer), Kenai (58% fewer), Ketchikan (59% fewer), Kodiak (62% fewer), Kotzebue (36% fewer), and Palmer (47% fewer). Contrary to this trend, Anchorage (14% more) and Nome (11% more) had slightly higher percentages of defendants who pled to lesser felonies in 1999 than during 1984-1987.

In all locations, the percentages of defendants initially charged with a felony who pled to a misdemeanor increased substantially in 1999 when compared to 1984-1987. The greatest increases from 1984-1987 in the percentages of felony defendants who pled to misdemeanors occurred in Sitka (171% more), Barrow (117% more), Kenai (92% more), Fairbanks (91% more), and Bethel (85% more). The next greatest increases occurred in Kodiak (71% more), Ketchikan (69% more), Palmer (68% more), and Juneau (54% more). Other locations with smaller, but still substantial increases were Anchorage (38% more) and Kotzebue (18% more).

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<sup>199</sup> ALASKA'S PLEA BARGAINING BAN RE-EVALUATED, *supra* note 19, at 77, Table 14.

	Pled to Top Charge		Pled to Lesser Felony		Pled to Misdemeanor		Convicted After Trial	
	1984-87	1999	1984-87	1999	1984-87	1999	1984-87	1999
<b>Anchorage</b>	45%	<b>40%</b>	14%	<b>16%</b>	29%	<b>40%</b>	12%	<b>3%</b>
<b>Fairbanks</b>	62%	<b>63%</b>	12%	<b>9%</b>	11%	<b>21%</b>	14%	<b>8%</b>
<b>Juneau</b>	53%	<b>40%</b>	14%	<b>14%</b>	26%	<b>40%</b>	6%	<b>6%*</b>
<b>Barrow</b>	46%	<b>41%</b>	14%	<b>2%*</b>	18%	<b>39%</b>	21%	<b>18%</b>
<b>Bethel</b>	33%	<b>23%</b>	32%	<b>22%</b>	27%	<b>50%</b>	8%	<b>5%</b>
<b>Kenai</b>	51%	<b>42%</b>	19%	<b>8%</b>	25%	<b>48%</b>	5%	<b>2%*</b>
<b>Ketchikan</b>	36%	<b>43%</b>	29%	<b>12%</b>	26%	<b>44%</b>	9%	<b>2%*</b>
<b>Kodiak</b>	35%	<b>34%</b>	21%	<b>8%</b>	34%	<b>58%</b>	10%	<b>0%*</b>
<b>Kotzebue</b>	36%	<b>36%</b>	22%	<b>14%</b>	39%	<b>46%</b>	4%	<b>5%*</b>
<b>Nome</b>	38%	<b>28%</b>	28%	<b>31%</b>	30%	<b>41%</b>	4%	<b>0%*</b>
<b>Palmer</b>	52%	<b>46%</b>	19%	<b>10%</b>	25%	<b>42%</b>	5%	<b>2%*</b>
<b>Sitka</b>	47%	<b>17%*</b>	25%	<b>13%*</b>	21%	<b>57%</b>	8%	<b>13%*</b>
<b>Total Statewide<sup>b</sup></b>		<b>41%</b>		<b>14%</b>		<b>40%<sup>c</sup></b>		<b>4%</b>

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\* N=Five or fewer convictions

<sup>a</sup> For this analysis, statewide data were grouped into thirteen locations. However, a comparison of dispositions in Dillingham was not possible because Dillingham became a superior court location after 1987. Valdez was a superior court location in 1984-1987, but by 1999 was a district court position. Valdez cases from 1984-1987 were not included in this table. Valdez cases from 1999 were included with the Palmer cases, consistent with the way cases were consolidated in other analyses by location. See discussion *supra* pp. 40, 100.

<sup>b</sup> Not available for 1984-1987.

<sup>c</sup> The omission of the Dillingham cases accounts for the difference between Table 19 and Table 20.

From 1984-1987 to 1999, the percentages of felony defendants who were convicted after trial decreased in most locations. Because in most locations the 1999 data included five or fewer defendants who were convicted after trial, specific comparisons were not always helpful. The four locations with six or more defendants in the 1999 data all saw declines in trial rates: Anchorage (75% fewer), Fairbanks (43% fewer), Barrow (14% fewer), and Bethel (38% fewer).

## **9. Sentencing by Location**

Multiple regression analysis showed that being in a rural court was associated with increased post-disposition incarceration in some non-presumptive cases.<sup>200</sup> Presumptive post-disposition incarceration did not vary significantly by location.

## **10. Case Processing Time by Location**

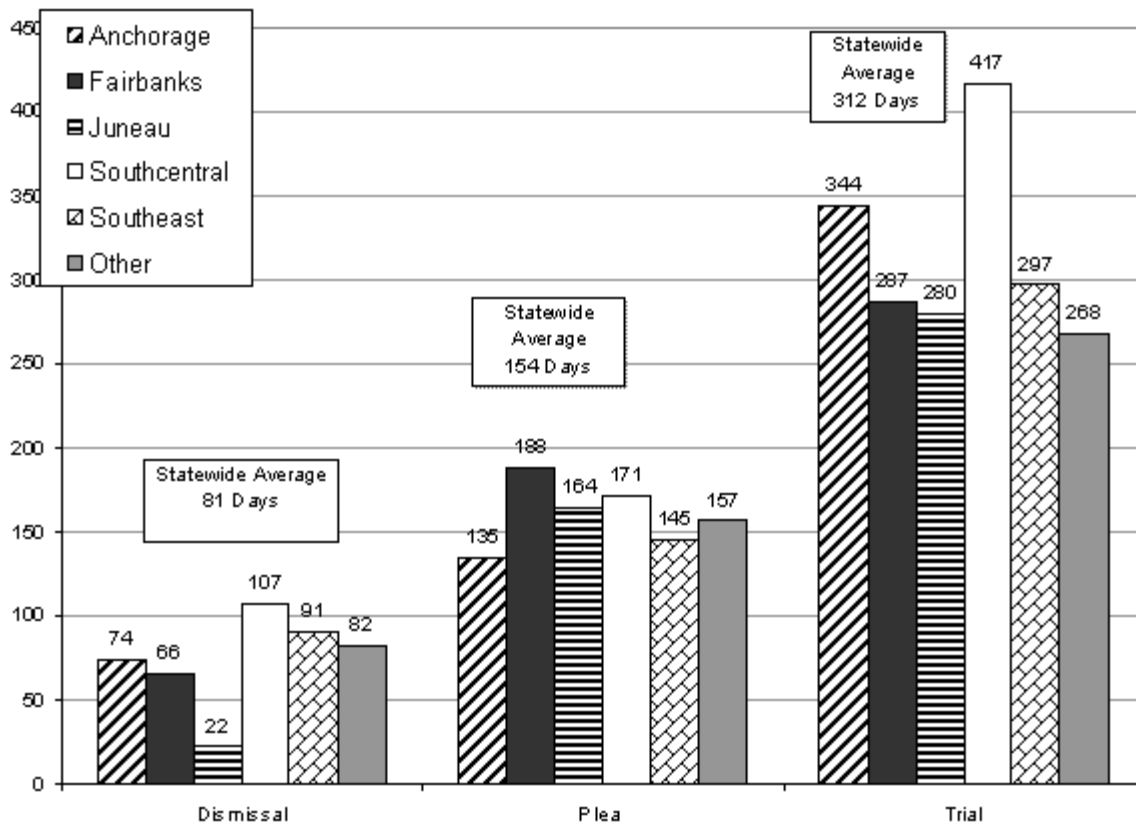
Time to disposition varied by location (Figure 25).<sup>201</sup> In dismissed cases, time to disposition was longest in Southcentral (107 days) compared to the statewide average of 81 days. Southeast (91 days) slightly exceeded the statewide average. Dismissed cases were processed most rapidly in Juneau where time to disposition was only 22 days. Times to disposition in dismissed cases in Anchorage (74 days) and Fairbanks (66 days) were below the statewide average. Northern and western Alaskan communities (“Other”) (82 days) tracked the statewide average.

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<sup>200</sup> See discussion *infra* p. 219. Barrow, Bethel, Dillingham, Kodiak, Kotzebue, and Nome were considered rural in the multivariate analysis. Anchorage, Fairbanks, Juneau, Southcentral, and Southeast were considered non-rural. *See id.*

<sup>201</sup> For comparison, *see* ALASKA’S PLEA BARGAINING BAN RE-EVALUATED which showed that case dispositions in 1984-1987 also varied by location and type of disposition, *supra* note 19, at Table C-8, page C-19.

Figure 25  
Average Days to Disposition by Location and Type of Disposition



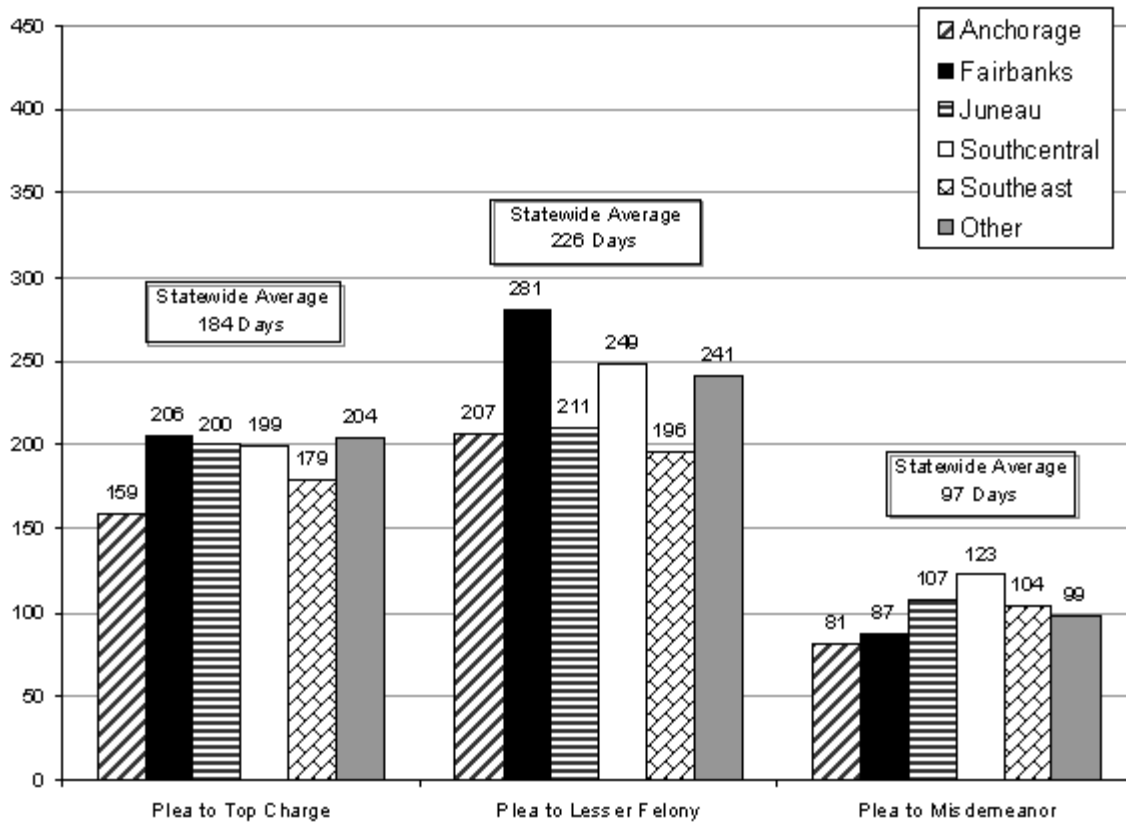
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Cases resolved by plea took an average of 154 days statewide to resolve, with less variation by location in this category. Cases resolved by plea took the longest to resolve in Fairbanks (188 days). Times to disposition in cases resolved by plea also exceeded the statewide average in Southcentral (171 days), Juneau (164 days), and in Other (northern and western) areas (157 days). Cases were resolved by plea most rapidly in Anchorage (135 days).

The statewide average time to disposition in cases that went to trial was 312 days. Time to disposition in cases that went to trial was longest in Southcentral (417 days). Time to disposition in tried cases also exceeded the statewide average in Anchorage (344 days). It took less than the statewide average time to disposition for tried cases to resolve in Fairbanks (287 days), Juneau (280 days), Southeast (297 days), and in Other (northern and western) areas (268 days).

Figure 26 shows that among cases resolved by pleas, variation by location was related to whether defendants pled to the most serious felony charged, a lesser felony, or a misdemeanor. In cases in which defendants pled to the most serious felony charged, the statewide average time to disposition was 184 days. Fairbanks (206 days), Juneau (200 days), Southcentral (199 days), and Other areas (204 days) exceeded the statewide average. In Anchorage (159 days) and Southeast (179 days), less time was required.

Figure 26  
Average Days to Disposition by Location and Type of Plea



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In cases in which defendants pled to lesser felonies, the statewide average time to disposition was 226 days. In Fairbanks (281 days), these cases took an additional two months to resolve. Southcentral (249 days) and Other (northern and western) areas (241 days) exceeded the statewide average. Anchorage (207 days), Juneau (211 days), and Southeast (196 days) cases needed fewer days to dispose of cases with pleas to lesser felonies.

In cases in which defendants pled to misdemeanors, the statewide average time to disposition was 97 days. Cases in Juneau (107 days), Southcentral (123 days), Southeast (104 days), and Other



(northern and western) areas (99 days) took longer. Cases in Anchorage (81 days) and Fairbanks (87 days) required less time.

Some factors that affected case disposition times potentially had a greater impact on case processing times in smaller courts. In locations with a single judge, peremption of the judge and reassignment to another judge from another location could have caused delay. Similarly, a conflict of interest on the part of a court-appointed attorney (not uncommon in smaller areas where the attorney frequently represented or had represented a witness or co-defendant) could have resulted in longer case disposition times. The lack of a probation officer in a smaller community could have presented scheduling problems. Finally, weather conditions throughout Alaska affected the availability of judges, attorneys, witnesses, and defendants.

## F. Comparison of Alaska Felony Cases to Felony Cases in State Courts Nationwide

The comparison of Alaska cases to those in other states drew on two major sources of national data. The Uniform Crime Reporting (UCR) Program was a nationwide statistical project in which city, county, and state law enforcement agencies voluntarily shared data about reported crime and arrests. UCR data permitted comparison of crime rates for selected offenses between Alaska and other states. The data also allowed analysis of the rates of felony convictions in the context of the number of reported crimes and arrests for selected offenses.

The Bureau of Justice Statistics conducted a nationwide survey every two years on sentences imposed on persons convicted of felonies in state courts.<sup>202</sup> Findings from the surveys were the sole source of comparative information about felony sentences in state courts.<sup>203</sup> The “National Judicial Reporting Program” (NJRP) compiled detailed information on sentences and characteristics of convicted felons.<sup>204</sup> In 1998, the Bureau surveyed a sample of 344 counties (out of the nation’s approximately 3,100 counties) selected to be nationally representative.<sup>205</sup> Data from this survey were used to compare Alaska sentences, characteristics of Alaska felons, and the processing of Alaska felony cases to national statistics.

### 1. Crime Rates

The FBI used UCR data to create a Crime Index from selected offenses. Offenses included were the violent crimes of Murder and non-Negligent Manslaughter, Forcible Rape,<sup>206</sup> Robbery, and Aggravated Assault,<sup>207</sup> and the Property crimes of Burglary, Larceny-Theft, Motor Vehicle Theft, and Arson. The Crime Index was used to calculate the crime rate for the reported offenses per 100,000 inhabitants for each state, the District of Columbia, and Puerto Rico.

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<sup>202</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, FELONY SENTENCES IN STATE COURTS, 1998 1 (2001).

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.* at 2.

<sup>206</sup> In Alaska, this offense was defined as Sexual Assault 1. The definition excluded Sexual Abuse of a Minor. It included attempts.

<sup>207</sup> Defined as a felony assault. *See infra* p. 128, Table 21, note i.

In 1999, the crime rate in Alaska per 100,000 inhabitants based on the Crime Index was 4,363,<sup>208</sup> slightly higher than the national crime rate of 4,267 crimes per 100,000 inhabitants.<sup>209</sup> Alaska's Violent crime rate per 100,000 inhabitants was 632, or 20% higher than the national rate of 525.<sup>210</sup> Alaska's rate of Property crime per 100,000 inhabitants was 3,732<sup>211</sup> about the same as the national rate of 3,742 per 100,000.<sup>212</sup>

In 1999, Alaska's rate of 84 reported Forcible Rapes per 100,000 inhabitants was higher than all other states<sup>213</sup> and 155% higher than the national average of 33 Forcible Rapes per 100,000 inhabitants.<sup>214</sup> Delaware had a rate of 70 reported Rapes per 100,000 inhabitants. No other state came close to Alaska's rate.

## **2. Rate of Felony Convictions Relative to Number of Reported Crimes and Arrests**

UCR data may be used to calculate the rate of felony convictions relative to the number of reported crimes and arrests. Table 21 gives the rate of felony convictions per 100 reports and 100 arrests for four of seven major crime categories for which the FBI collected data.<sup>215</sup>

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<sup>208</sup> FED. BUREAU OF INVEST., U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES, 1999 Table 5 (2000).

<sup>209</sup> *Id.* at Table 2.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.* at Table 5.

<sup>212</sup> *Id.* at Table 2.

<sup>213</sup> *Id.* at Table 5. It was also higher than the rates in the District of Columbia and Puerto Rico.

<sup>214</sup> *Id.* at Table 2.

<sup>215</sup> Insufficient Alaska data were available for three other major crime categories for this analysis. Those categories were Murder (not enough Alaska murders to compare), Motor Vehicle Theft, and Drug Trafficking. The latter two were identified differently in Alaska law and the cases could not be sorted out for comparison.

**Table 21**  
**Felony Convictions Relative to the Number of Reported Crimes and Arrests**  
**for State Courts Nationally (1998) and Alaska (1999)<sup>a</sup>**

Offense	Uniform Crime Reports Alaska <sup>b</sup>		Arrests as percent of reports	Estimated No. of Alaska felony convictions <sup>e</sup>	For 100 reports		For 100 arrests	
	No. of crimes reported to the police <sup>c</sup>	No. of adults arrested <sup>d</sup>			No. of felony convictions		No. of felony convictions	
					Estimated Alaska	U.S. <sup>f</sup>	Estimated Alaska	U.S. <sup>g</sup>
Rape <sup>h</sup>	517	112	22%	38	7	12	34	45
Robbery	566	140	25%	71	13	9	51	44
Aggravated Assault <sup>i</sup>	2,773	935	34%	236	9	8	25	16
Burglary	3,787	294	8%	101	3	4	34	41

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<sup>a</sup> For this table, national data came from 1998. Data on felony convictions in state courts nationally were available for 1998 but not for 1999. These aggregate numbers should not be understood as tracking individual cases through the criminal justice system. Convictions in a given year may not be for crime or arrests in that year. However, the comparisons illustrate the approximate rates of felony conviction based on a crime report or arrest.

<sup>b</sup> Uniform Crime data were best viewed as estimates and not exact numbers. No data were available for some locations in Alaska and elsewhere. The Alaska Judicial Council provided staffing for the Criminal Justice Council, an interagency criminal justice working group. Under the direction of that body, Judicial Council staff surveyed Alaska communities to find the number of reported offenses and arrests for each Alaska community in 2000. Data were not available for a number of smaller Alaska villages and for some larger community police departments such as Sitka. ALASKA CRIMINAL JUSTICE COUNCIL, INTERIM STATUS REPORT (2002) at Appendix B, Table of Distribution of Alaska Justice System Needs and Resources, Note 8.

Where data were unavailable, the FBI made estimates for the national data based on available data. See FED. BUREAU OF INVEST., U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES, 1999 (2000). The Judicial Council did not make estimates for Alaska data.

Under UCR procedures, an arrest was recorded on each separate occasion a person was taken into custody. Annual arrest figures did not measure the number of individuals arrested because one person could have been arrested several times during the same year for the same or different offenses.

<sup>c</sup> CRIME IN THE UNITED STATES, 1999, *supra* note b at Table 5.

<sup>d</sup> *Id.* at Table 69. Adults were defined as persons 18 years of age and older. Adult arrests were used to facilitate comparison to national data and to analyze the relationship between arrests and felony convictions. In Alaska, in 1999, the percentages of arrests of persons under the age of 18 for these crimes were 14% for Murder (N=5 of 36), 16% for Rape (N=22 of 134), 26% for Robbery (N=48 of 188), 14% for Aggravated Assault (N=154 of 1,089), and 56% for Burglary (N=341 of 605). As noted elsewhere, see *supra* p. 54, very few defendants under 18 were charged as adults.

<sup>e</sup> The table shows the estimated number of convictions of any felony, based on the Judicial Council's representative sample of two-thirds of felony cases filed in Alaskan courts in 1999. To arrive at this number, the actual number of felony convictions for each type of offense in the Council's database was multiplied by 1.5. For example, the Council's database had 25 defendants who originally were charged with Rape. The table shows 38 defendants, the estimated number that would be found among all the filed and convicted charges for 1999. Note that this is the estimated number of defendants convicted of any felony charge, not just the number of defendants convicted of the same exact crime. When comparing the number of convictions to the number of reported crimes or arrests, the reader should note that some crimes were committed by more than one person, and one person could have committed (or been arrested for) more than one offense.

<sup>f</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, FELONY SENTENCES IN STATE COURTS, 1998 6 (2001).

<sup>g</sup> *Id.*

<sup>h</sup> Forcible rape, including attempts. In Alaska, this offense was defined as Sexual Assault in the first degree. The definition excluded Sexual Abuse of a Minor.

<sup>i</sup> Defined as a felony assault.

The Bureau of Justice Statistics carefully noted that these kinds of aggregate numbers should not be interpreted as tracking individual cases through the criminal justice system.<sup>216</sup> However, the comparisons illustrated the approximate odds of felony conviction, given a report and arrest for a felony offense.

Only a small percentage of reported crimes resulted in a felony conviction, with few differences between Alaska and the rest of the nation. The “conviction on any felony” rate for reported cases of Rape in Alaska was about half of the same rate nationally. On the other hand, the “conviction on any felony” rate for reported Robbery cases was about one-third higher in Alaska than nationally. “Conviction on any felony” rates for Assault and Burglary resembled each other closely.

Once police arrested a defendant, the probability of a conviction on any felony increased substantially. In two types of offenses, Rape and Burglary, Alaska’s rates of felony conviction were noticeably lower for arrested offenses than those found in other parts of the country. Alaska’s rate of felony conviction (any felony) for Rape arrests was about 33% lower than in the rest of the country, and the rate for felony conviction for Burglary was about 20% lower. On the other hand, Alaska’s felony conviction rate for Robbery arrests and Aggravated Assault arrests exceeded national averages by about 16% and 50% respectively.

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<sup>216</sup> FELONY SENTENCES IN STATE COURTS, 1998, *supra* note 202, at 6.

### 3. Distribution of Felony Conviction Offenses

Table 22 compares the distribution of felony convictions by category of offense in state courts nationwide to the distribution of felony convictions in Alaska.

Violent offense felony convictions made up a 98% greater part of overall felony convictions in Alaska than they did nationwide. Nationally, Drug and Property offense convictions were larger percentages of the total than they were in Alaska.

Table 22 Comparison of Felony Convictions in Alaska with State Courts Nationwide by Type of Offense				
Most serious conviction offense <sup>b</sup>	Felony convictions in state courts nationwide <sup>a</sup>		Felony convictions in Alaska	
	Number	Percent	Number	Percent
All Offenses Combined	927,717	100%	1,152	100%
Violent Offenses	164,584	18%	405	35%
Property Offenses	283,002	31%	301	26%
Drug Offenses	314,626	34%	259	23%
Weapon Offenses	31,904	3%	19	2%
Other Offenses	133,601	14%	168	15%

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<sup>a</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, FELONY SENTENCES IN STATE COURTS, 1998 1 (2001). Note: Percentages in tables may not sum to total because of rounding.

<sup>b</sup> Alaskan offenses were grouped in these tables in the categories of offenses that BJS used in its study of state court sentences which required slightly different categories than used in the rest of this report. For example, too few Weapons offenses were charged in Alaska in 1999 to warrant a separate category for analysis of Alaska data only. Depending on the offense, a Weapon offense was classified as a Violent or Other offense for the Alaska analysis. In the BJS study, Weapon offenses were considered separately. To facilitate comparison with BJS data, Alaska weapon offenses were also considered separately in these tables.

The difference in the rates of distribution of Violent felony convictions in Alaska and Violent felony convictions in state courts nationally was mainly attributable to a much higher incidence of felony convictions in Alaska for Sexual offenses.<sup>217</sup> Convictions for Sexual offenses comprised 3% of felony convictions in state courts nationally,<sup>218</sup> but 15% of all Alaska felony convictions.<sup>219</sup>

<sup>217</sup> Violent offenses in the tables that compared national statistics compiled by BJS and Alaska statistics included Robbery, Assault, all Sexual Assaults and Sexual Abuse of a Minor, Manslaughter and Negligent Homicide. In most other tables in this report, Alaska Violent offenses did not include any Sexual offenses.

<sup>218</sup> FELONY SENTENCES IN STATE COURTS, 1998, *supra* note 202, at Table 1. (N of Sexual offenses=29,693).

<sup>219</sup> N of Sexual offenses=176.

## 4. Sentences for Felonies

### a. Likelihood of incarceration: incarceration versus probation only

Table 23 compares the percentages nationally and in Alaska of convicted felons sentenced to some form of incarceration versus a sentence of probation with no time to serve.

Most serious conviction offense	State courts nationwide <sup>a</sup> Percent of felons sentenced		Alaska Percent of felons sentenced	
	Incarceration	Probation	Incarceration	Probation
All Offenses Combined	68%	32%	85%	15%
Violent Offenses	78%	22%	97%	3%
Property Offenses	65%	35%	75%	25%
Drug Offenses	68%	32%	70%	31%
Weapon Offenses	66%	34%	95%	5%
Other Offenses	63%	37%	98%	2%

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<sup>a</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, FELONY SENTENCES IN STATE COURTS, 1998 2 (2001).

The likelihood of incarceration after a felony conviction was much greater in Alaska than it was in state courts nationwide, for all except Drug offenses. For Drug offenses, the likelihood of a sentence of incarceration was only slightly higher in Alaska.

The most dramatic variation was in Weapon offenses. In the Alaska 1999 sample, only nineteen defendants were convicted of felony Weapon offenses. Most were sentenced to some incarceration. Some defendants in other states may have been convicted of felony Weapon offenses and placed on probation for conduct that would not have been felonious, or even unlawful in Alaska.

When offenders were convicted of misdemeanors, after they were initially charged with felonies, the likelihood of a sentence of incarceration in Alaska also was much greater. In the nation's largest counties, 54% of defendants initially charged with a felony but convicted of a misdemeanor received a sentence of incarceration.<sup>220</sup> In Alaska, 74% of defendants initially charged with a felony but convicted of a misdemeanor received a sentence of incarceration (N=605 out of 813).

<sup>220</sup> FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 1998, *supra* note 136, at Table 30.

**b. Length of incarceration by offense**

Table 24 compares the mean lengths of felony sentences imposed by state courts nationally, by offense, with mean lengths of felony sentences imposed in Alaska courts. The mean sentence lengths were based only on sentences for convicted felons<sup>221</sup> who received any amount of incarceration.<sup>222</sup> The mean sentences were only for offenders who were convicted of a single felony offense.<sup>223</sup> Among felons convicted in state courts nationwide in 1998, 78% were sentenced on a single felony offense.<sup>224</sup> In Alaska, 72% of convicted felons were sentenced on a single felony offense in the 1999 cases.<sup>225</sup> Some states allowed judges to impose an indeterminate sentencing range, such as five to ten years, leaving the ultimate sentence to the discretion of a parole board. Whenever an offender in the BJS study received such a sentence, the maximum possible time an offender could serve was used to calculate mean sentences.<sup>226</sup>

Table 24 Alaska Felony Sentences Compared to Sentences Imposed in State Courts Nationwide, by Mean Sentence Length		
Felony Offense	Mean Sentence Length for Felons Sentenced to Incarceration (Single Felony Offense)	
	State Courts Nationwide <sup>a</sup>	Alaska
All Offenses Combined	34 months	23 months
Violent Offenses	62 months	36 months
Property Offenses	28 months	16 months
Drug Offenses	29 months	16 months
Weapon Offenses	26 months	34 months
Other Offenses	25 months	14 months

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<sup>a</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, STATE COURT SENTENCING OF CONVICTED FELONS, 1998 Table 1.8. (2001). The means excluded sentences to death or life in prison.

<sup>221</sup> Defendants charged with felonies but convicted only of misdemeanors were not included in this analysis.

<sup>222</sup> The mean sentence lengths did not include offenders for whom all incarceration was suspended or who were sentenced only to probation.

<sup>223</sup> This method of calculating mean Alaska sentences was different than the method used to calculate mean sentences for Alaska felony sentences in other places in this report. The method was used here only to allow comparison with the federal survey. Convicted felons sentenced on only one felony offense were considered because it would be difficult to identify similarly situated offenders convicted of multiple offenses. Elsewhere in this report, the sentence for an offender's most serious offense was used even if the offender also was convicted of other offenses.

<sup>224</sup> FELONY SENTENCES IN STATE COURTS, 1998, *supra* note 202, at Table 6.

<sup>225</sup> N=824 out of 1,152.

<sup>226</sup> FELONY SENTENCES IN STATE COURTS, 1998, *supra* note 202, at 4, 5.



Table 25 compares mean sentence lengths for convicted felons who received a sentence exceeding one year of incarceration. These offenders were the more serious felony offenders either because of their prior convictions or because their offenses were among the more serious. The same method was used to calculate mean sentences as in Table 24.

Felony Offense	Mean Sentence Length for Felons Sentenced to More than One Year of Incarceration (Single Felony Offense)	
	State Courts Nationwide <sup>a</sup>	Alaska
All Offenses Combined	51 months	44 months
Violent Offenses	82 months	58 months
Property Offenses	41 months	34 months
Drug Offenses	45 months	30 months
Weapon Offenses	38 months	45 months
Other Offenses	39 months	27 months

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<sup>a</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, FELONY SENTENCES IN STATE COURTS, 1998 at 5 (2001). The means excluded sentences to death or life in prison. One percent of state court sentences to state prison facilities for sentences in excess of one year, were life sentences. In Alaska, one defendant received a maximum 99 year sentence among the Council's representative two-thirds sample of defendants.

Except for weapons offenses, the figures in Tables 24 and 25 show that sentences of incarceration imposed on felony offenders in Alaska if they were convicted of only one felony appeared to be shorter than sentences imposed on similarly situated offenders in other states. However, Alaskan felony offenders had a much greater chance of some incarceration as noted above, and a higher percentage were convicted of more than one felony. They also (see section c., below) were likely to serve much more of the time imposed.

Twenty-two percent of convicted felons in state courts nationwide were sentenced on more than one felony offense.<sup>227</sup> Twenty-eight percent of convicted felons in Alaska were sentenced on more than one felony offense.<sup>228</sup> Defendants convicted of more than one felony often had consecutive sentences, and thus served more time.

<sup>227</sup> *Id.* at Table 6.

<sup>228</sup> Data available from Alaska Judicial Council.

### c. Estimated actual time to be served

Comparing the amount of time likely to actually be served by felons sentenced to more than one year may give a more accurate picture of Alaska and other states. Offenders could be released early for two primary reasons. First, offenders could be released on parole, either because a judge imposed an indeterminate sentence or because the offender was eligible for discretionary parole consideration. Second, in most states, as in Alaska, offenders could gain early release through automatic time credits for good behavior or special achievements.

Nationwide, BJS estimated that offenders sentenced to more than one year in state prison by state courts would serve 47% of the time imposed for All Offenses Combined before they were released from prison.<sup>229</sup> These offenders served a much smaller percentage of their prison sentences than felony offenders sentenced to more than one year in prison in Alaska. Convicted felons in Alaska who were sentenced to more than one year in prison probably served close to two-thirds of the time imposed, for reasons described below.

Many Alaskan offenders were limited in their opportunities for release. Most importantly, offenders subject to presumptive sentences or mandatory minimum sentences did not qualify for discretionary parole during the initial term of the presumptive sentence or the mandatory minimum time.<sup>230</sup> They (and all other offenders) qualified for a one-third deduction of the sentence length for good behavior while incarcerated.<sup>231</sup> In the 1999 sample, 71% of Alaska's convicted felons who were sentenced to more than one year of incarceration received a presumptive or mandatory minimum sentence,<sup>232</sup> that required them to serve at least two-thirds of their presumptive or mandatory minimum sentence.

Other offenders were eligible for discretionary parole after they had served one-fourth of their sentence.<sup>233</sup> The Parole Board supervised offenders released on discretionary parole, setting conditions for release that could include treatment, employment and restrictions on movements or

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<sup>229</sup> FELONY SENTENCES IN STATE COURTS, 1998, *supra* note 202, at Table 4. This estimate included offenders serving time on more than one felony conviction. It did not include life sentences and death sentences because it was not possible to specify the percentage served. *Id.* at 5.

<sup>230</sup> AS 33.20.010(b) (1999); AS 33.16.100(c)(d) (1999); AS 12.55.125(g)(3) (1999).

<sup>231</sup> AS 33.20.010 (1999).

<sup>232</sup> N=347 out of 486.

<sup>233</sup> AS 33.16.100(c) (1999). Among offenders eligible for discretionary parole were those who had served at least 181 days (whether for a felony or a misdemeanor), or who had a non-presumptive, non-mandatory minimum sentence, or who had additional time beyond the presumptive or mandatory minimum and had served at least one-fourth of that time.

companions.<sup>234</sup> Offenders who had been sentenced to serve more than a year but less than two years<sup>235</sup> sometimes did not apply for discretionary parole when they were eligible because they did not want the supervision and conditions. Instead, they waited until they could be released on the good time credit when they had served two-thirds of their sentence but would not be subject to Parole Board supervision. As a result, they also served two-thirds of their time in prison.

Offenders convicted of multiple felonies and sentenced to consecutive presumptive terms were eligible for discretionary parole after they had served the initial presumptive term and a portion of the remaining sentence.<sup>236</sup> Offenders who served enhanced presumptive terms also qualified for discretionary parole after serving the presumptive term plus part of the remaining term.<sup>237</sup> Some of those offenders would have been granted parole during the remaining portions of their sentences, which would slightly reduce the estimate that all convicted felons sentenced to more than one year served close to two-thirds of their sentenced time.<sup>238</sup>

That Alaska offenders in general actually serve more of their sentences is consistent with national data. Nationally in 2000, 29% of the adult correctional population under state supervision was incarcerated. Conversely, 71% of the correctional population for the fifty states was on probation or parole. In Alaska, a much higher percentage of the adult correctional population was incarcerated. In Alaska in 2000, 44% of the correctional population was incarcerated and 56% was on probation or parole. Among the fifty states, Alaska had the sixth highest percentage of incarcerated defendants among its adult correctional population.<sup>239</sup>

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<sup>234</sup> AS 33.16.010 (1999). The Parole Board also supervised offenders on mandatory release for good time, except for those who had a sentence of less than two years incarceration.

<sup>235</sup> N=70 out of 486. This group made up 14% of convicted felons in Alaska who had more than one year to serve.

<sup>236</sup> AS 33.16.090(c) (1999); AS 33.16.100(c)-(d) (1999). The fraction to be served depended on the severity of the offense.

<sup>237</sup> AS 33.16.090 (1999); AS 33.16.100(c)-(d) (1999) Again, the portion served depended on the severity of the offense.

<sup>238</sup> Among Alaska defendants convicted of a felony and sentenced to more than one year of incarceration, 16% were convicted of another felony and received a consecutive or partially consecutive sentence. Because this percentage was relatively small and would have involved convictions on less serious felony offenses, the effect on the estimate of actual time served would not be great.

<sup>239</sup> Press Release, "National Correction Population Reaches New High, Grows by 126,400 During 2000 to Total 6.5 Million Adults," Bureau of Justice Statistics, U. S. Dep't of Justice, (August 26, 2001) at Table 2 *available at* [www.ojp.usdoj.gov/bjs/pub/pdf/ppus00.pr.htm](http://www.ojp.usdoj.gov/bjs/pub/pdf/ppus00.pr.htm).

**d. Summary of combined effects of likelihood of incarceration, length of sentence imposed, and estimated actual time served**

Offenders charged with a felony were much more likely to receive a sentence of incarceration in Alaska whether convicted of a felony or a misdemeanor than similarly situated offenders in other states. Convicted felons sentenced to incarceration on a single felony offense were likely to have shorter sentences in Alaska than elsewhere. Convicted felons in Alaska were more likely to be convicted of more than one felony offense, subjecting them to additional incarceration. Convicted felons in Alaska sentenced to more than one year in prison probably served substantially more of the time imposed than did similarly situated offenders in other states.

**5. Alaska and Other State Convicted Felons: Gender, Ethnicity, and Age**

**a. Gender**

Table 26 compares convicted felons in Alaska and other states by gender and type of offense.

Table 26 Alaska Convicted Felons Compared to Convicted Felons in State Courts Nationwide by Gender				
Most serious conviction offense	State Courts Nationwide <sup>a</sup>		Alaska	
	Male	Female	Male	Female
All Offenses Combined	83%	17%	85%	15%
Violent Offenses	90%	10%	93%	7%
Property Offenses	75%	25%	82%	18%
Drug Offenses	82%	18%	77%	23%
Weapon Offenses	94%	6%	100%	0%
Other Offenses	88%	12%	81%	19%

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<sup>a</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, FELONY SENTENCES IN STATE COURTS, 1998 Table 5 (2001).

Men were convicted of many more felony offenses, nationally and in Alaska, than women. In 1998, men were 48% of adults (age 18 or older) in the U.S. population<sup>240</sup> but 83% of persons convicted of a felony. In 1999, men were 52% of adults<sup>241</sup> in the Alaska population and 85% of persons convicted of a felony.

<sup>240</sup> FELONY SENTENCES IN STATE COURTS, 1998, *supra* note 202, at Table 5.

<sup>241</sup> ALASKA POPULATION OVERVIEW: 1999 ESTIMATES *supra* note104, at 32, Table 1.12.

The distribution of convicted felons between men and women in Alaska resembled that in state courts nationally for All offenses and offense categories. In Alaska, men comprised a slightly higher percentage of the adult population than they did in the nation as a whole. On that basis alone, one would expect to find a slightly lower percentage of women among convicted felons in Alaska than in state courts nationwide.

Alaska had a slightly lower percentage of women convicted of felony Property offenses than state courts nationwide, and a slightly higher percentage of women convicted of felony Drug offenses.

### b. Ethnicity

Table 27 compares convicted felons in Alaska and other states by ethnicity and type of offense.

Most serious conviction offense	State Courts Nationwide <sup>a</sup>			Alaska <sup>b</sup>					
	Cauc.	Black	Other	Cauc.	Black	Native	Hispanic	Asian <sup>c</sup>	Unk <sup>d</sup>
All Offenses Combined	55%	44%	1%	52%	12%	30%	3%	2%	2%
Violent Offenses	53%	44%	3%	39%	10%	43%	3%	4%	1%
Property Offenses	60%	38%	2%	59%	12%	26%	1%	2%	2%
Drug Offenses	46%	53%	1%	61%	17%	13%	5%	2%	2%
Weapon Offenses	49%	50%	1%	37%	42%	11%	11%	0%	0%
Other Offenses	67%	31%	2%	57%	6%	36%	1%	0%	1%

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<sup>a</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, FELONY SENTENCES IN STATE COURTS, 1998 Table 5 (2001). Hispanics were distributed between white and non-white in the national data. In Alaska data, Hispanics were listed separately.

<sup>b</sup> Totals may not equal 100% due to rounding.

<sup>c</sup> Includes Pacific Islanders.

<sup>d</sup> Unknown.

Disproportionate numbers of ethnic minorities were convicted of felony offenses nationally and in Alaska. The disproportionate number of ethnic minorities in Alaska's criminal justice system<sup>242</sup> fueled the present report.

<sup>242</sup> REPORT OF THE SUPREME COURT ADVISORY COMMITTEE ON FAIRNESS AND ACCESS, *supra* note 1, at 78.

Caucasians were 83% of the adult (age 18 or older) U.S. population in 1998<sup>243</sup> and 55% of persons convicted of a felony. Caucasians were 76% of the adult Alaska population in 1999<sup>244</sup> and 52% of persons convicted of a felony. They were under-represented among convicted felons nationwide and in Alaska at roughly the same rate.

In Alaska, the disproportion of ethnic minorities convicted of Violent offenses was greater than in state courts nationally. Elsewhere, 53% of persons convicted of Violent felonies were Caucasian, as compared to 39% of Alaskans in the sample convicted of violent felonies.

Table 27 also highlights the different distributions of ethnic minorities in Alaska and nationally. Most of the ethnic minorities in state courts nationally were Black. Blacks made up 12% of the U.S. population<sup>245</sup> but 44% of convicted felons. In Alaska, in 1999, Blacks were 4% of the Alaska population<sup>246</sup> and 12% of convicted felons, a slightly lesser rate of disproportion than in the nation as a whole. The percentage of Blacks among convicted felons in Alaska was three times the percentage of Blacks in Alaska's adult population and was the greatest rate of disproportion for any ethnicity in Alaska.

In 1998, ethnicities other than Caucasian and Black (American Indians,<sup>247</sup> Alaska Natives, Asians, and Pacific Islanders) represented 5% of the U.S. population but 1% of convicted felons and 3% of those convicted of a violent crime. In 1999, Alaska Natives represented 14% of the Alaska population,<sup>248</sup> 30% of convicted felons, and 43% of those convicted of a violent crime. The percentage of Alaska Natives among convicted felons in Alaska was a little more than twice the percentage of Alaska Natives in the adult Alaska population.

Alaska's Native population distinguished Alaska from other states. Alaska Natives made up 14% of Alaska's adult population, but American Indians, Alaska Natives, Asians, and Pacific Islanders combined made up only 5% of the adult U.S. population. In the nation, these ethnic groups accounted for only 1% of felony convictions. Alaska Natives were 30% of convicted felons in Alaska. While there were approximately three times as many Alaska Natives in Alaska as there were

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<sup>243</sup> FELONY SENTENCES IN STATE COURTS, 1998, *supra* note 202, at 6.

<sup>244</sup> ALASKA POPULATION OVERVIEW: 1999 ESTIMATES, *supra* note 104, at 32, Table 1.12.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> FELONY SENTENCES IN STATE COURTS, 1998, *supra* note 202, at 6-7.

<sup>248</sup> ALASKA POPULATION OVERVIEW: 1999 ESTIMATES, *supra* note 104, at 32, Table 1.12.

other ethnicities nationwide, there were thirty times as many Alaska Natives among convicted felons in Alaska as there were other ethnicities among convicted felons in the U.S.

The greatest disproportions in Alaska occurred in Violent offenses where Alaska Natives were 43% of convicted felons. Half of Alaska Natives in this sample convicted of felony offenses were convicted of Violent offenses. There was no disproportion for Alaska Natives in felony Property and Drug offenses.

**c. Age<sup>249</sup>**

Table 28 shows the distribution of convicted felons by age and type of offense in state courts nationwide compared to Alaska.

Table 28 Alaska Convicted Felons Compared to Convicted Felons in State Courts Nationwide by Age										
Most serious conviction offense	State Courts Nationwide <sup>a</sup>					Alaska <sup>b</sup>				
	<20	20-29	30-39	40+	Mean	<20	20-29	30-39	40+	Mean
All Offenses Combined	9%	39%	32%	20%	31 yr	11%	36%	31%	23%	32yr
Violent offenses	12%	41%	28%	19%	31yr	13%	38%	28%	22%	32yr
Property Offenses	10%	40%	32%	18%	31yr	17%	45%	26%	13%	29yr
Drug Offenses	7%	39%	33%	21%	32yr	6%	24%	38%	32%	35yr
Weapon Offenses	10%	47%	26%	17%	30yr	26%	42%	26%	5%	28yr
Other Offenses	7%	35%	34%	24%	33yr	2%	30%	38%	30%	35yr

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<sup>a</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, FELONY SENTENCES IN STATE COURTS, 1998 Table 5 (2001).

<sup>b</sup> Total may not equal 100% due to rounding.

The distribution of convicted felons by age among convicted felons in state courts nationally and in Alaska was similar when offense categories were combined. The average age of the Alaska population was lower than the average age of the population of the nation but this was mostly due to a greater percentage of the Alaska population ages 19 and under than in the nation, and a lower percentage of people ages 60 and older.<sup>250</sup> There were similar percentages of the respective

<sup>249</sup> Ages were calculated at time of sentencing in this comparison.

<sup>250</sup> ALASKA POPULATION OVERVIEW: 1999 ESTIMATES, *supra* note 104, at 24-25, 53, and Figure 1.7.

populations ages 20 to 40.<sup>251</sup> This group represented more than two-thirds of convicted felons nationally and in Alaska.

There were differences among offense categories. Persons under the age of 20 committed a higher percentage of the felony property offenses and weapons offenses in Alaska. The mean age of felony drug offenders in Alaska was higher than in state courts nationally. Alaska had a smaller proportion of felony drug offenders ages 20-29 and a greater proportion of felony drug offenders 40 or older than did state courts nationally.

## **6. Method of Conviction**

In state courts nationwide, about 94% of felony sentencings in 1998 followed a plea.<sup>252</sup> The remaining 6% were found guilty following a trial. Those convicted by a jury comprised 3.3% of the convicted felon population. Those convicted by a judge following a bench trial comprised 2.7% of the convicted felon population.<sup>253</sup> In 1998, violent crime accounted for the most jury trials. Of all jury trial felony convictions, 51% were for violent crime.<sup>254</sup>

Felony convictions in Alaska in 1999 occurred at rates very similar to those in state courts nationwide in 1998. In Alaska, 94.6% of 1999 felony sentencings followed a plea.<sup>255</sup> The remaining 5.4% were found guilty following a trial.<sup>256</sup> Those convicted by a jury comprised 4.9% of the convicted felon population.<sup>257</sup> Those convicted by a judge following a bench trial comprised .5% of the convicted felon population.<sup>258</sup> Of all jury trial felony convictions in Alaska, 58.9% were for violent crime.<sup>259</sup>

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<sup>251</sup> *Id.*

<sup>252</sup> FELONY SENTENCES IN STATE COURTS, 1998, *supra* note 202, at Table 9.

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> N=1,090 out of 1,152. Pleas included both guilty and no contest pleas.

<sup>256</sup> N=62 out of 1,152.

<sup>257</sup> N=56 out of 1,152.

<sup>258</sup> N=6 out of 1,152.

<sup>259</sup> N=33 out of 56. To permit comparison with national statistics, Sexual offenses were included among Violent offenses here but Weapon offenses were not. In other places in this report, where Alaska data was considered alone, Sexual offenses were a separate category and Weapon offenses were either Violent or Other offenses, depending on the severity of the charge.



## 7. Case Processing Time

Mean times from the beginning of a case to sentencing for convicted felons in Alaska resembled mean times in state courts nationwide. Table 29 compares mean times in Alaska with mean times in state courts nationwide for persons convicted of felony offenses.

Most serious conviction offense	State Courts Nationwide, 1998 <sup>a</sup>			Alaska, 1999 <sup>b</sup>		
	Total	Trial	Plea	Total	Trial	Plea
All Offenses Combined	214 days	352 days	216 days	204 days	358 days	196 days
Violent Offenses	254 days	401 days	248 days	251 days	370 days	240 days
Property Offenses	206 days	313 days	208 days	178 days	351 days	171 days
Drug Offenses	203 days	327 days	210 days	174 days	320 days	170 days
Weapon Offenses	211 days	323 days	220 days	255 days	440 days <sup>c</sup>	234 days
Other Offenses	208 days	319 days	213 days	178 days	322 days	172 days

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<sup>a</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, FELONY SENTENCES IN STATE COURTS, 1998 Table 11 (2001). BJS measured time to disposition from date of arrest to sentencing. For Alaska data, the date that charges were filed was used. This date almost always corresponded to the date of the defendant's initial court appearance. In Alaska, arrested defendants must be taken before a judicial officer within twenty-four hours of their arrest. Alaska R. Crim. P. 5(a).

<sup>b</sup> These mean times should not be confused with mean times to disposition discussed *supra* pp. 122-124. This analysis of mean time to disposition was only for cases that ended in a felony conviction. These mean times extend to time of sentencing. The times used here facilitate comparison with BJS data. Times to disposition discussed earlier were not limited to cases resulting in a felony conviction.

<sup>c</sup> N=2 cases.

In 1998, mean time from arrest to sentencing in state courts nationwide for All Offenses Combined was 214 days. In 1999, Alaska's mean time from the date charges were filed to sentencing was slightly shorter at 204 days.

Trial cases took longer nationally (352 days) and in Alaska (358 days). Cases resolved by plea took slightly less time in Alaska (196 days) than nationally (216 days). Time needed to dispose of Property (178 days) Drug (174 days) and Other (178 days) offenses was about one month less overall in Alaska than nationally. The differences appeared to be related to processing for cases with pleas rather than those with trials. Weapons offenses took a little longer to resolve in Alaska.<sup>260</sup>

<sup>260</sup> Other states may have had more rigorous weapons laws than Alaska and conduct constituting Alaska weapons offenses may have been more serious than that resulting in felony weapons offenses elsewhere.

Nationally, cases resolved by trial involving Violent offenses took about a month longer than similar cases in Alaska. Nationally, cases resolved by trial involving Property offenses took 38 days less than similar cases in Alaska.

## **G. Comparison of Felony Defendants with Publicly Appointed Versus Private Attorneys, in Alaska and Nationally**

This section compares felony defendants with publicly appointed attorneys to those with privately hired attorneys. Alaska data were compared to national data. Socioeconomic data about defendants was not consistently available for the Alaska study<sup>261</sup> and was not used in the national study.

The Department of Justice, Bureau of Justice Statistics (BJS) published the report on "Defense Counsel in Criminal Cases"<sup>262</sup> in November 2000. The report included data collected from a sample of felony cases filed in the 75 most populous counties in the United States in 1996.<sup>263</sup> The data tracked defendants from charge at arrest through final sentencing. The report described the rates at which defendants used publicly financed attorneys, and compared defendants having publicly financed attorneys to those with privately hired attorneys. The data included the likelihood of defendants having a prior conviction, likelihood of pretrial release, likelihood of conviction, likelihood of incarceration if convicted, and average sentence length.<sup>264</sup> The report also compared defendants with public and private attorneys by the type of offense for which the defendant was arrested.<sup>265</sup>

The Alaska data for 1999 defendants generally were comparable to the BJS data. Four major differences in the data occurred. The Alaska felony data tracked defendants from charge at court case filing through final sentencing, instead of from arrest to sentencing. Between arrest and filing, about 37% of charges considered by state prosecutors were either declined or accepted as lesser charges than the arrest charges.<sup>266</sup> This difference from the 75 largest counties study should be taken into account when comparing the national data with the Alaska data.

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<sup>261</sup> See discussion *supra* pp. 47-52.

<sup>262</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, DEFENSE COUNSEL IN CRIMINAL CASES 1 (2000).

<sup>263</sup> *Id.* at 11. These findings were among others collected from other data sets.

<sup>264</sup> *Id.* at 5-6.

<sup>265</sup> *Id.*

<sup>266</sup> The Alaska Department of Law reported that in 1999 the "decline to prosecute" rate for felonies referred by public safety agencies was 25%. The "accepted as a misdemeanor" rate was 10% for referred felonies. Two percent of cases were accepted for prosecution as a lesser felony and 62% of referred felonies were accepted as referred or charged as a higher felony.

The national data were collected in 1996; Alaska data were collected from cases filed in 1999. The national data used different standards and classifications for offense categories. Last, significant amounts of data were missing from the BJS study, ranging from about 30 to 40% for some data points.<sup>267</sup> Because of these differences in the data, comparisons were not exact. However, comparable data were sufficient to show that Alaska patterns closely resembled the patterns found nationwide.

The highlights of the comparison included:

- Felony defendants were represented by public and private attorneys (Table 30), at similar rates nationally and in Alaska.
- In general, Alaska distributions of attorney representation by offense were similar to national distributions. The private attorney category, showed greater variation by offense types in Alaska. More felony Drug defendants hired private attorneys in Alaska than did felony defendants in other offense categories. Nationally, almost twice as many defendants had private attorneys in property crimes (18%) as in Alaska (10%) (Table 31).
- Felony defendants with any prior convictions were much more likely to be represented by a public attorney both in Alaska and nationally (Table 32).
- Conviction rates in Alaska were about the same for defendants represented by public attorneys as for those represented by private attorneys. The likelihood of the defendant having his or her case dismissed or acquitted also was about the same (Table 33).
- Felony defendants were more likely to be incarcerated after conviction when represented by a public attorney (72%) rather than by a private attorney (57%) (Table 34).

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<sup>267</sup> DEFENSE COUNSEL IN CRIMINAL CASES, *supra* note 262, at 5-6, Tables 6-12.

Type of Attorney	Percent of felony defendants <sup>a</sup>			
	75 largest counties - 1992	75 largest counties - 1994	75 largest counties - 1996	Alaska - 1999
<b>Total - Public attorney</b>	81%	79%	82%	80%
Public defender	60%	60%	69%	63%
Assigned counsel/OPA <sup>b</sup>	22%	19%	14%	17%
<b>Private attorney</b>	18%	20%	18%	17%
<b>Self/Other Unknown</b>	2%	1%	>1%	1% 2%
<b>Number of defendants</b>	33,092	32,909	37,410	2,331

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<sup>a</sup> BJS data were missing for 40% of defendants in 1992, 38% in 1994, and 31% in 1996. Data were missing on type of counsel for 31% of cases. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, DEFENSE COUNSEL IN CRIMINAL CASES 5 Table 6 (2000).

<sup>b</sup> The BJS study used the category "assigned counsel" - most likely contract or panel attorneys. *Id.* at 2. The comparable category from the Alaska report was that of Office of Public Advocacy (OPA) - either staff attorneys, or contract attorneys paid by the agency. All OPA attorneys were publicly financed. See discussion *supra*, at 67.

In the nation's 75 largest counties about 80% of defendants charged with a felony had publicly appointed counsel in 1992, 1994, and 1996. About 60-69% of the total were represented by a public defender and another 14-22% were represented by an attorney assigned by the court. About 18% to 20% hired attorneys to represent them. Less than 1% to about 2% represented themselves.<sup>268</sup>

In Alaska in 1999, about 80% of defendants charged with a felony were represented by publicly appointed counsel, about 63% of whom worked for the Public Defender's Office. About 17% of the total number of defendants were represented by OPA counsel and 17% hired private attorneys. Fewer than 1% represented themselves, and data for about 2% were missing or unknown. Type of attorney for these Alaska data was recorded at the disposition of the case.<sup>269</sup>

The distribution of representation nationally is similar to that shown in Alaska by the 1999 data. All of Alaska's rates fall squarely within the ranges shown by the national study.

<sup>268</sup> *Id.* at 5.

<sup>269</sup> Data for 31% of the defendants in the national report were missing or unknown. *Id.* See *infra* Table 31.

**Table 31**  
**Type of Attorney for Felony Defendants by Most Serious Charge**  
**in Alaska and Nationally**

Type of Attorney	Nations's 75 largest counties - 1996 (Most serious charge at arrest) <sup>a</sup>				Alaska - 1999 (Most serious charge at court case filing)			
	Violent	Property	Drug	Other <sup>b</sup>	Violent	Property	Drug	Other <sup>c</sup>
<b>Public Defender</b>	68%	68%	70%	64%	65%	68%	50%	67%
<b>Assigned counsel/ OPA<sup>d</sup></b>	15%	13%	15%	9%	17%	18%	18%	11%
<b>Private attorney</b>	17%	18%	15%	27%	16%	10%	28%	21%
<b>Self/Other</b>	<1%	<1%	<1%	<1%	<1%	<1%	1%	1%
<b>Number of defendants</b>	9,003	12,006	13,338	3,063	928	723	465	215

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<sup>a</sup> Data were missing on type of counsel for 31% of cases. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, DEFENSE COUNSEL IN CRIMINAL CASES 5 Table 7 (2000).

<sup>b</sup> The Other category was classified in the BJS study as "Public-order" offenses, which included weapons, driving-related, flight/escape, parole or probation violations, prison contraband, habitual offender, obstruction of justice, rioting, libel, slander, treason, perjury, prostitution/pandering, bribery, and tax law violations. *Id.* at 5.

<sup>c</sup> Other charges in the Alaska report included weapons offenses, escape, contraband, hindering prosecution, interference with official proceedings, failure to appear, tampering with public records or evidence, endangering the welfare of a minor, violation of probation condition, and the sale of alcohol without a permit. To facilitate comparison with national data in this section, driving-related offenses were included among other charges.

<sup>d</sup> See *supra* p. 67, note 126.

In the nation's 75 largest counties in 1996, defendants charged with Violent, Property, and Drug crimes were more likely to have been represented by public defenders or assigned counsel than those charged with Other offenses.<sup>270</sup> In Other offenses, more defendants found private counsel and fewer defendants used assigned counsel. Public defenders represented 64% to 70% of all defendants in all offenses. Persons charged with Violent, Property or Drug crimes were represented by assigned counsel 13% to 15% of the time and persons charged with Other offenses were represented by assigned counsel only 9% of the time. Persons charged with Violent, Property, or Drug crimes were represented by private counsel 15% to 18% of the time but persons charged with Other offenses were represented by private counsel 27% of the time. Felony defendants in all types of offenses represented themselves less than 1% of the time.

The Alaska data showed that public defenders represented defendants charged with Violent, Property, and Other offenses about 65%-68% of the time but represented Drug offenders only about 50% of the time. Assigned (OPA) counsel represented defendants from all four offense categories about 11%-18% of the time. Private counsel represented about 10% of the Property defendants and

<sup>270</sup> DEFENSE COUNSEL IN CRIMINAL CASES, *supra* note 262, at 5.

about 28% of the Drug defendants. Self-representation was slightly higher in Alaska than nationally, but still less than 1%.

The biggest difference between Alaska and national data was in Drug offenses. National patterns showed high private counsel representation rates in "Other" (so-called "public order") offenses. Alaska patterns showed high private counsel representation rates in Drug cases (28%), almost double the private counsel rates (15%) in Drug cases nationally. In general, use of private counsel in Alaska varied more by offense type than it did in other states.

Table 32 Felony Defendants' Type of Attorney by Prior Conviction <sup>a</sup> in Alaska and Nationally		
Defendant Criminal History	Public Attorney Representation Rate	
	Nation's 75 largest counties-1996	Alaska - 1999
With prior conviction	86%	83%
No prior conviction	77%	74%

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<sup>a</sup> "Prior conviction" was for any offense - felony or misdemeanor.

Felony defendants nationally in 1996 who had any prior conviction were more likely than those without a criminal record to have used a publicly financed lawyer.<sup>271</sup> About 86% of felony defendants in the nation's 75 largest counties with a prior conviction were represented by a public defender or publicly appointed counsel, compared to 77% of felony defendants without a prior conviction who were represented by a public defender or publicly appointed counsel. About 83% of Alaska defendants with a prior conviction were represented by appointed counsel but only 74% of defendants without a prior conviction. The Alaska rates and national rates were very similar.

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<sup>271</sup> *Id.* at 5.

Table 33 shows case dispositions for Alaskan defendants only, by type of counsel. In this analysis, the type of attorney appeared to be unrelated to the likelihood of a specified type of disposition. Private counsel defendants had slightly fewer convictions (84%, compared to 86% for public attorneys), due to a slightly higher rate of dismissals. Most disposition rates were almost identical.<sup>272</sup>

Case disposition	Public counsel	Private counsel
<b>Convicted</b>	86%	84%
Felony	50%	51%
<i>By plea<sup>a</sup></i>	48%	48%
<i>By trial<sup>a</sup></i>	3%	3%
Misdemeanor	36%	33%
<i>By plea</i>	35%	32%
<i>By trial</i>	1%	1%
<b>Not convicted</b>	14%	16%
<i>Acquittal</i>	1%	1%
<i>Dismissal</i>	13%	15%
<b>Other</b>	N/A	N/A
<b>Number of defendants</b>	1,861	392

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<sup>a</sup> Amounts do not equal 50% due to rounding.

<sup>272</sup> *Id.* at 6, Table 10. National data were missing for over 32% of cases on type of counsel or case disposition. *Id.* Alaska data were missing for less than 1% of cases on type of counsel or case disposition. Each report's design and data collection prevented direct comparison of conviction rates between national rates and Alaska rates for this report. For defendants from the 75 largest counties in 1996, conviction rates were about the same for defendants with public attorneys (75%) as for those who hired private counsel (77%). Defendants represented by private and public counsel were convicted of felonies at about the same rates (80%). Defendants represented by private and public counsel were also acquitted at about the same rates. *Id.*

Table 34 shows that Alaska defendants represented by public counsel were more likely to be sentenced to a term of incarceration than defendants represented by private counsel. In Alaska, about 72% of those with public counsel were sentenced to any jail time compared with 57% of those with private counsel. The rates of incarceration for defendants represented by public and private counsel nationally were similar.<sup>273</sup> Again, it is possible that socioeconomic data about defendants, not available for this report or included in the national study, contributed to differences in outcomes for defendants represented by public and private attorneys.

Table 34 Rate of Incarceration for Convicted Alaska Defendants Initially Charged with Felonies by Type of Attorney <sup>a</sup>		
Sentences	Alaska - 1999	
	Public Attorney	Private Attorney
Incarcerated	72%	57%
Not incarcerated	28%	43%
Number of defendants	1861	392

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<sup>a</sup> Cases in which the defendant was acquitted or the case was dismissed, were excluded.

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<sup>273</sup> *Id.* at 6. Again, direct comparison of national rates to Alaska rates was not possible. The important result was that the incarceration rates were higher for defendants with public counsel in both the Alaska report and in the national study.



## H. Changes in Sentencing Law Since 1990

### 1. Introduction

Changes in the sentencing statutes or appellate law could help explain some of the differences between the Council's findings in earlier reports and the present review of 1999 felony cases. This section looks at the changes in both sentencing statutes and in case law between 1990, the time of the Council's last major updates, and 1999, the year from which the Council's sample of felony cases was drawn. Appendix A gives more detail on the statutory changes.

The legislature could alter the statutory sentences for crimes by broadening or narrowing the definition of punishable conduct, or by upgrading or downgrading the crimes' classifications. For example, legislators could upgrade a class B felony to a class A felony. These changes would affect sentences for specific crimes. Alternatively, the legislature could amend the entire statutory sentencing scheme, by increasing the range of years or the presumptive sentence for an entire class of crimes. Between 1990 and 1999, the legislature amended the criminal statutes in both ways.

### 2. Legislative Changes

A comprehensive description of sentencing law in Alaska appeared in the Council's January, 1991 report, Alaska's Plea Bargaining Ban Re-evaluated.<sup>274</sup> The legislature did not make major changes to the criminal code between 1991 and 1999, but enacted many incremental changes to statutes defining and classifying crimes, and to sentencing laws. Most of the changes did not affect the comparison of 1999 findings to findings from previous studies.

#### a. Felony driving offenses

The most substantial change to Alaska's sentencing laws during the 1990s was the legislative revision of Driving While Intoxicated law. In 1995, legislators made a third DWI conviction within five years a Class C felony.<sup>275</sup> The legislature also made a person's third conviction of Refusing to Submit to a Chemical Test for Alcohol, Inhalants or Controlled Substances While Operating a Motor Vehicle a Class C felony.<sup>276</sup> Previously, DWI and refusals were Class A misdemeanor offenses, regardless of the defendant's prior convictions. The legislature upgraded first-degree Failure to Stop

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<sup>274</sup> See *supra* note 19, at 122-137.

<sup>275</sup> Ch. 80, § 7, SLA 1995.

<sup>276</sup> Ch. 80, § 12, SLA 1995.

at the Direction of a Police Officer to a Class C felony in 1998,<sup>277</sup> adding a third group of driving related offenses.<sup>278</sup> Enforcement of the new laws resulted in 172 felony driving cases in the Council's representative two-thirds sample of Alaska felony cases in 1999, all charging conduct that would not have been felonious in earlier reviews of the criminal justice process.

### **b. Theft laws**

The absence of any significant change in felony theft laws in the decades before 1999 also may have affected criminal justice practices. Criminal liability for many theft crimes relied on the value of the property taken.<sup>279</sup> By 1999, these amounts had not changed in twenty-five years. For instance, Theft 1 required theft of property valued in excess of \$25,000, but property worth \$25,000 in 1999 would have been worth only \$9,784 in 1978. A defendant who stole an item of property worth just over \$25,000 in 1999 would have been liable for Theft 1, a Class B felony in 1999, but only Theft 2, a Class C felony, in prior years. In this indirect way, many theft crimes were effectively "reclassified" upwards.

An increase in felony theft charges from 1984 to 1999 would be expected because amounts in theft statutes had not been amended for inflation. Instead, felony theft filings were a lower percentage of statewide felony filings in 1999 than in 1984. Although felony theft filings made up 31% of all felony cases filed in Alaska's courts for fiscal year 1984,<sup>280</sup> they had dropped to 22% of all felony filings in Alaska's courts in fiscal year 2000.<sup>281</sup> Felony DWI filings in 2000 that did not exist in 1984 accounted for part of the decrease in the percentage. Calculating FY'00 percentages without the DWI cases still left felony theft cases making up only 24% of non-DWI felony filings.<sup>282</sup>

The absence of change in the threshold amounts in theft statutes could be expected to be associated with more theft case charge reduction in 1999 than in prior years. In fact, this did occur. More 1999 felony theft cases had charge reductions than did 1984-1987 felony theft cases, when the Council last analyzed charge reductions. From 1984-1987, among convicted defendants, 51% of defendants charged with Theft 1 and 56% of defendants charged with Theft 2 were convicted of the original

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<sup>277</sup> The legislature repealed and reenacted AS 28.35.182. Ch. 136, §1, SLA 1998.

<sup>278</sup> Ch. 136, § 1, 1998.

<sup>279</sup> AS 11.46.120 - .140.

<sup>280</sup> Fiscal years in Alaska run from July 1 to June 30. Fiscal Year 1984 ran from July 1, 1983 to June 30, 1984. Fiscal Year 1984 data was obtained from ALASKA COURT SYSTEM, 1984 ANNUAL REPORT at S-31.

<sup>281</sup> ALASKA COURT SYSTEM, 2000 ANNUAL REPORT at S-25.

<sup>282</sup> *Id.*

charge.<sup>283</sup> In 1999, among convicted defendants, only 38% of defendants charged with Theft 1 and 45% of defendants charged with Theft 2 were convicted of the original charge.<sup>284</sup>

In addition, higher percentages of convicted defendants initially charged with felony theft offenses were convicted of misdemeanors as their single most serious charges. From 1984-1987, among convicted defendants, 7% of defendants charged with Theft 1 and 38% of defendants charged with Theft 2 were convicted of misdemeanors. In 1999, among convicted defendants, 25% of defendants charged with Theft 1 and 53% of defendants charged with Theft 2 were convicted of misdemeanors. Outcomes for defendants committing Property offenses in which the amount of stolen property was an element of the offense appear to have been affected more by prosecutorial decisions in 1999 than in 1984-1987, the previous period reported.

### 3. Appellate Law

Appellate cases helped to define sentencing parameters where the statutes did not. The Alaska Court of Appeals used benchmark sentences to help trial judges treat defendants more uniformly at sentencing.<sup>285</sup> During the 1990s, Alaska's appellate courts continued to use benchmark sentences for

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<sup>283</sup> ALASKA'S PLEA BARGAINING BAN RE-EVALUATED, *supra* note 19, at Table C-1. The presentation of charge change data in the earlier report did not include dismissals and acquittals. Percentages for particular outcomes were expressed as percentages among convicted defendants. To facilitate a comparison of present charge practices with the prior practices, outcome percentages were calculated in the same way for 1999 data. In other places in this report, outcome percentages for 1999 data included dismissals. For example, in 1999, 33% of all defendants whose most serious charge was Theft 1 were convicted of Theft 1. Some defendants whose most serious charge was Theft 1 were not convicted of any offense. Excluding those defendants, 38% of convicted defendants whose most serious charge was Theft 1 were convicted of Theft 1.

<sup>284</sup> See discussion, *supra* pp. 93-95 about charge reductions in 1999. Most offenses showed an increased number of charge reductions in 1999, compared to 1984-1987.

<sup>285</sup> In *State v. Wentz*, 805 P.2d 962 (Alaska 1991) the Alaska Supreme Court made clear its view that judges should not use benchmark sentences rigidly. *Id.* at 965. *Wentz* was convicted of first-degree assault, a Class A felony. *Id.* at 962-63. First felony offenders convicted of Class A felonies were subject to a five year presumptive term, with a maximum sentence of twenty years. The Alaska Court of Appeals had set a benchmark upper limit of ten years for first offenders convicted of aggravated Class A felony offenses except for one or two extraordinary conditions. The court of appeals found the defendant's sentence clearly mistaken in this context. *Id.*

The supreme court struck down the ten year benchmark, finding that the trial court had not abused its discretion by imposing twelve years of unsuspended incarceration on the defendant. The court held that the benchmark set by the court of appeals was "both inconsistent with the statutory scheme established by the legislature and contrary to our prior decisions concerning the proper role of the appellate courts in reviewing sentencing decisions." *Id.* The supreme court found that the benchmark limited judicial discretion too greatly in the strength and number of aggravating factors that would justify a greater sentence. *Id.*

Less than three months later, the Alaska Court of Appeals issued a decision that explained the effect of *Wentz* on the use of benchmark sentences generally. *Williams v. State*, 809 P.2d 931 (Alaska App. 1991). Chief Judge Alex Bryner (since elevated to the Alaska Supreme Court), noted that *Wentz* did not preclude the use of benchmarks as a framework to promote careful comparison between a given case and prior, similar cases. *Id.* at 934. Judge Bryner emphasized that the legislature was concerned about sentencing disparity when it enacted presumptive sentencing. *Id.* He saw the periodic

guidance in non-presumptive felony and aggravated presumptive sentencing cases, and in Unclassified felonies and consecutively-imposed sentences.<sup>286</sup> Because the Council identified ethnic and other disparities in the area of non-presumptive post-disposition incarceration,<sup>287</sup> case law developments in non-presumptive sentencing could provide more context for the Council's findings about these disparities.

**a. Non-presumptive Class B non-drug offenses**

In State v. Jackson,<sup>288</sup> the court of appeals established benchmark sentences for first felony offenders convicted of Class B felonies. Earlier, in Austin v. State,<sup>289</sup> the court of appeals said that except for very unusual cases a first felony offender should receive a more favorable sentence than the four-year presumptive sentence for a second offender.<sup>290</sup> In Jackson, the court gave more guidance than it had in Austin for first felony offenders convicted of B felonies, setting out the following benchmarks:

- less than ninety days was the benchmark sentence for a case involving significantly mitigated conduct AND an offender whose prospects for rehabilitation were significantly better than those of the typical first offender;
- between ninety days and one year was the benchmark for a case involving mitigated conduct OR an offender whose background indicated particularly favorable prospects for rehabilitation;
- one to four years to serve was the benchmark for a typical offender who committed a typical or moderately aggravated offense (four years was the presumptive term for a second felony offender); and

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collection and synthesis of similar cases into benchmark sentences as consistent with the legislature's goal of eliminating sentencing disparity, and wrote:

[W]hile an intrinsic tension may exist between the requirements of individualized sentencing and the need for reasonable sentencing uniformity, in the long run this tension can meaningfully be resolved only through an awareness of existing sentence practices and consideration of the case at hand in relation to other similar cases. *Id.* at 935.

<sup>286</sup> See DiPietro, *supra* note 49, at 282-88.

<sup>287</sup> See discussion *infra* pp. 208-210.

<sup>288</sup> 776 P.2d 320 (Alaska App. 1989).

<sup>289</sup> 627 P.2d 657 (Alaska App. 1981).

<sup>290</sup> AS 12.55.125(d)(1).

- up to six years was the benchmark for an exceptionally aggravated offense, i.e., an offense that involved significant statutory aggravators or other extraordinarily aggravated circumstances.<sup>291</sup>

**b. Non-presumptive class B drug offenses**

In State v. Eskridge,<sup>292</sup> the court of appeals noted that “the development of somewhat different guidelines for drug offenses appears to be rooted in the fact that drug offenses are easier to compare than other offenses,” while other offenses, such as burglary, included a wider variety of criminal behavior.<sup>293</sup> The court summarized its guidelines for first felony offenders convicted of class B felony drug offenses as follows:

One, for cases where the defendant has engaged in the on-going commercial sale of smaller quantities of cocaine, we have routinely approved first-offense sentences of up to two years of unsuspended time. Two, for cases where the defendant has engaged in a highly lucrative commercial pattern of cocaine trafficking—one involving large quantities of cocaine and large amounts of money, we established a guideline of up to six years with two years suspended. Three, for cases where the defendant engaged in on-going commercial sales and whose activity fell in between the other two categories, we approved sentences of up to three years of imprisonment.<sup>294</sup>

Most of the cases the court reviewed in summarizing these guidelines involved cocaine trafficking. However, the court said that it expected the guidelines to apply to other class B felony drug offenses.<sup>295</sup>

The sentencing guidelines for first felony offenders convicted of class B drug offenses suggested less incarceration than the Jackson guidelines. Lower sentences were not tied to the conditions set out in Jackson, such as mitigated conduct and better prospects for rehabilitation. The court of appeals added that the guidelines for mitigated drug offenses and offenders also had greater flexibility and involved less incarceration than did the Jackson guidelines.<sup>296</sup>

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<sup>291</sup> DiPietro, *supra* note 49, at 326-27.

<sup>292</sup> 53 P.3d 619 (Alaska App. 2002).

<sup>293</sup> *Id.* at 621.

<sup>294</sup> *Id.* (Citations omitted.)

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

The only sentencing disparities for groups that this report identified were in non-presumptive Drug cases. But, according to the court of appeals, Drug offenses were easier to compare than other offenses. That view would suggest that disparity in Drug offenses should be less than in other types of offenses, not greater than in other types of offense. Also, judges apparently had more discretion in sentencing non-presumptive Drug offenders than they had for other non-presumptive offenders. The data suggested that this greater discretion was associated with disparate ethnic effects.

Judges had a fair amount of sentencing discretion in all non-presumptive cases. That ethnic disparities only occurred in non-presumptive Drug offenses strongly suggested that those disparities were not intentional.

## Part III: Findings from Multiple Regression Analysis

Analysts<sup>297</sup> took several steps in the multivariate analysis of the dependent variables of predisposition incarceration (Section A), charge reductions (Section B), post-disposition incarceration (Section C), and total time (Section D). They first analyzed the data for All Offenses Combined in all locations in the state. Next, they looked at all offenses statewide, but grouped them into the major offense categories (Violent,<sup>298</sup> Property, Sexual, Drug, and Driving<sup>299</sup>). In the third step of the analysis, they divided the statewide grouping of offenses into those offenses in Anchorage and those outside Anchorage. Finally, they looked at the major offense categories (Violent, Property, etc.) within the Anchorage and outside Anchorage groupings to determine whether different factors came into play in different parts of the state.

### A. Predisposition Incarceration

#### 1. Background

The events in a criminal case began before the court saw the charges.<sup>300</sup> An offense was reported to authorities and investigated. In most cases, if police made an arrest on felony charges, a magistrate or other judicial officer set bail. In Anchorage, defendants often appeared by video or phone. Procedures varied in other parts of the state. Within twenty-four hours, the prosecutor filed charges

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<sup>297</sup> All of the multivariate analyses were done by Matt Berman and Stephanie Martin of ISER, *supra* n. 67 at p. 45.

<sup>298</sup> When analyzing predisposition incarceration time or total time served, the category of Violent offenses included the Murder and Kidnaping offenses. When analyzing post-disposition incarceration, the category of Violent offenses did not include Murder or Kidnaping Offenses. This is true throughout Part III, in text and on tables.

<sup>299</sup> The category of “Other” offenses was not included in the analysis because the offenses were too diverse to be meaningfully compared.

<sup>300</sup> *See* discussion and information *supra*, Part II, at pp. 29-30.

that opened a case in the court,<sup>301</sup> and if the defendant was incarcerated, a time was set for bail review. If a defendant was in custody, the defendant had to be released within ten days unless the court made a probable cause determination at a preliminary examination or the defendant was indicted by a grand jury.<sup>302</sup> Defendants could waive these requirements and agree to an extension of time, and typically did during this phase, to obtain discovery and pursue plea discussions with the prosecutor.

This section of the analysis addresses the factors that were related to the length of time (predisposition incarceration) that the defendant spent incarcerated before all the charges were dismissed or the defendant was acquitted, or the defendant was sentenced. A defendant could have been incarcerated no time at all, a few days, or all of the time until the case disposition (sentencing, or dismissal or acquittal). Typically, the court made a minimum of one decision about bail, and could have, at the defendant's request, reviewed bail several times. If the defendant was released and violated the conditions of release, he or she could have been returned to incarceration and spent more time in jail.

This report represents the most comprehensive examination of predisposition practices in Alaska to date. Multiple regression analyses revealed more widespread ethnic, type of attorney, and gender disparities during the predisposition period than at any other point in the criminal justice system process.

For several reasons, Alaska's unsentenced inmate population, especially those held before the dispositions of their cases, plays a large role in prison population management. The unsentenced inmate population in Alaska has increased, as a percentage of all incarcerated defendants. From 1997 to 2000, the percentage of unsentenced prisoners in Alaska increased from 31% to 41% of the prison

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<sup>301</sup> Data provided by the Alaska Attorney General's Office for calendar year 1999 showed that prosecutors declined to prosecute 25% of all felony charges brought to them. The prosecutors declined 40% (131) of Sexual Assault charges, 36% (115) of Sexual Abuse of a Minor charges, 27% (269) of Felony Drug charges, 27% (486) of Felony Property charges, 26% (163) of Miscellaneous Felony charges, 21% (37) of Robbery charges, 19% (199) of Felony Assault charges, 19% (3) of Manslaughter/Negligent Homicide charges, 10% (5) of Kidnaping charges, 7% (4) of Murder charges, and 1% (3) of Felony DWI charges. Most charges (74%) were accepted as referred, or filed as a lesser felony or as a misdemeanor (about 1% were pending).

<sup>302</sup> Alaska Criminal Rule 5 governed these time frames. If the defendant was out of custody, the preliminary examination, the grand jury, or their waivers had to occur within twenty days. *Id.*



population.<sup>303</sup> In 1999, the percentage of the inmate population that was unsentenced was 36%.<sup>304</sup> Although these figures included prisoners charged with misdemeanors and some convicted defendants awaiting sentencing, they indicate the importance of the predisposition period. Processing the predisposition prison population could be costly. Prisoners had to be transported to court hearings and given access to their attorneys.

For all of these reasons, predisposition practices should be reviewed for fairness and to insure that the most efficient and cost effective practices are pursued, consistent with public safety and defendants' rights.

## 2. Variables

As discussed in the Methodology section,<sup>305</sup> the Council collected and reviewed data about many characteristics of cases and defendants. These included the type of offense, the location of the court, the defendant's age, gender, ethnicity, and prior criminal convictions; the defendant's drug, alcohol, or mental health problems; the type of attorney representing the defendant; whether the defendant went to trial; and many others. The analyses that follow focused on five variables that influenced the outcomes of cases in unexpected ways: the defendants' ethnicities, the type of attorney representing them, their gender, the disposition of their cases in different court locations, and their alcohol, drug abuse or mental health problems. Other variables also were associated with the outcomes for various cases, but those influences tended to be more predictable.

Socioeconomic factors could have affected predisposition release. The Council collected consistently available data about defendants' ethnicity, age, prior convictions, substance abuse and mental health problems and analyzed the effects of these factors. As has been noted previously,<sup>306</sup> no data or insufficient data were available about defendants' income, employment, education, family status, stability in the community, or home ownership. Representation by a court-appointed, publicly funded

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<sup>303</sup> Figures provided by Alaska Department of Corrections. These percentages applied to Alaska institutions and did not include sentenced Alaska prisoners housed in Arizona. The percentages also did not include inmates housed in Community Residential Centers (half-way houses primarily used to hold misdemeanants serving short sentences). The DOC percentages of unsentenced defendants included defendants awaiting adjudication on a petition to revoke probation. The Judicial Council's definition of predisposition incarceration did not include those with petitions to revoke. All data available on file with the Alaska Judicial Council.

<sup>304</sup> *Id.*

<sup>305</sup> *See supra* pp. 38-46. Not all variables in the multivariate equations were reported in the following discussions. Age played no significant role in predisposition incarceration, and was associated with very little change in post-disposition and total time incarcerated. Data about "other" ethnicity were not reported on the tables, except in charge reduction analyses. *See* Appendix D for lists of variables about which data were collected and a table showing which variables were included in each multivariate equation.

<sup>306</sup> *See supra*, pp. 47-52.

attorney indicated a defendant's indigency but more information about socioeconomic factors might have helped to understand other multivariate relationships (legitimate or not) found in the equations.

The mere fact of indigency should not have resulted in longer times of predisposition incarceration for defendants with public attorneys. Alaska Statute 12.30.020 provides that bail conditions, including the requirement of a monetary bail, be imposed if reasonably necessary to assure the appearance of the defendant or the safety of the public. A defendant's ability to post a monetary bail must be considered by the court.<sup>307</sup> Socioeconomic data that were not available, such as the defendant's work history, education, family ties, and stability and support in the community, could have illuminated justifiable differences in predisposition incarceration times for defendants of a certain ethnicity, defendants with private attorneys, defendants in rural locations, or defendants of a particular gender. However, it is not likely that more socioeconomic data would have greatly diminished the significance of the factors that were found significant.

### **3. Methods of Quantifying the Relative Differences Among Significant Variables**

The purpose of the multivariate analyses was to show the associations between some of the defendant's traits and the length of time that the defendant was incarcerated, whether predisposition, post-disposition, or total time incarcerated. The equations created for the multivariate analyses showed that defendants with certain traits were associated with more or fewer estimated days of predisposition incarceration, when compared with a comparison group (e.g., Black/Caucasian; alcohol problem/no alcohol problem). The equations then estimated the number of days associated with the hypothetical defendant in each equation (see E= in footnotes on each table).<sup>308</sup>

#### **a. Defendants in the predisposition incarceration equations**

The actual defendants included in the analysis of predisposition incarceration were all those who had enough data about each of the variables included in the equation. For the statewide analysis of predisposition incarceration, the equation included 2,171 charged defendants, both convicted and not convicted (footnote a, Table 35a). For the Anchorage analysis, the multivariate equation for

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<sup>307</sup> For data about monetary bonds actually posted, *see supra* pp. 74-75.

<sup>308</sup> The equation estimating predisposition days was not linear. The closer a defendant fell to the end point of the equation – zero days or the 100-day hypothetical predisposition length – the smaller the effect of any disparity. At the extreme ends, an ethnic disparity, for example, would not give a Native defendant more than 100 days in jail if the Caucasian defendant already expected 100 days. Conversely, the equation might predict fewer than five days for some Native defendants whose offenses were not serious, so the disparity would be less than the five days at that end of the spectrum as well. This nonlinearity meant that the analysis had to estimate incarceration for an individual hypothetical defendant, not a group of defendants.

predisposition incarceration included 875 charged defendants (Table 35b), and for outside Anchorage, the equation included 1,348 charged defendants.<sup>309</sup>

**b. Mean number of days for actual defendants and estimated days for hypothetical defendants**

A first step to understanding how to use these analyses was to know that all the estimated days described below were estimated in the context of the multivariate equation. They were not the same as the actual mean days served by the defendants in the equation. The actual mean (average) days of predisposition incarceration served was reported in footnote d, on Table 35a. For All Offenses Combined, the mean number of predisposition incarceration days was 62 days. The actual mean days on Table 35a were calculated by averaging the actual days for all the charged defendants in the report. The mean (average) days of actual time incarcerated is shown for each type of offense in footnotes on each table.<sup>310</sup>

**c. Examples of associations between variables and amount of predisposition incarceration for the hypothetical defendants in the comparison groups**

To derive the association between being Black and the estimated days of predisposition incarceration, the analysts compared the estimated predisposition incarceration days associated with being a Black defendant with those associated with being a Caucasian defendant. For these purposes, they created a hypothetical Black defendant, with all the same characteristics as a hypothetical Caucasian defendant (average prior criminal convictions,<sup>311</sup> alcohol problems, average use of third party custodian, and so forth). The term “hypothetical” was used instead of “typical” because in reality there were no “typical” defendants who were average in every respect. The different types of hypothetical defendants were created separately for each variable, comparison group, and equation in the analysis.

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<sup>309</sup> The post-disposition and total time tables each show the numbers and types of defendants in footnotes on each table.

<sup>310</sup> Actual mean days of incarceration are shown for predisposition incarceration on footnotes in Tables 35a, 35b, and 35c. For post-disposition incarceration (non-presumptive cases only) the actual means are in footnotes on Tables 37a, 37b, and 37c. Mean sentences for each specific convicted offense are shown in Appendices C and D.

<sup>311</sup> This factor is shown on the table as prior felony record (defined as defendants with one prior felony conviction) vs. no prior felony record (defined as defendants with four or more prior misdemeanor convictions but no prior felony convictions). The variable had six values, ranging from no prior convictions to three or more prior felony convictions. There would be larger or smaller effects for prior conviction histories that were more or less serious than the values reported on the tables.

Table 35a shows, for example, that the estimated days of predisposition incarceration associated with being a Black defendant in the statewide analysis were 58 days for All Offenses Combined; for the Caucasian defendant, they were 51 days for All Offenses Combined. The difference between the estimated time associated with the Black defendant and that associated with being a Caucasian defendant was +7 days. That is, being a Black defendant was estimated to be associated with being incarcerated for an additional seven days before the disposition of the case, when compared to a Caucasian defendant, with all other things being held equal.

**d. Examples of associations between variables and amount of predisposition incarceration for the equation's hypothetical defendant**

A second step for understanding the importance of this finding is to compare the estimated days of predisposition incarceration associated with the hypothetical Black and Caucasian defendants to a second measure, the estimated days for the equation's hypothetical defendant with the average of all the characteristics tested in the equation. The equation's hypothetical defendant, whose estimated time was calculated from the average time for each characteristic of defendants in that equation, (including the average of all ethnicities) was estimated to spend 55 days for All Offenses Combined (see footnote d, Table 35a). The way to use these numbers relative to each other was to say: The hypothetical Black defendant was associated with 58 days in predisposition incarceration, compared to the equation's hypothetical defendant whose E (estimated days) was 55, and compared to the hypothetical Caucasian defendant who was associated with 51 days in predisposition incarceration for All Offenses Combined. The Es (estimated days) for each equation and each type of offense are in footnotes on each table.

**e. Structure of the tables and how to use them**

The tables show first, which characteristics were important in the decisions about the defendant's incarceration (see Table 35a for these examples). For example, for predisposition incarceration, the variables of ethnicity, type of attorney, gender, rural, prior felony record, and so forth, all were statistically significantly associated with the length of the defendant's incarceration. The tables also show the direction of the associations, with some variables associated with more estimated days of time incarcerated, and others reducing the amount of estimated time associated with certain characteristics of a defendant. If the table shows "NS," the variable was not associated in that equation with any significant change in the time incarcerated.

Two cautions are important: First, the purpose of these tables is to provide context for the findings and to show the magnitudes of disparities associated with certain characteristics in terms of days.

They do not represent actual mean amounts of time that defendants spent at any point in the process. The mean times for both predisposition and sentenced incarceration are shown elsewhere in the report. In addition, the estimated numbers for individual variables are meaningful only in the context of the estimated days for the equation's hypothetical defendants. The estimated days for the equation's hypothetical defendants are found in the footnotes for each table. Second, these analyses, as noted elsewhere in the report, do not show cause and effect. The research was not designed to show cause and effect. It only shows that certain characteristics of defendants were statistically associated with certain outcomes.<sup>312</sup> That does not mean that the characteristic caused the outcome for the defendant to be different; it only means that the characteristic and the outcome are more closely associated than would be expected in a random distribution of data.

**f. Relative size of the associations between variables and predisposition incarceration days**

The tables show the relative magnitude of the differences associated with each characteristic tested.<sup>313</sup> For example, Table 35a shows that having a third party custodian requirement, compared to no third party custodian requirement is a variable that is associated with a large difference in predisposition days for All Offenses Combined statewide. The difference between the hypothetical defendant with a third party custodian requirement and the hypothetical defendant without a third party custodian requirement can be quantified as an estimated 18 days. The defendant with a third party custodian requirement was associated with 63 days of predisposition incarceration; the defendant without a third party custodian requirement was associated with 45 days of predisposition incarceration. The difference (the effect) was +18 days. Relative to the effects associated with other variables (+11 days for a mental health problem, +6 days for a drug or alcohol problem, +11 days for being male) the third party custodian requirement variable was associated with a stronger effect.

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<sup>312</sup> As described elsewhere in the report, data were not available to the Council to assess the all of the associations among all socioeconomic data that could have been related to outcomes; nor were data available to the Council to assess all of the relative contributions to outcomes of decisions made earlier or later in the criminal justice process. The present report focuses on decisions made at the time of filing in the court through the sentencing decision. The decisions discussed in the report are decisions to which many agencies, including the court, contributed.

<sup>313</sup> The estimate of days for the defendants being compared to each other is based on each defendant having the average of all other characteristics, e.g., the average number of charges filed, the average likelihood of being of one ethnicity, the average likelihood of having a mental health problem, and calculating the expected days for each one of those characteristics. The one difference in the equations is that the defendant has or does not have the characteristic being tested, which in this example was the requirement of a third party custodian.

**g. Independent associations of each variable and relationships of variables to each other**

The equations showed the independent effects associated with each variable. On Table 35a, for All Offenses Combined, statewide, they showed an estimated effect of +18 days associated with the requirement of a third party custodian, an additional estimated effect of +11 days associated with the defendant being male, and an additional effect of +6 days associated with having a drug or alcohol problem. All other things being equal, the equations showed that being a male defendant with the requirement of a third party custodian, and a drug or alcohol problem was associated with substantially more time incarcerated predisposition than a comparable defendant without those factors.

Most defendants had more than one significant variable present, and the effects were calculated independently, so most could be expected to be associated with more than the estimated time for just one variable. However, because of the design of the equations, the estimated days could not be simply added to each other to calculate an estimated amount of predisposition time. The best that could be said was that defendants with more of these variables would be associated with more time incarcerated than defendants with fewer of these variables.

**h. Different effects associated with predisposition incarceration statewide, in Anchorage and outside Anchorage**

Table 35 summarizes the effects associated with the equations for ethnicity of the defendant, type of attorney at disposition, defendant's gender, location in the state and presence or absence of alcohol, drug and mental health problems. Effects were characterized as longer or shorter predisposition incarceration, as "NS" (effects were not statistically significant), or as "N/A" (data were not available for this analysis). The detailed estimated quantification of results described above was shown on Tables 35a (statewide), 35b (Anchorage only), and 35c (outside Anchorage).

For example, Table 35 shows that the independent variable, gender, was associated with a significant difference in the overall length of predisposition incarceration for All Offenses Combined statewide, in Anchorage and outside Anchorage. Gender also was associated with significant differences in predisposition incarceration in Violent offenses statewide, in Anchorage and outside Anchorage, and in Property offenses statewide and outside Anchorage, but not inside Anchorage. In each instance, being male was associated with more days of incarceration before the disposition of the case. Being

male was not associated with any significant difference in predisposition incarceration for Drug or Driving offenses anywhere in the state.<sup>314</sup>

A disparity might appear in one part of the analysis and not another. For example, on Table 35, being male appeared to be associated with longer predisposition incarceration for Property offenses statewide, and outside Anchorage, but not for Property offenses in Anchorage. This suggests that being male had a strong enough effect outside Anchorage that the effect also appeared at a statewide level. Being male did not appear to be a statistically significant factor associated with predisposition incarceration in Anchorage for Property offenses.

Another example from Table 35 was the relationship of appearing in a rural court to length of predisposition incarceration. The variable rural appeared to be significantly associated with predisposition incarceration for All Offenses Combined statewide, and with Violent,<sup>315</sup> Property, and Driving offenses statewide. However, the rural variable did not appear to be associated with any specific offenses in the areas outside Anchorage<sup>316</sup> because while it was a strong enough influence when all the data were considered together to be statistically significant, it was not a strong enough variable to be significant in the analysis of smaller groups of data.

A third situation occasionally occurred, in which data were grouped together in a way that showed statistical significance in one area of the state but not statewide. An example from Table 35 was the significant association between mental health problems and longer predisposition incarceration for Property offenses outside Anchorage but not for mental health problems in Property offenses statewide. In this situation, the association was strong enough in the areas outside Anchorage to be statistically significant, but when the outside Anchorage data for Property offenses was grouped with the Anchorage data, the lack of significance in Anchorage outweighed the finding of significance outside Anchorage.

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<sup>314</sup> There was no useful comparison group for gender in Sexual offenses because only one female in the 1999 sample was charged with a Sexual offense. As a result, the analysts did not carry out an analysis of gender effects in Sexual offenses.

<sup>315</sup> For the predisposition and total time analyses, the category of Violent offenses included defendants charged with Murder and Kidnaping offenses.

<sup>316</sup> Rural was not used as a variable in the Anchorage analysis because the Anchorage grouping included only Anchorage cases.

#### **4. Predisposition Incarceration Differences Associated with Ethnicity**

At the most general level, being of any ethnic minority group<sup>317</sup> (as compared to being Caucasian) was associated with spending more days in predisposition incarceration. The estimated predisposition incarceration for the equation's hypothetical defendant statewide for All Offenses Combined was 55 days, based on a hypothetical defendant with an average of all characteristics (Table 35a, footnote d). The hypothetical Black defendant and hypothetical Native defendant each was associated with an estimated seven more days incarcerated than was the hypothetical Caucasian defendant. Again, both the estimate of 55 days, which is present to give context and a sense of relative magnitude of the findings, and the estimate of seven days increase in predisposition time are not exact numbers, but provide an example of the size of the effects associated with ethnicity and predisposition incarceration.<sup>318</sup>

More specific differences in predisposition incarceration associated with the hypothetical Native defendant, relative to the hypothetical Caucasian defendant, were;

- Nine additional estimated days, Violent offenses statewide (Table 35a);
- Fourteen additional estimated days, Driving offenses statewide (Table 35a);
- Ten additional estimated days, Property offenses statewide (Table 35a);
- Nine additional estimated days, All Offenses Combined outside Anchorage (Table 35c);
- Eighteen additional estimated days, Property offenses outside Anchorage (Table 35c);

A more specific difference associated with the hypothetical Black defendant relative to the hypothetical Caucasian defendant was twelve additional estimated days, Drugs statewide (Table 35a).

As noted above, the additional estimated days for these variables were better understood by looking at them in the context of the estimated days for the equation's hypothetical defendant. The equation's

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<sup>317</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders, and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggested that further review of larger groups of these defendants is warranted to show whether disparities persist in bigger data sets.

<sup>318</sup> As noted elsewhere, none of these findings can be characterized as cause and effect relationships.



hypothetical defendant was estimated to have spent about 35 days in predisposition incarceration for Drug offenses statewide (Table 35a, footnote d). Being a Black hypothetical defendant was associated with 43 days of predisposition incarceration for Drug offenses statewide while being the hypothetical Caucasian defendant was associated with 31 days. Being Native rather than Caucasian was not associated with any significant difference from the estimated 35 days of predisposition incarceration.

Ethnicity was not associated with differences in predisposition incarceration for Sexual offenses at all. Ethnicity was also not associated with differences in predisposition incarceration for any offense groups in Anchorage.<sup>319</sup> Outside Anchorage,<sup>320</sup> the only statistically significant differences associated with estimated additional days of predisposition time occurred for the hypothetical Native defendant, for All Offenses Combined outside Anchorage, and for Property offenses outside Anchorage. Caution is advised when interpreting the findings of no significant disparities for parts of the state when the same analyses for the state as a whole show significant differences. This is because having a smaller sample to analyze can diminish the precision with which the equations can measure differences.

This was the first multivariate analysis of predisposition incarceration done in Alaska, to the best of the Council's knowledge.<sup>321</sup> The multivariate equations took into account a large number of other factors that might have explained or accounted for the ethnic-related differences, such as type of charge, defendant's prior convictions, age, gender, substance abuse and mental health problems, and type of attorney, and still found differences. The finding of scattered differences among defendants associated with ethnicity, while taking into account type of offense and location in the state, suggested the need for more review of predisposition practices throughout the state.

## 5. Differences Associated with Type of Attorney

### a. Findings

Having a private attorney<sup>322</sup> was associated with fewer days of predisposition incarceration. This finding held true for most types of offenses charged in most areas of the state (Tables 35, and 35a,

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<sup>319</sup> Table 35b.

<sup>320</sup> Table 35c.

<sup>321</sup> An Internet search on September 23, 2003 did not show any other multivariate analyses of predisposition incarceration in Alaska.

<sup>322</sup> In this analysis, "public attorney" included all attorneys representing indigent defendants: public defender staff, Office of Public Advocacy (OPA) staff, and OPA contractors. See discussion *supra* p. 67.

b, and c). Table 35 shows that the presence of a private attorney was not associated with a difference in the number of expected days in a Sexual offense case anywhere in the state.

To give context to the estimated relative difference, Table 35b (footnote d) shows that the equation's hypothetical defendant in an Anchorage Drug offense case was associated with an estimated 51 days incarcerated before the disposition of the case. The hypothetical private attorney client in Anchorage was associated with 23 days of predisposition incarceration for Drug offenses, when compared to the hypothetical public attorney client who would expect to serve 61 days. Outside Anchorage (Table 35c), the equation's hypothetical defendant in a Drug case could expect to spend an estimated 23 days incarcerated before disposition. The hypothetical private attorney client in a Drug case outside Anchorage could expect to spend 17 days, in comparison with the hypothetical public attorney client's 28 days. The estimated size of the differences varied by location and type of offense.

#### **b. Socioeconomic factors**

The predisposition release decision for felony defendants considered some of the same factors (income and resources) that judges used to make decisions about assignment of a public attorney to a defendant. Although the factors were readily available to the attorneys and the judge, they were not recorded consistently in court case files, so were not available for the analysis in this report. Judges used the information, together with information about the defendant's employment, stability of the living situation and other factors, to make the predisposition release decision. The importance of several of the same factors in making the attorney appointment and the release decision suggested that attorney type might serve as a "proxy" for the defendant's economic situation, and that the factors of income and resources common to both decisions might have helped to explain type of attorney significance.

Socioeconomic data not consistently available for this report,<sup>323</sup> would have helped to understand the different outcomes in predisposition incarceration between defendants with private attorneys and defendants with public attorneys. As noted, no data or insufficient data were available about defendants' income, employment, education, family status, stability in the community, or home ownership, although representation by a court-appointed, publicly funded attorney indicated a defendant's indigency. Many judges and attorneys believed that differences in predisposition incarceration associated with private and public attorneys were principally, if not exclusively, based on socioeconomic factors. The findings also could be associated with high caseloads for public

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<sup>323</sup> See discussion *supra* pp. 47-52.

attorneys and lack of adequate resources.<sup>324</sup> As is discussed elsewhere, differences in outcomes for defendants with private attorneys in Alaska resembled differences in outcomes for defendants with private attorneys nationwide, which suggested a common explanation.<sup>325</sup>

### **c. Nygren credit**

Prior to disposition, some defendants participated in court-ordered residential substance abuse treatment. If the court ordered the residential treatment, the judge credited the defendants with time spent there against any sentence that was imposed. Credit for time served in court-ordered residential treatment was known as “Nygren” credit, named after an Alaska appellate case.<sup>326</sup>

Some judges suggested that the Council’s inability to account for time spent in residential treatment might have helped to explain the differences in predisposition times for public and private attorney defendants. Although some resources were available to indigent defendants for residential treatment, it was more likely that defendants represented by private attorneys had sufficient resources to participate in residential treatment. Assuming defendants represented by private attorneys spent more time in court-ordered residential treatment prior to disposition than did indigent defendants represented by public attorneys, differences in predisposition incarceration times for these two groups of defendants would have been reduced. However, if indigent defendants spent more predisposition time in court-ordered residential treatment than defendants with private attorneys, the disparity between these two groups would have increased. Better documentation of residential treatment time in court files would enable future reports to analyze this effect.

### **d. Importance of attorney type**

The presence of a private attorney in a case was consistently associated with greater estimated reductions in predisposition incarceration than any other factor reviewed, including the defendant’s prior criminal convictions, whether the charge carried a presumptive sentence, and substance abuse or mental health problems. The requirement for a third party custodian was almost as important. By

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<sup>324</sup> See discussion *supra* pp. 98-99.

<sup>325</sup> See *supra* p. 148.

<sup>326</sup> *Nygren v. State*, 658 P.2d 141 (Alaska App. 1983). Research associates made notes about *Nygren* credit in 27 cases. Fifteen of those files had no days specified and 12 had the exact times, possibly reflecting the uneven manner in which this information was included in case files. Research associates were not instructed specifically to record *Nygren* credit so this information was probably incomplete. The relatively few cases for which this information was noted suggested that the potential impact of *Nygren* credit on predisposition disparity findings may not have been substantial, especially if the credits were evenly distributed among private and public attorney defendants. Without more complete information, the effect of *Nygren* credit on predisposition disparity findings, if any, cannot be known.

comparison, ethnicity and gender, while associated with significantly increased predisposition incarceration in some types of offenses and areas, did not play as big a role as did type of attorney.

**e. Other possible factors associated with attorney type differences**

Most judges and other observers perceived that public attorneys were as competent and dedicated as private defense counsel. The fact that public attorneys had fewer resources could not be discounted as a possible factor contributing to different outcomes. In a 1998 audit (released in 2000), the Alaska Legislature, Legislative Audit Division, indicated a need for more public defender resources.<sup>327</sup> The auditors concluded that the Public Defender Agency was substantially understaffed, noting that Agency attorneys worked an average of 21 hours of uncompensated overtime per week.<sup>328</sup> However, the audit showed that public defenders, OPA contractors, and private counsel averaged similar numbers of hours per felony case.<sup>329</sup>

The Division reviewed funding for the 1996 and 1997 fiscal years (July 1, 1995 through June 30, 1997) of both the Criminal Division of the Alaska Department of Law and the Alaska Public Defender Agency to determine if the Public Defender Agency was receiving disparate funding. The auditors noted that the Criminal Division had substantially more resources available for personal services, travel, supplies, and equipment among other things.<sup>330</sup> The report noted that the ratios of paralegals and other support staff to attorneys were far more favorable in the Department of Law.<sup>331</sup> Auditors noted that the Public Defender Agency, lacking representation on the committee overseeing funding decisions, had not been the recipient of any federal “Byrne” grant funds.<sup>332</sup> The report also noted several areas of inefficiency in the Public Defender Agency at that time.

In surveys conducted for the audit, judges, prosecutors, and public defenders reported that Public Defender Agency caseloads resulted in delayed court proceedings.<sup>333</sup> Commenting on the Council’s current report, some judges and attorneys suggested that the Council’s findings of differences in predisposition incarceration times for defendants with public and private attorneys were associated with delays caused by public attorneys’ heavy caseloads. To test this hypothesis, the Council

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<sup>327</sup> PUBLIC DEFENDER REVIEW, *supra* note 126, at 29.

<sup>328</sup> *Id.* at 13.

<sup>329</sup> *Id.* at Exhibit 9.

<sup>330</sup> *Id.* at 17.

<sup>331</sup> *Id.* at 31.

<sup>332</sup> *Id.* at 38.

<sup>333</sup> *Id.* at 14.

analyzed the time needed to dispose of a case by the type of attorney at disposition. The Council's analysis showed that case processing times for defendants represented by public attorneys were similar to case processing times for defendants with private attorneys. Where variation occurred, case processing times were actually shorter for defendants with public attorneys.<sup>334</sup>

To summarize, socioeconomic factors that could not be measured could have accounted for some of the disparities in predisposition incarceration times for public attorney clients compared to private attorneys. Fewer resources for public attorneys also may have been associated with differences. The Council's inability to track time spent in residential substance abuse treatment also might have been associated with the differences in predisposition times. Until these factors can be assessed, the quality of representation is another potential factor that cannot be excluded.

## 6. Differences Associated with Gender

Being male was associated with longer estimated predisposition incarceration when compared with predisposition incarceration for females. Being male was a factor for All Offenses Combined, for Violent offenses, and for Property offenses statewide, but not for Drug or Driving offenses.<sup>335</sup>

The equation's hypothetical defendant with an average of all characteristics, looked at by All Offenses Combined statewide was likely to spend an estimated 55 days of predisposition incarceration (Table 35a, footnote d). That provides context for the finding that a hypothetical male defendant was estimated to spend 57 days incarcerated before disposition of the case as compared to the hypothetical female for All Offenses Combined who was expected to spend 46 days. Still looking at the statewide table, being male was associated with an estimated 68 days of predisposition incarceration for Violent offenses (in the context of an estimated 66 days for the equation's hypothetical defendant and an estimated 54 days for the hypothetical female).

For Property offenses the hypothetical male defendant was estimated to spend 49 days of predisposition incarceration, compared to an estimated 31 days for the equation's hypothetical female defendant (in the context of an estimated 45 days for the hypothetical defendant).

In areas outside Anchorage, the same pattern held true. Being male was associated with more days of incarceration predisposition for All Offenses Combined (53 estimated days, for the hypothetical

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<sup>334</sup> See discussion *supra* p. 97.

<sup>335</sup> Only one female was charged with a Sexual offense in this sample of felony defendants. This was not enough females to create a comparison group, so gender was not used in the analysis for Sexual offenses. She was convicted of a non-Sexual offense.

male, compared to 39 days for the hypothetical female in the context of 51 days of estimated predisposition incarceration for All Offenses Combined). Table 35c also shows significant gender differences for being a male charged with a Violent offense (15 estimated additional days, with the context of 62 estimated days for the hypothetical defendant), or a Property offense (25 estimated additional days in the context of an estimated 42 days of predisposition incarceration).

In Anchorage, the estimated differences in predisposition incarceration occurred only in All Offenses Combined and in Violent offenses. For All Offenses Combined, the hypothetical male defendant was associated with 63 estimated days of predisposition incarceration, as compared to the hypothetical female defendant who was associated with an estimated 55 days. The equation's hypothetical defendant was associated with 62 days (Table 35b, footnote d). Both types of hypothetical defendants were associated with more estimated days for charged Violent offenses. The hypothetical male was associated with 78 days of predisposition incarceration; the hypothetical female was associated with 62 days. The equation's hypothetical defendant was associated with 75 days.

No historical data showed the relationships between gender and predisposition incarceration time for comparison. The finding of a relationship between gender and predisposition incarceration time was independent of the other variables such as ethnicity, prior criminal convictions and charged offense. No data were available about defendants' family life. Female defendants were probably more likely to have been responsible for caring for children in the home. For this reason, some judges may have been more likely to impose other predisposition conditions than incarceration for some female defendants. The differences appeared only in the analysis for All Offenses Combined, and for Violent offenses (all locations) and Property offenses (Statewide and outside Anchorage). The lack of gender-associated differences for Drug and Driving cases may suggest that other factors were more important in those cases.

## **7. Differences Associated with Appearance in a Rural Court**

Being charged in and appearing in a rural court were associated with shorter lengths of predisposition incarceration for some offenses. In the multivariate analysis, six court sites were defined as Rural.<sup>336</sup> At the time these data were collected, all were single judge courts in western and northern Alaska. Having a case in one of these communities was associated with fewer estimated days of predisposition incarceration for All Offenses Combined, and for Violent, Property, and Driving offenses considered statewide (Table 35a). The hypothetical rural defendant in All Offenses

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<sup>336</sup> The "Rural" courts for purposes of this analysis of 1999 cases were Barrow, Bethel, Dillingham, Kodiak, Kotzebue, and Nome. The legislature created a second superior court judge position for Bethel in 2001. The Anchorage analysis (Table 35b) did not include the "Rural" variable because only Anchorage cases were considered in that equation.

Combined was associated with 45 estimated days of predisposition incarceration as compared to the non-rural hypothetical defendant who was associated with 57 estimated days. The equation's hypothetical defendant was associated with 55 days (Table 35a, footnote d).

The decreases also occurred for Violent offenses statewide (an estimated 57 days associated with the hypothetical rural defendant compared to an estimated 69 days associated with the hypothetical non-rural defendant). A hypothetical rural defendant in a Property case (Table 35a) was associated with an estimated 35 days of predisposition incarceration, compared to an estimated 45 days associated with a hypothetical non-rural defendant. The difference for a hypothetical rural defendant in a Driving case (43 days, compared to 69 days for the hypothetical non-rural defendant) was larger than the other differences shown. The statewide analysis on Table 35a did not show any significant differences in estimated predisposition incarceration for Sexual or Drug offenders. The only other quantifiable finding about the rural variable appeared on Table 35c. Outside Anchorage, the hypothetical rural defendant was associated with 46 estimated days of predisposition incarceration, as compared to an estimated 53 days associated with the hypothetical non-rural defendant.

One possible partial explanation for the fewer days of predisposition incarceration was that if the defendant came to the rural court from a small village, the judge might have been more inclined to send the defendant back to the village during the pretrial period. In Barrow, 33% of the defendants came into Barrow from villages. In Bethel, 72% of the defendants came from the villages; in Kotzebue, 54% of the defendants came in from the villages; and in Nome, 67% of the defendants came in from villages. Bethel and Nome had facilities that could incarcerate defendants for up to about 30 days. The other four communities had much more limited holding facilities.

The judge could have had two main reasons for sending the defendant back to the village:

- The defendant might have been supporting a family and not have been charged with an offense that endangered the family. In that case, it might have been preferable to have the defendant back in the village. Also, it was more likely that an acceptable third party custodian would live in the defendant's village, rather than in the rural court community.
- If the judge would otherwise have been inclined to set a higher bail or stiffer conditions for release, the lack of an easily available place of incarceration might have argued against that decision. In the rural communities, defendants could be incarcerated only for limited periods in the rural community (and typically, not at all in the village). That would mean that the state would have to transport the defendant to a much larger location (e.g., Anchorage, Fairbanks, Juneau) for incarceration, and then would have to transport the defendant back

to the rural community for court proceedings (some could be done telephonically,<sup>337</sup> but typically not all). That was expensive for the state, and could cause delays (if no state agency had staff for transportation; if attorney couldn't talk easily with the defendant and had to ask for continuances; if weather delayed transportation to the rural court). If the defendant was released to the remote community, it would be the defendant's responsibility to get to court proceedings, not the state's responsibility or expense to transport him/her there.

These factors show that judges had several strong incentives for releasing defendants to remote villages, incentives that would not have been applicable or important in more urban areas. The equations did not take these incentives that could have helped to explain the shorter rural predisposition times into account, because the data were not available. These factors, if they had been included in the equations, might have shown rural predisposition incarceration days that more closely resembled the urban predisposition incarceration days.

On the other hand, anecdotal comments from judges in these courts suggested reasons why the benefit to a defendant in a rural court might have been even greater than it was because of other factors that the equations also did not measure. Although the time spent in predisposition incarceration in rural areas was short, it could have been even shorter, for the following reasons:

- Delays due to weather or lack of state personnel for transportation duty from Anchorage, Fairbanks or other communities with incarceration facilities to the rural community for court proceeding could mean that defendants were incarcerated for longer times.
- Court approval of a third party custodian in the remote village could take longer than court approval of a third party custodian in the same community as the court, resulting in more predisposition incarceration.
- Delays due to time needed to mail monetary bail from the remote village to the rural court could result in more predisposition incarceration.
- Delays resulting from the need for more time for the attorney to communicate to the client in a remote location or in a community different from the attorney's could result in more predisposition incarceration.

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<sup>337</sup> Alaska R. Crim. P. 38.1.



The first set of factors described would have lessened the effect of being in a rural area, had they been included. The second set of factors would have increased the effect of being in a rural area, had they been included.

Another hypothesis for the fewer days of predisposition incarceration could have been that it took less time to dispose of cases in rural areas, so that the shorter predisposition times simply reflected shorter case times overall. The data did not support this hypothesis. Cases in rural courts took about the same amount of time from filing to disposition as did cases in other courts (see Figure 25, *supra* p. 123). Although rural defendants were spending fewer days incarcerated before the disposition of their cases, their cases took just as long to dispose of.

## **8. Differences Associated with Alcohol, Drug, and Mental Health Problems**

Problems with alcohol, drugs or mental health were associated with more estimated days in predisposition incarceration for some defendants. The associations among the types of offenses and the location in the state varied, with mental health problems associated most frequently with additional estimated days, then alcohol problems, and least commonly, drug problems. All Offenses Combined and Violent offense categories showed the strongest associations, and none of the factors appeared to be associated with estimated days of predisposition incarceration for Drug offenses.

### **a. Mental health problems**

In the statewide analysis<sup>338</sup> the hypothetical defendant with a mental health problem was associated with an estimated 63 days of predisposition incarceration for All Offenses Combined; the hypothetical defendant without a mental health problem was associated with an estimated 52 days of predisposition incarceration. The equation's hypothetical defendant was associated with 55 days (Table 35a, footnote d).

A hypothetical defendant with a mental health problem who was charged with a Violent offense in the statewide analysis was associated with an estimated 78 days of predisposition incarceration, compared to the 59 days for the hypothetical defendant without a mental health problem. The difference was less for the hypothetical defendant charged with a Property offense in the statewide analysis. The hypothetical defendant with a mental health problem was associated with an estimated 50 days of predisposition incarceration, as compared to the hypothetical defendant without a mental health problem, whose predisposition incarceration days were estimated at 43. Mental health

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<sup>338</sup> Table 35a.

problems were not associated with an estimated difference in predisposition days for hypothetical defendants in Sexual, Drug, or Driving offenses.

In Anchorage, mental health problems were associated with estimated increases in predisposition incarceration only in All Cases Combined and Violent offenses.<sup>339</sup> The hypothetical defendant with a mental health problem was associated with an estimated 66 days of predisposition incarceration for All Offenses Combined, as compared to the estimated 60 days for the hypothetical Anchorage defendant without a mental health problem. In Violent offenses, the hypothetical defendant with a mental health problem was associated with an estimated 82 days of predisposition incarceration, as compared to 70 days for the hypothetical defendant without a mental health problem.

Outside Anchorage, a hypothetical defendant with a mental health problem was associated with larger differences in estimated days than was the hypothetical defendant with mental health problems in Anchorage.<sup>340</sup> For example, the hypothetical defendant with a mental health problem outside Anchorage, for All Offenses Combined, was associated with an estimated 61 days of predisposition incarceration, compared to the hypothetical defendant without a mental health problem, who was associated with an estimated 47 days. The difference between the two hypothetical defendants was 14 days in the outside Anchorage analysis, but only 6 estimated days in the Anchorage analysis.

For Violent offenses, the hypothetical defendant with a mental health problem outside Anchorage was associated with an estimated 77 days of predisposition incarceration, while the comparable hypothetical defendant without a mental health problem was associated with an estimated 54 days. In addition, a hypothetical defendant with a mental health problem in a Property case was associated with an estimated 50 days of predisposition incarceration, compared to the estimated 39 days of predisposition incarceration associated with a defendant with no mental health problems.

#### **b. Alcohol problems**

The increases in estimated predisposition time associated with alcohol problems were less prevalent than the increases associated with mental health problems. Statewide,<sup>341</sup> the hypothetical defendant with an alcohol problem was associated with an estimated 57 days of predisposition incarceration for All Offenses Combined. The hypothetical defendant with no alcohol problem was associated with 51 days of predisposition incarceration for All Offenses Combined. In Violent offenses on the

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<sup>339</sup> Table 35b.

<sup>340</sup> Table 35c.

<sup>341</sup> Table 35a.

statewide table, the hypothetical defendant with an alcohol problem was associated with an estimated 69 days of predisposition incarceration, compared to the hypothetical defendant without an alcohol problem who was associated with an estimated 60 days of predisposition incarceration. The hypothetical defendant charged with a Property offense in the statewide analysis who had alcohol problems was associated with an estimated 49 days of predisposition incarceration, compared to the estimated 42 days associated with the hypothetical defendant without alcohol problems.

In Anchorage, the increases in estimated days of predisposition incarceration for the hypothetical defendant with an alcohol problem were limited to All Offenses Combined and Violent offenses.<sup>342</sup> Outside Anchorage, the increases in estimated days of predisposition incarceration associated with the hypothetical defendant with an alcohol problem were limited even further, to the hypothetical defendant in All Offenses Combined.<sup>343</sup> Alcohol problems were not associated with any differences in estimated predisposition days for the hypothetical defendants in Sexual, Drug or Driving offenses in any location in the state.

### **c. Drug problems**

The hypothetical defendant with a drug problem was associated with an increase in estimated predisposition incarceration days for several types of offenses. Statewide,<sup>344</sup> for All Offenses Combined, the hypothetical defendant with a drug problem was associated with 58 estimated days of predisposition incarceration, compared to the hypothetical defendant with no drug problem who was associated with an estimated 52 days of predisposition incarceration. The hypothetical defendant with a drug problem charged with a Sexual offense statewide was associated with an estimated 78 days of predisposition incarceration, compared to the hypothetical defendant charged with a Sexual offense who had no drug problem who was associated with an estimated 64 days of predisposition incarceration. In Driving offenses statewide, the hypothetical defendant with a drug problem was associated with an estimated 70 days of predisposition incarceration, compared to the hypothetical defendant charged with a Driving offense who did not have a drug problem and was associated with an estimated 57 days of predisposition incarceration.

Anchorage hypothetical defendants who had drug problems were associated with increased estimated days of predisposition incarceration only for All Offenses Combined and for Violent offenses.<sup>345</sup>

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<sup>342</sup> Table 35b.

<sup>343</sup> Table 35c.

<sup>344</sup> Table 35a.

<sup>345</sup> Table 35b.

Outside of Anchorage,<sup>346</sup> the hypothetical defendant with a drug problem was only associated with an increase in estimated days of predisposition incarceration for Driving offenses. The hypothetical defendant with a drug problem charged with a Driving offense outside Anchorage was associated with an estimated 69 days of predisposition incarceration, as compared to the hypothetical defendant with no drug problem who was associated with an estimated 49 days of predisposition incarceration.

A defendant's alcohol, drug or mental health problems could affect both the likelihood that the defendant would appear for trial, and the judge's or attorney's assessment of the dangers that the defendant might present to the community. Both appearance at trial and public safety were factors that the judge could consider when setting the conditions of predisposition release.<sup>347</sup> However, none of these problems included as variables in the multivariate equations were consistently or systematically associated with estimated days of predisposition incarceration, whether analyzed by type of offense or by location in the state.

## **9. Impact of Third Party Custodian Requirement**

The requirement that a defendant have a court-approved third party custodian before being released pending disposition of the case was one of the most important factors associated with the estimated predisposition incarceration days served by the hypothetical defendants. In the statewide analysis, the hypothetical defendant who was required to have a third party custodian was associated with more estimated days of predisposition incarceration for All Offenses Combined, and for all five types of offenses analyzed. It was the only factor considered in the statewide predisposition incarceration equations that was significantly associated with an estimated change in predisposition incarceration days for every type of offense.

In most categories, the differences in the statewide analysis between the estimated days for the hypothetical defendants with and without the third party custodian requirement were substantial. For All Offenses Combined, the difference in estimated days was +18 days (63 estimated days for the hypothetical defendant with the third party requirement and 45 days for the hypothetical defendant without the third party requirement). The difference in estimated days was +6 for Violent offenses, +22 estimated days for Property offenses, +15 estimated days for Sexual offenses, +25 estimated days for Drug offenses, and +16 estimated days for Driving offenses.

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<sup>346</sup> Table 35c.

<sup>347</sup> AS 12.30.020 (1999).

In the Anchorage equations,<sup>348</sup> the estimated days associated with the requirement of a third party custodian for the hypothetical defendants were significant in All Offenses Combined, Violent, Property, and Sexual offenses. Outside Anchorage,<sup>349</sup> the estimated days associated with the requirement of a third party custodian for the hypothetical defendants were significant in All Offenses Combined, Property offenses, Sexual offenses and Drug offenses. They were not significant in either location for Driving offenses. In all of the equations in Anchorage, and outside Anchorage, the size of the differences in estimated days of predisposition incarceration associated with the requirement for a third party custodian were relatively large.

Alaska law required that judges impose conditions of release pending trial that would insure the appearance of the defendant and protect the public to the extent needed.<sup>350</sup> Some judges believed that a third party custodian requirement was important to achieve these goals and routinely required one. Other judges used the requirement less frequently.<sup>351</sup> Public defenders interviewed in 1998 in connection with an independent assessment of Alaska's criminal justice system perceived that what began as a substitute for monetary bail for indigent defendants had become an additional requirement for most defendants.<sup>352</sup> The present findings are consistent with a belief that the requirement for third party custodians is widespread and is associated with increased predisposition incarceration.

Given its association with increased estimated days of predisposition incarceration, the effectiveness of the third party custodian requirement should be reviewed. The predisposition mechanisms used in other jurisdictions to assure the appearance of the defendant and the public's safety should be examined for their effectiveness, and compared to practices in Alaska.

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<sup>348</sup> Table 35b.

<sup>349</sup> Table 35c.

<sup>350</sup> AS 12.30.020(b) (1999).

<sup>351</sup> *See supra* pp. 114-116 for discussion of use of third party custodians by location. The requirement is imposed on 59% of the charged defendants in Anchorage but on 41% of the defendants in Fairbanks.

<sup>352</sup> CHASE RIVELAND, ET AL., ALASKA CRIMINAL JUSTICE ASSESSMENT COMMISSION, A PRELIMINARY REPORT TO THE CRIMINAL JUSTICE ASSESSMENT COMMISSION 32 (1999).

## Summary of Predisposition Incarceration Regression Analyses

### How to Use Table 35

The following table shows the results of the multiple regression analyses for selected variables in the Predisposition Incarceration equations. Please also see the discussion at pages 44-45 of the differences between multiple regression analyses and other ways of describing the data in this report.

- Each column shows the location that was analyzed: all defendants together statewide; all defendants in Anchorage; and all defendants outside Anchorage.
- Five variables are shown on the table: defendant's ethnicity, private/public attorney (presence of), defendant's gender, whether the defendant was charged in a rural court, and whether the defendant had alcohol, drug or mental health problems.
- Each variable is analyzed first by equations for All Offenses Combined in one of the three locations, and then by types of offenses within each location: Violent, Property, Sexual, Drug, and Driving ("Other" offenses were too diverse to include the multivariate analyses).

The analyses are summarized on Table 35 in narrative form for the five variables described above. Tables 35a, 35b, and 35c provide quantified estimates of the changes in days of predisposition incarceration associated with different variables.

"N/A" on this table means that the data were not available to analyze because the number of defendants or the numbers in the comparison groups were too small. "NS" on this table means that the variable was not statistically significant in this particular analysis.

### Footnotes for Table 35

<sup>a</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggested that further review of larger groups of these defendants was warranted to show whether disparities persist in bigger data sets.

<sup>b</sup> For predisposition incarceration and total time, these analyses included Murder and Kidnap cases.

Table 35 Summary of Predisposition Incarceration Regression Analyses			
	Statewide	Inside Anchorage	Outside Anchorage
<b>Association with Ethnicity<sup>a</sup></b>			
<b>All Offenses Combined</b>	Native, Black/longer	NS	Native/longer
<b>Violent<sup>b</sup></b>	Native/longer	NS	NS
<b>Property</b>	Native/longer	NS	Native/longer
<b>Sexual</b>	NS	NS	NS
<b>Drug</b>	Black/longer	NS	NS
<b>Driving</b>	Native, Black/longer	NS	NS
<b>Association with Private/Public Attorney</b>			
<b>All Offenses Combined</b>	Private Attorney/shorter	Private Attorney/shorter	Private Attorney/shorter
<b>Violent<sup>b</sup></b>	Private Attorney/shorter	Private Attorney/shorter	Private Attorney/shorter
<b>Property</b>	Private Attorney/shorter	Private Attorney/shorter	Private Attorney/shorter
<b>Sexual</b>	NS	NS	NS
<b>Drug</b>	Private Attorney/shorter	Private Attorney/shorter	Private Attorney/shorter
<b>Driving</b>	Private Attorney/shorter	Private Attorney/shorter	Private Attorney/shorter
<b>Association with Gender</b>			
<b>All Offenses Combined</b>	Male/longer	Male/longer	Male/longer
<b>Violent<sup>b</sup></b>	Male/longer	Male/longer	Male/longer
<b>Property</b>	Male/longer	NS	Male/longer
<b>Sexual</b>	N/A	N/A	N/A
<b>Drug</b>	NS	NS	NS
<b>Driving</b>	NS	NS	NS
<b>Association with Rural</b>			
<b>All Offenses Combined</b>	Rural/shorter	N/A	Rural/shorter
<b>Violent<sup>b</sup></b>	Rural/shorter	N/A	NS
<b>Property</b>	Rural/shorter	N/A	NS
<b>Sexual</b>	NS	N/A	NS
<b>Drug</b>	NS	N/A	NS
<b>Driving</b>	Rural/shorter	N/A	NS
<b>Association with Alcohol/Mental/Drug</b>			
<b>All Offenses Combined</b>	Alch, Mental, Drug/longer	Alch, Drug, Mental/longer	Alch, Mental/longer Drug/NS
<b>Violent<sup>b</sup></b>	Alch, Mental/longer Drug/NS	Alch, Drug, Mental/longer	Mental/longer Alch, Drug/NS
<b>Property</b>	Alch, Mental/longer Drug/NS	All/NS	Mental/longer Drug, Alch/NS
<b>Sexual</b>	Drug/longer Alch, Mental/NS	All/NS	All/NS
<b>Drug</b>	All/NS	All/NS	All/NS
<b>Driving</b>	Drug/longer Alch, Mental/NS	All/NS	Drug/longer Alch, Mental/NS

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**Table 35a<sup>a</sup>**  
**Association with Predisposition Incarceration Days<sup>b</sup> - All Defendants Statewide**

Variable and Comparison Group <sup>c</sup>	All Offenses Combined <sup>d</sup>		Violent		Property		Sexual		Drug		Driving	
	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect
Black vs. Caucasian <sup>e</sup>	58/51	+7 Days	NS		NS		NS		43/31	+12 Days	N/A	
Native vs. Caucasian <sup>e</sup>	58/51	+7 Days	70/61	+9 Days	52/42	+10 Days	NS		NS		73/59	+14 Days
Male vs. female	57/46	+11 Days	68/54	+14 Days	49/31	+18 Days	N/A		NS		NS	
Private attorney vs. public attorney	38/59	-21 Days <sup>f</sup>	47/70	-23 Days <sup>f</sup>	24/49	-25 Days <sup>f</sup>	NS		22/42	-20 Days <sup>f</sup>	44/71	-27 Days <sup>f</sup>
Rural vs. non-rural <sup>g</sup>	45/57	-12 Days <sup>f</sup>	57/69	-12 Days <sup>f</sup>	35/48	-13 Days <sup>f</sup>	NS		NS		43/69	-26 Days <sup>f</sup>
3 <sup>rd</sup> party custodian vs. no 3 <sup>rd</sup> party custodian <sup>h</sup>	63/45	+18 Days	68/62	+6 Days	58/36	+22 Days	75/60	+15 Days	50/25	+25 Days	69/53	+16 Days
Prior felony record vs. no prior felony record <sup>i</sup>	60/56	+4 Days	NS		54/48	+6 Days	NS		48/38	+10 Days	NS	
Alcohol problem vs. no alcohol problem	57/51	+6 Days	69/60	+9 Days	49/42	+7 Days	NS		NS		NS	
Drug problem vs. no drug problem	58/52	+6 Days	NS		NS		78/64	+14 Days	NS		70/57	+13 Days
Mental health problem vs. no mental health problem	63/52	+11 Days	78/59	+19 Days	50/43	+7 Days	NS		NS		NS	
Presumptive charge vs. Non-presumptive charge	65/51	+14 Days	79/62	+17 Days	NS		83/65	+18 Days	NS		86/55	+31 Days
Contemporaneous cases vs. single case	63/53	+10 Days	NS		57/43	+14 Days	NS		NS		82/62	+20 Days
Two charges filed vs. one charge filed	54/53	+1 Days	63/60	+3 Days	NS		68/65	+3 Days	NS		61/57	+4 Days
Class B vs. Class C	55/48	+7 Days										
Class A vs. Class C	70/48	+22 Days										
Unclassified vs. Class C	100/48	+52 Days										



Table 35a (continued)  
Association with Predisposition Incarceration Days - All Defendants Statewide

<sup>a</sup> This table (Table 35a) shows the results of the statewide multiple regression analysis for predisposition incarceration days. Table 35b shows the regression results for Anchorage, and Table 35c shows the results for outside Anchorage. The tables show the results by types of offenses, starting with all offenses in the area covered by the table (e.g., statewide, Anchorage, outside Anchorage), and then showing results for types of cases including Violent, Property, Sexual, Drug and Driving (“Other” offenses were not included in the multivariate regressions because they were too diverse in nature).

The 2,171 defendants included in these equations were all defendants in the database with sufficient information to perform the analysis. All defendants were characterized by the single most serious charge filed against them. All single most serious charges were felonies at the time of filing. Because the predisposition incarceration tables included a different set of defendants than did the other equations, no information from these tables can be directly compared to information from any other set of equations.

The variables included on the table are described with their comparison groups (e.g., Black compared to Caucasian). Some variables used in the Tobit equations were not included in these tables. Specifically, variables of age at time of offense and “Other Ethnicity” (too few cases) were not included. On the statewide table, type of offense as a variable was not included because the results for each offense group were reported.

<sup>b</sup> Estimated predisposition days = (probmin\*0)+(probmax\*100)+(probmid\*xβ)+ diff.

Where, probmin =  $\text{cdf}(\text{Normal}, (0-x\beta)/\sigma)$ ;

probmax =  $1 - \text{cdf}(\text{Normal}, (100-x\beta)/\sigma)$ ;

probmid =  $\text{cdf}(\text{Normal}, (100-x\beta)/\sigma) - \text{probmin}$ ;

diff =  $\sigma * ((\text{pdf}(\text{Normal}, (0-x\beta)/\sigma)) - (\text{pdf}(\text{normal}, (100-x\beta)/\sigma)))$ ;

The estimates hold days from filing to disposition constant at 100 days, and everything else constant at the mean values.

<sup>c</sup> These tables show the statistically expected estimated change in days (increase or decrease) in the defendant’s predisposition incarceration based on the association with a particular characteristic of the defendant or case. For example, if the hypothetical defendant was male, the predisposition incarceration on a Violent offense was expected to be 68 days of incarceration, compared to 54 days for a comparable female defendant. If the male’s predisposition incarceration did not differ significantly from the female’s it was shown as “NS.” “N/A” on this table means that data were not available to analyze.

All other things being equal, the equations show that a defendant with several of the characteristics present would be likely to spend substantially more time incarcerated than a defendant without those characteristics. They also show that variables had relatively greater or lesser effects (e.g., the effect of having a third party custodian in All Offenses Combined (+18 days) was relatively greater than the effect of being male (+11 days, All Offenses Combined)).

<sup>d</sup> For each category of All Offenses Combined, and specific offense groups, an E number was calculated. See text, *supra*, for further discussion. E=the estimated days of predisposition incarceration that the hypothetical defendant, average in all characteristics, could expect. The estimated days of predisposition incarceration were based on all defendants, grouped by most serious offense at time of filing, with all characteristics. The purpose of showing the estimated days of predisposition incarceration for the hypothetical defendant was to provide context for the individual disparity findings. The numbers can only be used relative to each other, to give an approximate estimate of the relative size of the contribution that having a specific characteristic (e.g., being male) made to the amount of time that a defendant with that characteristic might have spent in predisposition incarceration. The Es on this table were: Statewide, All Offenses Combined E=55 days; Violent E=66 days; Property E=45 days; Sexual E=70 days; Drug E=35 days; Driving E=66 days.

Table 35a (continued)  
Association with Predisposition Incarceration Days - All Defendants Statewide

The estimated days were a statistical construct, useful only for looking at the effects of variables relative to each other. Because predisposition incarceration estimated days were not the same as the actual mean days of predisposition incarceration, the means for actual predisposition incarceration statewide are provided for comparison: Statewide, All Offenses Combined, Mean=62 Days; Violent, Mean=81 days; Property, Mean=44 days; Sexual, Mean=109 days; Drug, Mean=35 days; Driving, Mean=71 days.

For predisposition incarceration and total time, these analyses included Murder and Kidnap cases.

<sup>e</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggests that further review of larger groups of these defendants is warranted to show whether disparities persist in bigger data sets.

<sup>f</sup> A minus sign on the table meant that the defendant spent significantly less time incarcerated prior to disposition.

<sup>g</sup> Rural refers to court location. Kodiak, Barrow, Kotzebue, Nome, Dillingham, and Bethel were rural. Anchorage, Fairbanks, Juneau, Southeast and Southcentral were non-rural.

<sup>h</sup> The first group of variables listed (ethnicity, gender, etc.) shows the change in expected days for the variables of greatest interest in this report. The second group (presumptive charge, prior felony record, etc.) shows variables that also were significant in the multivariate equations. These were useful for comparison of their effects to the effects of the first group.

<sup>i</sup> This factor is shown as prior felony record (defined as defendants with one prior felony conviction) vs. no prior felony record (defined as defendants with four or more prior misdemeanor convictions but no prior felony convictions). The variable had six values, ranging from no prior convictions to three or more prior felony convictions. There would be larger or smaller effects than the +4 days shown on the table for All Offenses Combined for prior conviction histories that were more or less serious than the values reported on the tables.

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**Table 35b<sup>a</sup>**  
**Association with Predisposition Incarceration - Anchorage Defendants Only**

Variable and Comparison Group <sup>b</sup>	All Offenses Combined <sup>c</sup>		Violent <sup>d</sup>		Property		Sexual		Drug		Driving	
	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect
Black vs. Caucasian <sup>e</sup>	NS		NS		NS		NS		NS		N/A	
Native vs. Caucasian <sup>e</sup>	NS		NS		NS		NS		NS		NS	
Male vs. female	63/55	+8 Days	78/62	+16 Days	NS		N/A		NS		NS	
Private attorney vs. public attorney	40/66	-26 Days	50/79	-29 Days	20/53	-33 Days	NS		23/61	-38 Days	45/80	-35 Days
3 <sup>rd</sup> party custodian vs. no 3 <sup>rd</sup> party custodian	70/48	+22 Days	79/64	+15 Days	61/39	+22 Days	91/36	+55 Days	NS		NS	
Prior felony record vs. no prior felony record <sup>f</sup>	68/63	+5 Days	NS		58/50	+8 Days	NS		NS		89/70	+19 Days
Alcohol problem vs. no alcohol problem	65/57	+8 Days	81/63	+18 Days	NS		NS		NS		NS	
Drug problem vs. no drug problem	66/58	+8 Days	81/70	+11 Days	NS		NS		NS		NS	
Mental health problem vs. no mental health problem	66/60	+6 Days	82/70	+12 Days	NS		NS		NS		NS	
Presumptive charge vs. Non-presumptive charge	NS		NS		NS		NS		NS		NS	
Contemporaneous cases vs. single case	80/61	+19 Days	91/74	+17 Days	71/47	+24 Days	NS		NS		NS	
Two charges filed vs. one charge filed	NS		NS		NS		NS		NS		NS	

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<sup>a</sup> This table (Table 35b) shows the results of the multiple regression analysis for predisposition incarceration days for Anchorage defendants only. Table 35a shows the statewide regression results, and Table 35c shows the results for outside Anchorage. The tables show the results by types of offenses, starting with all offenses in the area covered by the table (e.g., Statewide, Anchorage, outside Anchorage), and then showing results for types of cases including Violent, Property, Sexual, Drug and Driving ("Other" offenses were not included in the multivariate regressions because they were too diverse in nature).

The 875 defendants included in this table were all defendants in the database with sufficient information to perform the analysis. All defendants were characterized by the single most serious charge filed against them. All single most serious charges were felonies at the time of filing. Because the predisposition incarceration tables included a different set of defendants than did the other equations, no information from these tables can be directly compared to information from any other set of equations.

Table 35b (continued)  
Association with Predisposition Incarceration - Anchorage Defendants Only

The variables included on the table are described with their comparison groups (e.g., Black compared to Caucasian). Some variables used in the Tobit equations were not included in these tables. Specifically, variables of age at time of offense and "Other Ethnicity" (too few cases) were not included.

<sup>b</sup> Estimated predisposition days = (probmin\*0)+(probmax\*100)+(probmid\*xβ)+ diff.

Where, probmin =  $\text{cdf}(\text{'Normal'}, (0-x\beta)/\sigma)$ ;

probmax =  $1 - \text{cdf}(\text{'Normal'}, (100-x\beta)/\sigma)$ ;

probmid =  $\text{cdf}(\text{'Normal'}, (100-x\beta)/\sigma) - \text{probmin}$ ;

diff =  $\sigma * ((\text{pdf}(\text{'Normal'}, (0-x\beta)/\sigma)) - (\text{pdf}(\text{'normal'}, (100-x\beta)/\sigma)))$ ;

The estimates hold days from filing to disposition constant at 100 days, and everything else constant at the mean values.

<sup>c</sup> These tables show the statistically expected estimated change in days (increase or decrease) in the defendant's predisposition incarceration based on the association with a particular characteristic of the defendant or case. For example, if the hypothetical defendant was male, the predisposition incarceration on a Violent offense was expected to be 78 days of incarceration, compared to 62 days for a comparable female defendant. If the male's predisposition incarceration did not differ significantly from the female's it was shown as "NS." "N/A" on this table means that data were not available to analyze.

All other things being equal, the equations show that a defendant with several of the characteristics present would be likely to spend substantially more time incarcerated than a defendant without those characteristics. They also show that variables have relatively greater or lesser effects (e.g., the effect of having a third party custodian for All Offenses Combined, in Anchorage, (+22 days) is relatively greater than the effect of being male (+8 days, All Offenses Combined)).

<sup>d</sup> For each category of all offenses combined, and specific offense groups, an E number was calculated. See text, *supra*, for further discussion. E=the estimated days of predisposition incarceration that the hypothetical defendant, average in all characteristics, could expect. The estimated days of predisposition incarceration were based on all defendants, grouped by most serious offense at time of filing, with all characteristics. The purpose of showing the estimated days of predisposition incarceration was to provide context for the individual disparity findings. The numbers can only be used relative to each other, to give an approximate estimate of the relative size of the contribution that having a specific characteristic (e.g., being male) made to the amount of time that a defendant with that characteristic might have spent in predisposition incarceration. The Es on this table were: Anchorage defendants only, All Offenses Combined E=62 days; Violent E=75 days; Property E=48 days; Sexual E=87 days; Drug E=51 days; Driving E=74 days.

The estimated days were a statistical construct, useful only for looking at the effects of variables relative to each other. Because predisposition incarceration estimated days were not the same as the actual mean days of predisposition incarceration, the means for actual predisposition incarceration for Anchorage are provided for comparison: Anchorage, All Offenses Combined, Mean=64 Days; Violent, Mean=92 days; Property, Mean=40 days; Sexual, Mean=149 days; Drug, Mean=41 days; Driving, Mean=69 days.

For predisposition incarceration and total time, these analyses included Murder and Kidnap cases.

Table 35b (continued)  
Association with Predisposition Incarceration - Anchorage Defendants Only

<sup>e</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggests that further review of larger groups of these defendants is warranted to show whether disparities persist in bigger data sets.

<sup>f</sup> A minus sign on the table meant that the defendant spent significantly less time incarcerated prior to disposition.

<sup>h</sup> The first group of variables listed (ethnicity, gender, etc.) shows the change in expected days for the variables of greatest interest in this report. The second group (presumptive charge, prior felony record, etc.) shows variables that also were significant in the multivariate equations. These were useful for comparison of their effects to the effects of the first group.

<sup>i</sup> This factor is shown as prior felony record (defined as defendants with one prior felony conviction) vs. no prior felony record (defined as defendants with four or more prior misdemeanor convictions but no prior felony convictions). The variable had six values, ranging from no prior convictions to three or more prior felony convictions. There would be larger or smaller effects than the +5 days shown on the table for All Offenses Combined for prior conviction histories that were more or less serious than the values reported on the tables.

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**Table 35c<sup>a</sup>**  
**Association with Predisposition Incarceration Days<sup>b</sup> - Defendants Outside Anchorage**

Variable and Comparison Group <sup>c</sup>	All Offenses Combined <sup>d</sup>		Violent		Property		Sexual		Drug		Driving	
	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect
Black vs. Caucasian <sup>e</sup>	NS		NS		NS		NS		NS		N/A	
Native vs. Caucasian <sup>e</sup>	55/46	+9 Days	NS		53/35	+18 Days	NS		NS		NS	
Male vs. female	53/39	+14 Days	64/49	+15 Days	46/22	+24 Days	N/A		NS		NS	
Private attorney vs. public attorney	38/54	-16' Days	48/65	-17 Days	26/45	-19' Days	NS		17/28	-11' Days	44/68	-24' Days
Rural vs. non-rural <sup>f</sup>	46/53	-7 Days	NS		NS		NS		NS		NS	
3 <sup>rd</sup> party custodian vs. no 3 <sup>rd</sup> party custodian <sup>h</sup>	58/43	+15 Days	NS		54/34	+20 Days	71/58	+13 Days	43/15	+28 Days	NS	
Prior felony record vs. no prior felony record <sup>i</sup>	NS		NS		NS		NS		43/31	+12 Days	NS	
Alcohol problem vs. no alcohol problem	53/47	+6 Days	NS		NS		NS		NS		NS	
Drug problem vs. no drug problem	NS		NS		NS		NS		NS		69/49	+20 Days
Mental health problem vs. no mental health problem	61/47	+14 Days	77/54	+23 Days	50/39	+11 Days	NS		NS		NS	
Presumptive charge vs. Non-presumptive charge	64/47	+17 Days	77/57	+20 Days	NS		NS		NS		83/51	+32 Days
Contemporaneous cases vs. single case	58/49	+9 Days	NS		53/38	+15 Days	NS		37/21	+16 Days	NS	
Two charges filed vs. one charge filed	48/46	+2 Days	58/53	+5 Days	NS		63/60	+3 Days	NS		53/46	+7 Days

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<sup>a</sup> This table (Table 35c) shows the results of the multiple regression analysis for predisposition incarceration days for defendants outside Anchorage. Table 35a shows the statewide regression results, and Table 35b shows the results for Anchorage. The tables show the results by types of offenses, starting with all offenses in the area covered by the table (e.g., Statewide, Anchorage, outside Anchorage), and then showing results for types of cases including Violent, Property, Sexual, Drug and Driving ("Other" offenses were not included in the multivariate regressions because they were too diverse in nature).



Table 35c (continued)  
Association with Predisposition Incarceration Days - Defendants Outside Anchorage

The 1,348 defendants included in this table were all defendants in the database with sufficient information to perform the analysis. All defendants were characterized by the single most serious charge filed against them. All single most serious charges were felonies at the time of filing. Because the predisposition incarceration tables included a different set of defendants than did the other equations, no information from these tables can be directly compared to information from any other set of equations.

The variables included on the table are described with their comparison groups (e.g., Black compared to Caucasian). Some variables used in the Tobit equations were not included in these tables. Specifically, variables of age at time of offense and "Other Ethnicity" (too few cases) were not used. On the statewide table, type of offense as a variable was not included because the results for each offense group were reported.

<sup>b</sup> Estimated predisposition days = (probmin\*0)+(probmax\*100)+(probmid\*xβ)+ diff.

Where, probmin =  $\text{cdf}(\text{'Normal'}, (0-x\beta)/\sigma)$ ;

probmax =  $1 - \text{cdf}(\text{'Normal'}, (100-x\beta)/\sigma)$ ;

probmids =  $\text{cdf}(\text{'Normal'}, (100-x\beta)/\sigma) - \text{probmin}$ ;

diff =  $\sigma * ((\text{pdf}(\text{'Normal'}, (0-x\beta)/\sigma)) - (\text{pdf}(\text{'normal'}, (100-x\beta)/\sigma)))$ ;

The estimates hold days from filing to disposition constant at 100 days, and everything else constant at the mean values.

<sup>c</sup> These tables show the statistically expected estimated change in days (increase or decrease) in the defendant's predisposition incarceration based on the association with a particular characteristic of the defendant or case. For example, if the hypothetical defendant was male, the predisposition incarceration on a Violent offense was expected to be 64 days of incarceration, compared to 49 days for a comparable female defendant. If the male's predisposition incarceration did not differ significantly from the female's it was shown as "NS." "N/A" on this table means that data were not available to analyze.

All other things being equal, the equations show that a defendant with several of the characteristics present would be likely to spend substantially more time incarcerated than a defendant without those characteristics. They also show that variables had relatively greater or lesser effects (e.g., the effect of having a third party custodian (+15 days, for All Offenses Combined) was relatively greater than the effect of having an alcohol problem (+6 days, All Offenses Combined)).

<sup>d</sup> For each category of All Offenses Combined, and specific offense groups, an E number was calculated. See text, *supra*, for further discussion. E=the estimated days of predisposition incarceration that the hypothetical defendant, average in all characteristics, could expect. The estimated days of predisposition incarceration was based on all defendants, grouped by most serious offense at time of filing, with all characteristics. The purpose of showing the estimated days of predisposition incarceration was to provide context for the individual disparity findings. The numbers can only be used relative to each other, to give an approximate estimate of the relative size of the contribution that having a specific characteristic (e.g., being male) made to the amount of time that a defendant with that characteristic might have spent in predisposition incarceration. The Es on this table were: All Offenses Outside Anchorage Combined E=51 days; Violent E=62 days; Property E=42 days; Sexual E=70 days; Drug E=23 days; Driving E=63 days.

The estimated days were a statistical construct, useful only for looking at the effects of variables relative to each other. Because predisposition incarceration estimated days were not the same as the actual mean days of predisposition incarceration, the means for actual predisposition incarceration statewide are provided for comparison: All Offenses Outside Anchorage Combined, Mean=64 Days; Violent, Mean=73 days; Property, Mean=47 days; Sexual, Mean=98 days; Drug, Mean=29 days; Driving, Mean=71 days.

For predisposition incarceration and total time, these analyses included Murder and Kidnap cases.

Table 35c (continued)  
Association with Predisposition Incarceration Days - Defendants Outside Anchorage

<sup>e</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggests that further review of larger groups of these defendants is warranted to show whether disparities persist in bigger data sets.

<sup>f</sup> A minus sign on the table meant that the defendant spent significantly less time incarcerated prior to disposition.

<sup>g</sup> Rural refers to court location. Kodiak, Barrow, Kotzebue, Nome, Dillingham, and Bethel were rural. Anchorage, Fairbanks, Juneau, Southeast and Southcentral were non-rural.

<sup>h</sup> The first group of variables listed (ethnicity, gender, etc.) shows the change in expected days for the variables of greatest interest in this report. The second group (presumptive charge, prior felony record, etc.) shows variables that also were significant in the multivariate equations. These were useful for comparison of their effects to the effects of the first group.

<sup>i</sup> This factor is shown as prior felony record (defined as defendants with one prior felony conviction) vs. no prior felony record (defined as defendants with four or more prior misdemeanor convictions but no prior felony convictions). The variable had six values, ranging from no prior convictions to three or more prior felony convictions. There would be larger or smaller effects than the +12 days shown on the table for Drug Offenses for prior conviction histories that were more or less serious than the values reported on the tables.

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## B. Charge Reductions

The Council reviewed the process of charge reductions for possible disparities.<sup>353</sup> It found that disparities were most pervasive for the hypothetical rural defendant who generally received more benefit from charge reductions, and for the hypothetical defendant with alcohol or drug problems who generally received less benefit from charge reductions. Type of attorney played a role in charge reductions, as did mental health problems, gender and ethnicity to lesser degrees. For these analyses, the comparison groups were defined similarly to those in the other types of multivariate regressions.

### 1. Process of Analysis

The method used to analyze the charge reduction data was somewhat different from that used to look at associations of the three other dependent variables (predisposition incarceration, non-presumptive post-disposition incarceration and total time incarcerated) because the variables were different in nature. Charge reductions were incremental, that is, they occurred in discrete steps rather than as a continuous variable.

The first equation, likelihood of a reduction of up to two levels, looked at the size of the difference between the original charge and the final charge.<sup>354</sup> If the charge did not change at all, or only changed by one level (for example, from a B felony to a C felony) the equation considered it to be a lesser reduction. If the charge changed by two or more levels (e.g., from a Class A to a Class C, or from a Class C to a dismissal or acquittal), the equation considered it to be a larger reduction.

A second equation, likelihood of reduction to a non-felony charge,<sup>355</sup> took into account the different independent factors to see whether they were associated with a reduction from a felony charge to a misdemeanor charge or to a dismissal or acquittal.<sup>356</sup> These first two analyses worked better for assessing incremental charge reductions. Because all defendants charged with a felony, regardless of the severity of the felony, could have their charges reduced by up to two levels, or could have their charges reduced to a non-felony level (including dismissal or acquittal), these analyses could be applied uniformly to all defendants and all types of offenses.

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<sup>353</sup> See *infra* Table 36. See also other discussions of charge reductions, *supra* pp. 88-95 and pp. 117-121.

<sup>354</sup> Table 36, first column.

<sup>355</sup> Table 36, middle column.

<sup>356</sup> Table 36, middle column.

The limitation of the first two equations was that they lacked the flexibility to distinguish between cases with relatively minor initial charges (Class C felonies, for example) and those with more serious initial charges (Class A and Unclassified felonies), where much greater charge reductions were possible. The third equation (Likelihood of Severity of Final Charge) considered the full range of possible charge changes by assigning values one through six to different possibilities.<sup>357</sup> A level six (dismissal or acquittal, from an original charge of an Unclassified felony) would be the maximum reduction because the defendant would have started with the most serious possible offense and received no penalty. Reduction from an Unclassified felony to a misdemeanor would be the next best outcome, and so forth.

## **2. Differences Associated with Ethnicity**

The analysis found relationships between the ethnicity of the defendant and the charge reductions only for defendants of Other ethnicity (Asian/Pacific Islander and Hispanic). There were too few of these defendants for these findings to be meaningful other than to suggest a need for analysis of larger groups of defendants to see whether the disparities persisted.

A hypothetical Other ethnicity defendant, compared to a hypothetical Caucasian defendant with comparable characteristics, was less likely to be associated with a charge reduction of up to two levels (first equation on Table 36) in Violent offenses. The analysis for the second equation showed that a hypothetical Other ethnicity defendant charged with a Property offense was more likely to be associated with a reduction to a non-felony charge (including dismissal/acquittal) than a hypothetical Caucasian defendant.

In the third equation, a hypothetical Other ethnicity defendant, overall and specifically if the defendant was charged with a Violent offense, received a more severe outcome when viewing the full range of possible charge reductions. No associations between charge reductions and ethnicity occurred in this set of equations for any other ethnic groups when compared to Caucasian defendants.

## **3. Differences Associated with Type of Attorney**

The presence of a private attorney in the case was associated with more favorable charge reductions for defendants under some analyses and for some types of offenses. When disparities were identified and the analyses had sufficient data to distinguish among public defenders, OPA staff, and OPA

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<sup>357</sup> Table 36. The levels were: Unclassified Charge, Classes A, B, and C felonies, misdemeanor and dismissal/acquittal of all charges.

contractors,<sup>358</sup> the OPA staff and contractors were more likely to be the attorneys whose clients were associated with less favorable charge reductions. In the overall analysis (All Offenses Combined), a defendant with either an OPA contract attorney or an OPA staff attorney was associated with less benefit from charge reductions for all three equations, when compared to a defendant with a private attorney. A defendant with a public defender was not associated with any significant differences from the private attorney client in these overall analyses.

In Violent offenses, a defendant with an OPA contract attorney was less likely than a defendant with a private attorney to be associated with a charge reduction of up to two levels, and was less likely to be associated with a non-felony charge reduction. There were no significant differences for a defendant with an OPA staff attorney or a defendant with a public defender. In the third analysis for Violent offenses, the overall likelihood of a less serious charge, a public attorney client fared no differently than a private attorney client.

For Property offenses, each of the public attorney clients was associated with fewer benefits in the first and third equations. In the analysis of likelihood of reduction to a non-felony charge, only the defendant with an OPA attorney (either staff or contract) was less likely to be associated with a non-felony reduction. Type of attorney also had an association with Sexual offenses. The defendant with any public attorney was less likely to be associated with a reduction to a non-felony charge,<sup>359</sup> but did not differ from a defendant with a private attorney in the other two ways of analyzing charge reductions. The type of attorney had no association with charge reductions in Drug offenses, for any of the three equations. For Driving offenses, a public attorney client tended to fare worse than a defendant represented by a private attorney.

OPA contractors often had a combination of private clients and clients referred by and paid for by OPA. This suggests that the disparity findings for OPA contractors may be related to characteristics of their public clients in ways for which no data were available.<sup>360</sup> The findings may also be related to possible differences in resources available to attorneys when they represented public versus private clients.<sup>361</sup>

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<sup>358</sup> In the offense types with larger numbers of offenders (Violent, Property and Drug), the analysis included the detailed information about whether the public attorney was a public defender, an OPA staff attorney, or an OPA contract attorney. The analysis for Sexual and Driving offenses looked at all three types of public attorneys as one group, titled “public attorney.”

<sup>359</sup> Table 36, middle column.

<sup>360</sup> See discussion regarding socioeconomic factors, *supra* pp. 47-52.

<sup>361</sup> See discussion *supra* pp. 98-99.

#### 4. Differences Associated with Gender

The defendant's gender was significantly associated with very few decisions about charge reductions. As noted above, in the description of the analysis, a male defendant was associated with a greater likelihood of a more severe final charge for All Offenses Combined, when compared with a female defendant. A male defendant with a Drug offense charged was less likely to be associated with a charge reduction of up to two levels and likely to be associated with a more severe final charge than a comparable female defendant. A male defendant was just as likely as a comparable female defendant in Drug offenses to be associated with a charge that was reduced to a non-felony charge.

#### 5. Differences Associated with Defendants in Rural Areas

Most of the analyses of charge reductions showed that a defendant in a rural area was associated with substantial benefits from being in a small court.<sup>362</sup> The only points at which being a Rural defendant apparently played no role were in the likelihood of reduction to a non-felony charge in Violent offenses,<sup>363</sup> and in the charge reductions for Drug or Driving offenses, across the board. This was consistent with other data (e.g., see charge change tables, Appendix B) that showed that felony Driving offenses were reduced much less frequently than any other type of offense, and that Drug offenses were reduced somewhat less frequently than others.

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<sup>362</sup> The courts included as rural were Barrow, Bethel, Dillingham, Kodiak, Kotzebue and Nome. All were single-judge superior court locations in western and northern Alaska in 1999. In several of the courts, 33% or more of the defendants came from villages to the superior court in the hub community (Barrow: 33% of defendants from outside Barrow; Bethel: 72% of defendants from outside Bethel; Kotzebue: 54% of defendants from outside Kotzebue; and Nome: 67% of defendants from outside Nome).

<sup>363</sup> Table 36, middle column.

## **6. Differences Associated with Alcohol, Drug and Mental Problems**

Alcohol and drug problems were associated with more widespread effects in the charge reduction analyses than type of attorney, ethnicity, gender, and rural location. All of the analyses for charge reductions showed that defendants with alcohol or drug problems were associated with fewer of beneficial charge reductions in most types of offenses, and for all three equations. Defendants with drug problems were associated with fewer and less beneficial charge reductions in each of the analyses, for all types of offenses. Defendants with alcohol problems also were associated with fewer beneficial charge reductions in most analyses. Alcohol problems did not appear to be associated with charge reductions for Sexual or Driving offenses.

More serious outcomes associated with mental health problems occurred primarily in the overall analyses, and for Violent offenses, in each of the three equations. Property crimes were associated with a lower likelihood of reduction up to two levels if the defendant had mental health problems but Sexual, Drug and Driving offenses did not show any relationships between charge reductions and mental health problems.



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## Charge Reduction Regression Analyses

### How to Use Table 36

The following table shows the results of the multiple regression analyses for charge reductions. Please see also the discussion at pages 44-45 of the differences between multiple regression analyses and other ways of describing the data in this report.

Each column shows the results of one of the three charge reduction analyses:

- Likelihood of a charge reduction of up to two levels (in other words, did the charge stay the same or get reduced by only one level of charge, or was it reduced by two or more levels);
- Likelihood of reduction to a non-felony charge (all charges in this sample started as a felony - was it more or less likely that the charge was reduced to a misdemeanor, or dismissed or acquitted); and
- Likelihood of severity of final charge (overall likelihood that a defendant with a given original charge would end the case with one of up to six charge levels ranging from dismissal/acquittal to an Unclassified felony).

For each of these regression equations, and for each important variable (e.g., ethnicity, type of attorney, gender), the findings are reported overall (for all defendants and types of offenses) and by type of offense. For example, to find the associations between gender and charge reductions, look at the category gender. The first row across shows that gender was not significantly associated with the likelihood of charge reduction of up to two levels, and had no effect on the likelihood of a reduction to a non-felony charge. However, overall, being male was associated with increased severity of the final charge in the case. The analyses also show, for Drug offenses, that males were less likely to be associated with a charge reduction of up to two levels, and that overall, males were more likely to be associated with a more serious charge at the end of the case.

### Footnotes for Table 36

<sup>a</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggests that further review of larger groups of these defendants is warranted to show whether disparities persist in bigger data sets.

<sup>b</sup> For predisposition incarceration, charge reductions, and total time, these analyses included Murder and Kidnap cases.

<sup>c</sup> There were three different types of public attorneys: public defenders, OPA staff, and OPA contractors. In this table, "All" refers to all three types of public attorneys; "OPA Both" refers both to OPA staff and contractors; "OPA Cntrct" refers only to OPA contractors.

<sup>d</sup> All felony Driving offenses in this report started as Class C felonies. Although they could in theory be reduced by two levels, to either a misdemeanor or to a dismissal or acquittal, in fact only one defendant had a charge reduced to a dismissal. Thus, this equation could not be used.

Table 36 Charge Reduction Regression Analyses			
	Likelihood of Charge Reduction of up to Two Levels	Likelihood of Reduction to a Non-Felony Charge	Likelihood of Severity of Final Charge
<b>Association with Ethnicity<sup>a</sup></b>			
<b>All Offenses Combined</b>	No effect	No effect	<b>Other Ethnic/more serious<sup>a</sup></b>
<b>Violent<sup>b</sup></b>	<b>Other Ethnic/less reduction<sup>b</sup></b>	No effect	<b>Other Ethnic/more serious<sup>a</sup></b>
<b>Property</b>	No effect	<b>Other Ethnic/felony less likely<sup>a</sup></b>	No effect
<b>Sexual</b>	No effect	No effect	No effect
<b>Drug</b>	No effect	No effect	No effect
<b>Driving</b>	N/A <sup>d</sup>	No effect	No effect
<b>Association with Private/Public Attorney<sup>c</sup></b>			
<b>All Offenses Combined</b>	<b>OPA Both/less reduction</b>	<b>OPA Both/felony more likely</b>	<b>OPA, Both/more serious</b>
<b>Violent<sup>b</sup></b>	<b>OPA Cntrct/less reduction</b>	<b>OPA Cntrct/felony more likely</b>	No effect
<b>Property</b>	<b>All/less reduction</b>	<b>OPA Both/felony more likely</b>	<b>All/more serious</b>
<b>Sexual</b>	No effect	<b>All/felony more likely</b>	No effect
<b>Drug</b>	No effect	No effect	No effect
<b>Driving</b>	N/A <sup>d</sup>	<b>All/felony more likely</b>	<b>All/More serious</b>
<b>Association with Gender</b>			
<b>All Offenses Combined</b>	No effect	No effect	<b>Male/more serious</b>
<b>Violent<sup>b</sup></b>	No effect	No effect	No effect
<b>Property</b>	No effect	No effect	No effect
<b>Sexual</b>	N/A - No females	N/A	N/A
<b>Drug</b>	<b>Male/Less charge reduction</b>	No effect	<b>Male/More serious</b>
<b>Driving</b>	N/A <sup>d</sup>	No effect	No effect
<b>Association with Rural</b>			
<b>All Offenses Combined</b>	<b>More charge reduction</b>	<b>Felony less likely</b>	<b>Less serious</b>
<b>Violent<sup>b</sup></b>	<b>More charge reduction</b>	No effect	<b>Less serious</b>
<b>Property</b>	<b>More charge reduction</b>	<b>Felony less likely</b>	<b>Less serious</b>
<b>Sexual</b>	<b>More charge reduction</b>	<b>Felony less likely</b>	<b>Less serious</b>
<b>Drug</b>	No effect	No effect	No effect
<b>Driving</b>	N/A <sup>d</sup>	No effect	No effect
<b>Association with Alcohol/Mental/Drug</b>			
<b>All Offenses Combined</b>	<b>All 3/less charge reduction</b>	<b>All 3/felony more likely</b>	<b>All 3/more serious</b>
<b>Violent<sup>b</sup></b>	<b>All 3/less charge reduction</b>	<b>All 3/felony more likely</b>	<b>All 3/more serious</b>
<b>Property</b>	<b>All 3/less charge reduction</b>	<b>Alch, Drug/felony more likely</b>	<b>Alch, Drug/more serious</b>
<b>Sexual</b>	<b>Drug/less charge reduction</b>	<b>Drug/felony more likely</b>	<b>Drug/more serious</b>
<b>Drug</b>	<b>Alch, Drug/less charge reduction</b>	<b>Alch, Drug/felony more likely</b>	<b>Alch, Drug/more serious</b>
<b>Driving</b>	N/A <sup>d</sup>	<b>Drug/felony more likely</b>	<b>Drug/more serious</b>

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## C. Sentences and Post-disposition Incarceration

The Council analyzed length of sentence and the factors related to it in several different ways. Each method of analysis gave different information. Table C-1 (Appendix C), with mean sentences, shows the actual range of sentences imposed, and the mean sentences. Other tables in the report give specific information about presumptive sentences,<sup>364</sup> and compare Alaska sentences to sentences in other states.<sup>365</sup>

The multivariate analyses reported in Part III used statistical equations to estimate the effects of various factors on the sentences imposed. To understand the sentences and post-disposition incarceration that judges imposed in 1999, each of the analyses must be considered. Following the discussion of methods of analyzing sentence lengths, part 2 of Section C repeats parts of the general methodological discussions found elsewhere in the report, to aid understanding for persons primarily interested in the sentencing analyses. The detailed discussion of results starts in part 3 of Section C.

### 1. Methods of Analyzing Sentence Lengths and Post-disposition Incarceration

#### a. Range of actual sentences, and mean sentences for specific offenses

In general, the Council defined sentence length as the amount of unsuspended incarceration imposed at the time of sentencing.<sup>366</sup> First, the Council looked at the actual amount of incarceration imposed, without taking into account any possible credit for time served. This sentence was taken directly from the judgment in the court case file, for each charge sentenced. The data suggested that within the statutory and case law bounds, judges imposed substantial time to serve on serious offenders in

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<sup>364</sup> Tables 7 and 7a, *supra* pp. 80-81.

<sup>365</sup> Tables, 23, 24, and 25, *supra* pp. 131-133.

<sup>366</sup> The Council compiled data on the actual sentence for each charge on which the defendant was convicted, including both felonies and misdemeanors, in the sampled case and all contemporaneous cases. Data included the total length of the sentence for each charge, the amount suspended, the length of probation, the fine, restitution, and any conditions of probation. For most analysis of length of sentence, the Council looked only at the unsuspended time of incarceration for the single most serious charge of conviction. If the entire time was suspended, or if the defendant was placed directly on probation, the sentence was analyzed as a probationary sentence.

Records were not available to the Council to show whether the defendant had actually received credit for any time served before disposition of the case. Defendants could have received credit for time served in a half-way house or jail prior to the disposition of the case, or they could have received *Nygren* credit for time served in a residential treatment program prior to disposition. In the multivariate analysis of post-disposition incarceration, both presumptive and non-presumptive, the equations that were used “censored” (deducted), for each defendant, the amount of time that the defendant spent incarcerated prior to disposition multiplied by 150% (to account for good time credit that would have been earned absent violation of institutional rules). In that manner, an approximation of credit for time served was possible. Because this number of days was not the same as the sentence imposed, the adjusted (censored) amount of unsuspended time is referred to throughout as “post-disposition incarceration.”

Violent cases. Violent offenders convicted of misdemeanor assault received a mean sentence of just over three months to serve. Appendix C contains the information about these sentences, categorized by the mean sentence for each specific offense of conviction. The mean sentences include all defendants, regardless of prior criminal convictions, any other characteristics of the case or defendant, or predisposition incarceration.

For example, page C-1 shows that the mean amount of unsuspended incarceration for Murder 1 convictions (two defendants in the sample were convicted of Murder 1) was 1044 months, or 87 years.<sup>367</sup> The table also shows the distribution of the sentences. Both Murder 1 sentences were at the top end of the scale. The table shows that five defendants had Murder 2 as their single most serious charge of conviction. The mean sentence for these five defendants was 360 months (30 years). All five of these sentences also were at the top end of the scale.

Page C-2 of the table shows that eight defendants were convicted of Assault 1, with a mean sentence of 90 months (7.5 years). Another eight were convicted of Manslaughter, with a mean sentence of 124.5 months (10.4 years). Under Class C violent felonies, the table shows that of the 130 defendants convicted of Assault 3 as their single most serious offense, 12% were not sentenced to any unsuspended period of incarceration, and the mean sentence for the 121 who received some amount of unsuspended time was 14.3 months.

Many defendants originally charged with felonies had a misdemeanor as the single most serious charge of conviction (see Appendix B, Table B-1, for detailed descriptions of the most serious original charges and the charges to which they were reduced). Of the 264 defendants convicted of Assault 4, all of which were charges that started as a felony, 223 (84%) received some unsuspended incarceration time to serve. The mean was 3.1 months, or slightly over 90 days.

These data show that without taking into account any information other than the actual charge of conviction, most defendants convicted of Violent offenses received some unsuspended incarceration at sentencing.<sup>368</sup> The earlier discussion of sentencing focused on the distribution of presumptive sentences. Tables 7 and 7a show that the more serious offenders tended to receive either the presumptive sentence or an aggravated sentence. For Class A offenders who did not use a weapon<sup>369</sup> the presumptive sentence was imposed in 17 of 22 first felony offender cases, and an aggravated sentence was imposed in five of the first felony offender cases. The mean sentence for the five first

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<sup>367</sup> The table includes the standard deviation for each mean sentence shown.

<sup>368</sup> See discussion *supra* p. 131.

<sup>369</sup> As Table 7 notes, manslaughter convictions were included with the Class A felony convictions without a weapon because the presumptive sentence for both was 60 months (five years) of unsuspended incarceration.

felony offenders with aggravated sentences was 114 months (9.5 years). Again, these reported sentences suggested that judges imposed substantial time to serve on most violent offenders, even those convicted of a misdemeanor as their single most serious offense of conviction.

**b. Alaska sentences compared to other states**

Another section of the report compared sentences imposed for convicted felons in Alaska with sentences for convicted felons in other parts of the United States.<sup>370</sup> The Alaska and national data in that section excluded all defendants originally charged with felonies but convicted of misdemeanors, an important difference between the data in Tables 23-25 and many of the tables elsewhere in the report for Alaska data.<sup>371</sup> Table 23 shows that a much higher percentage of Alaskan felons were sentenced to some incarceration for Violent offenses (97%, as compared to 78% of a sample of convicted felons in other state courts). Although mean sentence lengths for Alaskan offenders appeared to be shorter for most types of offenses (Table 24) than for comparable defendants nationally, Alaskan defendants were substantially more likely to go to jail, and were likely to serve more of their sentences than did defendants in other jurisdictions.

**c. Estimates of the effects of various factors on post-disposition incarceration**

The next step in the analysis was to determine, to the extent possible, what factors were associated with the amount of post-disposition incarceration, and the relative importance of each of the factors associated with changes in the days of post-disposition incarceration. The Council and ISER used multivariate analyses that created complex equations to look at the independent effects of numerous independent variables on a single dependent variable. In this case, the dependent variable was the length of the defendant's post-disposition incarceration. In the Council's analyses:

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<sup>370</sup> See *supra* pp. 131-136 for a more detailed description of the national data.

<sup>371</sup> Many of this report's tables did include misdemeanor convictions to more accurately show the overall operation of the criminal justice system, including the role of charge reductions.

- post-disposition incarceration days for defendants with a presumptive sentence<sup>372</sup> were analyzed and found to be associated with only a few expected independent variables such as type of charge and prior convictions. The main factors such as prior convictions, sentenced charge, aggravators and mitigators, and the class of the convicted charge found to influence presumptive post-disposition incarceration accounted for about 80% of the variation among defendants. The analysis did not find any disparities associated with ethnicity, type of attorney, gender, or rural location. As a result of these findings, the Council did not further analyze presumptive post-disposition incarceration.<sup>373</sup>
- The non-presumptive post-disposition incarceration analyzed included defendants convicted of less serious offenses - Class B and C first felony offenders, and defendants who were convicted of a misdemeanor as their single most serious final offense.<sup>374</sup> These defendants made up 82% of convicted defendants in the Council's representative sample of 1999 cases.<sup>375</sup> The multivariate findings about post-disposition incarceration in the report apply only to these groups of less serious offenders.
- To at least partially account for the effects of judges who may have sentenced to time served, the analysts reduced each sentence for each defendant by 150% of the time that the defendant served in predisposition incarceration.<sup>376</sup> The 150% took into account the maximum good time credit that would have been applied to the days of predisposition incarceration. This was done to distinguish additional time imposed at sentencing from time served prior to sentencing, enabling analysts to identify more precisely the points in the process where disparities occurred. For the multivariate analysis, post-disposition incarceration was defined as unsuspended incarceration that the judge required the defendant to serve that exceeded any time served by the defendant prior to sentencing. The actual days of mean sentence for All Offenses Combined and for each type of offense are shown in footnotes on Tables 37a, 37b, and 37c and in Appendix D.

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<sup>372</sup> A few Unclassified offenses had non-presumptive sentences. These included Murder 1, Murder 2, Kidnap, Attempted Murder 1, and Conduct Involving a Controlled Substance 1. All of these offenses had mandatory minimum sentences rather than presumptive sentences. Too few defendants were convicted of these offenses to include them in any of the post-disposition incarceration analyses.

<sup>373</sup> See Table 7 and 7a, and accompanying text, for more information about presumptive sentences.

<sup>374</sup> Those defendants could have had a prior felony conviction, but because their most serious offense was a misdemeanor they did not qualify for a presumptive sentence. The judge could, however, consider their prior felony convictions at the time of sentencing on the misdemeanor.

<sup>375</sup> Chart 2, *supra* p. 78.

<sup>376</sup> See *infra* p. 206.

- To give a relative sense of how much difference it made to a defendant to possess a given quality (ethnicity, gender, substance abuse problem), the analysts created two different sets of numbers: (a) the estimated days served by a hypothetical defendant with the average of all the qualities included in the equation, and (b) the changes in estimated days of non-presumptive unsuspended post-disposition incarceration associated with each quality. The report included these numbers only to be used in relationship to each other, and not to represent actual post-disposition incarceration. Actual sentences are described above, and elsewhere in the report.

### **1) The hypothetical defendant**

In court, only individual actual defendants appeared before a judge for sentencing. The purpose of creating a hypothetical defendant in a statistical analysis was to help understand the patterns that appeared in a number of individual cases viewed together. The creation of a hypothetical defendant permitted the analysts to show how large the relative effects that associated with a particular variable. It was not enough to know that being male was associated with significantly more days of post-disposition incarceration in Violent cases; it was more helpful to know that being male was associated with 50 estimated post-disposition incarceration days for non-presumptive Violent offenses compared to 29 estimated days for a female defendant with all the same characteristics. The question remained, “a difference of 21 days compared to what?” To answer this question of “compared to what?” the analysts created a hypothetical defendant for each equation.

The individual defendants, as they appeared in the courtroom and in the database, were male or female, with clean prior records or with several prior felonies, they were 19 or 47 years old, and so forth. The hypothetical defendant, created separately for each group of offenses, used the average of each of the qualities considered in the equation. For example, the hypothetical defendant in Violent cases might have been 28, male, with four prior misdemeanors, convicted of one count of a mid-range offense (a Class C Assault, in the analysis of Violent offenses), with a non-presumptive sentence, with no contemporaneous cases, and a charge bargain on the record.

Hypothetical defendants should not be equated with typical defendants. No actual defendant was typical. The hypothetical defendant, average in each characteristic, was a mathematical concept, created only for the purpose of providing context for the disparity findings.



## 2) The estimated days for the actual defendants

The next step in quantifying the effects of the multivariate analyses was to calculate, for the actual defendants,<sup>377</sup> an estimated number of days that they would receive for a particular type of offense.<sup>378</sup> The estimated days were calculated for each set of an independent variable (e.g., male, alcohol problem) and its comparison variable in the equations (e.g., female, no alcohol problem). For example, Table 37a shows that males were estimated to be associated with 50 post-disposition incarceration days for non-presumptive Violent offenses, compared to the 29 post-disposition incarceration days associated with a female with the same characteristics. The “effect” associated with being a male defendant in this context was an additional 21 days of post-disposition incarceration.

## 3) The increase or decrease in estimated days of post-disposition incarceration associated with each quality

In order to interpret the coefficients created in the previous step of the analysis, and to provide context for the findings, the analysts took the hypothetical defendants described above, and entered the information for them in the same equations. This step showed the estimated days of incarceration for the hypothetical defendant with a Violent offense in the statewide equation. Table 37a shows that the hypothetical defendant was associated with an estimated 45 days of post-disposition incarceration (footnote d, Table 37a, shows the E= estimates for the hypothetical defendants in the statewide analysis. Similar footnotes on the other tables show the E= estimates for each set of equations in each location).

The purpose of this final step was to construct a baseline, or measuring stick, to understand the relative effects (measured in days) of each variable in the equations. The actual male defendant in the statewide regression equation for Violent offenses, described above, was associated with an estimated 50 days of post-disposition incarceration. The actual female defendant was associated with 29 days of post-disposition incarceration. The hypothetical defendant, average in all respects (including gender), was associated with 45 days. This analysis shows that the male defendant’s 50 estimated days was only an estimated five days more than the hypothetical defendant, but 21 days

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<sup>377</sup> The databases for post-disposition incarceration analyses included the single most serious charge of conviction for defendants convicted on a non-presumptive charge. The defendants were convicted of a Class B or C felony and did not have a prior felony conviction of the type that would qualify for a presumptive sentence, or the most serious charge of which they were convicted was a misdemeanor. See *infra* footnotes to Tables 37a, 37b and 37c for additional information about the defendants included in each table.

<sup>378</sup> The analyses looked at all offenders taken together statewide, at all offenders sorted by type of offenses statewide, at all offenders in Anchorage taken together, and then sorted by type of offenses; and at all offenders not in Anchorage, first taken together and then sorted by type of offense.

more than the post-disposition incarceration associated with the female defendant. The “effect” of being male, in this equation, was to be associated with substantially more post-disposition incarceration than a female defendant or the hypothetical defendant. These estimated days, for the actual defendants and the hypothetical defendant, only estimate the days in the post-disposition increment of incarceration, after 150% of the predisposition incarcerations was factored into the equation to account for time previously served.

The equations showed the independent effects associated with each variable. For All Offenses Combined, statewide (Table 37a) they showed an estimated effect of +14 days associated with having a mental health problem, an estimated effect of +15 days associated with the defendant being male, and an effect of +6 days associated with having a drug problem. All other things being equal, the equations showed that being a male defendant with a mental health problem and a drug problem was associated with substantially more time incarcerated post-disposition for a non-presumptive conviction than for a defendant without those factors.

Most defendants had more than one significant factor present. The effects were calculated independently, so most defendants could be expected to have been associated with more than the estimated time than for just one variable. However, because of the design of the equations, the estimated days could not be simply added to each other to calculate an estimated amount of post-disposition time. The best that could be said was that defendants with more of these variables would be associated with more time incarcerated than defendants with fewer of these variables. Factors such as the class of charge and class of conviction also contributed to post-disposition incarceration.

None of these estimated days is the same as the actual mean sentence lengths imposed. For the Violent offenses statewide, as shown in Table 37a, the actual mean non-presumptive sentence length was 169 days to serve.<sup>379</sup> All of the offenses included in this analysis were for defendants convicted as first offender B and C felons or for defendants whose single most serious charge of conviction was a misdemeanor. The mean 169 days of unsuspended time actually imposed for these non-presumptive defendants did not include additional suspended time, or extra time required for probation that was separately imposed by the judge.

The equation was designed to isolate the effects of variables on incarceration imposed by judges that exceeded the incarcerated time spent by defendants prior to sentencing. Appendix C provides actual mean sentence lengths for all convicted offenses. Readers interested in mean sentence lengths should

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<sup>379</sup> See *infra* Table 37a, footnote “d” for the estimated (“E”) days for the hypothetical defendants and the actual mean sentences for each category of offense.

review Appendix C. In no case should the estimated days for the hypothetical defendants be taken as an accurate representation of the actual days to which defendants were sentenced.

## 2. Methodology: General Discussion

As discussed in the Methodology section earlier in the report,<sup>380</sup> the Council collected and reviewed data about many characteristics of cases and defendants. These included the type of offense, the location of the court, the defendant's age,<sup>381</sup> gender, ethnicity, and prior criminal convictions; the defendant's drug, alcohol or mental health problems; the type of attorney representing the defendant; whether the defendant went to trial; and many others. The multivariate analysis took into account the effects of many variables but focused on five variables that influenced the outcomes of cases in unexpected ways: the defendants' ethnicities, the type of attorney representing them, their gender, the disposition of their cases in different court locations, and their alcohol, drug abuse or mental health problems. Other variables also were associated with the outcomes for various cases but those influences tended to be more predictable.

Socioeconomic data about defendants were not consistently available for analysis in this report.<sup>382</sup> Sentencing studies reviewed by the Council in other states and compiled nationally by the Bureau of Justice Statistics and others also lacked discussion of socioeconomic factors that could affect sentencing disparity findings. The Council collected available data about defendants' ethnicity, gender, age, prior convictions, substance abuse, and mental health problems and analyzed the effects of these factors.

It has been noted throughout this report that there were no data available about defendants' income, employment, education, family status, stability in the community, or home ownership although representation by a court-appointed, publicly funded attorney indicated a defendant's indigency. Socioeconomic data would have helped the Council distinguish between the valid and possibly invalid contributions that these various factors had on outcomes. The mere fact of indigency should not have resulted in worse outcomes but a defendant's work history, education, family ties, and

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<sup>380</sup> See *supra* pp. 38-46.

<sup>381</sup> Defendant's age was included as a variable in all the analyses, but was insignificant in virtually all of them. When age was significant, it always meant that older defendants got more post-disposition incarceration. The finding was independent of prior convictions -- in other words, even taking into account the fact that older defendants had more chance to accumulate prior convictions, older defendants were associated with more post-disposition incarceration. Age was associated with longer post-disposition incarceration for older defendants in non-presumptive Violent and Drug offenses statewide and in non-presumptive Drug sentences outside Anchorage. It also was significant for total time incarcerated in Driving offenses statewide and Anchorage Drug offenses. It was not significant for any predisposition incarceration analysis.

<sup>382</sup> See discussion *supra* pp. 47-52.

stability and support in the community may have been appropriate considerations in decisions to incarcerate the defendant, whether pre- or post-disposition.

A defendant's potential for rehabilitation was among criteria judges had to consider for sentencing purposes. This potential for rehabilitation tended to be more important in non-presumptive cases. Unexplained post-disposition incarceration disparities were only found in non-presumptive cases. Judges may have considered less educated, less employable, and less stable defendants to have less potential for rehabilitation. The Council was unable to analyze the extent to which these factors might have had a disproportionate effect on defendants of certain ethnicities, defendants represented by private attorneys, defendants from rural locations, or defendants of a particular gender.

### **3. Presumptive Post-disposition Incarceration**

The analysis showed that presumptive days of post-disposition incarceration<sup>383</sup> were associated almost entirely with factors like the seriousness of the charge and the defendant's prior criminal convictions. Demographic factors such as ethnicity, type of attorney, gender, and whether the court was rural were not associated with the amount of presumptive post-disposition incarceration. Because these expected and legally appropriate factors were the only types of significant factors affecting presumptive post-disposition incarceration, the Council did not conduct further analysis.

### **4. Non-Presumptive Post-disposition Incarceration Differences**

The Council reviewed non-presumptive post-disposition incarceration for disparities. It found that the disparities associated with earlier events in the criminal justice process did not necessarily carry over into post-disposition incarceration. Almost all of the ethnic disparities seen earlier, particularly in predisposition incarceration, did not reappear post-disposition (but see analysis, below, for the total time incarcerated). One set of ethnic disparities occurred, and the type of attorney remained one of the strongest predictors of post-disposition unsuspended non-presumptive days. Gender continued to be associated with non-presumptive post-disposition incarceration, as did appearing in a rural court, and having alcohol, drug or mental health problems.

Tables 37a, 37b, and 37c present the results of the multivariate analyses for non-presumptive post-disposition incarceration length. Tables 37a (Statewide), 37b (Anchorage cases only), and 37c (all cases outside Anchorage) show the significant and non-significant findings, expressed as estimated

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<sup>383</sup> Presumptive sentences, by statute, were imposed almost entirely for felony offenders with one or more prior felony convictions, or for first felony offenders convicted of the more serious felony offenses, including all Class A offenses and Unclassified Sexual offenses.

days of change in post-disposition incarceration associated with variables in the equations. The estimated days of post-disposition incarceration for the hypothetical defendants are shown in footnotes on each table.

Looking at All Offenses Combined statewide (Table 37a), the estimated amount of post-disposition incarceration for the hypothetical defendant with an average of all characteristics was an estimated 25 days of incarceration in addition to time served by the defendant prior to sentencing.<sup>384</sup> For the hypothetical defendant convicted of a Violent offense in the statewide analysis, the estimated non-presumptive unsuspended post-disposition incarceration was 45 days. The hypothetical defendant convicted of a Sexual offense had an estimated 325 days of incarceration in excess of predisposition incarceration.

Statewide, for All Offenses Combined, being of any ethnic minority group<sup>385</sup> (as compared to being Caucasian) was not associated with an expected change in non-presumptive post-disposition incarceration days.<sup>386</sup>

Ethnicity was associated with more post-disposition incarceration in non-presumptive Drug offenses. The estimated non-presumptive post-disposition incarceration days for a Drug offense statewide (the estimated days of post-disposition incarceration after taking into account predisposition incarceration for a hypothetical defendant with an average of all characteristics) was nine days (E=9).<sup>387</sup> The hypothetical Black defendant and the hypothetical Native defendant convicted of Drug offenses could expect to have post-disposition incarceration of 19 days (for Blacks) and 18 days (for Natives) when compared to the hypothetical Caucasian defendant (7days). Again, both the estimates of nine

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<sup>384</sup> The equation estimating non-presumptive post-disposition incarceration days was not linear. The closer a defendant fell to the end point of the equation – zero days or the hypothetical post-disposition incarceration length – the smaller the effect of any disparity. At the extreme ends, an ethnic disparity, for example, was not going to give a Native defendant more days in jail than the Caucasian defendant, if the Caucasian defendant already expected the maximum. Conversely, the equation might predict fewer days for some Native defendants whose offenses were not serious, so the disparity would be less than the five days at that end of the spectrum as well. This nonlinearity meant that the analysis had to estimate post-disposition incarceration length for an individual hypothetical defendant, not a group of defendants.

<sup>385</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggested that further review of larger groups of these defendants is warranted to show whether disparities persist in bigger data sets.

<sup>386</sup> Tables 37 and 37a, 37b and 37c show the analysis for this discussion. Table 37 summarizes the types of offenses and locations in which the defendants could expect a change in estimated days for non-presumptive post-disposition incarceration. If the finding for a given type of offense in a particular location was not statistically significant, it was shown as “NS.” If the data were unavailable for the analysis, it was shown as N/A. Tables 37a, 37b, and 37c quantify the estimated differences in post-disposition incarceration, showing the estimated change in days of post-disposition incarceration associated with each different type of offense and location in the state.

<sup>387</sup> See *infra* Table 37a note d.

days, which is present to give context and a sense of relative magnitude of the findings, and the estimates of expected 19 days, 18 days, and seven days of post-disposition incarceration are not exact numbers but they provide an example of the relative size of the effects of ethnicity on non-presumptive post-disposition incarceration.

**a. Discussion of specific disparities associated with ethnicity**

The analysis showed that Blacks and Natives statewide (the comparison group was Caucasians statewide) were likely to have longer post-disposition incarceration only in non-presumptive Drug offenses. The analysis found that these ethnic disparities occurred independently of the effects of type of attorney, prior criminal convictions, and the other variables that the Council could measure. Again, “post-disposition incarceration” as used here meant only the incarceration that exceeded incarceration served by the hypothetical defendant prior to sentencing.

To gain more information about the disparities for Blacks and Natives in non-presumptive post-disposition incarceration for Drug offenses, analysts examined the data inside Anchorage and outside of Anchorage. In Anchorage, a disparity for Blacks appeared only in non-presumptive Drug offenses. The expected post-disposition incarceration for Blacks was 13 days, in the context of an expected sentence length of four days (E=4 days, footnote on Table 37b) for the hypothetical Anchorage defendant with an average of all characteristics. Three days of post-disposition incarceration were associated with being a Caucasian Anchorage defendant. No disparity in any category of offense was identified for Natives in Anchorage.

Outside of Anchorage, a disparity was associated with Natives for All Offenses Combined. Natives outside Anchorage were associated with an estimated 39 days of post-disposition incarceration compared to an estimated 30 days of post-disposition incarceration for Caucasian defendants, in the context of an estimated 33 days of post-disposition incarceration for the hypothetical defendant (E=33, Table 39c, footnote d). Outside Anchorage, the only category of offense in which this Native disparity was further identified was in non-presumptive Drug offenses. The estimated post-disposition incarceration days associated with being a Native defendant were 31 days compared to the nine estimated post-disposition incarceration days for the Caucasian defendant. This was in the context of the expected post-disposition incarceration of 12 days for the hypothetical Drug defendant outside Anchorage with an average of all characteristics. No disparity in any category of offense was identified for Blacks outside Anchorage.

**1) Additional data**

After reviewing its initial findings, the Council returned to the original case files for more detailed information about the non-presumptive drug sentences than that accumulated in the first round of data collection. The Council collected information about the type and amount of drug involved in each case, whether the defendant had a firearm, the amount of money involved, whether the case involved importation of drugs, and whether the defendant sold or provided drugs to a minor. The association of these ethnicities with more expected days of post-disposition incarceration persisted, despite the consideration of the new variables. None of the new variables were statistically significant.

**2) Unintended disparity**

The lack of ethnic associations with sentence length for any other type of offenses suggested that the identity of the judge did not play a major role in the post-disposition incarceration for non-presumptive Drug offenses and that the disparity did not occur intentionally. If judges had intended different treatment for ethnic minorities, the ethnic sentencing disparities would be likely to have occurred throughout all types of offenses instead of being isolated to a single type of offense. Disparities also would have been likely to have occurred among defendants with presumptive offenses, but these did not appear in the present data set.

**3) Other influences on non-presumptive post-disposition incarceration**

Defendants could have received a non-presumptive sentence by one of two routes. They could have been convicted of a misdemeanor as the final single most serious offense, and could have had none or any type of prior criminal conviction. Or, they could have been convicted of a Class B or C felony offense and not have had a prior felony conviction in their criminal history. Judges sentencing offenders on any first felony offense Class B or Class C felony had some guidelines from the appellate courts in published opinions.<sup>388</sup> The appellate courts have left judges with more latitude to sentence in non-presumptive cases than is allowed by the legislatively-created presumptive sentencing structure.

The context in which pleas were entered, and the presence of other significant influences at the time of sentencing, suggested that differences in post-disposition incarceration for otherwise similarly-situated defendants may have resulted from a combination of factors. One factor could have been the information presented to the judge at the sentencing hearing. Almost all defendants appeared at

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<sup>388</sup> See *supra* pp. 151-154, changes in appellate law since 1990.

sentencing with both the defense attorney and the prosecutor. In those situations, the information presented by the prosecutor and the defense attorney, and any agreements the defendant may have made, may have had important effects on the judge's choice of a sentence.

Even in superior court, many defendants pled *nolo contendere*<sup>389</sup> or guilty, without a prepared presentence report and after minimal discussion of the offense. A sentencing hearing in these circumstances was likely to have been briefer than it would have been had a full presentence report been filed. If the defendant pled to a misdemeanor, sentencing also may have been brief, with no presentence report and less discussion.

On the other hand, if a probation officer attended the sentencing hearing to present oral testimony or a written presentence report, that testimony was likely to have a significant effect on the sentence.<sup>390</sup> Earlier Judicial Council studies showed significant associations between sentences and characterization of the defendant by the presentence report writer. A favorable portrait of the defendant was associated with shorter sentences; a less flattering picture was associated with longer times to serve.<sup>391</sup>

While information presented to the court at sentencing could have been related to sentence disparity, it was not evident why it would be related only to ethnic differences in post-disposition incarceration for defendants convicted of non-presumptive Drug offenses.

#### **4) Historical background of ethnic disparities**

Historically, the Judicial Council's reports have shown that Drug offenses were more likely than others to show ethnic differences in sentencing. The first major review of plea agreements and sentences<sup>392</sup> showed that ethnicity was associated with longer sentences for Blacks and Natives in Property<sup>393</sup> and Fraud<sup>394</sup> offenses, and for Blacks in Drug offenses. A second review, commissioned

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<sup>389</sup> The Latin phrase means, "I do not contest the charges." In this report, conviction upon the defendant's plea includes both a *nolo* plea or a guilty plea.

<sup>390</sup> ALASKA FELONY SENTENCES: 1976-1979, *supra* note 84, at 48-49; ALASKA FELONY SENTENCES: 1980, *supra* note 89 at 36-38, (including all felonies filed statewide during these years).

<sup>391</sup> *Id.*

<sup>392</sup> ALASKA BANS PLEA BARGAINING, *supra* note 69. Data in that report came from the two years between August 15, 1974 and August 15, 1976, and were limited to cases in Anchorage, Fairbanks and Juneau.

<sup>393</sup> *Id.* at 201.

<sup>394</sup> *Id.* at 204.



by the legislature to follow up on the ethnic disparity findings, used data from 1976 through 1979.<sup>395</sup> That report found no further disparities related to ethnicity in urban Property or Fraud sentences, a small increase in sentence length associated with being Native in rural Property offenses, and continued disparity for Blacks convicted of Drug offenses. The disparity for urban Blacks in that report appeared to be mainly related to offenses involving heroin.<sup>396</sup> The second report described a new ethnic disparity: being a Native convicted of a Violent offense was associated with a significantly shorter sentence.<sup>397</sup>

The legislature commissioned another review of sentencing practices in 1980 to look at the effects of the first year of presumptive sentencing, and to follow up on the remaining differences in sentences associated with ethnicity.<sup>398</sup> By the 1980 report, no differences in sentences associated with ethnicity, including the differences for Blacks in Drug offenses, could be measured at statistically significant levels.<sup>399</sup> A reevaluation of Alaska's ban on plea bargaining using 1984-1987 data did not find any differences in sentencing that were associated with defendants' ethnicities.<sup>400</sup>

#### 5) Reappearance of ethnic disparities and plea bargaining

It was not clear why differences in sentencing related to ethnicity appeared to be statistically significant again in 1999. Alaska's population increased in size (from 384,100 in 1974 to an estimated 622,000 in 1999), and its ethnic population increased in size and changed in composition.<sup>401</sup> These facts, alone, did not seem to be a sufficient explanation for the reappearance of ethnic-related disparities.

The ethnic-related disparities from the 1970s could not be found in statistical analysis in 1980, suggesting that their statistical significance had vanished before presumptive sentencing took

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<sup>395</sup> ALASKA FELONY SENTENCES: 1976-1979, *supra* note 84.

<sup>396</sup> *Id.* at 40-41.

<sup>397</sup> *Id.* at 28.

<sup>398</sup> ALASKA FELONY SENTENCES: 1980, *supra* note at 89, at 57-58 (included all felonies filed in 1980 statewide).

<sup>399</sup> *Id.* at 57.

<sup>400</sup> ALASKA'S PLEA BARGAINING BAN RE-EVALUATED, *supra* note 19, at 147-148 (included all felonies filed statewide between 1984 and 1987).

<sup>401</sup> The comparison data showed that although Natives still constituted slightly over 16% of the state's population, just as in 1974 census estimates, the percentage of "Other" population (including Black, Hispanic and Asian/Pacific Islander) increased from about 5.7% to 9.4%, with a consequent drop in the percentage of Caucasians from 78.0% to 73.7%.

effect.<sup>402</sup> This suggested that the use of presumptive sentencing was not related to the reduction in significance of ethnic-related disparities and would not have been related to their newly-increased significance in 1999. The lack of any ethnic disparities in presumptive sentencing, conversely, supported a hypothesis that presumptive sentencing may have achieved one of the purposes of the statute: “The legislature finds that 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” [Alaska Statute Title 12 Ch. 55].

A significant change in criminal justice system policy between 1979, when the last ethnic related disparities were seen, and 1999, was the elimination of the 1975 prohibition on plea bargaining.<sup>403</sup> In 1993, then-Attorney General Charles Cole rescinded the prohibition.<sup>404</sup> Other data<sup>405</sup> suggested that many more plea agreements appeared in 1999 cases than in cases handled between 1984 and 1987. Some observers hypothesized that the disparities in the 1970s could have been related to the widespread use of plea agreements,<sup>406</sup> and that the disappearance of ethnic disparities by 1980 was related to the ban on plea bargaining.

The present analysis accounted for the independent effects of charge and sentence bargains on non-presumptive post-disposition incarceration. The analysis suggested that although the elimination of the ban could be a partial explanation for the new ethnic disparities, it could not account for all of the difference. Whether or not a specific answer or answers can be found for the reappearance of ethnic disparities in post-disposition incarceration for the limited group of non-presumptive drug offenders, the data suggest the need for additional thought and analysis.

#### **b. Disparities associated with type of attorney**

The Judicial Council found widespread differences in case outcomes and post-disposition incarceration for defendants with private attorneys when compared to defendants with public attorneys (Public Defender or OPA). Defendant’s representation by private attorneys was associated with fewer estimated days of post-disposition incarceration for All Offenses Combined, and also for

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<sup>402</sup> Presumptive sentencing became effective for all but drug felonies in 1980; it took effect for drug felonies in 1982.

<sup>403</sup> ALASKA BANS PLEA BARGAINING, *supra* note 69, at 1.

<sup>404</sup> Memorandum from Stephen "Neil" Slotnik, Alaska Assistant Attorney General to Bruce Botelho, Alaska Attorney General (Feb. 3, 1994). The memorandum quotes from a speech by former Attorney General Charles Cole to the Alaska Bar Assoc. on June 11, 1993: "[I]f in [prosecutors'] view the ability to engage in plea bargaining is necessary to achieve [justice] I want them to have the full power, discretion if you will, to do so."

<sup>405</sup> See *supra* pp. 117-121 for discussion of charge reductions.

<sup>406</sup> E.g., ALASKA’S PLEA BARGAINING BAN RE-EVALUATED, *supra* note 19, at 158.

Violent, Property, and Sexual offenses.<sup>407</sup> The presence of a private attorney at the sentencing hearing was one of the strongest predictors of fewer days of post-disposition incarceration, independently of any other factors that were statistically significant.

Table 37 shows that having a private attorney was significant statewide, in Anchorage and outside Anchorage, for all but Driving offenses and Drug offenses statewide and outside Anchorage. In Anchorage, having a private attorney was associated with slightly more days of post-disposition incarceration for Drug offenders. Again, the discussion of sentence length in this section refers to unsuspended incarceration imposed in addition to any jail time served by the defendant prior to sentencing (using a formula that took into account credit for good time).

The estimated change in the number of post-disposition incarceration days varied, depending on the type of offense and the location in the state. For example, statewide, a defendant with a private attorney would expect 18 days of post-disposition incarceration compared to a public attorney client who would expect 28 days of post-disposition incarceration (All Offenses Combined). The estimated ten days decrease occurred in the context of an estimated 25 days of post-disposition incarceration for the hypothetical defendant. The estimated days of post-disposition incarceration for the hypothetical defendant are discussed in Table 37a, footnote d. The differences were -24 days for Violent offenses statewide, -8 days for Property offenses and -266 days for Sexual offenses. The decrease for Sexual offenses was in the context of an expected 325 days of post-disposition incarceration for the hypothetical defendant (Table 37a footnote d), but the expected post-disposition incarceration decreases in other types of offenses were substantially smaller (45 days for Violent offenses and 15 days for Property offenses).

Outside Anchorage, both the expected decreases in post-disposition incarceration days for private attorney clients and the estimated days for the hypothetical defendant resembled the statewide figures. In Anchorage, the estimated post-disposition incarceration days (Es) for the hypothetical defendant generally were a little shorter (19 days for All Offenses Combined, 24 days for Violent offenses, and 10 days for Property offenses).<sup>408</sup> The expected decreases in post-disposition incarceration days for defendants with private attorneys were nine fewer days for All Offenses Combined, 16 fewer days for Violent offenses, and five fewer days for property offenses. In Anchorage Drug offenses, however, defendants with a private attorney had an estimated seven post-disposition incarceration days compared with an estimated three post-disposition incarceration days

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<sup>407</sup> See *infra* Table 37.

<sup>408</sup> See *infra* Table 37b, footnote d. Anchorage had too few non-presumptive convicted Sexual offenses to conduct this analysis.

for defendants with a public attorney. Type of attorney did not make any significant difference for defendants convicted of Driving offenses.

### **1) Characteristics of public attorneys**

The term “public attorney” in this report included staff attorneys for the Public Defender Agency, staff attorneys for the Office of Public Advocacy, and contracted attorneys for the Office of Public Advocacy. In some analyses, the effects of these categories could be distinguished; in others, there were no significant differences among the three groups or the numbers available for analysis were too small, and they were characterized together as “public attorney.” In the non-presumptive post-disposition incarceration analysis, they all were considered together.

Contract attorneys hired by the Office of Public Advocacy had varied criminal law backgrounds. In this way, they may have resembled the court-appointed attorneys in the 1970s more than they resembled the staff attorneys for the PD and OPA in the 1999 data sample.<sup>409</sup> OPA contract attorneys constituted about 12% of the attorneys characterized as “public,” with Public Defender attorneys being 63% of all attorneys, and OPA staff about 5% of the attorneys in the database.

### **2) History of disparities associated with type of attorney**

As with the ethnicity-related disparities, the type of attorney played a role in sentence lengths in the 1970's, but the effects of type of attorney had disappeared by the 1980s. In the original plea bargaining evaluation, covering the years 1974-1976 and Anchorage, Fairbanks and Juneau cases only, type of counsel was associated with sentencing disparities in Violent, Property, and Fraud cases. That analysis showed that defendants with private or prepaid counsel<sup>410</sup> were associated with shorter sentences in Violent<sup>411</sup> and Property<sup>412</sup> offenses. Defendants with public attorneys were associated with longer sentences for Fraud<sup>413</sup> offenses.

The next major report on sentences, covering felonies filed statewide from 1976 through 1979 showed an association between sentence length and attorney type for urban Fraud and Drug

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<sup>409</sup> ALASKA FELONY SENTENCES: 1980, *supra* note 89, at 58. *See also* ALASKA BANS PLEA BARGAINING, *supra* note 69, at p. 38.

<sup>410</sup> During the construction of the Alaska Pipeline from about 1974 through 1978, many unions offered pre-paid legal plans for their members. Generally, these plans contracted with law firms to provide counsel for any type of legal problem that their members might experience.

<sup>411</sup> ALASKA BANS PLEA BARGAINING, *supra* note 69, at 196, Figure 6.

<sup>412</sup> *Id.* at 199, Figure 7.

<sup>413</sup> *Id.* at 202, Figure 8.

offenses.<sup>414</sup> Having a court-appointed attorney was associated with increased sentence lengths for urban Fraud and Drug offenders. Having a public defender was associated with shorter sentences for urban drug offenders. Added analysis showed that having a court-appointed attorney was associated with substantially longer sentences for all types of offenses. The differences were statistically significant for all except Fraud and “Morals” (primarily Sexual) offenses.<sup>415</sup> Mean sentence lengths for public defender clients, in contrast, closely matched those for private attorneys in most offenses.

A review of possible explanations included a finding that defendants with court-appointed attorneys in the 1976-79 period were more likely to have codefendants.<sup>416</sup> A second suggestion focused on the appointment system for court-appointed attorneys. Before 1984 when the legislature created the Office of Public Advocacy to serve a variety of needs, including representation of defendants who had conflicts with the public defender attorneys, the court had appointed defense counsel from the private bar. Defense counsel could volunteer to be on a court list, or the court could appoint any private attorney. This practice often resulted in relatively inexperienced counsel representing criminal defendants.

The report of felonies filed in 1980 found that “earlier attorney–type outcome differences have been completely eliminated.”<sup>417</sup> The report attributed the change to a new program created by the court system, in which the court contracted only with experienced criminal defense attorneys to handle court-appointed cases. In 1984, the legislature created the Office of Public Advocacy to supervise this program and other previously-contracted programs.

### 3) 1999 findings compared to earlier years

Looking at the findings from the earlier reports in the context of the findings for the 1999 felony cases about type of attorney at sentencing, the data suggested that some of the same situations were recurring. For example, the 1976-1979 report showed that urban defendants with drug convictions received shorter sentences if they had a public defender.<sup>418</sup> The present report on 1999 felonies made a similar finding: presence of a public attorney was associated with a shorter sentence for drug offenders in Anchorage.

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<sup>414</sup> ALASKA FELONY SENTENCES: 1976-1979, *supra* note 84, at 50-51.

<sup>415</sup> *Id.* at 50-54.

<sup>416</sup> *Id.* at 53.

<sup>417</sup> ALASKA FELONY SENTENCES: 1980, *supra* note 89, at 58-59.

<sup>418</sup> ALASKA FELONY SENTENCES: 1976-1979, *supra* note 84, at 150.

The presence of a public attorney in a case also was associated with longer post-disposition incarceration in Violent, Property and Sexual cases for the 1999 felony sample. Longer sentences were associated with a court-appointed attorney in Violent and Property cases in both the 1974-76 and the 1976-1979 reports, and again in 1999. In 1999, public attorney representation also was associated with more post-disposition incarceration for Sexual offenses,<sup>419</sup> as it had been in the 1976-1979 report. The similarities in findings for the 1970s data and the 1999 data might suggest similar causes for the differences, a topic for further exploration.

#### **4) Limitations in the data**

As has been discussed at various places in this report,<sup>420</sup> some socioeconomic data about defendants were not available for analysis nor were they considered in the most recent Bureau of Justice Statistics report discussing outcomes for defendants with court appointed counsel.<sup>421</sup> These data might have helped to explain the differences in sentences for defendants with private attorneys.

#### **c. Disparities associated with defendant's gender**

Being male was associated with longer post-disposition incarceration for non-presumptive Violent and Property offenses, statewide and in Anchorage.<sup>422</sup> Outside Anchorage, being male was associated with longer post-disposition incarceration for Drug and Property convictions. Being female was associated with longer post-disposition incarceration only in non-presumptive Drug offenses in Anchorage.<sup>423</sup>

Other Council work has shown a few gender disparities. In the 1974-1976 plea bargaining report, females received shorter sentences for Fraud offenses.<sup>424</sup> In the 1976-1979 and 1980 reports on felonies, gender did not appear to be associated with significant differences in sentence lengths. The

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<sup>419</sup> The 1999 finding was limited to the statewide and outside Anchorage analyses because Anchorage did not have enough Sexual offenders with non-presumptive sentences to do the analysis.

<sup>420</sup> See e.g., discussion *supra* pp. 47-52.

<sup>421</sup> DEFENSE COUNSEL IN CRIMINAL CASES, *supra* note 262.

<sup>422</sup> Only males in this 1999 felony sample were convicted of Sexual offenses. The analysis could not be done without a comparison group.

<sup>423</sup> A male in Anchorage was estimated to have three days of post-disposition incarceration for a Drug offense in Anchorage. A comparable female was estimated to have ten days of post-disposition incarceration, in the context of the estimated four days of sentence time for the hypothetical defendant (*see* Table 37b, footnote d).

<sup>424</sup> ALASKA BANS PLEA BARGAINING, *supra* note 69, Appendix B, at Table VII-6.

review of 1984-1987 felonies found that being male was associated with a greater likelihood of a sentence to some jail time.<sup>425</sup>

Combined with the other findings about differences associated with defendants' genders in the criminal justice process,<sup>426</sup> the finding of expected differences in post-disposition incarceration time based on gender leads to further questions about the possible reasons for the differences. For men, the estimated increases in post-disposition incarceration days tended to appear in the more common Violent and Property offenses. For women, the one increase in post-disposition incarceration days showed up in Drug offenses in Anchorage.<sup>427</sup> The data may suggest starting points for additional analysis.

#### **d. Rural areas**

The Council found that defendants in Rural areas in 1999 cases often received different treatment than defendants in Anchorage. For non-presumptive post-disposition incarceration, a disparity was identified for rural defendants statewide for All Offenses Combined (Table 37a). Additional analysis showed an estimated 25 days of post-disposition incarceration for rural defendants with Drug convictions, compared to eight days of post-disposition incarceration for non-rural defendants. This was in the context of a hypothetical defendant with the average of all characteristics, whose estimated predisposition incarceration was nine days (Table 37a, footnote d). Disparities for rural defendants were not identified in other specific offense categories.

Analyses in earlier studies were structured differently than in this report, so the effect of being a defendant from a rural area could not be discussed. The 1976-1979<sup>428</sup> and 1980<sup>429</sup> reports did discuss rural versus urban differences using different definitions of rural and urban.

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<sup>425</sup> *Id.* at 146.

<sup>426</sup> For example, gender played a role in each of the multivariate analyses, for predisposition incarceration, for charge reductions, for non-presumptive post-disposition incarceration and for total time incarcerated.

<sup>427</sup> A review of actual sentences imposed in Anchorage showed that the women and men received probationary sentences in non-presumptive drug cases at similar rates (58% probationary for men, and 50% probationary for women). The differences came in longer mean unsuspended incarceration imposed for women. Data available from Judicial Council on request.

<sup>428</sup> ALASKA FELONY SENTENCES: 1976-1979, *supra* note 84, at 68-70.

<sup>429</sup> ALASKA FELONY SENTENCES: 1980, *supra* note 89, at 78-80.

**e. Alcohol, drug and mental health problems**

Many defendants had alcohol abuse, drug use or mental health problems.<sup>430</sup> In Sexual offenses alone, none of these problems appeared to be associated with a change in the post-disposition incarceration. Generally, having one or more of these problems was associated with more estimated post-disposition incarceration days. The associations appeared somewhat more often in Anchorage than outside Anchorage.<sup>431</sup>

When mental health problems were statistically significant in the equations, they were associated with increases in post-disposition incarceration days, compared to a hypothetical defendant without a mental health problem. Mental health problems statewide appeared to be associated with more post-disposition incarceration days for All Offenses Combined (36 estimated post-disposition incarceration days compared to 14 post-disposition incarceration days for defendants with no mental health problems), for Property offenses (19 estimated days of post-disposition incarceration, compared to 13 estimated days of post-disposition incarceration for no mental health problem), and for Drug offenses (16 estimated days of post-disposition incarceration, compared to eight estimated days of post-disposition incarceration for defendants with no mental health problems).

In Anchorage mental health problems appeared to be associated with All Offenses Combined (30 estimated days of post-disposition incarceration for a defendant with a mental health problem, compared to 17 estimated days for a defendant without a mental health problem), with Drug offenses (11 estimated days of post-disposition incarceration for a defendant with a mental health problem, compared to three estimated days for a defendant without a mental health problem) and with Driving offenses (119 estimated days of post-disposition incarceration for a defendant with a mental health problem, compared to 65 estimated days for a defendant without a mental health problem) (Table 37b). Outside Anchorage, a defendant with a mental health problem could expect an estimated 44 days of post-disposition incarceration, compared to 30 days for a defendant with no mental health problem (Table 37c).

In contrast to the more noticeable associations between mental health problems and post-disposition incarceration days, alcohol problems did not appear to be strongly associated with post-disposition incarceration. They bore no relationship statewide to All Offenses Combined or to any particular type of offense (Table 37a). In Anchorage, defendants convicted of Drug offenses who had an alcohol problem appeared to have fewer post-disposition incarceration days an estimated three days

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<sup>430</sup> See discussion *supra* pp. 64-66 of percentages of defendants with these problems.

<sup>431</sup> See *infra* Table 37.



compared to defendants without an alcohol problem, who were estimated to have 15 post-disposition incarceration days (Table 37b). Outside Anchorage, having an alcohol problem was associated with more post-disposition incarceration days for All Offenses Combined, an estimated 36 post-disposition incarceration days, compared to those with no alcohol problem who were estimated to have 27 post-disposition incarceration days (Table 37c). Also outside Anchorage, defendants with alcohol problems and a Driving conviction were estimated to have 46 days of post-disposition incarceration as compared to 16 days of post-disposition incarceration for Driving defendants without alcohol problems.

Drug problems were associated with small increases in estimated post-disposition incarcerated days, compared to defendants without drug problems. Table 37a shows that defendants with drug problems had an estimated 29 days of post-disposition incarceration for All Offenses Combined, compared with 23 days estimated for defendants without drug problems in the same category. Defendants with Property convictions had an estimated 19 days of post-disposition incarceration compared to an estimated 13 days for defendants with no drug problems. Table 37b identified differences in Anchorage for All Offenses Combined (25 estimated days of post-disposition incarceration for defendants with drug problems, compared to 16 days for defendants with no drug problems) and for Violent offenses (37 estimated days of post-disposition incarceration for defendants with drug problems and 20 estimated days for defendants with no drug problems). Outside Anchorage (Table 37c), drug problems were not associated with any statistically significant differences in estimated days of post-disposition incarceration.

**f. Other significant variables associated with post-disposition incarceration**

Several other factors were significantly associated with non-presumptive post-disposition incarcerations. These included the defendant's prior convictions,<sup>432</sup> some plea or sentence

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<sup>432</sup> This variable was shown as prior felony record (defined as defendants with one prior felony conviction) vs. no prior felony record (defined as defendants with four or more prior misdemeanor convictions but no prior felony convictions). The variable had six values, ranging through no prior convictions, one to three prior misdemeanor convictions, four or more misdemeanor convictions, one prior felony, two prior felonies, and three or more prior felony convictions. There would be larger or smaller effects than those shown on the tables for prior conviction histories that were more or less serious than the values reported on the tables.

agreements,<sup>433</sup> the number of contemporaneous cases,<sup>434</sup> the number of charges sentenced,<sup>435</sup> whether the defendant went to trial, whether the defendant was incarcerated at the time of sentencing,<sup>436</sup> whether the victim was a stranger to the defendant as compared to other possible relationships, and aggravating or mitigating factors found at the time of sentencing.<sup>437</sup> These factors are discussed briefly in the following section to provide more context for the judges' decisions in sentencing the non-presumptive defendants in this sample.

Among these variables, prior convictions were associated with significant increases in post-disposition incarceration for most types of offenses and all locations. Aggravating factors were associated with more increases in post-disposition incarceration statewide than in the Anchorage/outside Anchorage analyses; mitigating factors were not associated with any changes in the estimated number of post-disposition incarceration days. Having both a charge bargain and a sentence bargain also was associated with changes in post-disposition incarceration days.

### **1) Prior convictions**

On Tables 37a, 37b, and 37c, the differences are quantified as the difference between two values of the six-value variable: defendants with four or more prior misdemeanor convictions and those with one prior felony conviction.<sup>438</sup> The information about defendants' prior conviction history for felonies and misdemeanors came from the statewide depository of information that the Alaska

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<sup>433</sup> The tables show three distinct variables, each one a yes/no variable. The variables were charge bargain, sentence bargain, and both charge and sentence bargain. In each case, the comparison group was all defendants (on Tables 37a, 37a, and 37c, only convicted defendants with a non-presumptive charge of conviction) for whom no bargain of any sort appeared in the court case file.

<sup>434</sup> Contemporaneous cases were those cases whose filing or disposition dates overlapped with the filing or disposition dates of the randomly selected case included in the report. This was a yes (the defendant had one or more contemporaneous cases)/no (the defendant had only a single case) variable.

<sup>435</sup> The number of charges sentenced is shown as two charges sentenced vs. one charge sentenced. The variable's values were one charge sentenced, two charges sentenced, three charges sentenced, and so forth. On the tables, only the differences between one charge sentenced and two charges sentenced are shown. There would be additional estimated days of post-disposition incarceration associated with three charges sentenced as compared to the number of days associated with two charges sentenced or one charge sentenced.

<sup>436</sup> Information about the defendant's incarceration status at the time of sentencing was compiled only for non-presumptive Drug offenses at the time of sentencing.

<sup>437</sup> The tables show only information about the aggravating and mitigating factors found on the record or mentioned by the judge at sentencing as having been considered in deciding what sentence to impose.

<sup>438</sup> Most defendants in the non-presumptive post-disposition incarceration equations who had prior felony convictions were defendants charged with a felony but convicted of a misdemeanor. A few of the defendants in these equations who were convicted of non-presumptive felonies had prior felony convictions that were too old to require that the defendant be sentenced presumptively. There would be larger or smaller effects than those shown on the tables for prior conviction histories that were more or less serious than the values reported on the tables.

Department of Public Safety maintained. Descriptive information about defendants' prior convictions is located in Part II of the report.

For all locations analyzed, prior felony record was associated with significantly more days of post-disposition non-presumptive incarceration in All Offenses Combined, Violent and Property offenses. The association of prior convictions with the days of the defendants' post-disposition incarceration for non-presumptive charges appeared to be modest. Defendants with a prior felony record were associated with an estimated 48 days of post-disposition incarceration (statewide, All Offenses Combined), as compared to defendants with four or more misdemeanors in the same group who were associated with 33 days. Violent and Property defendants with one prior felony conviction were associated with similar, relatively smaller, changes in all locations.

The association of prior convictions with Sexual, Drug, and Driving offenses differed, depending on the location of the case and the type of offense. Prior convictions were associated with small increases in estimated days for non-presumptive Drug offenses in Anchorage and outside Anchorage. Prior convictions in Driving offenses (statewide and Anchorage only) had somewhat larger effects.<sup>439</sup> A Driving defendant with a prior felony record (one prior felony) statewide was associated with 84 estimated days of post-disposition incarceration; the comparison group defendant with four or more misdemeanor convictions but no prior felonies was associated with 59 estimated days, a difference of 25 days. In Anchorage, Driving defendants with one prior felony were associated with 119 estimated days of post-disposition incarceration, compared to 65 days associated with a defendant who had four or more prior misdemeanor convictions. The difference (the effect) was 54 days.

The largest effect however, appeared to be associated with Sexual offenses in the statewide analysis. A defendant with one prior felony conviction was associated with an estimated 558 days of post-disposition incarceration for a non-presumptive offense. The comparable defendant with four or more misdemeanors was associated with 432 days. The difference between the two defendants, all else being equal, was 126 days more for the defendant with the prior felony.<sup>440</sup> Prior convictions were not significantly associated with estimated post-disposition incarceration days in Anchorage or outside Anchorage.

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<sup>439</sup> Most defendants convicted of Driving offenses were convicted of Felony DWI or Felony Refusal of an alcohol blood level test. For the offense to be a felony, the defendant must have been previously convicted of at least two DWI-related misdemeanors within a specified time. Defendants convicted of felony DWI or Refusal were required to serve mandatory minimum sentences of 120 to 360 days, depending on the number of prior convictions of the same or similar offenses. These mandatory minimums could account in part for the findings about prior convictions in Driving offenses. See Appendix D, *Infra*.

<sup>440</sup> Anchorage defendants convicted of non-presumptive Sexual offenses were not included in this analysis because there were too few of them. Outside Anchorage defendants did not show any significant differences between defendants with a prior felony conviction and those with four or more prior misdemeanor convictions.

These effects described for prior felony convictions were independent of any other factors included in the equation. As with the other significant variables described, the effects of having more than one factor (e.g., a prior felony conviction, being male, having an alcohol problem) were likely to be greater with the combined influences. The equations could not define the exact amount of additional time that was likely to be associated with any particular combination of characteristics.

## **2) Plea and sentence agreements**

The equations included variables for charge bargain only, compared to no bargains of any sort; sentence bargains only, compared to no bargains of any sort; and both charge and sentence bargain recorded or described in the case, compared to no bargains of any sort.

### **a) Charge bargains only**

The analysis hypothesized that increased post-disposition incarceration might be expected for defendants whose plea agreement included a charge bargain. Because a defendant with a charge bargain originally faced a more serious charge than a defendant convicted of the same offense without a charge bargain, the judge could have determined that the more seriously charged defendant committed a more serious offense. The data did not support the hypothesis because having only a charge bargain in the case was not associated with any statistically significant changes in non-presumptive post-disposition incarceration anywhere in the state for any type of offense.

### **b) Both charge and sentence bargain**

Statewide, defendants with both charge and sentence bargains were associated with more estimated days of post-disposition incarceration for All Offenses Combined, and for Violent and Driving offenses. Outside Anchorage, defendants with both bargains were associated with more estimated days of post-disposition incarceration for All Offenses Combined, for Violent offenses and for Property offenses. When sentence bargains were combined with charge bargains in these cases, the equations estimated increased days of post-disposition incarceration.

Prosecutors may have agreed to reduced charges on the condition that defendants serve a particular amount of post-disposition incarceration, reflecting the state's perspective on the seriousness of defendants' offenses. Alternatively, these offenses could have been committed under more serious circumstances. Defendants might have pled in return for an agreed upon limit or "cap" on the days of post-disposition incarceration that could be imposed.

In Driving offenses, another factor may have operated. Most defendants originally charged with felony Driving offenses were charged with DWI or Refusal to Submit to a Chemical Test, both of which carried mandatory minimum sentences. If these defendants reached an agreement to plead to a misdemeanor, they might have agreed to serve more post-disposition incarceration than they would have agreed to for an offense that did not carry a mandatory minimum sentence.

**c) Sentence bargain only**

Even without a charge bargain recorded, a sentence bargain was associated with an increase in estimated days of post-disposition incarceration for Driving offenses statewide (+23 days) and outside Anchorage (+28 days). It may be that a consensus of what constituted a more serious offense in Driving cases might have been easier to reach than for other types of offenses. It also might have been the case that charge bargains were particularly under-reported in case files for the defendants convicted of non-presumptive Driving offenses and that the additional incarceration observed actually was associated with an unrecorded charge bargain.

A much different pattern was observed for defendants charged with Drug offenses in Anchorage. A sentence bargain in a non-presumptive Anchorage Drug case was associated with significantly less post-disposition incarceration (-48 days). The Anchorage Drug defendant with a sentence bargain, all other things being held equal, was associated with an estimated three days of post-disposition incarceration; the defendant without a sentence bargain was associated with an estimated 51 days of post-disposition incarceration. The finding for the Anchorage Drug defendants was echoed in the finding that Anchorage Drug defendants with both a sentence and a charge bargain also were associated with fewer days of post-disposition incarceration. The size of the difference (-49 days) was similar. This suggests that in Anchorage, there was a greater consensus about what constituted a less serious Drug offense.

These data suggest that sentence agreements, and charge and sentence agreements are handled differently inside Anchorage and outside Anchorage. Inside Anchorage, with the exception of Drug defendants who were associated with fewer days of post-disposition incarceration, agreements appeared not to be associated with significant changes in post-disposition incarceration. Outside Anchorage, agreements were associated with increases in post-disposition incarceration days.

### **3) Statutory aggravating and mitigating factors found at sentencing**

This set of analyses compared cases in which the judge found aggravators or mitigators at sentencing in non-presumptive convictions.<sup>441</sup> In presumptively sentenced cases, attorneys were required to provide notice to the judge and parties of any aggravating or mitigating factors that they wanted the judge to consider at sentencing. If the judge found that the factor was proved by clear and convincing evidence, he or she determined the weight, if any, to give the factor in adjusting the defendant's presumptive sentence.<sup>442</sup> Attorneys and judges in the non-presumptive cases analyzed here were not required to consider aggravating or mitigating factors. Nevertheless, in 20% of the non-presumptive felony convictions and 2% of the non-presumptive misdemeanor convictions in this sample, judges mentioned aggravating factors as playing a part in their sentencing decisions.<sup>443</sup>

In the statewide analyses, if the judge found aggravating factors, they were statistically associated with increases in post-disposition incarceration days for all but Drug offenses. Inside Anchorage, their statistically significant associations occurred only with Violent and Driving offenses. Outside Anchorage, aggravating factors were associated with more days of post-disposition incarceration in All Offenses Combined and Property offenses.

### **4) Other variables**

In addition to all the factors described above, the Council considered the defendant's choice of taking the case to trial, the statistical importance of having a contemporaneous case, the number of charges sentenced, the victim's relationship to the defendant (only in Violent cases) and the defendant's custodial status at the sentencing hearing (only in Drug cases). Although judges may have considered them at the time of sentencing, no (or very few) statistically significant effects were associated with the number of days of post-disposition incarceration that judges imposed. The few effects that were observed tended to be relatively small and limited to one type of case or one location. They are shown on the tables to provide more context for the relative importance of the factors discussed above.

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<sup>441</sup> The statutory factors were set forth in AS 12.55.155(c) and (d) (1999).

<sup>442</sup> A judge could also consider aggravating or mitigating factors not raised by the parties if the judge gave the parties advance notice of an intent to do so.

<sup>443</sup> When judges considered mitigating factors found at sentencing in non-presumptive cases, the mitigators did not appear to have any statistically significant associations with length of post-disposition incarceration.

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## Non-Presumptive Post-disposition Incarceration Regression Analyses

### How to Use Table 37

This table shows the results of the multiple regression analyses for non-presumptive post-disposition incarceration (see text for discussion of presumptive post-disposition incarceration findings). Please also see the discussion at pages 44-45, about the differences between multiple regression analyses and other ways of describing the data in this report.

Each column shows the results of the regression analysis, statewide, in Anchorage, and outside of Anchorage

- The results of the regression analyses are expressed narratively;
- The analyses divide the data into subgroups of ethnicity, private/public attorney, gender, rural location (Barrow, Bethel, Dillingham, Kodiak, Kotzebue and Nome), and alcohol, drug or mental health problem;
- The statistically significant findings are stated in bold letters; the non-statistically significant categories are marked "NS." "N/A" on this table means that the data were not available to analyze because the numbers of defendants or the number in comparison groups were too small.

The analyses on Tables 37a, 37b and 37c provide more detail about estimated differences in days of non-presumptive post-disposition incarceration associated with the variables tested.

### Footnotes for Table 37

<sup>a</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggested that further review of larger groups of these defendants was warranted to show whether disparities persist in bigger data sets.

<sup>b</sup> There were too few offenders in Sexual cases in Anchorage with non-presumptive sentences to do the multivariate analysis.



Table 37 Summary of Non-Presumptive Post-disposition Incarceration Regression Analyses			
	Statewide	Inside Anchorage	Outside Anchorage
<b>Association with Ethnicity<sup>a</sup></b>			
<b>All Offenses Combined</b>	NS	NS	Native/longer
<b>Violent</b>	NS	NS	NS
<b>Property</b>	NS	NS	NS
<b>Sexual</b>	NS	N/A <sup>b</sup>	NS
<b>Drug</b>	Native, Black/Longer	Black/longer	Native/longer
<b>Driving</b>	NS	NS	NS
<b>Association with Attorney</b>			
<b>All Offenses Combined</b>	Private Atty/shorter	Private Atty/shorter	Private Atty/shorter
<b>Violent</b>	Private Atty/shorter	Private Atty/shorter	Private Atty/shorter
<b>Property</b>	Private Atty/shorter	Private Atty/shorter	Private Atty/shorter
<b>Sexual</b>	Private Atty/shorter	N/A <sup>b</sup>	Private Atty/shorter
<b>Drug</b>	NS	Public Atty/shorter	NS
<b>Driving</b>	NS	NS	NS
<b>Association with Gender</b>			
<b>All Offenses Combined</b>	Male/longer	Male/longer	Male/longer
<b>Violent</b>	Male/longer	Male/longer	NS
<b>Property</b>	Male/longer	Male/longer	Male/longer
<b>Sexual</b>	NS	N/A <sup>b</sup>	N/A
<b>Drug</b>	NS	Female/longer	Male/longer
<b>Driving</b>	NS	NS	NS
<b>Association with Rural</b>			
<b>All Offenses Combined</b>	Rural/longer	N/A	NS
<b>Violent</b>	NS	N/A	NS
<b>Property</b>	NS	N/A	NS
<b>Sexual</b>	NS	N/A	NS
<b>Drug</b>	Rural/longer	N/A	NS
<b>Driving</b>	NS	N/A	NS
<b>Association with Alcohol/Mental/Drug</b>			
<b>All Offenses Combined</b>	Mental, Drug/longer Alch/NS	Mental, Drug/longer Alch/NS	Mental, Alch/longer Drug/NS
<b>Violent</b>	All/NS	Drug/longer Mental, Alch/NS	All/NS
<b>Property</b>	Mental, Drug/longer Alch/NS	All/NS	All/NS
<b>Sexual</b>	All/NS	N/A <sup>b</sup>	All/NS
<b>Drug</b>	Mental/longer Drug, Alch/NS	Alch/shorter Mental/longer Drug/NS	All/NS
<b>Driving</b>	All/NS	Mental/longer Alch, Drug/NS	Alch/longer Mental, Drug/NS

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**Table 37a**  
**Association with Post-Disposition Incarceration<sup>a</sup> - Statewide, Non-presumptive<sup>b</sup> Cases**

Variable and Comparison Group <sup>c</sup>	All Offenses Combined <sup>d</sup>		Violent		Property		Sexual		Drug		Driving <sup>d</sup>	
	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect
Black vs. Caucasian <sup>e,f</sup>	NS		NS		NS		NS		19/7	+12 Days	NS	
Native vs. Caucasian <sup>e,f</sup>	NS		NS		NS		NS		18/7	+11 Days	NS	
Male vs. female <sup>g</sup>	29/14	+15 Days	50/29	+21 Days	19/7	+12 Days	N/A		NS		NS	
Private attorney vs. public attorney	18/28	-10 Days <sup>g</sup>	28/52	-24 Days <sup>g</sup>	8/16	8 Days <sup>g</sup>	118/384	-266 Days <sup>g</sup>	NS		NS	
Rural vs. non-rural <sup>h</sup>	31/24	+7 Days	NS		NS		NS		25/8	+17	NS	
Prior felony record vs. no prior felony record <sup>i</sup>	48/33	+15 Days	66/52	+14 Days	27/19	+8 Days	558/432	+126 Days	NS		84/59	+25 Days
Alcohol problem vs. no alcohol problem	NS		NS		NS		NS		NS		NS	
Drug problem vs. no drug problem	29/23	+6 Days	NS		19/13	+6 Days	NS		NS		NS	
Mental health problem vs. no mental health problem	36/22	+14 Days	NS		19/13	+6 Days	NS		16/8	+8 Days	NS	
Contemporaneous cases vs. single case	NS		NS		NS		NS		NS		NS	
Two charges sentenced vs. one charge sentenced	NS		NS		NS		NS		NS		NS	
Aggravating factors vs. no aggravating factors <sup>j</sup>	48/24	+24 Days	72/42	+30 Days	38/14	+24 Days	432/275	+157 Days	NS		109/49	+60 Days
Mitigating factors vs. no mitigating factors <sup>j</sup>	NS		NS		NS		NS		NS		N/A	
Charge bargain only vs. no bargain	NS		NS		NS		NS		NS		NS	
Sentence bargain only vs. no bargain	NS		NS		NS		NS		NS		63/40	+23 Days
Both bargains vs. no bargains	32/23	+9 Days	68/34	+34 Days	NS		NS		NS		72/40	+32 Days
Trial vs. no trial	NS		NS		NS		NS		NS		NS	
In jail at time of sentence vs. not in jail	N/A		N/A		N/A		N/A		19/8	+11 Days	N/A	
Victim is stranger vs. other relationship	N/A		NS		N/A		N/A		N/A		N/A	

Table 37a (continued)  
Association with Post-Disposition Incarceration - Statewide, Non-presumptive Cases

<sup>a</sup> The 1,488 defendants included in these equations were those convicted of a charge that carried a non-presumptive sentence and who had sufficient information for the analysis. “Other” offenses were not included in the multivariate regressions because they were too diverse in nature. The defendants were convicted of a Class B or C felony and did not have a prior felony conviction of the type that would qualify for a presumptive sentence, or the most serious charge of which they were convicted was a misdemeanor. These estimated days of post-disposition incarceration took into account (were censored for) the amount of time served in predisposition incarceration by each defendant. A formula of 1-1/2 times the actual number of predisposition days incarcerated was used, to take into account “good time” credits. For example, if a defendant had 30 days of predisposition incarceration, the defendant appeared in the regression equation with a “censor” of 45 days.

The variables included on the table are described with their comparison groups (e.g., Black compared to Caucasian). Some variables used in the Tobit equations were not included in these tables. Specifically, variables of age at time of offense and “Other Ethnicity” (too few cases) were not included. On the statewide table, type of offense as a variable was not included because the results for each offense group were reported.

<sup>b</sup> The other sets of tables in these multivariate analyses included all defendants with presumptive sentences and those with dismissed charges (predisposition incarceration only). Because the analyses of post-disposition incarceration included different types of defendants they cannot be directly compared to Tables 35a, 35b, and 35c (for predisposition incarceration), or tables 38a, 38b, and 38c (for total time incarcerated).

<sup>c</sup> These tables show the statistically expected estimated change in days (increase or decrease) in the defendant’s post-disposition incarceration based on the presence of a particular characteristic of the defendant or case. For example, if the hypothetical defendant was male, the post-disposition incarceration on a non-presumptive Violent offense was expected to be 50 days of incarceration, compared to 29 days for a comparable female defendant. If the male’s post-disposition incarceration did not differ significantly from the female’s it was shown as “NS.” “N/A” on this table means that data were not available to analyze.

All other things being equal, the equations show that a defendant with several of the characteristics present would be likely to spend substantially more time incarcerated than a defendant without those characteristics. They also show that variables had relatively greater or lesser effects (e.g., the effect associated with having a mental health problem in All Offenses Combined (+14 days) was relatively greater than the effect associated with being from a rural area (+7 days, All Offenses Combined)).

<sup>d</sup> For each category of All Offenses Combined and specific offense groups, an E number was calculated. See text, *supra*, for further discussion. E=the estimated days of non-presumptive unsuspended post-disposition incarceration that the hypothetical defendant, average in all characteristics, could expect. The days of non-presumptive unsuspended post-disposition incarceration were based on all defendants convicted in non-presumptive cases grouped by most serious offense at time of conviction, with all characteristics. The purpose of showing the estimated days of non-presumptive unsuspended post-disposition incarceration was to provide context for the individual disparity findings. The numbers can only be used relative to each other, to give an approximate estimate of the relative size of the contribution that having a specific characteristic (e.g., having a prior record) made to the amount of time that a defendant with that characteristic might have received as unsuspended post-disposition incarceration at sentencing. If a male was expected to have 50 days post-disposition incarceration for a non-presumptive Violent offense and a female was expected to have 29 days, and the E was 45 days, the male defendant was estimated to spend a few more days than the hypothetical defendant, but the female was spending many fewer days than the hypothetical defendant. The Es on this table are: Statewide, All Offenses Combined E=25 days; Violent E=45 days; Property E=15 days; Sexual E=325 days; Drug E=9 days; Driving E=52 days.

Table 37a (continued)  
Association with Post-Disposition Incarceration - Statewide, Non-presumptive Cases

The estimated days were a statistical construct, useful only for looking at the effects of variables relative to each other. Because post-disposition incarceration only included unsuspended incarceration imposed by a judge that exceeded the amount of predisposition incarceration served by the defendant, these estimates were lower than mean actual sentences. DWI and Refusal felonies had mandatory minimum sentences ranging from 120 days to 360 days, depending on the number of prior convictions. See discussion *infra* Appendix D, Table D-4. Mean actual sentences for the non-presumptive defendants in this equation were: Statewide, All Offenses Combined, Mean=167 days; Violent, Mean=169 days; Property, Mean=94 days; Sexual, Mean=588 days; Drugs, Mean=88 days; Driving, Mean=155 days.

<sup>e</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggests that further review of larger groups of these defendants is warranted to show whether disparities persist in bigger data sets.

<sup>f</sup> See following tables for additional findings in Drug offenses inside Anchorage and outside Anchorage.

<sup>g</sup> A minus sign on the table meant that the defendant received significantly fewer estimated days of post-disposition incarceration on a non-presumptive charge.

<sup>h</sup> Rural refers to court location. Kodiak, Barrow, Kotzebue, Nome, Dillingham, and Bethel were rural. Anchorage, Fairbanks, Juneau, Southeast, and Southcentral were non-rural.

<sup>i</sup> This variable is shown as prior felony record (defined as defendants with one prior felony conviction) vs. no prior felony record (defined as defendants with four or more prior misdemeanor convictions but no prior felony convictions). The variable had six values, ranging from no prior convictions to three or more prior felony convictions. There would be larger or smaller effects than the +15 days shown on the table for All Offenses Combined for prior conviction histories that were more or less serious than the values reported on the tables.

<sup>j</sup> This table shows only aggravating and mitigating factors found on the record or mentioned by the judge at sentencing. Judges were not required to make findings about aggravators or mitigators when sentencing non-presumptive offenses. However, the data showed that judges found aggravators in about 20% of their convicted non-presumptive felony cases. In about 2% of this sample's misdemeanor convictions (all of which started as a felony), judges also mentioned aggravating factors.

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**Table 37b**  
**Association with Post-Disposition Incarceration<sup>a</sup> - Anchorage Only, Non-presumptive<sup>b</sup> Cases**

Variable and Comparison Group <sup>c</sup>	All Offenses Combined <sup>d</sup>		Violent		Property		Sexual <sup>e</sup>		Drug		Driving <sup>d</sup>	
	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect
Black vs. Caucasian <sup>f</sup>	NS		NS		NS		N/A		13/3	+10 Days	NS	
Native vs. Caucasian <sup>f</sup>	NS		NS		NS		N/A		NS		NS	
Male vs. female <sup>g</sup>	22/13	+9 Days	29/14	+15 Days	12/6	+6 Days	N/A		3/10	-7 Days	NS	
Private attorney vs. public attorney	13/22	-9 Days <sup>g</sup>	13/29	-16 Days <sup>g</sup>	6/11	-5 Days <sup>g</sup>	N/A		7/3	+4 Days	NS	
Prior felony record vs. no prior felony record <sup>h</sup>	39/25	+14 Days	43/31	+12 Days	17/12	+5 Days	N/A		11/6	+5 Days	119/65	+54 Days
Alcohol problem vs. no alcohol problem	NS		NS		NS		N/A		3/15	-12 Days <sup>g</sup>	NS	
Drug problem vs. no drug problem	25/16	+9 Days	37/20	+17 Days	NS		N/A		NS		NS	
Mental health problem vs. no mental health problem	30/17	+13 Days	NS		NS		N/A		11/3	+8 Days	176/51	+125 Days
Contemporaneous cases vs. single case	NS		NS		NS		N/A		N/A		17/73	-56 Days <sup>g</sup>
Two charges sentenced vs. one charge sentenced	24/18	+6 Days	NS		13/9	+4 Days	N/A		NS		NS	
Aggravating factors vs. no aggravating factors <sup>i</sup>	NS		38/22	+16 Days	NS		N/A		N/A		N/A	
Mitigating factors vs. no mitigating factors <sup>i</sup>	NS		NS		NS		N/A		N/A		N/A	
Charge bargain only vs. no bargain	NS		NS		NS		N/A		NS		NS	
Sentence bargain only vs. no bargain	NS		NS		NS		N/A		3/51	-48 Days <sup>g</sup>	NS	
Both bargains vs. no bargains	NS		NS		NS		N/A		2/51	-49 Days <sup>g</sup>	NS	
Trial vs. no trial <sup>j</sup>	NS		N/A		N/A		N/A		N/A		N/A	
In jail at time of sentence vs. not in jail <sup>k</sup>	N/A		N/A		N/A		N/A		9/3	+6 Days	N/A	
Victim is stranger vs. other relationship <sup>l</sup>	N/A		NS		N/A		N/A		N/A		N/A	

Table 37b (continued)  
Association with Post-Disposition Incarceration - Anchorage Only, Non-presumptive Cases

<sup>a</sup> The 557 defendants included in these equations were those convicted of a charge that carried a non-presumptive sentence. The defendants were convicted of a Class B or C felony and did not have a prior felony conviction of the type that would qualify for a presumptive sentence, or the most serious charge of which they were convicted was a misdemeanor. These estimated days of post-disposition incarceration took into account (were censored for) the amount of time served in predisposition incarceration by each defendant. A formula of 1-1/2 times the actual number of predisposition days incarcerated was used, to take into account "good time" credits. For example, if a defendant had 30 days of predisposition incarceration, the defendant appeared in the regression equation with a "censor" of 45 days.

The variables included on the table are described with their comparison groups (e.g., Black compared to Caucasian). Some variables used in the Tobit equations were not included in these tables. Specifically, variables of age at time of offense and "Other Ethnicity" (too few cases) were not included. On the statewide table, type of offense as a variable was not included because the results for each offense group were reported.

<sup>b</sup> The other sets of tables in these multivariate analyses included all defendants with presumptive sentences and those with dismissed charges (predisposition incarceration only). Because the analyses include different types of defendants they cannot be directly compared to Tables 35a, 35b, and 35c, for predisposition incarceration or Tables 38a, 38b, and 38c for total time incarcerated.

<sup>c</sup> These tables show the statistically expected estimated change in days in the defendant's post-disposition incarceration based on the presence of a particular characteristic of the defendant or case. For example, if the hypothetical defendant was male, the post-disposition incarceration on a non-presumptive Violent offense was expected to be 29 days of incarceration compared to 14 days of post-disposition incarceration for a comparable female defendant. If the male's sentence did not differ significantly from the female's it was shown as "NS." "N/A" on this table means that there were not data available to analyze.

All other things being equal, the equations show that a defendant with several of the characteristics present would be likely to spend substantially more time incarcerated than a defendant without those characteristics. They also show that variables had relatively greater or lesser effects (e.g., the effect associated with having a mental health problem in All Offenses Combined (+13 days) was relatively greater than the effect associated with being male (+9 days, All Offenses Combined)).

<sup>d</sup> For each category of All Offenses Combined and specific offense groups, an E number was calculated. See text, *supra*, for further discussion. E=the estimated days of non-presumptive unsuspended post-disposition incarceration that the hypothetical defendant, average in all characteristics, could expect. The days of non-presumptive unsuspended post-disposition incarceration were based on all defendants convicted in non-presumptive cases grouped by most serious offense at time of conviction, with all characteristics. The purpose of showing the estimated days of non-presumptive unsuspended post-disposition incarceration was to provide context for the individual disparity findings. The numbers can only be used relative to each other, to give an approximate estimate of the relative size of the contribution that having a specific characteristic (e.g., having a prior record) made to the amount of time that a defendant with that characteristic might have received as unsuspended post-disposition incarceration at sentencing. The Es on this table were: Anchorage only, All Offenses Combined E=19 days; Violent E=24 days; Property E=10 days; Sexual, no analysis; Drug E=4 days; Driving E=61 days.

The estimated days were a statistical construct, useful only for looking at the effects of variables relative to each other. Because post-disposition incarceration only included unsuspended incarceration imposed by a judge that exceeded the amount of predisposition incarceration served by the defendant, these estimates were lower than mean actual sentences. DWI and Refusal felonies had mandatory minimum sentences ranging from 120 days to 360 days, depending on the number of prior convictions. See discussion *infra* Appendix D, Table D-4. Mean actual sentences for the non-presumptive defendants in this equation were: Anchorage only, All Offenses Combined, Mean=147 days; Violent, Mean=163 days; Property, Mean=83 days; Sexual, Mean=590 days; Drugs, Mean=95 days; Driving, Mean=182 days.

<sup>e</sup> Anchorage had too few non-presumptive sexual offenses to calculate any of these equations.

Table 37b (continued)  
Association with Post-Disposition Incarceration - Anchorage Only, Non-presumptive Cases

<sup>f</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggests that further review of larger groups of these defendants is warranted to show whether disparities persist in bigger data sets.

<sup>g</sup> A minus sign shows that the variable tested was associated with expected decrease in non-presumptive post-disposition incarceration days. For example, in Anchorage Drug cases, males had compared to females, seven fewer expected days of post-disposition incarceration.

<sup>h</sup> This variable is shown as prior felony record (defined as defendants with one prior felony conviction) vs. no prior felony record (defined as defendants with four or more prior misdemeanor convictions but no prior felony convictions). The variable had six values, ranging from no prior convictions to three or more prior felony convictions. There would be larger or smaller effects than the +14 days shown on the table for All Offenses Combined for prior conviction histories that were more or less serious than the values reported on the tables.

<sup>i</sup> This table shows only aggravating and mitigating factors found on the record or mentioned by the judge at sentencing. Judges were not required to make findings about aggravators or mitigators when sentencing non-presumptive offenses. However, the data showed that judges found aggravators in about 20% of their convicted non-presumptive felony cases. In about 2% of this sample's misdemeanor convictions (all of which started as a felony), judges also mentioned aggravating factors.

<sup>j</sup> Trials were too few in number to include in the equation.

<sup>k</sup> Incarcerated at time of sentencing, compared to on release at time of sentencing - data were available only for non-presumptive Drug cases.

<sup>l</sup> Victim was stranger compared to other victim/defendant relationships - analysis available only for Violent offenses (it was not significant).



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**Table 37c**  
**Association with Post-Disposition Incarceration<sup>a</sup> - Outside Anchorage, Non-presumptive<sup>b</sup> Cases**

Variable and Comparison Group <sup>c</sup>	All Offenses Combined <sup>d</sup>		Violent		Property		Sexual		Drug		Driving <sup>d</sup>	
	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect
Black vs. Caucasian <sup>e</sup>	NS		NS		NS		NS		NS		N/A	
Native vs. Caucasian <sup>e</sup>	39/30	+9 Days	NS		NS		NS		31/9	+22 Days	NS	
Male vs. female <sup>e</sup>	38/17	+21 Days	NS		24/9	+15 Days	N/A		14/7	+7 Days	NS	
Private attorney vs. public attorney	26/35	-9 Days <sup>f</sup>	36/59	-23 Days <sup>f</sup>	11/22	-11 Days <sup>f</sup>	104/374	-270 Days <sup>f</sup>	NS		NS	
Rural vs. non-rural <sup>e</sup>	NS		NS		NS		NS		NS		NS	
Prior felony record vs. no prior felony record <sup>h</sup>	56/42	+14 Days	70/59	+11 Days	39/27	+12 Days	NS		31/19	+12 Days	NS	
Alcohol problem vs. no alcohol problem	36/27	+9 Days	NS		NS		NS		NS		46/16	+30 Days
Drug problem vs. no drug problem	NS		NS		NS		NS		NS		NS	
Mental health problem vs. no mental health problem	44/30	+14 Days	NS		NS		NS		NS		NS	
Contemporaneous cases vs. single case	NS		NS		NS		NS		NS		NS	
Two charges sentenced vs. one charge sentenced	NS		NS		NS		NS		21/10	+11 Days	NS	
Aggravating factors vs. no aggravating factors <sup>i</sup>	61/31	+30 Days	NS		62/18	+44 Days	NS		N/A		NS	
Mitigating factors vs. no mitigating factors <sup>i</sup>	NS		NS		NS		NS		NS		N/A	
Charge bargain only vs. no bargain	NS		NS		NS		NS		NS		NS	
Sentence bargain only vs. no bargain	NS		NS		NS		NS		NS		60/32	+28 Days
Both bargains vs. no bargains	47/28	+19 Days	81/44	+37 Days	28/16	+12 Days	NS		NS		NS	
Trial vs. no trial	NS		NS		NS		NS		NS		NS	
In jail at time of sentence vs. not in jail <sup>i</sup>	N/A		N/A		N/A		N/A		NS		N/A	
Victim is stranger vs. other relationship <sup>k</sup>	N/A		NS		N/A		N/A		N/A		N/A	

Table 37c (continued)  
Association with Post-Disposition Incarceration - Outside Anchorage, Non-presumptive<sup>b</sup> Cases

<sup>a</sup> The 965 defendants included in these equations were those convicted of a charge that carried a non-presumptive sentence. The defendants were convicted of a Class B or C felony and did not have a prior felony conviction of the type that would qualify for a presumptive sentence, or the most serious charge of which they were convicted was a misdemeanor. These estimated days of post-disposition incarceration took into account (were censored for) the amount of time served in predisposition incarceration by each defendant. A formula of 1-1/2 times the actual number of predisposition days incarcerated was used, to take into account “good time” credits. For example, if a defendant had 30 days of predisposition incarceration, the defendant appeared in the regression equation with a “censor” of 45 days.

The variables included on the table are described with their comparison groups (e.g., Black compared to Caucasian). Some variables used in the Tobit equations were not included in these tables. Specifically, variables of age at time of offense and “Other Ethnicity” (too few cases) were not included. On the statewide table, type of offense as a variable was not included because the results for each offense group were reported.

<sup>b</sup> The other sets of tables in these multivariate analyses included all defendants with presumptive sentences and those with dismissed charges (predisposition incarceration only). Because the analyses included different types of defendants they cannot be directly compared to Tables 35a, 35b, and 35c, for predisposition incarceration or tables 38a, 38b, and 38c for total time incarcerated.

<sup>c</sup> These tables show the statistically expected estimated change in days in the defendant’s post-disposition incarceration based on the presence of a particular characteristic of the defendant or case. For example, if the hypothetical defendant was male, the post-disposition incarceration on a non-presumptive Property offense was expected to be 24 days of incarceration compared to 9 days of post-disposition incarceration for a comparable female defendant. If the male’s sentence did not differ significantly from the female’s it was shown as “NS.” “N/A” on this table means that there were not data available to analyze.

All other things being equal, the equations show that a defendant with several of the characteristics present would be likely to spend substantially more time incarcerated than a defendant without those characteristics. They also show that variables had relatively greater or lesser effects (e.g., the effect associated with being male in All Offenses Combined (+21 days) was relatively greater than the effect associated with having an alcohol problem (+9 days, All Offenses Combined)).

<sup>d</sup> For each category of All Offenses Combined and specific offense groups, an E number was calculated. See text, *supra*, for further discussion. E=the estimated days of non-presumptive unsuspended post-disposition incarceration that the hypothetical defendant, average in all characteristics, could expect. The days of non-presumptive unsuspended post-disposition incarceration was based on all defendants convicted in non-presumptive cases grouped by most serious offense at time of conviction, with all characteristics. The purpose of showing the estimated days of non-presumptive unsuspended post-disposition incarceration was to provide context for the individual disparity findings. The numbers can only be used relative to each other, to give an approximate estimate of the relative size of the contribution that having a specific characteristic (e.g., having a prior record) made to the amount of time that a defendant with that characteristic might have received as unsuspended post-disposition incarceration at sentencing. The Es on this table are: Outside Anchorage, All Offenses Combined E=33 days; Violent E=54 days; Property E=20 days; Sexual E=324 days; Drug E=12 days; Driving E=43 days.

The estimated days were a statistical construct, useful only for looking at the effects of variables relative to each other. Because post-disposition incarceration only included unsuspended incarceration imposed by a judge that exceeded the amount of predisposition incarceration served by the defendant, these estimates were lower than mean actual sentences. DWI and Refusal felonies had mandatory minimum sentences ranging from 120 days to 360 days, depending on the number of prior convictions. See discussion *infra* Appendix D, Table D-4. Mean actual sentences for the non-presumptive defendants in this equation were: Outside Anchorage, All Offenses Combined, Mean=179 days; Violent, Mean=173 days; Property, Mean=102 days; Sexual, Mean=587 days; Drugs, Mean=85 days; Driving, Mean=141 days.

Table 37c (continued)  
Association with Post-Disposition Incarceration - Outside Anchorage, Non-presumptive<sup>b</sup> Cases

<sup>e</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggests that further review of larger groups of these defendants is warranted to show whether disparities persist in bigger data sets.

<sup>f</sup> A minus sign shows that the variable tested had an expected decrease in non-presumptive post-disposition incarceration days.

<sup>g</sup> Rural refers to court location. Kodiak, Barrow, Kotzebue, Nome, Dillingham, and Bethel were rural. Anchorage, Fairbanks, Juneau, Southeast, and Southcentral were non-rural.

<sup>h</sup> This variable is shown as prior felony record (defined as defendants with one prior felony conviction) vs. no prior felony record (defined as defendants with four or more prior misdemeanor convictions but no prior felony convictions). The variable had six values, ranging from no prior convictions to three or more prior felony convictions. There would be larger or smaller effects than the +14 days shown on the table for All Offenses Combined for prior conviction histories that were more or less serious than the values reported on the tables.

<sup>i</sup> This table shows only aggravating and mitigating factors found on the record or mentioned by the judge at sentencing. Judges were not required to make findings about aggravators or mitigators when sentencing non-presumptive offenses. However, the data showed that judges found aggravators in about 20% of their convicted non-presumptive felony cases. In about 2% of this sample's misdemeanor convictions (all of which started as a felony), judges also mentioned aggravating factors.

<sup>j</sup> Incarcerated at time of sentencing, compared to on release at time of sentencing - data were available only for non-presumptive Drug cases.

<sup>k</sup> Victim was a stranger compared to other victim/defendant relationships - analysis available only for Violent offenses.

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## **D. Total Time Incarcerated**

The final major multivariate regression analysis looked at the longer of the convicted defendant's two possible periods of incarceration: predisposition (time incarcerated prior to sentencing), and unsuspended incarceration imposed at sentencing for both presumptive and non-presumptive sentences.<sup>444</sup> This analysis allowed the Council to look at the total amount of time served throughout the criminal justice process for convicted defendants<sup>445</sup> and its associations with the various characteristics of the defendant and the case.

The majority of convicted defendants were sentenced to more time than they had already served prior to sentencing.<sup>446</sup> The total time of incarceration for those defendants was the unsuspended incarceration imposed at sentencing.

However, because some defendants were incarcerated longer prior to sentencing than they were required to serve when sentenced, the analysis of total time of incarceration for all defendants could not simply be based on defendants' sentences. The analysis had to allow for defendants who spent more time incarcerated prior to sentencing than they were sentenced to serve. By defining total time of incarceration as the longer of the defendant's predisposition incarceration (without credit for good time) or unsuspended incarceration imposed at sentencing, the analysis was able to accurately measure total time of incarceration for all convicted defendants.

It is important to remember that the total time multivariate regression analysis discussed below included all sentenced defendants. The sentencing analysis discussed in Part III, Section C, included only defendants subject to non-presumptive post-disposition incarceration because no disparities were identified in presumptive post-disposition incarceration days.

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<sup>444</sup> The analysts used a different type of equation to view total time for convicted defendants. Their methodology explains it as: "we used a reduced form equation to look at the system as a whole . . . . This dependent variable is [log] of the longer pretrial (predisposition) incarceration or days sentenced on single most serious charge. . . . The equation includes Murder charges. The equation is censored from below at zero and from above at the maximum statutory sentence for the single most serious charge of conviction." They note that the equation included "all persons charged with a felony who do not have all charges dropped (except after trial)." ISER, *Alaska Felony Sentencing, 1999 Methodology*, May 22, 2003. (On file at Alaska Judicial Council.)

<sup>445</sup> The equation included all convicted defendants.

<sup>446</sup> Note that because of different purposes for the analysis, the unsuspended incarceration imposed at sentencing in the total time analysis is not the same as the unsuspended post-disposition incarceration analyzed in the previous section. The unsuspended incarceration in this section includes all unsuspended incarceration imposed at sentencing, not just post-disposition incarceration that exceeded predisposition incarceration. See previous section.

For reasons related to the statistical analyses, it was not possible to simply add the defendant's predisposition incarceration to the defendant's post-disposition incarceration, for this total time multivariate regression analysis.<sup>447</sup> When calculating the defendant's post-disposition incarceration in the multivariate regression analysis discussed in Part C, credit for good time was used in the calculation of the defendant's predisposition incarceration. For the post-disposition incarceration analysis, the Council wanted to assess exactly how much unsuspended incarceration the judge required the defendant to serve in excess of time served prior to sentencing. Different methods of calculating predisposition incarceration were used in the two prior analyses.

To create the variable used in this analysis, the Council used the longer of the two times, and characterized the defendant by that length of time. For example, a defendant who spent six months incarcerated before sentencing and was sentenced to two months to serve, was characterized as serving six months of total time. Conversely, a defendant who spent only a few days incarcerated prior to the sentencing but then was sentenced to a year to serve (whether presumptive or non-presumptive) was characterized by the one-year time for the total time analysis.

The analysis of total time incarcerated relied on many of the same methods used in the predisposition incarceration and non-presumptive post-disposition incarceration analyses. The preliminary discussion of methodology for the analysis is repeated below in section 1. Because the total time incarcerated equations were structured somewhat differently from the predisposition and non-presumptive post-disposition incarceration equations, section 1 also includes information about methods unique to understanding the total time incarcerated findings. The detailed discussion of results for the total time analysis starts in section 2.

## **1. Methodology: General Discussion**

As discussed in the methodology section earlier in the report,<sup>448</sup> the Council collected and reviewed data about many characteristics of cases and defendants. These included the type of offense; the location of the court; the defendant's age, gender, ethnicity, and prior criminal convictions; the defendant's drug, alcohol or mental health problems; the type of attorney representing the defendant; whether the defendant went to trial; and information about plea agreements. The analyses that follow focused on five variables that influenced the outcomes of cases in unexpected ways: the defendants' ethnicities, the type of attorney representing them, their gender, the disposition of their cases in different court locations and their alcohol, drug abuse or mental health problems. Other variables

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<sup>447</sup> For further information about the analyses please contact the Judicial Council.

<sup>448</sup> *See supra* pp. 38-46.

also were associated with the outcomes for various cases, but those influences tended to be more predictable.

The analysis showed that certain traits of defendants were significantly associated with changes in the estimated length of total time incarcerated. The analysts estimated the effects (coefficients) associated with individual variables by mathematically constructing two defendants identical in every characteristic except the one to be measured. To look at the effects associated with being Native in Violent offenses statewide, the analysts created defendants who were comparable except that one was Native and the other Caucasian. The equations created to estimate the total time incarcerated were run using the Native defendant in one run and the Caucasian defendant in the other.

To interpret the coefficients created in this first analysis of Native/Caucasian, and to provide context for the findings, the analysts created hypothetical defendants, made mathematically from the average of each characteristic used in the equation (e.g., characteristics such as alcohol problem, prior record of convictions, number of charges filed).<sup>449</sup> The estimated total time incarcerated, measured in days (E=) for the hypothetical defendants in each set of equations is included in footnotes on each set of tables.

To use the example of Native defendant differences from Caucasian defendants in Violent offenses statewide, Table 38a shows that the estimated days of total time for Native defendants were 126, and for Caucasian defendants, the estimated days were 80. The estimated days for the hypothetical defendants (Table 38a, footnote c) were 103.<sup>450</sup> The Caucasian defendant with a Violent offense statewide was associated with 23 fewer days of total time of incarceration than the hypothetical defendant and the comparable Native defendant was expected to have 23 more days of total time of incarceration.

These estimated days can only be used relative to each other and to the hypothetical defendant to give a sense of the relative magnitude of the effects of certain characteristics on the defendant's total

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<sup>449</sup> The term "hypothetical" was used instead of "typical" because in reality there were no "typical" defendants who were average in every respect. The hypothetical defendant with average characteristics had to be created separately for each equation in the analysis.

<sup>450</sup> This estimated 103 days is substantially higher than the predisposition estimated incarceration for the hypothetical defendant of 66 days or the post-disposition incarceration estimated 45 days. This equation for total time incarcerated included all defendants with presumptive sentences (most of which were 365 days or longer), and it did not take into account the formula for estimating good time and credit for time served in predisposition incarceration that was used in the non-presumptive post-disposition incarceration analyses.



time of incarceration. They do not reflect the actual time spent by any one defendant, or an average defendant.

The equations showed the independent effects associated with each variable. For example, for the statewide analysis of All Offenses Combined, (Table 38a), they showed an estimated effect of +24 days associated with being Native, an additional estimated effect of +47 days associated with the defendant being male, and an additional effect of +14 days associated with having an alcohol problem. All other things being equal, the equations showed that being a Native male defendant with an alcohol problem was associated with substantially more total time incarcerated for a non-presumptive conviction than for a defendant without those factors.

Most defendants had more than one significant factor present. The effects were calculated independently, so most defendants could be expected to have been associated with more than the estimated time than for just one variable. However, because of the design of the equations, the estimated days could not be simply added to each other to calculate an estimated amount of total time incarcerated. The best that could be said was that defendants with more of these variables would be associated with more total time incarcerated than defendants with fewer of these variables.

Tables 38a, 38b, and 38c present the results of the multivariate analyses for total time incarcerated. The tables show the significant and non-significant findings expressed as estimated changes in total days incarcerated associated with the variables in the equations. When considering the estimated days for the total time incarcerated, it is useful to keep in mind the fact that most defendants were charged with Class B and C felonies, and most defendants were convicted of those offenses or of a misdemeanor. In other words, most offenders were not the more serious offenders.

Tables 39a, 39b, 39c and 39d compare the multivariate regression findings for predisposition incarceration, charge reductions, non-presumptive post-disposition incarceration and total time incarcerated by ethnicity, type of attorney, gender and rural location. These tables permit a clearer understanding of how all of the analyses fit together, particularly important for understanding the total days incarcerated analyses. The tables should be read similarly to prior narrative tables that summarized regression analysis findings.

For example, Table 39a shows that being Native was associated with longer estimated total times of incarceration in Violent offenses statewide when compared to Caucasian defendants. It also shows that although there was no significant difference for Natives compared to Caucasians in post-disposition incarceration for Violent offenses statewide, there was a significant difference between the two groups in predisposition incarceration on Violent offenses statewide. The findings, taken

together, suggest that the disparity in total time was more related to predisposition incarceration than to post-disposition non-presumptive incarceration.

Tables 38a, 38b, and 38c present the quantified results of the multivariate analyses for total time incarcerated. Tables 38a (Statewide), 38b (Anchorage cases only), and 38c (all cases outside Anchorage) show the significant and non-significant findings, expressed as estimated changes in total time incarcerated days associated with variables in the equations.<sup>451</sup>

## **2. Total Time Disparities Associated with Ethnicity<sup>452</sup>**

### **a. Disparities for Native defendants**

Statewide, for All Offenses Combined, being Native was associated with longer total time incarcerated (93 estimated days for a Native defendant compared to 69 days for a comparable Caucasian defendant. The estimated days (E=) for the hypothetical defendant, Table 38a, footnote c, were 79). Statewide, longer total times were associated with being Native in Violent (126 days for Native defendants in the context of an estimated 103 days for the hypothetical defendant) and Drug offenses (74 days in the context of an estimated 40 days for the hypothetical defendant). (See Table 38a.)

Table 39a shows that statewide, for All Offenses Combined, being Native was associated with longer predisposition times but not longer times for non-presumptive post-disposition incarceration, suggesting that the statewide Native total time disparity was related to the longer predisposition incarceration times associated with being Native. More detailed findings regarding predisposition incarceration and non-presumptive post-disposition incarceration are reported in Sections A and C.

In Anchorage cases, no total time disparity was associated with being Native for All Offenses Combined. When particular offense types were examined in Anchorage cases, a total time disparity for Natives was only identified for Drug offenses (133 estimated days for the Native defendant in

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<sup>451</sup> The equations estimating total days of incarceration were not linear. The closer a defendant fell to the end point of the equations – zero days or the hypothetical maximum days of incarceration – the smaller the effect of any disparity. At the extreme ends, an ethnic disparity, for example, was not going to give a Native defendant more days in jail than the Caucasian defendant, if the Caucasian defendant already expected the maximum. Conversely, the equation might predict fewer days for some Native defendants whose offenses were not serious, so the disparity would be less at that end of the spectrum as well. This nonlinearity meant that the analysis had to estimate total days incarcerated for an individual hypothetical defendant, not a group of defendants.

<sup>452</sup> As with the earlier analyses, there were too few Hispanic and Asian/Pacific Islander defendants to adequately analyze the data. Some of the findings appeared to suggest that these ethnic groups might experience disparate treatment at various points in the justice system. The analyses suggest the need to look at groups of these defendants that would be large enough to make statistically reliable findings.

the context of an estimated 57 days for the hypothetical defendant). (See footnote c, Table 38b.) Although no disparities were associated with being Native in predisposition incarceration or non-presumptive post-disposition incarceration in Drug offenses in Anchorage (see Table 39), when all things were considered, a statistically significant disparity in total time incarcerated was associated with being Native in Anchorage Drug offenses.

In cases outside of Anchorage, for All Offenses Combined, being Native was associated with more total time (an estimated 100 days in the context of 85 estimated days for the hypothetical defendant). (See Table 38c.) Looking at particular offense types outside of Anchorage, a total time disparity was associated with being Native only in Violent offenses (116 estimated days in the context of 97 estimated days for the hypothetical defendant). Table 39a shows that outside of Anchorage, Native disparities were identified in predisposition incarceration and non-presumptive post-disposition incarceration for All Offenses Combined. The disparity associated with non-presumptive post-disposition incarceration occurred in non-presumptive All Offenses Combined and Drug offenses.

#### **b. Disparities for Black defendants**

Statewide (Table 38a), being Black was not associated with any significant differences in total time incarcerated, for All Offenses Combined or for individual offense types statewide. Looking at Anchorage offenses only (Table 38b), Black defendants in Drug cases were associated with an estimated 68 days of total incarceration time, as compared to 33 days for the comparable Caucasian defendant. Table 39a shows that a disparity in non-presumptive post-disposition incarceration was related to the total time disparity. The total days estimated for the hypothetical Drug defendant were 57 days.<sup>453</sup>

Black defendants outside Anchorage also were associated with an increase in total time incarcerated estimated for Violent offenses. The Black defendants charged with Violent offenses were associated with an estimated 204 days total time incarcerated, in the context of 97 days total time for the hypothetical defendant (Table 38c, and footnote c). Table 39a does not show any disparities associated with being Black outside Anchorage in predisposition incarceration or in non-presumptive post-disposition incarceration, suggesting that the finding of a significant difference in total time incarcerated might possibly be attributed to the defendants with presumptive post-disposition incarceration included in the equations for total time.

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<sup>453</sup> See *infra* Table 38b, footnote c.

### 3. Disparities Associated with Type of Attorney

Total time disparities for defendants represented by private attorneys appeared consistently at the statewide level for All Offenses Combined and for defendants with Violent and Property charges (Table 38a). The same pattern appeared in Anchorage (Table 38b). Outside Anchorage, the charged defendants in All Offenses Combined, Property, or Sexual offenses showed disparities associated with type of attorney (Table 38c). In all instances, the defendants represented by private attorneys were associated with fewer estimated days of total time incarcerated than defendants represented by public attorneys.

A defendant with a private attorney was associated with an estimated 46 days of total time incarcerated in All Offenses Combined Statewide, instead of the estimated 89 days for a comparable defendant with a public attorney.<sup>454</sup> For defendants charged with Violent offenses statewide, the private attorney client was associated with an estimated 64 days of total time, compared to the 114 days of total time incarcerated for the public attorney client.<sup>455</sup> In Property offenses statewide, the private attorney client was associated with an estimated nine days of total time incarcerated, while the public attorney client was estimated to spend 43 days of total incarceration time.<sup>456</sup>

In Anchorage cases, the same sets of disparities were found in estimated total time incarcerated. Defendants with private attorneys in All Offenses Combined, Violent and Property offenses were associated with fewer estimated days of total time incarcerated, compared to comparable defendants with public attorneys (Table 38b). For example, defendants with private attorneys in Anchorage charged with Violent offenses were associated with 57 total days of incarceration throughout the course of their cases. Comparable defendants with public attorneys were associated with 133 days of total time of incarceration in Anchorage Violent offenses.<sup>457</sup>

Table 39b shows that the estimated reductions in total time incarcerated associated with defendants with private attorney representation in All Offenses Combined, Violent offenses and Property offenses, were echoed by fewer days of predisposition incarceration and fewer days of post-disposition non-presumptive incarceration for all the same offense groups. The only exception was

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<sup>454</sup> See *infra* Table 38a. The estimated days for the hypothetical defendant from Table 38a, footnote c, were 79 days.

<sup>455</sup> Estimated days for the hypothetical defendant in a Violent offense statewide were 103 days. See *infra* Table 38a, footnote c.

<sup>456</sup> Estimated days for the hypothetical defendant in a Property offense statewide were 36 days of total time incarcerated. See *infra* Table 38a, footnote c.

<sup>457</sup> Estimated days for the hypothetical defendant in an Anchorage Violent case were 115 days of total time incarcerated. See *infra* Table 38b, footnote c.

that fewer expected days of predisposition incarceration and post-disposition non-presumptive incarceration for private attorney defendants with Violent offenses charged outside Anchorage was not followed by a finding of significantly fewer days of total time incarcerated for the same defendants.

The one other difference in total time incarcerated analyzed by type of attorney appeared in Sexual offenses charged outside Anchorage. Defendants with a private attorney were associated with an estimated 176 days of total time incarcerated over the course of their cases; comparable defendants with a public attorney were associated with an estimated 348 days of total time incarcerated.<sup>458</sup>

The noticeable differences by type of offense in the outcomes on Table 39b associated with being a private attorney client compared to a public attorney client suggested that the client characteristics that could not be measured may have been among the deciding factors in the outcomes,<sup>459</sup> rather than the quality of representation provided by the different attorneys. The differences appeared primarily in All Offenses Combined, and in Violent and Property offenses. If the quality of representation were the deciding factor, the analyses would have been more likely to show consistent differences by type of attorney for all offenses rather than just for selected types of offenses.

#### **4. Disparities Associated with Gender**

Being male was associated with increased days of estimated total time to serve for All Offenses Combined, Violent offenses, and Property offenses (Table 38). The differences were found statewide, in Anchorage, and outside Anchorage. No significant differences in estimated total time of incarceration were associated with Drug or Driving offenses (it could not be measured for Sexual offenses because there was no comparison group).

Although the actual number of expected days of total time incarcerated varied somewhat by location and type of offense, the findings of increased estimated days for male defendants remained consistent. For example, a male defendant charged with a Violent offense statewide was associated with an estimated 115 days of total time incarcerated throughout his case. A comparable female

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<sup>458</sup> The hypothetical defendant was associated with (E=) 320 days of total time incarcerated for Sexual offenses outside Anchorage. See *infra* Table 38c, footnote c.

<sup>459</sup> For example, defendants with different types of socioeconomic factors could have been more likely to be charged with some types of offenses and not with other types of offenses. Differences in case processing associated with different types of offenses also could have accounted for different outcomes rather than type of attorney being responsible for the significant differences.

defendant was associated with 57 days of estimated total incarceration.<sup>460</sup> A male charged with a Violent offense in Anchorage was associated with an estimated 131 days of total time incarcerated; the comparable Anchorage female charged with a Violent offense was associated with 69 days.<sup>461</sup> A male charged with a Violent offense outside Anchorage was associated with 105 estimated days of total time incarcerated, relative to the comparable female outside Anchorage who was associated with 54 days.<sup>462</sup>

Table 39c shows that male defendants also were associated with more estimated predisposition incarceration days, and more non-presumptive post-disposition estimated days for All Offenses Combined, Violent offenses, and Property offenses everywhere in the state. However, no disparities were associated with Driving offenses in any of the categories for male defendants compared to female defendants, and disparities in Drug offenses were limited to females in Anchorage and males outside Anchorage for post-disposition non-presumptive incarceration.<sup>463</sup> The lack of consistent disparities in Driving and Drug offenses, and the consistency of the disparities between male and female defendants for All Offenses Combined, and Violent and Property offenses, suggests that different factors were considered in the handling of different offenses. Although the factor could have been gender, the lack of its presence in Driving and Drug offenses suggests that it could have been some factor other than gender.

## 5. Disparities Associated with Rural

Being a defendant in a rural area (defined, for this analysis, as a defendant in Barrow, Bethel, Dillingham, Kodiak, Kotzebue or Nome) did not appear to be significantly associated with changes in the total time of incarceration. The single exception was Drug cases, where rural defendants were associated with a substantial increase in total estimated days of incarceration, both in the statewide analysis and in the outside Anchorage analysis. Statewide, the defendant in the rural Drug case was associated with an estimated 81 days of total time incarcerated, as compared to the 36 days that a comparable non-rural defendant could expect.<sup>464</sup> Just looking at the rural defendant in the equation

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<sup>460</sup> The estimated days for the hypothetical defendant charged with a Violent offense in the statewide equations were 103 days. *See infra* Table 38a, footnote c.

<sup>461</sup> The estimated days for the hypothetical defendant charged with a Violent offense in the Anchorage equations were 115 days. *See infra* Table 38b, footnote c.

<sup>462</sup> The estimated days (E=) for the hypothetical defendant charged with a Violent offense in the outside Anchorage equations were 97 days. *See infra* Table 38c, footnote c.

<sup>463</sup> There was no comparison group for males in Sexual offenses, so the analyses by gender were not done for Sexual offenses.

<sup>464</sup> The estimated days for the hypothetical Drug defendant in the statewide equations were 40 days. *See infra* Table 38a, footnote c.

for the areas outside Anchorage, the rural Drug defendant was associated with an estimated 74 days of total time incarcerated, as compared to the 26 days of total time incarcerated that a non-rural outside Anchorage defendant would expect.<sup>465</sup>

Table 39d showed the overall pattern of the effects of being in a rural area associated with different outcomes in the analyses. Being from a rural area was associated with the most effect in predisposition incarceration where it tended to reduce the estimated days of incarceration for All Offenses Combined, and for Violent, Property and Driving offenses. It also tended to benefit defendants in the charge reduction equations, showing that those charged with All Offenses Combined, and Violent, Property and Sexual offenses were associated with better charge reductions. Being from a rural area was associated however, with longer post-disposition non-presumptive incarceration for All Offenses Combined and for Drug offenses statewide, and with longer total time of incarceration for Drug offenses statewide. Statewide, less predisposition incarceration and increased charge reductions generally offset longer post-disposition non-presumptive times for rural defendants.

## **6. Differences Associated with Alcohol, Drug or Mental Problems**

Alcohol, drug, or mental health problems were associated with longer estimated total times of incarceration in many of the equations. Drug and mental health problems appeared to have slightly more effects than did alcohol problems. In most instances, if the problems had a significant association with total time incarcerated, they tended to increase the total time (the one exception was defendants with mental health problems in Driving offenses outside Anchorage; they were associated with shorter total times of incarceration) (Tables 38 and 38c).

Alcohol problems appeared to be significantly associated with longer estimated total times incarcerated for All Offenses Combined statewide, and for Violent offenses, Property offenses, and Driving offenses statewide. They appeared to have no relationship to any offense groups in Anchorage, except Property offenses. Outside Anchorage, alcohol problems appeared to be associated with longer estimated total time incarcerated for All Offenses Combined, and for Violent and Driving offenses. Alcohol problems appeared to be unrelated to total times incarcerated for Sexual offenses anywhere in the state.

Drug problems appeared to be significantly associated with longer estimated total times of incarceration for All Offenses Combined statewide, and for Violent, Property, and Drug offenses

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<sup>465</sup> The estimated days for the hypothetical Drug defendant in the outside Anchorage equations were 32 days. See *infra* Table 38c, footnote c.

statewide. In Anchorage, drug problems were associated with longer total time of incarceration for all offense groupings except Sexual and Driving offenses. Outside Anchorage, drug problems were associated with longer total incarceration times for All Offenses Combined, for Property offenses and for Driving offenses.

Mental health problems were associated with All Offenses Combined statewide, and with Violent and Property offenses. They were associated with longer total times of incarceration in Anchorage for All Offenses Combined, and for Violent, and Property offenses. Outside Anchorage, mental health problems appeared to be associated with longer total times of incarceration for All Offenses Combined, and for Violent offenses, Property offenses, and Drug offenses. For Driving offenses outside Anchorage, mental health problems were associated with slightly shorter total times of incarceration.

The detailed information about the estimated days associated with these problems in each area and type of offense appears on Tables 38a, 38b, and 38c. For the most part, these types of problems seemed to be associated with relatively moderate changes in estimated days of total time incarcerated.



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## Total Time Incarcerated Regression Analyses

### How to Use Table 38

This table shows the results of the multiple regression analyses for total time incarcerated (see text for discussion of total time findings). Please also see the discussion at pages 44-45, about the differences between multiple regression analyses and other ways of describing the data in this report.

Each column shows the results of the regression analysis, statewide, in Anchorage, and outside of Anchorage

- The results of the regression analyses are expressed narratively;
- The analyses divide the data into subgroups of ethnicity, type of attorney, gender, rural location (Barrow, Bethel, Dillingham, Kodiak, Kotzebue and Nome), and alcohol, drug or mental health problem;
- The statistically significant findings are stated in bold letters; the non-statistically significant categories are marked "NS." "N/A" on this table means that the data were not available to analyze because the numbers of defendants or the number in comparison groups were too small.

For each of these regression equations, and for each important variable (e.g., ethnicity, type of attorney, gender), the findings are reported overall (for all defendants and types of offenses) and by type of offense. For example, to find the relationship between gender and the length of time incarcerated, look at the category gender. The first line across shows that a hypothetical male spent more total time incarcerated during his case than did the hypothetical female, all other factors being equal. This finding remained significant for a hypothetical defendant statewide, in Anchorage and outside of Anchorage for All Offenses Combined, and for Violent and Property crimes in all locations. (The analysis was not done for Sexual offenses because no female defendants were available to make a comparison. Gender was not associated with the total length of time incarcerated for Drug or Driving offenses.)

### Footnotes for Table 38

<sup>a</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggested that further review of larger groups of these defendants was warranted to show whether disparities persist in bigger data sets.

<sup>b</sup> For predisposition incarceration and total time, these analyses included Murder and Kidnap cases.

Table 38 Summary of Total Time Incarcerated Regression Analyses			
	Statewide	Inside Anchorage	Outside Anchorage
<b>Association with Ethnicity<sup>a</sup></b>			
All Offenses Combined	Native/longer	NS	Native/longer
Violent <sup>b</sup>	Native/longer	NS	Black, Native/longer
Property	NS	NS	NS
Sexual	NS	NS	NS
Drug	Native/longer	Black, Native/longer	NS
Driving	Black/longer	NS	NS
<b>Association with Private/Public Attorney</b>			
All Offenses Combined	Private Attorney/shorter	Private Attorney/shorter	Private Attorney/shorter
Violent <sup>b</sup>	Private Attorney/shorter	Private Attorney/shorter	NS
Property	Private Attorney/shorter	Private Attorney/shorter	Private Attorney/shorter
Sexual	NS	NS	Private Attorney/shorter
Drug	NS	NS	NS
Driving	NS	NS	NS
<b>Association with Gender</b>			
All Offenses Combined	Male/longer	Male/longer	Male/longer
Violent <sup>b</sup>	Male/longer	Male/longer	Male/longer
Property	Male/longer	Male/longer	Male/longer
Sexual	N/A	N/A	N/A
Drug	NS	NS	NS
Driving	NS	NS	NS
<b>Association with Rural</b>			
All Offenses Combined	NS	N/A	NS
Violent <sup>b</sup>	NS	N/A	NS
Property	NS	N/A	NS
Sexual	NS	N/A	NS
Drug	Rural/longer	N/A	Rural/longer
Driving	NS	N/A	NS
<b>Association with Alcohol/Mental/Drug</b>			
All Offenses Combined	All/longer	Drug, Mental/longer Alch/NS	All/longer
Violent <sup>b</sup>	All/longer	Drug, Mental/longer Alch/NS	Alch, Mental/longer Drug/NS
Property	All/longer	All/longer	Drug, Mental/longer Alch/NS
Sexual	All/NS	NS	All/NS
Drug	Drug/longer Mental, Alch/NS	Drug/longer Mental, Alch/NS	Mental/longer Drug, Alch/NS
Driving	Alch/longer Drug, Mental/NS	NS	Alch, Drug/longer Mental/shorter

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**Table 38a**  
**Association with Total Time Incarcerated - Statewide Cases<sup>a</sup>**

Variable and Comparison Group <sup>b</sup>	All Offenses Combined <sup>c</sup>		Violent <sup>d</sup>		Property		Sexual		Drug		Driving <sup>c</sup>	
	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect
Black vs. Caucasian <sup>e</sup>	NS		NS		NS		NS		NS		N/A <sup>f</sup>	
Native vs. Caucasian <sup>e</sup>	93/69	+24 Days	126/80	+46 Days	NS		NS		74/31	+43 Days	NS	
Male vs. female	89/42	+47 Days	115/57	+58 Days	46/12	+34 Days	N/A		NS		NS	
Private attorney vs. public attorney	46/89	-43 Days <sup>g</sup>	64/114	-50 Days <sup>g</sup>	9/43	-34 Days <sup>g</sup>	NS		NS		NS	
Rural vs. non-rural <sup>f</sup>	NS		NS		NS		NS		81/36	+45 Days	NS	
Prior felony record vs. no prior felony record <sup>i</sup>	130/91	+39 Days	132/113	+19 Days	70/43	+27 Days	NS		86/49	+37 Days	307/222	+85 Days
Alcohol problem vs. no alcohol problem	84/70	+14 Days	117/74	+43 Days	42/30	+12 Days	NS		NS		239/91	+148 Days
Drug problem vs. no drug problem	101/63	+38 Days	130/88	+42 Days	48/31	+17 Days	NS		45/24	+21 Days	NS	
Mental health problem vs. no mental health problem	113/67	+46 Days	151/83	+68 Days	53/30	+23 Days	NS		NS		NS	
Presumptive charge vs. Non-presumptive charge	117/69	+48 Days	193/87	+106 Days	NS		NS		NS		390/186	+204 Days
Contemporaneous cases vs. single case	94/77	+17 Days	NS		53/32	+21 Days	341/352	-11 Days <sup>g</sup>	NS		N/A	
Two charges filed vs. one charge filed	77/76	+1 Day	94/86	+8 Days	39/33	+6 Days	333/317	+16 Days	NS		NS	

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<sup>a</sup> The statewide total time incarcerated equation included 1,898 defendants who were convicted and who had sufficiently complete information about predisposition incarceration and length of sentence to be analyzed. Defendants were grouped by their original single most serious charge against them at the beginning of the case (even if they were later convicted of a charge in a different class or type of offense). The equation included defendants convicted of both presumptive and non-presumptive charges, which distinguished it from the analysis reported in the section on non-presumptive post-disposition incarceration (Tables 37, 37a, 37b, and 37c). Total time incarcerated was defined as the defendant's predisposition incarceration or unsuspended time imposed at sentencing (without the adjustments that were made for predisposition incarceration in Tables 37, 37a, 37b and 37c), whichever was greater. Because the total time incarcerated tables included a different set of defendants than did the other equations, no information from these tables can be directly compared to information from any other set of equations.

Table 38a (continued)  
Association with Total Time Incarcerated - Statewide Cases

The variables included on the table are described with their comparison groups (e.g., Black compared to Caucasian). Some variables used in the Tobit equations were not included in these tables. Specifically, variables of age at time of offense and "Other Ethnicity" (too few cases) were not included. On the statewide table, type of offense as a variable was not included because the results for each offense group were reported.

These tables show the estimated increase or decrease in the defendant's total days to serve based on the presence of a particular characteristic of the defendant or case. For example, if the hypothetical defendant was a male in the statewide analysis of Violent offenses, he would expect to serve an estimated 58 more days in total time incarcerated than a comparable female defendant. If the male's total time incarcerated did not differ significantly, it was shown as NS. If data were not available to analyze, it was shown as N/A.

<sup>b</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggests that further review of larger groups of these defendants is warranted to show whether disparities persist in bigger data sets.

<sup>c</sup> For each category of All Offenses Combined and specific offense groups, an E number was calculated. See text, *supra*, for further discussion. E=the estimated length of total time incarcerated that the hypothetical defendant, average in all characteristics, could expect. The total time incarcerated was based on all defendants in the equations, with all characteristics. The purpose of showing the estimated total time incarcerated was to provide context for the individual disparity findings. The numbers for the Es and the estimated days for each individual variable can only be used relative to each other, to give an approximate estimate of the relative size of the contribution that having a specific characteristic (e.g., having a prior felony record) made to the amount of time that a defendant with that characteristic might have spent incarcerated overall during the case. The Es on this table are: Statewide All Offenses Combined E=79 days; Violent E=103 days; Property E=36 days; Sexual E=350 days; Drug E=40 days; Driving E=235 days.

All other things being equal, the equations show that a defendant with several of the characteristics present would be likely to spend substantially more time incarcerated than a defendant without those characteristics. They also show that variables had relatively greater or lesser effects (e.g., the association of total time incarcerated for a male in a Violent offense was +58 days; it was relatively larger than the association with a Violent offender with a drug problem (+42 days).

DWI and Refusal felonies had mandatory minimum sentences ranging from 120 days to 360 days, depending on the number of prior convictions. See discussion *infra* Appendix D, Table D-4.

<sup>d</sup> For predisposition incarceration and total time incarcerated, these analyses included Murder and Kidnap cases in the group of Violent cases.

<sup>e</sup> See following tables for ethnicity findings in Drug offenses inside Anchorage and outside Anchorage.

<sup>f</sup> Insufficient data available to analyze.

<sup>g</sup> A minus sign on the table meant that the defendant spent significantly less total time incarcerated.

<sup>h</sup> Rural refers to court location. Kodiak, Barrow, Kotzebue, Nome, Dillingham, and Bethel were rural. Anchorage, Fairbanks, Juneau, Southeast, and Southcentral were non-rural.

<sup>i</sup> This variable is shown as prior felony record (defined as defendants with one prior felony conviction) vs. no prior felony record (defined as defendants with four or more prior misdemeanor convictions but no prior felony convictions). The variable had six values, ranging from no prior convictions to three or more prior felony convictions. There would be larger or smaller effects than the +39 days shown on the table for All Offenses Combined for prior conviction histories that were more or less serious than the values reported on the tables.

**Table 38b**  
**Association with Total Time Incarcerated - Anchorage Cases<sup>a</sup>**

Variable and Comparison Group <sup>b</sup>	All Offenses Combined <sup>c</sup>		Violent <sup>d</sup>		Property		Sexual		Drug		Driving <sup>c</sup>	
	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect
Black vs. Caucasian	NS		NS		NS		NS		68/33	+35 Days	N/A <sup>e</sup>	
Native vs. Caucasian	NS		NS		NS		NS		133/33	+100 Days	NS	
Male vs. female	80/43	+37 Days	131/69	+62 Days	33/11	+22 Days	N/A		NS		NS	
Private attorney vs. public attorney	35/83	-48 Days <sup>f</sup>	57/133	-76 Days <sup>f</sup>	5/32	-27 Days <sup>f</sup>	NS		NS		NS	
Prior felony record vs. no prior felony record <sup>g</sup>	128/82	+46 Days	NS		53/30	+23 Days	NS		123/56	+67 Days	NS	
Alcohol problem vs. no alcohol problem	NS		NS		34/21	+13 Days	NS		NS		NS	
Drug problem vs. no drug problem	100/52	+48 Days	182/81	+101 Days	39/22	+17 Days	NS		68/23	+45 Days	NS	
Mental health problem vs. no mental health problem	102/60	+42 Days	171/88	+83 Days	36/22	+14 Days	NS		NS		NS	
Presumptive charge vs. Non-presumptive charge	108/61	+47 Days	249/97	+152 Days	NS		NS		NS		593/217	+376 Days
Contemporaneous cases vs. single case	141/68	+73 Days	NS		83/24	+59 Days	NS		NS		NS	
Two charges filed vs. one charge filed	NS		105/94	+11 Days	NS		NS		NS		NS	

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<sup>a</sup> The Anchorage total time incarcerated equation included 726 defendants who were convicted and who had sufficiently complete information about predisposition incarceration and length of sentence to be analyzed. Defendants were grouped by their original single most serious charge against them at the beginning of the case (even if they were later convicted of a charge in a different class or type of offense). The equation included defendants convicted of both presumptive and non-presumptive charges, which distinguished it from the analysis reported in the section on non-presumptive post-disposition incarceration (Tables 37, 37a, 37b, and 37c). Total time incarcerated was defined as the defendant's predisposition incarceration or unsuspended time imposed at sentencing (without the adjustments for predisposition incarceration that were made in Tables 37, 37a, 37b and 37c), whichever was greater. Because the total time incarcerated tables included a different set of defendants than did the other equations, no information from these tables can be directly compared to information from any other set of equations.

The variables included on the table are described with their comparison groups (e.g., Black compared to Caucasian). Some variables used in the Tobit equations were not included in these tables. Specifically, variables of age at time of offense and "Other Ethnicity" (too few cases) were not included. On the Statewide table, type of offense as a variable was not included because the results for each offense group were reported.

Table 38b (continued)  
Association with Total Time Incarcerated - Anchorage Cases

These tables show the estimated increase or decrease in the defendant's total days to serve based on the presence of a particular characteristic of the defendant or case. For example, if the hypothetical defendant was a male in the analysis of Violent offenses in Anchorage, he would expect to serve an estimated 62 more days in total time incarcerated than a comparable female defendant. If the male's total time incarcerated did not differ significantly, it was shown as NS. If data were not available to analyze, it was shown as N/A.

<sup>b</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggests that further review of larger groups of these defendants is warranted to show whether disparities persist in bigger data sets.

<sup>c</sup> For each category of All Offenses Combined and specific offense groups, an E number was calculated. See text, *supra*, for further discussion. E=the estimated length of total time incarcerated that the hypothetical defendant, average in all characteristics, could expect. The total time incarcerated was based on all defendants in the equation, with all characteristics. The purpose of showing the estimated total time incarcerated was to provide context for the individual disparity findings. The numbers for the Es and the estimated days for each individual variable can only be used relative to each other, to give an approximate estimate of the relative size of the contribution that having a specific characteristic (e.g., having a prior record) made to the amount of time that a defendant with that characteristic might have spent incarcerated overall during the case. The Es on this table are: Anchorage, All Offenses Combined E=71 days; Violent E=115 days; Property E=26 days; Sexual E=443 days; Drug E=57 days; Driving E=358 days.

All other things being equal, the equations show that a defendant with several of the characteristics present would be likely to spend substantially more time incarcerated than a defendant without those characteristics. They also show that variables had relatively greater or lesser effects (e.g., the association of total time incarcerated for a male in a Violent offense was +62 days; it was relatively smaller than the +101 days for a Violent offender with a drug problem.

DWI and Refusal felonies had mandatory minimum sentences ranging from 120 days to 360 days, depending on the number of prior convictions. See discussion *infra* Appendix D, Table D-4.

<sup>d</sup> For predisposition incarceration and total time, these analyses included Murder and Kidnap cases in the group of Violent cases.

<sup>e</sup> Insufficient data to analyze.

<sup>f</sup> A minus sign on the table meant that the defendant spent significantly less total time incarcerated.

<sup>g</sup> This variable is shown as prior felony record (defined as defendants with one prior felony conviction) vs. no prior felony record (defined as defendants with four or more prior misdemeanor convictions but no prior felony convictions). The variable had six values, ranging from no prior convictions to three or more prior felony convictions. There would be larger or smaller effects than the +46 days shown on the table for All Offenses Combined for prior conviction histories that were more or less serious than the values reported on the tables.

**Table 38c**  
**Association with Total Time Incarcerated - Outside Anchorage Cases<sup>a</sup>**

Variable and Comparison Group <sup>b</sup>	All Offenses Combined <sup>c</sup>		Violent <sup>d</sup>		Property		Sexual		Drug		Driving	
	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect
Black vs. Caucasian	NS		204/73	+131 Days	NS		NS		NS		NS	
Native vs. Caucasian	100/73	+27 Days	116/73	+ 43 Days	NS		NS		NS		NS	
Male vs. female	95/41	+54 Days	105/54	+ 51 Days	56/13	+43 Days	N/A		NS		NS	
Private attorney vs. public attorney	55/94	-39 Days <sup>e</sup>	NS		17/51	-34 Days <sup>e</sup>	176/348	-172 Days <sup>e</sup>	NS		NS	
Rural vs. non-rural <sup>f</sup>	NS		NS		NS		NS		74/26	+48 Days	N/A <sup>g</sup>	
Prior felony record vs. no prior felony record <sup>h</sup>	132/98	+34 Days	NS		79/54	+25 Days	NS		63/42	+21 Days	281/199	+82 Days
Alcohol problem vs. no alcohol problem	91/69	+22 Days	112/61	+51 Days	NS		NS		NS		219/45	+174 Days
Drug problem vs. no drug problem	100/72	+28 Days	NS		59/38	+21 Days	NS		NS		230/178	+52 Days
Mental health problem vs. no mental health problem	120/73	+47 Days	140/79	+61 Days	70/37	+33 Days	NS		55/28	+27 Days	197/222	-25 Days <sup>e</sup>
Presumptive charge vs. Non-presumptive charge	121/76	+45 Days	157/83	+74 Days	NS		NS		NS		335/169	+166 Days
Contemporaneous cases vs. single case	NS		NS		NS		NS		NS		NS	
Two charges filed vs. one charge filed	79/76	+3 Days	NS		NS		301/286	+15 Days	26/22	+4 Days	NS	

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<sup>a</sup> The Outside Anchorage total time incarcerated equation included 1,172 defendants who were convicted and who had sufficiently complete information about predisposition incarceration and length of sentence to be analyzed. Defendants were grouped by their original single most serious charge against them at the beginning of the case (even if they were later convicted of a charge in a different class or type of offense). The equation included defendants convicted of both presumptive and non-presumptive charges, which distinguished it from the analysis reported in the section on non-presumptive post-disposition incarceration (Tables 37, 37a, 37b, and 37c). Total time incarcerated was defined as the defendant's predisposition incarceration or unsuspended time imposed at sentencing (without the adjustments for predisposition incarceration that were made in Tables 37, 37a, 37b and 37c), whichever was greater. Because the total time incarcerated tables included a different set of defendants than did the other equations, no information from these tables can be directly compared to information from any other set of equations.

The variables included on the table are described with their comparison groups (e.g., Black compared to Caucasian). Some variables used in the Tobit equations were not included in these tables. Specifically, variables of age at time of offense and "Other Ethnicity" (too few cases) were not included. On the Statewide table, type of offense as a variable was not included because the results for each offense group were reported.



Table 38c (continued)  
Association with Total Time Incarcerated - Outside Anchorage Cases

These tables show the estimated increase or decrease in the defendant's total days to serve based on the presence of a particular characteristic of the defendant or case. For example, if the hypothetical defendant was a male in the analysis of Violent offenses outside Anchorage, he would expect to serve an estimated 51 more days in total time incarcerated than a comparable female defendant. If the male's total time incarcerated did not differ significantly, it was shown as NS. If data were not available to analyze, it was shown as N/A.

<sup>b</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggests that further review of larger groups of these defendants is warranted to show whether disparities persist in bigger data sets.

<sup>c</sup> For each category of All Offenses Combined and specific offense groups, an E number was calculated. See text, *supra*, for further discussion. E=the estimated length of total time incarcerated that the hypothetical defendant, average in all characteristics, could expect. The total time incarcerated was based on all defendants, with all characteristics. The purpose of showing the estimated total time incarcerated was to provide context for the individual disparity findings. The numbers for the Es and the estimated days for each individual variable can only be used relative to each other, to give an approximate estimate of the relative size of the contribution that having a specific characteristic (e.g., having a prior record) made to the amount of time that a defendant with that characteristic might have spent incarcerated overall during the case. The Es on this table are: Outside Anchorage, All Offenses Combined E=85 days; Violent E=97 days; Property E=45 days; Sexual E=320 days; Drug E=32 days; Driving E=195 days.

All other things being equal, the equations show that a defendant with several of the characteristics present would be likely to spend substantially more time incarcerated than a defendant without those characteristics. They also show that variables had relatively greater or lesser effects (e.g., the association of total time incarcerated for a male in a Violent offense was +51 days; it was relatively smaller than the association with a presumptive charge (+74 days).

DWI and Refusal felonies had mandatory minimum sentences ranging from 120 days to 360 days, depending on the number of prior convictions. See discussion *infra* Appendix D, Table D-4.

<sup>d</sup> For predisposition incarceration and total time, these analyses included Murder and Kidnap cases in the group of Violent cases.

<sup>e</sup> A minus sign on the table meant that the defendant spent significantly less total time incarcerated.

<sup>f</sup> Rural refers to court location. Kodiak, Barrow, Kotzebue, Nome, Dillingham, and Bethel were rural. Anchorage, Fairbanks, Juneau, Southeast, and Southcentral were non-rural.

<sup>g</sup> Insufficient data to analyze.

<sup>h</sup> This variable is shown as prior felony record (defined as defendants with one prior felony conviction) vs. no prior felony record (defined as defendants with four or more prior misdemeanor convictions but no prior felony convictions). The variable had six values, ranging from no prior convictions to three or more prior felony convictions. There would be larger or smaller effects than the +34 days shown on the table for All Offenses Combined for prior conviction histories that were more or less serious than the values reported on the tables.

Table 39a Disparities Summarized by Ethnicity by Offense <sup>b</sup>				
	Predisposition Incarceration	Charge Reduction <sup>b</sup>	Non-Presumptive Post-disposition Incarceration	Total Time Incarcerated
<b>All Offenses Combined</b>				
Statewide	Native, Black/longer	Other Ethnicities/ some effect	NS	Native/longer
Anchorage	NS	N/A	NS	NS
Outside Anchorage	Native/longer	N/A	Native/longer	Native/longer
<b>Violent</b>				
Statewide	Native/longer	Other Ethnicities/ some effect	NS	Native/longer
Anchorage	NS	N/A	NS	NS
Outside Anchorage	NS	N/A	NS	Black, Native/longer
<b>Property</b>				
Statewide	Native/longer	Other Ethnicities/ some effect	NS	NS
Anchorage	NS	N/A	NS	NS
Outside Anchorage	Native/longer	N/A	NS	NS
<b>Sexual</b>				
Statewide	NS	NS	NS	NS
Anchorage	NS	N/A	N/A	NS
Outside Anchorage	NS	N/A	NS	NS
<b>Drug</b>				
Statewide	Black/longer	NS	Native, Black/longer	Native/longer
Anchorage	NS	N/A	Black/longer	Black, Native/longer
Outside Anchorage	NS	N/A	Native/longer	NS
<b>Driving</b>				
Statewide	Native, Black/longer	NS	NS	Black/longer
Anchorage	NS	N/A	NS	NS
Outside Anchorage	NS	N/A	NS	NS

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<sup>a</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for "Other Ethnicities" (Asian/Pacific Islanders and Hispanic defendants) appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggested that further review of larger groups of these defendants was warranted to show whether disparities persist in bigger data sets.

<sup>b</sup> Charge reduction analyses were done only statewide, not by Anchorage/non-Anchorage. See *infra* Table 36. Other ethnicities (Hispanic, Asian/ Pacific Islanders) were the only groups to show significant differences in charge reductions. Table 36 showed the outcomes of three separate charge reduction analyses. For these tables (39a, b, c, and d), the three equations' outcomes are summarized as: NS (No effect in any of the three equations) some effect (some statistically significant difference for this group in one or two of the equations) and all (all three equations showed a significant effect for this group).

Table 39b Disparities Summarized by Type of Attorney by Offense <sup>b</sup>				
	Predisposition Incarceration	Charge Reduction <sup>b</sup>	Non-Presumptive Post-disposition Incarceration	Total Time Incarcerated
<b>All Offenses Combined</b>				
Statewide	Private Attorney/shorter	OPA Both/all	Private Attorney/shorter	Private Attorney/shorter
Anchorage	Private Attorney/shorter	N/A	Private Attorney/shorter	Private Attorney/shorter
Outside Anchorage	Private Attorney/shorter	N/A	Private Attorney/shorter	Private Attorney/shorter
<b>Violent</b>				
Statewide	Private Attorney/shorter	OPA Cntrct/some effect	Private Attorney/shorter	Private Attorney/shorter
Anchorage	Private Attorney/shorter	N/A	Private Attorney/shorter	Private Attorney/shorter
Outside Anchorage	Private Attorney/shorter	N/A	Private Attorney/shorter	NS
<b>Property</b>				
Statewide	Private Attorney/shorter	OPA, Both/all, P.D./some effect	Private Attorney/shorter	Private Attorney/shorter
Anchorage	Private Attorney/shorter	N/A	Private Attorney/shorter	Private Attorney/shorter
Outside Anchorage	Private Attorney/shorter	N/A	Private Attorney/shorter	Private Attorney/shorter
<b>Sexual</b>				
Statewide	NS	OPA, Both, P.D./some effect	Private Attorney/shorter	NS
Anchorage	NS	N/A	N/A	NS
Outside Anchorage	NS	N/A	Private Attorney/shorter	Private Attorney/shorter
<b>Drug</b>				
Statewide	Private Attorney/shorter	NS	NS	NS
Anchorage	Private Attorney/shorter	N/A	Private Attorney/longer	NS
Outside Anchorage	Private Attorney/shorter	N/A	NS	NS
<b>Driving</b>				
Statewide	Private Attorney/shorter	OPA, Both, P.D./all	NS	NS
Anchorage	Private Attorney/shorter	N/A	NS	NS
Outside Anchorage	Private Attorney/shorter	N/A	NS	NS

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<sup>a</sup> There were three different types of public attorneys; public defenders, OPA staff, and OPA contractors. "OPA Both" refers both to OPA staff and contractors; "OPA cntrct" refers only to OPA contractors. "PD" refers to public defenders.

<sup>b</sup> "Some effect" means that the specified type of attorney was significant in one or two of the Charge Reduction equations. "All" means that the specified type of attorney was significant in all three of the equations. "NS" means that no type of attorney was significant in any of the three equations. For these tables (39a, b, c, and d), the three equations' outcomes are summarized as: NS (No effect in any of the three equations) some effect (some statistically significant difference for this group in one or two of the equations) and all (all three equations showed a significant effect for this group).

Table 39c Disparities Summarized by Gender by Offense				
	Predisposition Incarceration	Charge Reduction <sup>a</sup>	Non-Presumptive Post-disposition Incarceration	Total Time Incarcerated
<b>All Offenses Combined</b>				
Statewide	Male/longer	Male/some effect	Male/longer	Male/longer
Anchorage	Male/longer	N/A	Male/longer	Male/longer
Outside Anchorage	Male/longer	N/A	Male/longer	Male/longer
<b>Violent</b>				
Statewide	Male/longer	NS	Male/longer	Male/longer
Anchorage	Male/longer	N/A	Male/longer	Male/longer
Outside Anchorage	Male/longer	N/A	NS	Male/longer
<b>Property</b>				
Statewide	Male/longer	NS	Male/longer	Male/longer
Anchorage	NS	N/A	Male/longer	Male/longer
Outside Anchorage	Male/longer	N/A	Male/longer	Male/longer
<b>Sexual<sup>b</sup></b>				
Statewide	N/A	N/A	N/A	N/A
Anchorage	N/A (no comparison group)			
Outside Anchorage	N/A	N/A	N/A	N/A
<b>Drug</b>				
Statewide	NS	Male/some effect	NS	NS
Anchorage	NS	N/A	Female/longer	NS
Outside Anchorage	NS	N/A	Male/longer	NS
<b>Driving</b>				
Statewide	NS	NS	NS	NS
Anchorage	NS	N/A	NS	NS
Outside Anchorage	NS	N/A	NS	NS

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<sup>a</sup> Table 36 showed the outcomes of three separate charge reduction analyses. For these tables (39a, b, c, and d), the three equations' outcomes are summarized as: NS (No effect in any of the three equations) some effect (some statistically significant difference for this group in one or two of the equations) and all (all three equations showed a significant effect for this group).

<sup>b</sup> There were not enough females charged with Sexual offenses to serve as a comparison group, so the analyses were not done for Sexual offenses.

Table 39d Disparities Summarized by Rural by Offense <sup>a</sup>				
	Predisposition Incarceration	Charge Reduction <sup>b</sup>	Non-Presumptive Post-disposition Incarceration	Total Time Incarcerated
<b>All Offenses Combined</b>				
Statewide	Rural/shorter	Rural/all, less serious	Rural/longer	NS
Anchorage	N/A	N/A	N/A	N/A
Outside Anchorage	Rural/shorter	N/A	NS	NS
<b>Violent</b>				
Statewide	Rural/shorter	Rural/some effect, less serious	NS	NS
Anchorage	N/A	N/A	N/A	N/A
Outside Anchorage	NS	N/A	NS	NS
<b>Property</b>				
Statewide	Rural/shorter	Rural/all, less serious	NS	NS
Anchorage	N/A	N/A	N/A	N/A
Outside Anchorage	NS	N/A	NS	NS
<b>Sexual</b>				
Statewide	NS	Rural/all, less serious	NS	NS
Anchorage	N/A	N/A	N/A	N/A
Outside Anchorage	NS	N/A	NS	NS
<b>Drug</b>				
Statewide	NS	NS	Rural/longer	Rural/longer
Anchorage	N/A	N/A	N/A	N/A
Outside Anchorage	NS	N/A	NS	N/A
<b>Driving</b>				
Statewide	Rural/shorter	NS	NS	NS
Anchorage	N/A	N/A	N/A	N/A
Outside Anchorage	NS	N/A	NS	N/A

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<sup>a</sup> Rural refers to court location. Kodiak, Barrow, Kotzebue, Nome, Dillingham, and Bethel were rural. Anchorage, Fairbanks, Juneau, Southeast and Southcentral were non-rural.

<sup>b</sup> Table 36 showed the outcomes of three separate charge reduction analyses. For these tables (39a, b, c, and d), the three equations' outcomes are summarized as: NS (No effect in any of the three equations); some effect (some statistically significant difference for this group in one or two of the equations); and all (all three equations showed a significant effect for this group).

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## **Part IV: Summary of Findings**

### **A. Characteristics of Defendants**

Generally, there was little variation between charged and convicted defendants for many defendant characteristics. Many disproportions that occurred when defendants were convicted tracked disproportions that existed when defendants first appeared in court.

#### **1. Age and Gender**

Young males were substantially over-represented among charged felony defendants. Males were 83% of defendants charged with felonies. Slightly less than half of charged defendants (47%) were under the age of 30. Different patterns in offense types by age occurred. A higher percentage of younger defendants was charged with Property offenses and a higher percentage of older defendants was charged with Drug offenses. The distribution of convicted felons by age and gender in Alaska was similar to rest of the nation. (See pages 52-55, 136-137, 139-140.)

#### **2. Ethnicity**

The percentage of Blacks among charged felons in Alaska was three times the percentage of Blacks in Alaska's adult population and was the greatest rate of disproportion for any ethnicity in Alaska. Among Black defendants, the least frequently charged offenses were Driving and Sexual offenses. The most frequent charges occurred in Other offenses. Among convicted felons, Blacks were over-represented in Alaska at a slightly lesser rate of disproportion than in the nation as a whole. (See pages 55-60, 137-138.)

The percentage of Alaska Natives among charged felons in Alaska was a little more than twice the percentage of Alaska Natives in the adult Alaska population. Alaska Natives comprised 43% of defendants convicted of Violent felonies. Half of Alaska Natives convicted of felony offenses in Alaska were convicted of Violent offenses. Fifty-five percent of defendants charged with felony Sexual offenses were Alaska Native. American Indians, Alaska Natives, Asians, and Pacific Islanders combined were under-represented among convicted felons nationally compared to their percentage of the national population. (See pages 55-60,137-139.)

Caucasians were under-represented among charged felons in comparison to their percentage in Alaska's adult population. Caucasians were under-represented among convicted felons nationwide and in Alaska at roughly the same rate. Among Caucasian felony defendants, Caucasians appeared more frequently in Drug and Driving cases and less frequently in Sexual offenses. (See pages 55-60, 137-138.)

Asians, Pacific Islanders, and Hispanics were under-represented among charged felons in comparison to their percentage in Alaska's population. Hispanics were 2% of charged felony defendants but 41% of the Hispanics were charged with Drug offenses (note 114). (See pages 55-57.)

The distribution of ethnic groups among felony defendants varied considerably by location. The under-representation of Caucasians as felony defendants was most pronounced in Other areas of Alaska, mostly rural, where Caucasians appeared as felony defendants at .38 times the rate that they occurred in the same population. Eighty percent of all Black felony defendants statewide were charged in Anchorage cases. The over-representation of Alaska Natives among charged felony defendants was most pronounced in urban locations including Anchorage, Fairbanks and Juneau. The lowest rate of over-representation for Alaska Natives occurred in mostly rural Other areas. (See pages 105-110.)

### **3. Prior Criminal Convictions**

Twenty-five percent of the charged felony defendants had a prior felony conviction. Thirteen percent had one prior felony, 6% had two prior felony convictions and 6% had three or more felony convictions. (See page 61.)

Caucasian defendants were just as likely to have prior convictions as non-Caucasian defendants. Among defendants with prior criminal convictions, there were some differences by ethnicity in the types of prior convictions. Black and Native defendants were more likely to have prior felony convictions. Native defendants were more likely to have four or more misdemeanor convictions. Black defendants were less likely to have misdemeanor convictions. (See page 62.)

Whether defendants had prior criminal convictions varied significantly by type of charged offense. Defendants charged with Other offenses (37%), Murder and Kidnaping (31%), and Driving offenses (31%) were most likely to have at least one prior felony conviction. Defendants charged with Driving (55%) and Violent offenses (52%) were most likely to have prior misdemeanor convictions. Defendants charged with Murder and Kidnaping (23%) and Sexual offenses (23%) were most likely to have no prior criminal convictions. (See page 63.)



#### **4. Alcohol, Drug, and Mental Health Problems**

Many defendants had alcohol, drug and/or mental health problems. Sixty-three percent of charged felony defendants had an alcohol problem, 45% had a drug problem, and 29% had a mental health problem. (See pages 64-66.)

Noticeably higher percentages of Alaska Native defendants (80%) had alcohol problems. Blacks (44%) and Asian/Pacific Islanders had fewer alcohol problems than other defendants. Higher percentages of charged Hispanic defendants (59%) and Black defendants (51%) had drug problems than other defendants. There was less variation by ethnicity in the distribution of defendants with mental health problems. (See pages 64-66.)

The incidence of problems appeared to vary by location. Alcohol problems were more prevalent in rural Alaska, Juneau, and Southeast. Juneau had higher percentages of defendants with drug problems and mental health problems and Southeast had a higher than average percentage of defendants with drug problems. (See pages 111-112.)

#### **5. Type of Attorney**

For a defendant to qualify for appointment of a public attorney, a judge had to determine that the defendant was indigent. Eighty percent of felony defendants were represented by a public attorney including 63% represented by the Public Defender Agency, 5% represented by OPA staff attorneys, and 12% represented by contract attorneys hired by OPA. Private attorneys in Southcentral represented a higher percentage of defendants (26%) than in other areas of the state. (See pages 67, 112-113.)

The rates at which defendants were represented by public attorneys varied somewhat by type of charged offense. A higher percentage (95%) of defendants charged with Murder or Kidnaping were represented by public attorneys. Defendants charged with Drug offenses (68%) were represented least frequently by public attorneys. (See page 69.)

Slightly higher percentages of ethnic minority defendants were represented by public attorneys compared to the percentage of Caucasian defendants represented by public attorneys. Eighty-eight percent of Black defendants and a little less than 90% of Alaska Native defendants were represented by public attorneys. (See pages 69-70.)

Nearly the same percentage of defendants represented by a public attorney had substance abuse problems compared to defendants with a private attorney. Thirty-three percent of convicted defendants represented by public attorneys had a mental health problem while only 20% of convicted defendants represented by private attorneys had a problem (See page 70.)

Distribution of representation of felony defendants between public and private counsel was similar in Alaska and nationally. In Alaska, more felony Drug defendants hired private attorneys than in other offense categories. Nationally, almost twice as many defendants had private attorneys (18%) in property crimes as in Alaska (10%). Felony defendants with prior criminal convictions were much more likely to be represented by a public attorney, both in Alaska and nationally. (See pages 142-146.)

Conviction rates in Alaska were about the same for defendants represented by public attorneys compared with those represented by private attorneys. Defendants represented by private attorneys were much less likely to be sentenced to a term of incarceration. These findings were also true nationally. (See pages 147-148.)

## **6. Predisposition Incarceration**

Most charged felony defendants (80%) spent one or more days incarcerated before disposition of their cases. Most charged felony defendants (58%) were incarcerated for 30 or fewer days prior to disposition. (See page 72.)

Mean predisposition times varied by type of charged offense. The longest mean predisposition incarceration times occurred in Murder and Kidnaping cases (257 days) and in Sexual offense cases (109 days). The lowest mean predisposition times occurred in Property cases (44 days) and Drug cases (35 days). (See page 73.)

Most felony defendants were required to post some form of monetary bail at some point in the process, and 39% actually posted a monetary bond to secure their release at some point prior to trial or sentencing. (See pages 74-75.)

Mean predisposition incarceration times varied by location. In Anchorage, a lower percentage of defendants were incarcerated for less than one day (15%) than the statewide average (20%). (See pages 114-115.)

Judges required 54% of charged defendants to have a third party custodian as a condition of release. Predisposition practices varied by location. The third party requirement was less common in Fairbanks than in Anchorage and some other areas of the state. Twenty percent of all charged felony defendants spent less than one day in jail before disposition but only 8% of those defendants had been required to have a third party custodian. (See pages 75-76, 116.)

## **7. Sentencing**

Eighty-five percent of charged felony defendants were convicted of some offense. Fifty percent of charged defendants were convicted of a felony and 35% were convicted of a misdemeanor. (See page 77.)

Eighty-two percent of convicted defendants, defendants initially charged with a felony but convicted of any offense, were subject to non-presumptive sentencing. Among defendants subject to non-presumptive sentencing, half were convicted of a felony and half were convicted of a misdemeanor. (See pages 77-78.)

Among defendants convicted of felonies, 31% were subject to statutory presumptive sentencing. Exact statutory presumptive sentences were imposed on over half of the convicted felons to whom they applied. When there was variation from the presumptive sentence, it resulted more frequently in an aggravated sentence for more serious offenses and in a mitigated sentence for less serious offenses. Only 7% of first felony offenders subject to presumptive sentencing received a mitigated sentence while 32% of defendants with two or more prior felony convictions received a mitigated sentence. Mitigation of presumptive sentences for repeat offenders occurred most frequently in Drug and Property cases. (See pages 79-83.)

Eighty percent of defendants convicted of felonies and 86% of defendants convicted of misdemeanors were placed on probation, usually after serving some time incarcerated. Approximately two-thirds (65%) of defendants convicted of felonies and two-fifths (40%) of defendants convicted of misdemeanors were placed on probation for three or more years. (See pages 83-84.)

Thirty-three percent of defendants convicted of a felony and 28% of defendants convicted of a misdemeanor were required to pay restitution. (See page 84.)

## **B. Charging and Disposition Patterns**

### **1. Charging Patterns**

The most serious charge filed against nearly two-thirds (65%) of 1999 felony defendants was a Class C felony offense (see page 85).

When Murder and Kidnaping (2%), and Sexual offenses (12%) were combined with other Violent offenses (27%), they made up about two-fifths of the most serious felony charges filed against felony defendants in 1999. A Property offense was the most serious charge for 31% of defendants. The most serious charge was a Drug offense for 20% of defendants and a Driving offense for 8%. The type of most serious offense charged against defendants varied by location. (See pages 86, 102-104.)

The change to Alaska's sentencing law during the 1990s that had the greatest impact in this report was the legislature's creation of a Class C felony designation for a third conviction within five years for DWI or Refusal to Submit to a Chemical Test. This created a new category of felony offenses

that did not exist when prior criminal justice process research in Alaska was conducted. (See pages 149-150.)

## **2. Case Disposition Patterns**

About one-third (35%) of defendants charged with felonies pled to the most serious felony charge against them. Twelve percent pled to a lesser felony and one-third (34%) pled to a misdemeanor offense. About 4% were convicted of an offense after trial. Fifteen percent of felony defendants were acquitted or had all charges against them dismissed. (See page 87.)

The type of case disposition varied depending on the most serious felony offense charged. The likelihood of a defendant being convicted of the most serious felony offense initially charged was higher for less serious felony offenses than for more serious felony offenses. Charge reductions for Unclassified and Class A felonies tended to be reductions to lesser felonies; reductions for Class B and C felonies tended to be misdemeanors. (See page 88.)

Case disposition varied by type of offense within classes of offenses. Among defendants charged with Unclassified and Class A offenses, the highest percentage of defendants convicted of the most serious charge was defendants charged with Robbery 1 (36%). The lowest percentage of defendants convicted of the most serious charge was defendants convicted of Sexual Assault 1 (9%). Among defendants charged with Class B and Class C felonies, the highest percentage of defendants convicted of the most serious charge was in Felony DWI (90%). The lowest percentage was for Assault 2 (6%). (See pages 89-92.)

The type of case disposition varied by location. Fairbanks had the highest percentage (55%) of defendants who pled to the most serious charge filed against them. Methods of felony conviction (plea or trial) in Alaska occurred at almost identical rates as in state courts nationwide. (See pages 117-120, 140.)

A comparison of charge reductions in 1999 with charge reductions in 1984-1987 showed that charge reductions were much more common in 1999. For all offenses except Misconduct Involving a Controlled Substance 4, a higher percentage of defendants was convicted of the most serious felony charge in 1984-1987 compared to 1999. For most offenses, higher percentages of felony defendants in 1999 pled to misdemeanors. There was some variation by location in the magnitude of change from 1984-1987 to 1999. (See pages 93-95, 120-121.)

## **3. Case Processing Times**

The amount of time needed to resolve a felony case in 1999 varied by the type of disposition. Statewide, cases in which all charges were dismissed took the least amount of time to resolve,

averaging 81 days to disposition. Cases that went to trial took the most time, averaging 312 days to disposition. If defendants pled guilty or no contest, cases took an average of 154 days to disposition. Case disposition time for defendants who pled varied by the type of plea. Cases in which the defendant pled to a misdemeanor took the least amount of time. (See pages 96-97.)

Case processing time varied depending on the type of charged offense. Mean case processing times ranged from 232 days for defendants charged with Murder or Kidnaping to 122 days for defendants charged with Property offenses. (See page 97.) There was little variation in case processing times between defendants represented by private attorneys and defendants represented by public attorneys. When variations did occur, times to disposition were longer for defendants represented by private attorneys. (See pages 97-98.)

Case processing times in 1999 were substantially different from case processing times in 1984-1987. For cases in which all charges were dismissed, the mean time to disposition was longer in 1984-1987 (131 days) than in 1999 (81 days). For cases in which the defendant entered a guilty or no contest plea, time to disposition was shorter in 1984-1987 (96 days) than in 1999 (154 days). It took almost twice as long in 1999 (312 days) to get a case to trial as it took in 1984-1987 (168 days). (See pages 98-100.)

Case processing times varied by location. Mean times from the beginning of a case to sentencing for defendants convicted of a felony in Alaska were similar to mean times in state courts nationwide. (See pages 122-125, 141-142.)

From 1984-1999, felony filings in Alaska increased 86%. During that time, Alaska justice system resources to process criminal cases increased by 21% when adjusted for inflation. (See page 99.)

### **C. Comparison of Alaska Felony Cases to Felony Cases in State Courts Nationwide**

Alaska's rate of Violent crime in 1999 was 20% higher than the national rate. Alaska's rate of Forcible Rape (defined in Alaska as Sexual Assault 1) was 155% higher than the national average. (See page 127.)

Only a small percentage of reported crimes resulted in a felony conviction, with a few differences between Alaska and the rest of the nation. In 1999, in Alaska, reported Rapes resulted in a felony conviction at about half the national rate. Reported Robberies resulted in a felony conviction more frequently in Alaska than nationally. (See pages 127-129.)

Once police arrested a defendant, the probability of a conviction on any felony offense increased substantially. Alaska's rates of felony conviction per arrest were lower for Rape and Burglary than

nationally. Alaska's felony conviction rate for Robbery arrests and Aggravated Assault (defined as any felony assault) arrests exceeded the national average. (See page 129.)

Violent offense felony convictions comprised 98% more of all felony convictions in Alaska than they did nationwide. This was substantially attributable to a much higher incidence of felony convictions in Alaska for Sexual offenses. Drug offense convictions comprised 34% less of the overall felony convictions in Alaska than nationwide. (See page 130.)

Offenders charged with a felony and convicted of any offense were much more likely to receive a sentence of incarceration in Alaska whether convicted of a felony or a misdemeanor than similar offenders in other states. Convicted felons sentenced to incarceration on a single felony offense were likely to have shorter sentences in Alaska than elsewhere. Convicted felons in Alaska were more likely to be convicted of more than one felony offense subjecting them to additional incarceration. Convicted felons in Alaska sentenced to more than one year in prison probably served substantially more of the time imposed than did similarly situated offenders in other states. (See pages 131-135.)

## **D. Multivariate Findings**

### **1. Predisposition Incarceration**

#### **a. Ethnicity**

Being of any ethnic minority group was associated with more days of predisposition incarceration for All Offenses Combined, statewide (Table 35a).<sup>466</sup> The analysis did not find any ethnic disparities associated with Sexual offenses. (See pages 164-165.)

Being Native was associated with predisposition incarceration disparities in specific types of offenses, especially Violent, Property and Driving. The disparities associated with All Offenses Combined appeared to be most strongly associated with cases outside of Anchorage, especially in Property offenses. In Anchorage, being Native was not associated with any differences in the number of estimated predisposition incarceration days. (See pages 164-165.)

Being Black was associated with disparities in All Offenses Combined statewide, and with Drug offenses statewide. The analysis could not show whether the disparities occurred primarily in Anchorage or outside Anchorage. (See pages 164-165.)

#### **b. Type of Attorney**

Having a private attorney was associated with fewer estimated days of predisposition incarceration throughout the state for all types of offenses except Sexual. The size of the differences varied by

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<sup>466</sup> The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant but numbers of these defendants were too small to make useful findings.

location, and by type of offense. The presence of a private attorney in the case was consistently more often associated with estimated predisposition incarceration days than was any other variable measured. (See pages 165-169.)

**c. Gender**

Being male was associated with more estimated predisposition incarceration days in Violent and Property offenses, but not in Drug or Driving offenses. Being male generally was associated with more estimated predisposition incarceration outside Anchorage than inside Anchorage. (See pages 169-170.)

**d. Rural location**

Being charged and appearing in a rural court was associated with fewer estimated days of predisposition incarceration. The differences appeared confined to Violent and Property offenses, with no significant differences in Sexual, Drug or Driving cases. (See pages 170-173.)

**e. Alcohol, drug, and mental health problems**

Having an alcohol or mental health problem was associated with more estimated predisposition incarceration days for some types of defendants. The relationships among the types of offenses and the location in the state varied. Mental health problems were associated most often with more estimated days of predisposition incarceration, then alcohol problems, and least often, drug problems. The strongest associations were with All Offenses Combined and with Violent offenses throughout the state. None of the factors seemed to play any role in Drug offenses. (See pages 173-176.)

**f. Third party custodian requirement**

The requirement that a defendant have a court-approved third party custodian before being released pending disposition of the case was one of the most important factors associated with predisposition incarceration. It was the only factor considered in the statewide predisposition analysis that was significantly associated with an increase in predisposition incarceration days for every type of offense. In most categories, the increases were substantial. (See pages 176-177.)

**2. Charge Reductions**

**a. Ethnicity**

The report found no statistically significant evidence of ethnic disparity in charge reductions except for Asian/Pacific Islanders and Hispanics. Not enough of these defendants appeared in the sample

for the findings to be meaningful, other than to suggest the need to analyze larger groups of defendants to see whether the disparities persisted. (See page 193.)

**b. Type of attorney**

The presence of a private attorney was associated with more charge reductions for defendants in some analyses and for some types of offenses. When disparities were identified and the analyses had enough data to distinguish among private attorneys, public defenders, OPA staff and OPA contractors, the OPA staff and contractors were more likely to be the attorneys associated with less favorable charge reductions. (See pages 193-194.)

For All Offenses Combined, a defendant with a private attorney was associated with more benefit in all analyses than a defendant with an OPA contractor or OPA staff attorney. A public defender client was not associated with significant differences from the private attorney client for All Offenses Combined. (See pages 193-194.)

In some of the analyses, private attorney clients were associated with more beneficial charge reductions in Property, Sexual and Driving offenses than were public defender clients. The same held true for OPA staff and contract clients, in all but Drug offenses. None of the attorney types were significantly associated with charge reductions in Drug offenses. (See page 194.)

**c. Gender**

The defendant's gender appeared to play little role in the charge reduction process. (See page 195.)

**d. Rural location**

Defendants in rural courts were associated with more beneficial charge reductions in all types of offenses except Drugs, Driving, and one category of charge reductions in Violent offenses. (See page 195.)

**e. Alcohol, drug, and mental health problems**

Drug problems were associated with fewer beneficial charge reductions in all equations, and alcohol problems were associated with fewer beneficial charge reductions for most types of offenses. Alcohol and drug problems had more widespread associations with charge reductions than most other variables. (See page 196.)

Mental health problems were associated with worse outcomes for All Offenses Combined, Violent offenses, and to a lesser extent, Property offenses. They were not associated with differences in charge reductions in Sexual, Drug or Driving offenses. (See page 196.)



### **3. Presumptive Post-disposition Incarceration<sup>467</sup>**

Eighteen percent of the convicted defendants were subject to a presumptive sentence. The report found no significant unexplained disparities associated with presumptive post-disposition incarceration. Difference in post-disposition incarceration days were associated almost entirely with factors such as the seriousness of the charge and the defendant's prior criminal convictions. Demographic factors such as ethnicity, type of attorney, gender and the court location were not associated with the days of presumptive post-disposition incarceration. (See page 208.)

### **4. Non-presumptive Post-disposition Incarceration**

#### **a. Ethnicity**

Eighty-two percent of convicted defendants in the sample qualified for a non-presumptive sentence. No disparities associated with ethnicity were found in non-presumptive post-disposition incarceration days except in Drug offenses. Statewide, being Black or Native was associated with more post-disposition incarceration days in non-presumptive Drug offenses. The ethnic disparities occurred independently of associations found for type of attorney, prior criminal convictions and other variables that the Council could measure. (See pages 210-214.)

In Anchorage, being Black was associated with more days of post-disposition incarceration for non-presumptive Drug offenses. Being Native in Anchorage was not associated with any difference on post-disposition incarceration. (See pages 210-214.)

Outside Anchorage, being Native was associated with more days of post-disposition incarceration only for non-presumptive Drug offenses. Being Black outside Anchorage was not associated with any significant differences in non-presumptive days of post-disposition incarceration. (See pages 210-214.)

#### **b. Type of attorney**

Defendants with private attorneys were associated with fewer estimated days of non-presumptive post-disposition incarceration when compared with defendants who had public attorneys (Public Defender, OPA staff, or OPA contractors). The associations were statistically significant for All Offenses Combined and for Violent, Property and Sexual offenses. The presence of a private attorney at the sentencing hearings was one of the best predictors associated with fewer post-disposition incarceration days. This finding was independent of any other statistically significant factors. (See pages 214-218.)

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<sup>467</sup> This and the following sections use the term "post-disposition incarceration" to refer to the days of unsuspended incarceration imposed by the judge at sentencing that exceeded any days (including credit for good time) that the defendant had spent incarcerated before the sentencing hearing.

Having a private attorney was significantly associated with fewer post-disposition incarceration days statewide (all but Drug and Driving cases), in Anchorage (all but Sexual and Driving cases), and outside Anchorage (all but Drug and Driving cases). In Anchorage, having a private attorney was associated with slightly longer post-disposition incarceration for non-presumptive Drug offenders. (See pages 214-218.)

**c. Gender**

Being male was associated with more estimated days of post-disposition incarceration for non-presumptive Violent and Property offenses, statewide and in Anchorage.<sup>468</sup> Outside Anchorage, being male was associated with more estimated post-disposition incarceration days for Drug and Property convictions. Being female associated with more estimated days of post-disposition incarceration only in non-presumptive Drug offenses in Anchorage. (See pages 218-219.)

**d. Rural location**

Being charged in a rural location was associated with more non-presumptive post-disposition incarceration only for All Offenses Combined statewide, and for Drug offenses statewide. (See page 219.)

**e. Alcohol, drug, and mental health problems**

Many defendants had alcohol abuse, drug use or mental health problems. Generally, having one or more of these problems was associated with more estimated non-presumptive post-disposition incarceration days. The associations appeared more often in Anchorage than outside Anchorage, except in Sexual offenses. (See pages 220-221.)

Mental health problems appeared to be associated with more post-disposition incarceration days for All Offenses Combined, and for Property and Drug offenses. In contrast to the more obvious associations between mental health problems and post-disposition incarceration, alcohol problems were associated with few changes in post-disposition incarceration days. Drug problems were associated with small increases in post-disposition incarceration days for All Offenses Combined statewide and in Anchorage, and with increases for Property offenses statewide and for Violent offenses in Anchorage. (See pages 220-221.)

**f. Other variables**

Prior convictions were associated with significant increases in post-disposition incarceration for most types of offenses and all locations. Aggravating factors were associated with more increases in post-

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<sup>468</sup> Only males in the 1999 felony sample were convicted of Sexual offenses. The analysis could not be done without a comparison group.

disposition incarceration statewide than in the Anchorage/outside Anchorage analyses. Mitigating factors were not associated with any changes in post-disposition incarceration. (See pages 221-224, 226.)

Having a charge bargain was not associated with increased post-disposition incarceration. Having a charge bargain and a sentence bargain was associated with increased post-disposition incarceration. Having only a sentence bargain was associated with increased post-disposition incarceration for Driving offenses statewide and outside Anchorage. Having a sentence bargain only was associated with less post-disposition incarceration for Drug offenses in Anchorage. (See pages 224-225.)

### **5. Total Time of Incarceration<sup>469</sup>**

Findings about the total time that defendants were incarcerated during the course of their cases could have been affected by the disparities associated with predisposition incarceration, by disparities in the unsuspended incarceration or by accumulated disparities that did not amount to a significant disparity in either analysis individually. The equations for the total time analysis were designed differently than the equation used in the analysis of post-disposition incarceration. They included all of the defendants in the report who had enough information to do the analysis. (See page 242-243.)

Disparities in total time incarcerated were more often associated with ethnicity and type of attorney than were disparities in post-disposition incarceration. Tables 39a and 39b show that the total time disparities appeared to be more closely tied to predisposition incarceration disparities than to post-disposition incarceration. (See pages 262-263.)

Disparities associated with gender occurred as often in predisposition incarceration as they did in non-presumptive post disposition incarceration, and were echoed in the total time incarcerated findings (Table 39c). As with the report's other findings, disparities associated with gender were isolated almost entirely to All Offenses Combined, and Violent and Property offenses. (See page 264.)

Disparities in total time incarcerated associated with being in a rural location appeared to be isolated to Drug offenses. The longer total time incarcerated associated with being a rural defendant (in the statewide and outside Anchorage analyses) appeared to be related to more non-presumptive post-disposition incarceration for rural Drug offenders. (See page 265).

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<sup>469</sup> Refers to the longer of the defendant's two possible periods of incarcerations: predisposition (included time incarcerated before a dismissal/acquittal or time incarcerated before the defendant was sentenced), and unsuspended incarceration imposed at sentencing for both presumptive and non-presumptive sentences. Note that in the total time equations, the unsuspended incarceration imposed by the judge was not modified for analysis by taking into account the predisposition incarceration. As a result, it is not referred to as post-disposition incarceration.

**a. Ethnicity**

Being Black was associated with little disparity in total time incarcerated anywhere in the state, with the exceptions of Drug offenses in Anchorage, and Violent offenses outside Anchorage. The finding of a significant difference in total time incarcerated for Blacks in these two offense groups might be more related to the fact that presumptive post-disposition incarceration (which tended to be much longer than non-presumptive post-disposition incarceration) was included in the total time equations, but was not part of the other two analyses. (See page 247.)

Statewide, being Native was associated with more estimated days of total time incarcerated for All Offenses Combined, Violent offenses, and Drug offenses. The statewide disparities for All Offenses Combined and Violent offenses appeared to stem from disparities in predisposition incarceration. The statewide disparity in Drug offenses appeared to be related to the disparity in non-presumptive post-disposition incarceration. In Anchorage, the only total time disparity was associated with Drug offenses. Outside Anchorage, the Native total time disparities were associated with All Offenses Combined and Violent offenses. (See pages 246-247.)

**b. Type of attorney**

Total time disparities for defendants represented by private attorneys appeared at the statewide level, with fewer estimated days of total time associated with All Offenses Combined, Violent offenses and Property offenses. At the statewide level, defendants with private attorneys did not appear to be associated with fewer days of total time for Sexual, Drug or Driving offenses. The Anchorage pattern was the same. (See pages 248-249.)

Outside Anchorage, defendants represented by private attorneys were associated with fewer estimated days of total time for All Offenses Combined, and for Property and Sexual offenses. (See pages 248-249.)

The noticeable differences by type of offense in the estimated days of total time incarcerated associated with having a private attorney suggested that client characteristics that could not be measured may have been among the deciding factors in the outcomes, rather than the quality of representation provided by the different attorneys. (See pages 248-249.)

**c. Gender**

Being male was associated with more estimated days of total time incarcerated statewide, in Anchorage, and outside Anchorage. The differences occurred in All Offenses Combined, and Violent and Property offenses. Differences in estimated days of total time incarcerated did not appear associated with gender in Drug or Driving offenses. (See pages 249-250.)

**d. Rural location**

Being a defendant in a rural area was not associated with any change in total time incarcerated, except for more estimated days in Drug cases. The increases occurred in the statewide equations and outside of Anchorage. (See pages 250-251.)

**e. Alcohol, drug, or mental health problems**

Having an alcohol, drug or mental health problem was associated with increases in the estimated days of total time incarcerated for some offenses in some locations. (See pages 251-252.)

Alcohol problems appeared to be associated with more estimated days of total time incarcerated for All Offenses Combined and with Violent and Driving offenses statewide and outside Anchorage. Alcohol problems also were associated with more total time incarcerated for Property offenses statewide and in Anchorage. They were not associated with total time incarcerated for Sexual or Drug offenses anywhere in the state. (See pages 251-252.)

Drug problems were associated with more estimated days of total time incarcerated statewide and in Anchorage for All Offenses Combined, Violent, Property and Drug offenses. Outside Anchorage, drug problems were associated with more estimated days of total time incarcerated for All Offenses Combined, Property, and Driving offenses. (See pages 251-252.)

Mental health problems were associated with more estimated days of total time incarcerated for All Offenses Combined, Violent and Property offenses in all locations in the state. Outside Anchorage they were associated with more estimated days of total time incarcerated for Drug offenses, and with fewer estimated days for Driving offenses. (See pages 251-252.)

**6. Summary**

By many measures, the report showed that justice for felony defendants in Alaska was evenhanded. The most pervasive differences in the multivariate analyses were associated with the defendant's type of attorney. Gender and ethnic disparities centered primarily in All Offenses Combined, Violent and Property offenses throughout the state, with scattered findings of disparities in Drug offenses in different locations. Some differences were associated with being an offender in a rural area, particularly in predisposition incarceration and charge reductions. These findings were consistent in many respects with findings made in other states.<sup>470</sup> The findings of disparities in the multivariate analyses, especially those for ethnicity, were not uniform enough to suggest intentional discrimination. The Council's suggestions for possible responses are in Part V, Recommendations. (See pages 283-288.)

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<sup>470</sup> For a good discussion of other research on sentencing patterns, see Spohn, *supra* note 4, page 2.

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## Part V: Recommendations

**Recommendation 1. The court system should take affirmative steps to encourage criminal justice agencies to collaborate to eliminate unwarranted disparities through the criminal justice process.**

Improving many areas of the criminal justice process depends on a collaborative working relationship between criminal justice agencies. The disproportionate numbers of minorities in the justice system, prison overcrowding, effective and equitable predisposition release practices, charge bargaining, case processing times, and new approaches such as therapeutic courts are examples of issues that depend on inter-agency understanding and cooperation. Court administrators, prosecutors, defense attorneys, law enforcement officials, and others cannot solve these problems working alone. A criminal justice working group comprised of representatives from different branches of government should be convened to develop long-range policies for the criminal justice system and to serve as a forum for resolution of more immediate problems that affect more than one agency or branch of government. Representatives with policymaking responsibility from the following state agencies should be included: the Alaska Court System, the Alaska Legislature, the Alaska Departments of Law, Public Safety, Health and Social Services, and Corrections, the Public Defender Agency, the Office of Public Advocacy, and the Mental Health Trust Authority. The court system should play a leadership role in commencing this coordinated effort.

These meetings should encourage the development of solutions to the issues raised by this report's findings. A principal focus should be the disproportionate numbers of minority ethnic defendants that appeared in the courts, from the time of charging through sentencing, and the specific non-systemic disparities they experienced in each of the analyses carried out for predisposition incarceration, charge reductions, non-presumptive post-disposition incarceration, and total time incarcerated. Because disproportions already existed when defendants were formally charged in court, discussion should include earlier events in the criminal justice system process as defendants were arrested and charged. A broader focus will lead to more holistic and useful solutions.

**Recommendation 2. The inter-branch working group should meet with representatives of ethnic organizations, community groups, local law enforcement officials, the private defense bar, and others to examine policies and practices that may be responsible for the disparities reported in this report.**

To better understand the causes of disparate treatment and to identify potential remedies, it is essential that the working group of state policymakers understand the perspectives of ethnic minorities, local law enforcement officials, the private defense bar, and others such as treatment providers and bail bonds providers. The inter-agency working group should sponsor public meetings with these groups and other appropriate representatives. If feasible, regional meetings would help policymakers recognize problems that may be unique to particular areas or communities in Alaska.

**Recommendation 3. The inter-branch working group should meet collectively with persons from the various agencies who actively work in the criminal justice system.**

The working group described above should meet collectively with representative employees in the various agencies who actually do the day-to-day work in the criminal justice system. Successful solutions to the problems identified in this report will only occur if policymakers hear from the people who routinely work with criminal cases. Representative judges, public attorneys, prosecutors, police officers, probation officers, and court clerks, among others, should be consulted by the group. These meetings will not only help to identify workable solutions, they will lend credibility to the solutions and promote their implementation.

**Recommendation 4. The effectiveness of specific existing predisposition incarceration practices should be examined and other options should be considered.**

Specific predisposition practices should be objectively assessed using “failure to appear” rates and rearrest rates. These rates should be used as outcome measures to compare the effectiveness of different policies. In particular, use of the third party custodian requirement should be examined. Initially intended to give indigent defendants an equal opportunity for predisposition release, the requirement was associated with substantially longer terms of predisposition incarceration.

The court system and other agencies should review predisposition practices in other communities and states to determine whether less restrictive practices can protect the public and ensure the appearance of defendants as effectively. Based on the findings from this assessment, the court and other agencies should consider increased use of options other than third party custodians or reliance on incarceration to provide for public safety and reliable appearance of defendants. Options could



include increased use of bail schedules for less serious offenses and offenders, electronic monitoring of the defendant's location, house arrest, and use of Sobriety and other drug testing. Some jurisdictions use telephone reminder systems that have been shown to significantly reduce failures to appear for court-ordered events (hearings, sentencing, substance abuse assessments, and domestic violence treatment).

Resources should be allocated to serve all charged defendants equitably. Practices adopted should not unfairly affect defendants' chance for predisposition release based solely on illegitimate factors such as income.

**Recommendation 5. Greater use of therapeutic courts should be considered.**

Many felony defendants had problems with alcohol abuse, drug abuse and/or mental health. Alaska has recently set up several therapeutic courts that include judicial oversight and mandatory treatment as alternatives to incarceration for defendants with these problems. Preliminary Alaska reports and many national evaluations have shown that therapeutic courts reduce recidivism.

This report showed that disproportionate numbers of ethnic minority defendants had substance abuse problems. Being Black or Hispanic was associated with a higher incidence of drug problems and being Native was associated with more alcohol problems. The only ethnic-related disparities in post-disposition incarceration that could be identified occurred among Black and Native defendants in non-presumptive drug cases. Giving these defendants better access to therapeutic courts that treat alcohol and drug problems could potentially help reduce these disproportions and disparities.

**Recommendation 6. Resources for public attorneys should be increased.**

This report reported widespread findings that felony defendants with private attorneys served shorter periods of incarceration at all stages of the criminal justice process. Data accumulated for this report suggested that public attorneys had insufficient resources for handling their caseloads. For example, even though public attorneys and prosecutors appeared to spend about the same number of hours on their cases, the public attorneys did this without the benefit of substantial investigative and other staff and monetary resources available to prosecutors. Increasing resources should improve public attorneys' abilities to handle increasing case loads.

**Recommendation 7. Additional resources for other criminal justice agencies should be provided.**

Additional resources or re-allocation of existing resources should be provided for other criminal justice agencies. Although the felony case load has increased by 86% since 1984, the resources available to the criminal justice agencies combined (courts, public attorneys, law enforcement,

prosecutors and corrections) have increased by only 21%. This may have contributed to longer case disposition times. Inadequate resources (and/or possible changes in charging practices) may be contributing to charge reduction disparities among defendants.

**Recommendation 8. Collection of criminal justice system data should be improved. Agencies should routinely examine data to permit identification of disparities on an ongoing basis. Sufficient resources should be provided for independent comprehensive analysis.**

Better criminal justice system data, ongoing agency responsibility for examining data, and increased resources for independent comprehensive evaluation are necessary to ensure and maintain essential improvements to the criminal justice process. Improvement is recommended in the following areas:

**8(a). Improved data:**

**8(a)(1). Improved data about ethnicity in reporting, arrests, and prosecutorial screening:**

Disproportions in the criminal justice process occurred before defendants were formally charged in court. Whether a crime was reported, whether it was investigated and a suspect arrested, and whether the prosecutor decided to file charges and at what level all could play a significant role in the existence of charges and their severity. To determine whether any of these decisions about the charges were related to the defendants' ethnicities, gender, or other unwarranted distinctions, agencies should collect ethnicity information at reporting (to the extent possible), at arrest and at screening, and should make these data readily available to researchers and policymakers. Future research will be able to use these data to identify ethnic and other differences, if any, at these points in the process. The Alaska Criminal Justice Information Agency Board should be included in efforts to coordinate the collection of data necessary to evaluate the entire criminal justice process.

**8(a)(2). Better data in agency files, court case files, and the court's new case management system:**

The extensive search for data in court case files turned up significant areas in which the court and other public agencies had little data about factors that could have been significant in understanding the findings in this report. Two major areas lacking in data were records of plea agreements and defendants' socioeconomic characteristics.

Many more substantial charge reductions occurred in 1999 than during the mid-1980s. The amount of charge reduction observed abundantly exceeded the number of plea agreements recorded in case

files. A high percentage of case files of felony defendants who pled to misdemeanors did not contain a record of a plea agreement. Records of plea agreements would distinguish reduced charges and/or sentences that were the products of plea agreements from other reduced charges and sentences.

Judges who commented on this report's findings said that they often relied on socioeconomic information such as source of income, employment, and family status about defendants who appeared before them for bail and sentencing. The researchers noted that a written record of this information was usually not available in the court case files that were the primary source of data for the report. One possible source of the information would have been presentence reports, but fewer defendants than in the past had presentence reports (possibly because they waived the presentence report, or because many more of them were convicted of a misdemeanor, for which a presentence report typically was not available).

A consistent policy and procedures for providing that information in a written form could allow more consistent decisions by an individual judge and among all judges. Other judges would have more information to compare defendants convicted of the same or similar offenses. The net result of better information about defendants' characteristics could be fewer disparities associated with ethnicity, gender, and other inappropriate factors. A written record would help researchers document information that judges said played an important part in their decisions.

The lacking data also could have substantially benefitted management of courts and agencies. The court and other agencies should meet with researchers to identify potentially significant data and take appropriate steps to capture and transmit these data for management and research purposes.

**8(b). Ongoing agency responsibility to examine data for disparities:**

Criminal justice agencies should monitor their collection of data and examine the data routinely to promote the identification of disparities on an ongoing basis. Agency self-evaluation of data should be consistent with accepted statistical techniques.

**8(c). Increased resources for independent comprehensive evaluation:**

Sufficient resources should be provided for periodic, independent, and comprehensive evaluation of criminal justice system data. Historically, the Alaska Judicial Council has conducted these evaluations, in part because of its constitutional mandate to "conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature." The Council has worked closely with other agencies in its reports.

To analyze whether disparate treatment occurred prior to defendants being formally charged in court requires more resources than were available for the present report. In its recommendation for a

comprehensive review of Alaska's criminal justice process, the Alaska Supreme Court's Fairness and Access Committee included the Judicial Council's estimate of resources needed. Only a part of those resources were available for the present report. Improving the collection of data to permit a more comprehensive review will not be useful unless adequate resources are provided for evaluation. Criminal justice agencies and community groups could collaborate to obtain resources for analysis of pre-court criminal justice processes.

Additional resources would permit more meaningful analysis of Hispanic and Asian/Pacific Islander defendants. The representative two-thirds sample of Alaska felony cases in 1999 included too few Hispanic and Asian/Pacific Islander defendants to adequately analyze the data about their cases. Some of the findings appeared to suggest that these ethnic groups might experience disparate treatment at various points in the justice system. The analyses suggest the need to look at all cases in a single year or tracking cases for a longer period of time.

**Recommendation 9. Charging and charge reduction practices should be reviewed.**

Justice system agencies, particularly prosecutors and defense attorneys, should review their perspectives on charging and charge reduction practices. The analysis showed some unexplained disparities in charge reduction practices, particularly in Property and Violent offenses. The increase in charge reductions since the mid-1980s accentuates the need to understand the reasons for these disparities. Whether increased charge reduction occurred due to increased caseloads, changes in charging practices, or other reasons should be examined. The court system should work with prosecutors and defense attorneys to review existing court practices in the acceptance and rejection of proposed plea agreements under Alaska Criminal Rule 11(c).

**Recommendation 10. Better monitoring for defendants convicted of misdemeanors is recommended.**

The data showed a much increased rate of reductions of felony charges to misdemeanors compared to previous years. Convicted felons are supervised by probation officers who monitor them to assure that they are complying with court-imposed conditions of probation. Misdemeanor defendants are unsupervised, even if they have prior felony convictions or lengthy misdemeanor records. Many more felony cases were reduced to misdemeanors than in past years, contributing to the numbers of unsupervised defendants. It may be appropriate for the state to consider better ways of tracking convicted misdemeanants and to provide sufficient resources for doing so.

## Appendix A

### Changes in Felony Offense Definition, Classification and Sentencing Statutes, 1990-1999

Between 1991 and 1999 the legislature did not make substantial revisions to the criminal justice code. Nonetheless, the legislature passed many incremental changes in statutes relating to criminal definition and classification, and sentencing. These statutory changes may help to give the 1999 data context and may help to explain the data and analysis of the present study. Those changes should be considered when comparing the 1999 data against any previous data to better understand current sentencing patterns.

The legislature has not enacted major revisions to the criminal code since 1982 and 1983 when it reclassified some sex crimes and all felony drug offenses.<sup>1</sup> The legislature has acted at times since then to incrementally alter the definition of crimes, their classifications, and their resultant sentences. This appendix discusses changes in criminal justice laws from 1990-1999, the years between discussion of the law in the last published study and the collection of data for the present study.

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<sup>1</sup> See ch. 45, §§ 1-2, SLA 1982 (reclassifying drug crimes); ch. 78, § 2, SLA 1983 (reclassifying some sex crimes).

## **A. Changes in Crime Definition and Classification Laws, 1990-1999**

### **1. Attempt, Solicitation, and Conspiracy**

The legislature made two significant changes to this chapter. First, it defined Conspiracy as a separate offense.<sup>2</sup> Previously Conspiracy had not been a statutorily defined crime in Alaska. The legislature classified Conspiracy as an Unclassified felony if the object of the Conspiracy is Murder 1, a Class A felony if the object is an Unclassified felony other than Murder 1, a Class B felony if the object is a Class A felony, and a Class C felony if the object is a Class B felony.<sup>3</sup> Second, in 1999 the legislature changed the classification for Solicitation of Murder 1, classifying it upwards to an Unclassified felony.

### **2. Offenses Against the Person**

From 1992-1995 the legislature modified the law of assault to include more types of reckless conduct and to include more types of conduct involving child victims.<sup>4</sup>

In 1993 the legislature enacted law defining "stalking" as a crime.<sup>5</sup> It classified Stalking 1 as a Class C felony and Stalking 2 as a Class A misdemeanor.<sup>6</sup>

In 1998 the legislature broadened liability for Kidnap 1 to include conduct that restrains another person with the intent to commit Sexual Abuse of a Minor or that places the restrained person, or third person, in fear that the victim will be subject to Sexual Abuse of a Minor.<sup>7</sup> In 1999 the legislature increased culpability for deaths occurring during the commission of a felony and for deaths of children in some circumstances.<sup>8</sup> The legislature also reclassified Criminally Negligent Homicide upwards to a Class B felony.<sup>9</sup> In 1999 the legislature broadened liability for Custodial

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<sup>2</sup> AS 11.31.120; ch. 3, § 1, SLA 1994.

<sup>3</sup> Ch. 3, § 1, SLA 1994.

<sup>4</sup> Ch. 79, § 2, SLA 1992 (defining Assault 1 and 2 to include recklessly causing serious physical injury to another by means of repeated assaults); ch. 40, §§ 2,3, SLA 1993; ch. 54 §§ 1,2, SLA 1995 (modifying the definition of Assault 3 to include more types of conduct involving child victims); ch. 79, § 4, SLA 1999.

<sup>5</sup> Ch. 79, § 1, SLA 1993.

<sup>6</sup> *Id.*

<sup>7</sup> Ch. 99, §§ 3,4, SLA 1998.

<sup>8</sup> Ch. 54 §§ 3,4, SLA 1999.

<sup>9</sup> Ch. 54, § 5, SLA 1999.

Interference 1, as a Class C felony, to include the keeping of a child out of state without the legal right to do so.<sup>10</sup>

The legislature amended sexual assault offense statutes in 1990, 1992, and 1996. In 1990 the legislature deleted references to the age of culpability for Sexual Assault 1, 2, and 3.<sup>11</sup> In 1992 the legislature added provisions to protect against sexual assaults of vulnerable persons who are unaware that a sexual act is being committed.<sup>12</sup> And in 1996 the legislature expanded criminal liability for Sexual Assault 1 and 2 to include engaging in sexual penetration or contact with a person in a facility or program that is required by law to be licensed by the state.<sup>13</sup>

The legislature also amended Sexual Abuse of a Minor statutes in 1990 by eliminating requirements that the child be "entrusted to" the offender's care and added provisions defining the meaning of "legal guardian" and "position of authority."<sup>14</sup> Also in that year the legislature broadened liability for Unlawful Exploitation of a Minor, a Class B felony.<sup>15</sup>

### **3. Offenses Against Property**

In 1996 the legislature enacted statutes specifically criminalizing Vehicle Theft and classifying Vehicle Theft I as a Class C felony.<sup>16</sup> Although the core conduct constituting Vehicle Theft 1 previously would have been charged as Criminal Mischief 2, also a Class C felony,<sup>17</sup> the change did create a new group of felony offenders – those who were charged with Vehicle Theft 1 as a result of a prior conviction in the preceding seven years for "joyriding" or the theft of a vehicle valued at less than \$500.

The legislature made no significant changes in non-vehicle related felony theft laws from 1990-1999. This lack of action, however, could have affected felony filings. Criminal liability for many theft

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<sup>10</sup> Ch. 54, § 6, SLA 1999.

<sup>11</sup> Ch. 4, §§ 7, 8, 9, SLA 1990

<sup>12</sup> Ch. 79, § 5,6,7, SLA 1992

<sup>13</sup> Ch. 30 §§ 3,4, SLA 1996; ch. 61, § 2, SLA 1996.

<sup>14</sup> Ch. 151, §§ 1,2, SLA 1990.

<sup>15</sup> Ch. 161, §§ 1-3, SLA 1990.

<sup>16</sup> Ch. 71, § 1, SLA 1996.

<sup>17</sup> See former AS 11.46.360 (1999); former AS 11.46.482 (1995).

crimes is affected by the value of the property taken.<sup>18</sup> These amounts had not changed in more than 20 years. For instance, Theft 1 required theft of property valued in excess of \$25,000. Property worth \$25,000 in 1999 would have been worth only \$9,784 in 1978. A defendant who stole an item of property worth just over \$25,000 in 1999 would have been liable for Theft 1, a Class B felony, in 1999 but only Theft 2, a Class C felony, in prior years. In this indirect way, many theft crimes were effectively "reclassified" upwards.

The legislature made only minor changes to the criminal mischief statutes in the 1990s.<sup>19</sup>

#### **4. Offenses Against Family and Vulnerable Adults**

The legislature made two changes in this area from 1990-1999: in Child Endangerment 1, and in Endangering the Welfare of a Vulnerable Adult 1, both Class C felonies. First, it enacted legislation that criminalized "conduct endangering the welfare of a vulnerable adult" in the case of a care giver of a vulnerable adult who intentionally abandons the vulnerable adult in circumstances creating a substantial risk of physical injury to the vulnerable adult.<sup>20</sup>

Next, the legislature repealed and reenacted AS 11.51.100, Endangering the Welfare of a Child 1, which substantially broadened criminal liability for that offense, including criminalizing the leaving of a child with another person knowing that the other person is required to register as a sex offender, has been charged with Sexual Abuse of a Minor, or has previously mistreated or had sexual contact with any child and the other person causes the child physical injury or engages in sexual contact with the child.<sup>21</sup> The rewritten statute also changed the crime classification in certain ways. Before the change, the offense was a Class C felony. After the change the offense was a Class B felony if the child dies, a Class C felony if the child suffers sexual contact, sexual penetration, or serious physical injury, or a Class A misdemeanor if the child suffers physical injury.<sup>22</sup>

#### **5. Offenses Against Public Administration**

The legislature created one additional felony offense in the Offenses Against Public Administration article when it enacted Failure to Register as a Sex Offender or Child Kidnaper 1, AS 11.56.835, in

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<sup>18</sup> AS 11.46.120 - 11.46.140.

<sup>19</sup> Ch. 2, §1, SLA 1991; ch. 71, §§ 2, 11, SLA 1996.

<sup>20</sup> Ch. 61, §3, SLA 1996.

<sup>21</sup> Ch. 99, § 5, SLA 1998. *See* former 11.51.100 (1997).

<sup>22</sup> AS 11.51.100(d).



1998 as a Class C felony; it then amended the original offense in 11.56.840, which had previously been designated as Failure to Register as a Sexual Offender 1, relegating it to "second degree" status.<sup>23</sup>

## **6. Offenses Against Public Order**

One area in which the legislature showed interest was in laws relating to indecent child viewing and child pornography. It enacted 11.61.123, Indecent Viewing or Photography in 1995, classifying the crime as a Class C felony if the person being viewed was a minor at the time of the offense.<sup>24</sup> The legislature amended AS 11.61.127, Possession of Child Pornography, in 1998,<sup>25</sup> inserting an intent element of "knowingly" and reclassifying the offense from a Class A misdemeanor to a Class C felony. The legislature also clarified the scope of liability for the offense by inserting a provision that made clear that possession of each separate item of pornography was a separate violation.

In 1996 the legislature enacted AS 11.61.160, Recruiting a Gang Member 1, and classified it as a Class C felony.<sup>26</sup> This statute criminalized conduct in which a person uses or threatens the use of force against a person or property to induce a person to participate in a criminal street gang or to commit a crime on behalf of a criminal street gang.

Most importantly, the legislature acted virtually every year from 1990-1999 to amend the laws regarding weapons and explosives. It enacted Misconduct Involving Weapons 1, AS 11.61.190, in 1992,<sup>27</sup> a Class A felony, and expanded liability for that offense to include conduct in which a person discharges a firearm from a vehicle (i.e. drive-by shooting), in 1996.<sup>28</sup> The legislature also enacted AS 11.61.195, Misconduct Involving Weapons 2, a Class B felony, in 1992.<sup>29</sup> It expanded liability for that offense by amending it in 1997 to include discharging a firearm at or in the direction of a building with reckless disregard for a risk of physical injury to a person, or at a dwelling.<sup>30</sup> The legislature had enacted the substance of AS 11.61.200, Misconduct Involving Weapons 3, in the

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<sup>23</sup> Ch. 106, §§ 1-2, SLA 1998.

<sup>24</sup> Ch. 29, § 1, SLA 1995.

<sup>25</sup> Ch. 81, §§ 7,8,9, SLA 1998.

<sup>26</sup> Ch. 60, §2, SLA 1996.

<sup>27</sup> Ch. 79, § 10, SLA 1992.

<sup>28</sup> Ch. 60, SLA §3, SLA 1996.

<sup>29</sup> Ch. 79, § 10, SLA 1992.

<sup>30</sup> Ch. 89, § 1, SLA 1997.

revised criminal code in 1978, a Class C felony.<sup>31</sup> It amended that law numerous times from 1990-1999, substantially broadening the prohibited conduct but also providing for some affirmative defenses.<sup>32</sup>

## **7. Offenses Against Public Health and Decency**

The legislature did not amend felony offenses relating to prostitution, gambling, adult entertainment or imitation controlled substances from 1990-1999. The legislature did not substantially amend statutes relating to felony offenses involving controlled substances during that time. It did amend AS 11.71.030, Misconduct Involving a Controlled Substance 3, a Class B felony, and AS 11.71.040, Misconduct Involving a Controlled Substance 4, a Class C felony, to add provisions relating to possession of controlled substances within 500 feet of schools or recreation or youth centers.<sup>33</sup> The legislature also amended the "schedules" for controlled substances several times during the 1990s.

## **8. Driving Offenses**

In 1995 the legislature amended the statute defining Driving While Intoxicated, most significantly to make a third conviction of DWI<sup>34</sup> or of Refusing to Submit to a Chemical Test for Alcohol, Inhalants or Controlled Substances While Operating a Motor Vehicle<sup>35</sup> within five years a Class C felony. In 1998 the legislature repealed and reenacted AS 28.35.182, making Failure to Stop at the Direction of a Police Officer 1 a Class C felony.<sup>36</sup> These changes have substantially increased the number of felony offenses since their enactments.

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<sup>31</sup> Ch. 166, § 7, SLA 1978.

<sup>32</sup> Ch. 63, § 1, SLA 1990; ch. 189, § 1, SLA 1990; ch. 59, §§ 4-6, SLA 1991; ch. 64 § 3, SLA 1991; ch. 79 §§ 11-14, SLA 1992; ch. 113, §§ 2-3, SLA 1994; ch. 60, § 4, SLA 1996; ch. 64, § 7, SLA 1996; ch. 1, §§ 1-2, SLA 1998.

<sup>33</sup> Ch. 63, §§ 1-4 SLA 1991; ch. 70, §§ 1-4, SLA 1994.

<sup>34</sup> Ch. 80, § 7, SLA 1995. The statute has been subsequently amended to increase the "look-back" period five years. *See* ch. 63, §§ 9-11 SLA 2001. The latest change did not affect the 1999 data.

<sup>35</sup> Ch. 80 § 12, SLA 1995.

<sup>36</sup> Ch. 136, § 1, 1998.

## **B. Changes in Sentencing Statutes**

### **1. The Original Presumptive Sentencing Framework**

The original presumptive sentencing framework, enacted in 1978 and effective in 1980, was relatively straightforward.<sup>37</sup> It first established "classes" of offenses: Class A, B, and C felonies, and A and B misdemeanors. It then established both minimum and maximum ranges of incarceration terms and, for some classes of offenses, set forth presumptive terms of incarceration that could be adjusted either upwards or downwards based on a variety of mitigating or aggravating circumstances.<sup>38</sup>

Presumptive sentencing did not apply to the most serious offenses of Murder 1 or 2 or to Kidnap. Under the original statutory framework, defendants convicted of Murder 1 were subject to a range of 20 to 99 years imprisonment with no presumptive term and with 20 years as a mandatory minimum.<sup>39</sup> Those convicted of Murder 2 and Kidnap were subject to a range of five to 99 years with no presumptive term and with five years as a mandatory minimum.<sup>40</sup> Imprisonment for the mandatory minimums could not be suspended, imposition of sentence could not be suspended, and the minimums could not otherwise be reduced.<sup>41</sup>

Defendants convicted of Class A felonies were subject to zero to 20 years imprisonment with six years presumptive for a first offense (other than Manslaughter) if the defendant had used a firearm or caused serious physical injury, ten years presumptive for a second felony offense, and 15 years presumptive for a third felony offense.<sup>42</sup> Defendants convicted of Class B felonies faced zero to ten years imprisonment with presumptive terms of four years for a second felony offense and six years for a third felony offense.<sup>43</sup> Defendants convicted of Class C felonies faced zero to five years imprisonment with presumptive terms of two years for a second felony offense and three years for a third felony offense.<sup>44</sup>

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<sup>37</sup> Ch. 166, SLA 1978. For applicability see ch. 166, § 23, SLA 1978.

<sup>38</sup> Ch. 166, § 12, SLA 1978.

<sup>39</sup> *Id.* at § 12.55.125(a).

<sup>40</sup> *Id.* at § 12.55.125(b).

<sup>41</sup> *Id.* at § 12.55.125(f).

<sup>42</sup> *Id.* at § 12.55.125(c).

<sup>43</sup> *Id.* at § 12.55.125(d).

<sup>44</sup> *Id.* at § 12.55.125(e).

## **2. Major Changes, 1980-1990**

In 1982 the legislature added Unclassified sex offenses to the list of presumptive sentencing offenses.<sup>45</sup> The change made defendants convicted of Sexual Assault 1 subject to zero to 30 years imprisonment with presumptive terms of eight years for a first felony conviction, increasing to ten years if the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 15 years for a second felony conviction, and 25 years for a third felony conviction.<sup>46</sup> In 1982 the legislature also added five-year presumptive sentences for first felony conviction of a Class A felony other than Manslaughter, increasing to seven years if the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury.<sup>47</sup> It also added Misconduct Involving a Controlled Substance 1 to the list of offenses subject to a range of five to 99 years and to a mandatory minimum of five years.<sup>48</sup>

In 1983 the legislature added Sexual Abuse of a Minor 1 to the sentencing scheme, giving it the same terms of incarceration as it had assigned for Sexual Assault 1 in 1982.<sup>49</sup>

In 1983 the legislature expanded presumptive sentencing to defendants convicted for a first felony by adding presumptive terms if the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense.<sup>50</sup> The legislature established presumptive terms of seven years for a Class A (other than Manslaughter), two years for Class B, and one year for Class C.<sup>51</sup>

In 1988 the legislature amended the sentencing statutes to increase the range of penalties for Murder 2, Attempted Murder 1, Kidnap, or Misconduct Involving a Controlled Substance 1 to a definite term of imprisonment of 5-99 years.<sup>52</sup>

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<sup>45</sup> Ch. 143, § 30, SLA 1982.

<sup>46</sup> *Id.*

<sup>47</sup> Ch. 143, § 28, SLA 1982.

<sup>48</sup> Ch. 45, § 18, SLA 1982.

<sup>49</sup> Ch. 78, § 8 SLA 1983.

<sup>50</sup> Ch. 92, § 1-3, SLA 1983.

<sup>51</sup> *Id.*

<sup>52</sup> Ch. 59, § 5, SLA 1988.

### **3. Major Legislative Changes, 1990-1999**

The Alaska Legislature amended presumptive sentences for felonies in 1992. Those amendments included a provision that called for a mandatory 99-year sentence of imprisonment for a defendant convicted of Murder 1 who killed a uniformed or other clearly identified peace officer, firefighter, or corrections officer who was performing official duties at the time of the murder.<sup>53</sup> A mandatory 99-year term was also set forth for defendants who were convicted of Murder 1, when the defendant had been previously convicted of Murder 1 or 2, or when the court found by clear and convincing evidence that the defendant had subjected the victim to substantial physical torture.<sup>54</sup> The legislature also made clear that although the 99-year terms were mandatory in those particular circumstances, it did not intend to limit a judge from otherwise imposing a 99-year sentence, or limiting parole eligibility, for a person who was convicted of Murder 1 or 2 in other circumstances.<sup>55</sup> The legislature provided that defendants sentenced to mandatory 99-year terms could apply for a modification or reduction of sentence after serving half of the mandatory term without consideration of "good time," i.e., after serving forty-five and a half years.<sup>56</sup>

Last, the legislature amended the presumptive sentencing framework to provide that a first felony offender convicted for an offense for which no presumptive term was specified, could not be sentenced to a term of unsuspended imprisonment that exceeded the presumptive term for a second felony for the same offense. The exception was a finding by the court, by clear and convincing evidence, that an aggravating factor was present or that extraordinary circumstances would warrant referral to a three-judge panel.<sup>57</sup>

The Alaska Legislature next amended the sentencing statutes in 1994 when it added Conspiracy to Commit Murder 1 to the list of unclassified felonies having a range of five to 99 years imprisonment, a mandatory minimum sentence without a presumptive term.<sup>58</sup>

In 1996 the Alaska legislature enacted a so-called "three-strikes" provision that called for a definite term of imprisonment from 40-99 years for defendants who were not subject to mandatory 99-year terms and who were convicted of an Unclassified or Class A felony and who had been previously

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<sup>53</sup> Ch. 79, § 23, SLA 1992.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at § 24.

<sup>56</sup> *Id.* at § 25.

<sup>57</sup> *Id.*

<sup>58</sup> Ch. 3, § 5, SLA 1994.

convicted of two or more serious felonies, provided that the prosecutor filed notice for a definite term at the time of the defendant's arraignment.<sup>59</sup> The statute also provided that imprisonment for the prescribed definite term could not be suspended, imposition of sentence could not be suspended, and the sentence could not be reduced for such defendants.<sup>60</sup>

In 1999, the year for which data were collected for the study, the Alaska Legislature again amended the felony presumptive sentence statutes. In its first amendment, it added Solicitation to Commit Murder1 to the list of unclassified felonies deserving a five to 99 year sentence.<sup>61</sup> It also provided that defendants convicted of Murder 2 would be sentenced to a definite term of imprisonment of 20-99 years if the defendant had murdered a child under 16 years old and if (1) the defendant was a natural or adopted parent, stepparent, legal guardian, or person occupying a position of authority in relation to the child or (2) the defendant caused the death of the child by committing a crime against a person, as defined in AS 11.41.200 – 11.41.530.<sup>62</sup>

The legislature stated that if the defendant was convicted of Manslaughter, it was a first offense, and the conduct was knowingly directed towards a child under the age of 16, the presumptive sentence would be seven years, increasing the presumptive sentence by two years.<sup>63</sup> It specified that a defendant convicted of Criminally Negligent Homicide when the victim was a child under the age of 16 could be sentenced to a term of unsuspended imprisonment that exceeded the presumptive term for a second or third felony offender convicted of the same crime.<sup>64</sup> Last, in a second amendment in 1999, the legislature directed that a defendant convicted of Murder 2 should be sentenced to a definite term of imprisonment of ten to 99 years, increasing the mandatory minimum from five years.<sup>65</sup>

The amendments to Alaska's sentencing framework display that from 1990 to 1999 the Alaska legislature gradually increased penalties for certain crimes, or for crimes involving certain circumstances. It introduced mandatory 99-year terms for Murder 1 in some circumstances, increased

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<sup>59</sup> Ch. 7, §§ 3-7, SLA 1996.

<sup>60</sup> *Id.*

<sup>61</sup> Ch. 54, § 9, SLA 1999.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at § 10.

<sup>64</sup> *Id.* at §11.

<sup>65</sup> Ch. 65, § 1, SLA 1999. None of the changes made in 1999 affected the subjects of the study. All defendants who were charged with Murder in the First Degree in the 1999 data set had been charged before the effective date of the statute.

penalties for Murder 2, increased penalties if a child under the age of 16 was killed, and increased penalties for defendants who commit Unclassified or Class A felonies when the defendant has committed two or more serious felonies. The Alaska Legislature has not decreased penalties or broadened the opportunity for parole, suspended sentences, or suspended imposition of sentences for any offense since presumptive sentencing went into effect.<sup>66</sup>

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<sup>66</sup> The Alaska Legislature has amended the sentencing statutes since 1999; because those changes did not affect the data in this report they are not described here.

## Appendix B - Part I Charge Changes - 1999\*

<b>Table B-1 Charge Changes for Single Most Serious Charge** 1999</b>					
Original Single Most Serious Charge	Number of Defendants With This Charge	Final Disposition of Single Most Serious Charge Against Defendants	N	Percent of Each Disposition	Percent Convicted of Misdemeanor
<b>Murder and Kidnaping</b>					
<b>Murder 1</b> (Unclassified)	<b>9</b>	<b>Murder 1</b> Murder 2 Assault 1 Manslaughter <i>Dismissed/Acquitted</i>	<b>2</b> 3 1 2 1	<b>22%</b> 33% 11% 22% 11%	<b>0%</b>
<b>Murder 2</b> (Unclassified)	<b>7</b>	<b>Murder 2</b> Manslaughter <i>Dismissed/Acquitted</i>	<b>2</b> 4 1	<b>29%</b> 57% 14%	<b>0%</b>
<b>Manslaughter</b> (Class A)	<b>5</b>	<b>Manslaughter</b> Crim. Neg. Homicide Fail to Stop Felony	<b>2</b> 2 1	<b>40%</b> 40% 20%	<b>0%</b>
<b>Attempted Murder</b>	<b>1</b>	<b>Att Murder (Att Homicide)</b>	<b>1</b>	<b>100%</b>	<b>0%</b>
<b>Attempted Murder 1</b> (Unclassified)	<b>8</b>	<b>Att Murder 1</b> Assault 2 <i>Dismissed/Acquitted</i>	<b>2</b> 1 5	<b>25%</b> 13% 63%	<b>0%</b>
<b>Kidnaping</b> (Unclassified)	<b>12</b>	<b>Kidnaping</b> Assault 4 (misd.) Att Coercion (misd.) Contributing to Delinquency of Minor (misd.) Theft 3 (misd.) <i>Dismissed/Acquitted</i>	<b>3</b> 5 1 1 1 1	<b>25%</b> 42% 8% 8% 8% 8%	<b>67%</b>

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\* This table includes defendants who were acquitted or who had all charges dismissed. Table B-2 in Part II of this appendix which contains 1984-87 data on charge changes, does not include defendants who were acquitted or who had all charges dismissed. In the text of this report, to facilitate comparison of 1999 and 1984-87 data on charge changes, 1999 percentages of each disposition were recalculated using only convicted defendants. See discussion at *supra* at page 93, note 164. Percentages in this table are slightly different than those used in the text.

\*\* This table shows each of the more common single most serious charges filed. The "final disposition" is "dismissed/acquitted" for defendants who were not convicted of any charges or it is the single most serious charge left standing against the defendant at the time of conviction. Thus, a Manslaughter charge may not actually have been reduced to "Failure to Stop," but one defendant who was originally charged with Manslaughter had "Failure to Stop," as the single most serious charge left in the case at the time of conviction.



**Table B-1  
Charge Changes for Single Most Serious Charge\*\* 1999**

Original Single Most Serious Charge	Number of Defendants With This Charge	Final Disposition of Single Most Serious Charge Against Defendants	N	Percent of Each Disposition	Percent Convicted of Misdemeanor
<b>Violent Offenses</b>					
<b>Arson 1</b> (Class A)	<b>3</b>	<b>Arson 1</b> Arson 2	<b>1</b> 2	<b>33%</b> 67%	<b>0%</b>
<b>Assault 1</b> (Class A)	<b>58</b>	<b>Assault 1</b> Assault 2 Assault 3 Assault 4 (misd.) Leaving Scene of Accident (misd.) Reckless Endangerment (misd.) <i>Dismissed/Acquitted</i>	<b>6</b> 15 18 11 2 1 5	<b>10%</b> 26% 31% 19% 3% 2% 9%	<b>24%</b>
<b>MIW 1 (Misconduct Involving Weapons)</b> (Class A)	<b>5</b>	<b>MIW 1 (Misconduct Involving Weapons)</b> MIW 2 (Misconduct Involving Weapons)	<b>4</b> 1	<b>80%</b> 20%	<b>0%</b>
<b>Robbery 1</b> (Class A)	<b>56</b>	<b>Robbery 1</b> Assault 3 Att Assault 2 Att Robbery 1 Coercion Conspiracy to Commit Robbery Robbery 2 Theft 2 Att Theft 2 (misd.) Theft 3 (misd.) <i>Dismissed/Acquitted</i>	<b>20</b> 3 1 2 1 2 9 4 2 2 10	<b>36%</b> 5% 2% 4% 2% 4% 16% 7% 4% 4% 18%	<b>7%</b>
<b>Assault 2</b> (Class B)	<b>98</b>	<b>Assault 2</b> Assault 3 Sexual Assault 2 Assault 4 (misd.) Disorderly Conduct (misd.) DWI (misd.) DWLR/S (misd.) Harassment (misd.) Interfering w/ Report of Crime of DV (misd.) MICS 6 (misd.) Practicing Medicine w/out License (misd.) Reckless Endangerment (misd.) Resist Arrest (misd.) <i>Dismissed/Acquitted</i>	<b>6</b> 21 1 44 1 1 2 1 1 1 1 4 2 12	<b>6%</b> 21% 1% 45% 1% 1% 2% 1% 1% 1% 1% 4% 2% 12%	<b>59%</b>
<b>Conspiracy to Commit Robbery</b> (Class B)	<b>1</b>	<b>Conspiracy to Commit Robbery</b>	<b>1</b>	<b>100%</b>	<b>0%</b>
<b>Extortion</b> (Class B)	<b>1</b>	<i>Dismissed/Acquitted</i>	<b>0</b> 1	<b>0%</b> 100%	<b>0%</b>
<i>Alaska Judicial Council 1999 Felony Report</i>					

**Table B-1  
Charge Changes for Single Most Serious Charge\*\* 1999**

Original Single Most Serious Charge	Number of Defendants With This Charge	Final Disposition of Single Most Serious Charge Against Defendants	N	Percent of Each Disposition	Percent Convicted of Misdemeanor
<b>Violent Offenses (Continued)</b>					
<b>Robbery 2</b> (Class B)	<b>15</b>	<b>Robbery 2</b> Theft 2 Assault 4 (misd.) Att Theft 2 (misd.) Harassment (misd.) Theft 3 (misd.) <i>Dismissed/Acquitted</i>	<b>3</b> 2 5 1 1 1 2	<b>20%</b> 13% 33% 7% 7% 7% 13%	<b>53%</b>
<b>Assault 3</b> (Class C)	<b>371</b>	<b>Assault 3</b> Assault 2 Assault 1 Sexual Assault 3 Criminal Mischief 2 Probation Revocation F Assault 4 (misd.) Att Assault 3 (misd.) Criminal Mischief 3 (misd.) Criminal Trespass 1 (misd.) Disorderly Conduct (misd.) DWI (misd.) Harassment (misd.) MIW 4 (misd.) Negligent Driving (misd.) Reckless Driving (misd.) Reckless Endangerment (misd.) Resist Arrest (misd.) Theft 4 (misd.) Violation DV Protective Order (misd.) <i>Dismissed/Acquitted</i>	<b>85</b> 2 1 1 2 1 159 1 1 1 6 4 1 14 1 3 17 1 2 1 67	<b>23%</b> 1% 1% 1% 1% 1% 43% 1% 1% 1% 2% 1% 4% 1% 1% 5% 1% 1% 18%	<b>57%</b>
<b>Crim. Neg. Homicide</b> (Class C)	<b>2</b>	<b>Crim. Neg. Homicide</b> Reckless Endangerment (misd.)	<b>1</b> 1	<b>50%</b> 50%	<b>50%</b>
<b>Stalking 1</b> (Class C)	<b>7</b>	<b>Stalking 1</b> Stalking 2 (misd.) DV violation (misd.) Interfering w/ Report of Crime of DV (misd.) Violation DV Protective Order (misd.) <i>Dismissed/Acquitted</i>	<b>2</b> 1 1 1 1 1	<b>29%</b> 14% 14% 14% 14% 14%	<b>57%</b>
<b>Terroristic Threat</b> (Class C)	<b>2</b>	Assault 3 MIW 4 (misd.)	<b>0</b> 1 1	<b>0%</b> 50% 50%	<b>50%</b>
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**Table B-1  
Charge Changes for Single Most Serious Charge\*\* 1999**

Original Single Most Serious Charge	Number of Defendants With This Charge	Final Disposition of Single Most Serious Charge Against Defendants	N	Percent of Each Disposition	Percent Convicted of Misdemeanor
<b>Property Offenses</b>					
<b>Arson 2 (Class B)</b>	<b>1</b>	<b>Arson 2</b>	<b>1</b>	<b>100%</b>	<b>0%</b>
<b>Burglary 1 (Class B)</b>	<b>107</b>	<b>Burglary 1</b> Burglary 2 Att Burglary 1 Theft 2 Probation Revocation F Assault 4 (misd.) Criminal Mischief 3 (misd.) Criminal Trespass (misd.) Criminal Trespass 1 (misd.) Fail to Appear (misd.) Forgery 3 (misd.) Probation Revocation (misd.) Reckless Endangerment (misd.) Theft 3 (misd.) Theft 4 (misd.) Unlawful Contact (misd.) Violation DV Protective Order (misd.) <i>Dismissed/Acquitted</i>	<b>17</b> 10 5 1 2 11 6 2 29 1 1 1 2 2 6 1 2 2 8	<b>16%</b> 9% 5% 1% 1% 10% 6% 2% 27% 1% 1% 2% 2% 6% 1% 2% 2% 6% 1% 2% 2% 8%	<b>60%</b>
<b>Criminal Mischief 1 (Class B)</b>	<b>2</b>	Criminal Mischief 3 (misd.) DWI (misd.)	<b>0</b> 1 1	<b>0%</b> 50% 50%	<b>100%</b>
<b>Forgery 1 (Class B)</b>	<b>2</b>	Theft 2	<b>0</b> 2	<b>0%</b> 100%	<b>0%</b>
<b>Scheme to Defraud (Class B)</b>	<b>3</b>	<b>Scheme to Defraud</b>	<b>3</b>	<b>100%</b>	<b>0%</b>
<b>Theft 1 (Class B)</b>	<b>9</b>	<b>Theft 1</b> Theft 2 Att Theft 1 Theft 3 (misd.) <i>Dismissed/Acquitted</i>	<b>3</b> 2 1 2 1	<b>33%</b> 22% 11% 22% 11%	<b>22%</b>
<b>Attempted Vehicle Theft 1 (Class C)</b>	<b>1</b>	Assault 4 (misd.)	<b>0</b> 1	<b>0%</b> 100%	<b>100%</b>
<b>Bad Check (Class C)</b>	<b>5</b>	<b>Bad Check</b> Forgery 2 Att Bad Check (misd.) Bad Check (misd.) <i>Dismissed/Acquitted</i>	<b>1</b> 1 1 1 1	<b>20%</b> 20% 20% 20% 20%	<b>40%</b>

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**Table B-1  
Charge Changes for Single Most Serious Charge\*\* 1999**

Original Single Most Serious Charge	Number of Defendants With This Charge	Final Disposition of Single Most Serious Charge Against Defendants	N	Percent of Each Disposition	Percent Convicted of Misdemeanor
<b>Property Offenses (Continued)</b>					
<b>Burglary 2</b> (Class C)	<b>67</b>	<b>Burglary 2</b> Theft 3 (misd.) Att Burglary 2 (misd.) Att Theft 2 (misd.) Criminal Mischief 3 (misd.) Criminal Trespass 1 (misd.) Criminal Trespass 2 (misd.) Criminal Trespass 3 (misd.) DWOL (misd.) <i>Dismissed/Acquitted</i>	<b>34</b> 3 5 1 3 10 4 1 1 5	<b>51%</b> 5% 8% 2% 5% 15% 6% 2% 2% 8%	<b>42%</b>
<b>Criminal Mischief 2</b> (Class C)	<b>77</b>	<b>Criminal Mischief 2</b> Assault 4 (misd.) Att Criminal Mischief 2 (misd.) Crim. Neg. Burning (misd.) Criminal Mischief 4 (misd.) Criminal Mischief 3 (misd.) Disorderly Conduct (misd.) DWI (misd.) Theft 3 (misd.) <i>Dismissed/Acquitted</i>	<b>13</b> 4 2 1 2 37 1 4 1 12	<b>17%</b> 5% 3% 1% 3% 48% 1% 5% 1% 16%	<b>68%</b>
<b>Defraud/Credit Card</b> (Class C)	<b>2</b>	<b>Defraud/Credit Card</b>	<b>2</b>	<b>100%</b>	<b>0%</b>
<b>Falsifying Business Records</b> (Class C)	<b>1</b>	<b>Falsifying Records (Fraud)</b>	<b>1</b>	<b>100%</b>	<b>0%</b>
<b>Forgery 2</b> (Class C)	<b>66</b>	<b>Forgery 2</b> Theft 2 Att Forgery 2 (misd.) Criminal Mischief 4 (misd.) Forgery 3 (misd.) Unsworn Falsification (misd.) <i>Dismissed/Acquitted</i>	<b>41</b> 1 3 1 15 1 4	<b>62%</b> 2% 5% 2% 23% 2% 6%	<b>30%</b>
<b>Misapplication of Property</b> (Class C)	<b>2</b>	<b>Misapplication of Property F</b>	<b>2</b>	<b>100%</b>	<b>0%</b>
<i>Alaska Judicial Council 1999 Felony Report</i>					

**Table B-1  
Charge Changes for Single Most Serious Charge\*\* 1999**

Original Single Most Serious Charge	Number of Defendants With This Charge	Final Disposition of Single Most Serious Charge Against Defendants	N	Percent of Each Disposition	Percent Convicted of Misdemeanor
<b>Property Offenses (Continued)</b>					
<b>Theft 2</b> (Class C)	<b>242</b>	<b>Theft 2</b> Burglary 1 Criminal Mischief 2 Scheme to Defraud Assault 4 (misd.) Att MIW 3 (misd.) Att Theft 2 (misd.) Contributing to Delinquency of Minor (misd.) Criminal Mischief 3 (misd.) Criminal Trespass 1 (misd.) DWI (misd.) MIW 4 (misd.) Probation Revocation (misd.) Theft 3 (misd.) Unsworn Falsification (misd.) Fail to Appear (misd.) <i>Dismissed/Acquitted</i>	<b>97</b> 1 1 1 1 1 7 1 1 1 1 2 1 95 1 1 29	<b>40%</b> 1% 1% 1% 1% 1% 3% 1% 1% 1% 1% 1% 1% 39% 1% 1% 12%	<b>47%</b>
<b>Vehicle Theft 1</b> (Class C)	<b>137</b>	<b>Vehicle Theft 1</b> Felony DWI NVOL F Probation Revocation F Theft 2 Att Theft 2 (misd.) Att Vehicle Theft (misd.) Att Vehicle Theft 1(misd.) Criminal Mischief 3 (misd.) Criminal Mischief 4 (misd.) DWI (misd.) DWLR/S (misd.) DWOL (misd.) Fail to Stop (misd.) Leaving Scene of Accident (misd.) MIW 5 (misd.) NVOL (misd.) Reckless Driving (misd.) Refuse Test (misd.) Vehicle Theft 2 (misd.) <i>Dismissed/Acquitted</i>	<b>48</b> 1 1 2 1 1 7 17 1 7 17 3 1 2 1 1 1 1 2 2 19	<b>35%</b> 1% 1% 2% 1% 1% 5% 12% 1% 5% 12% 2% 1% 2% 1% 1% 1% 2% 2% 14%	<b>47%</b>
<i>Alaska Judicial Council 1999 Felony Report</i>					

**Table B-1**  
**Charge Changes for Single Most Serious Charge\*\* 1999**

Original Single Most Serious Charge	Number of Defendants With This Charge	Final Disposition of Single Most Serious Charge Against Defendants	N	Percent of Each Disposition	Percent Convicted of Misdemeanor
<b>Sexual Offenses</b>					
<b>Sexual Abuse Minor 1</b> (Unclassified)	<b>43</b>	<b>Sexual Abuse Minor 1</b>	<b>9</b>	<b>21%</b>	<b>5%</b>
		Att SAM 1	8	19%	
		Sexual Abuse Minor 2	15	35%	
		Sexual Abuse Minor 3	2	5%	
		Sexual Assault 1	1	2%	
		Sexual Assault 2	1	2%	
		Assault 4 (misd.)	1	2%	
		Contributing to Delinquency of Minor (misd.)	1	2%	
		<i>Dismissed/Acquitted</i>	5	12%	
<b>Sexual Assault 1</b> (Unclassified)	<b>46</b>	<b>Sexual Assault 1</b>	<b>4</b>	<b>9%</b>	<b>22%</b>
		Att Sexual Assault 2	2	4%	
		Att Sexual Assault 1	1	2%	
		Burglary 1	1	2%	
		Perjury	1	2%	
		Sexual Assault 2	13	28%	
		Sexual Assault 3	2	4%	
		Alcohol to Minor (misd.)	1	2%	
		Assault 4 (misd.)	6	13%	
		Att Sexual Assault 3 (misd.)	1	2%	
		Criminal Mischief 3 (misd.)	1	2%	
		Harassment (misd.)	1	2%	
		<i>Dismissed/Acquitted</i>	12	26%	
<b>Attempted SAM 1</b> (Class A)	<b>1</b>	<b>Att SAM 1</b>	<b>1</b>	<b>100%</b>	<b>0%</b>
<b>Attempted Sexual Assault 1</b> (Class A)	<b>2</b>	Att Sexual Assault 2	<b>0</b>	<b>0%</b>	<b>0%</b>
		<i>Dismissed/Acquitted</i>	1	50%	
			1	50%	
<b>Exploit Minor</b> (Class B)	<b>1</b>	<b>Exploit Minor</b>	<b>1</b>	<b>100%</b>	<b>0%</b>
<b>Sexual Abuse Minor 2</b> (Class B)	<b>95</b>	<b>Sexual Abuse Minor 2</b>	<b>39</b>	<b>41%</b>	<b>13%</b>
		Att SAM 2	20	21%	
		Att Sexual Assault 2	3	3%	
		Coercion	2	2%	
		Probation Revocation F	1	1%	
		Sexual Assault 3	1	1%	
		Sexual Abuse Minor 3	8	8%	
		Sexual Abuse Minor 1	1	1%	
		Sexual Assault 2	2	2%	
		Alcohol to Minor (misd.)	1	1%	
		Assault 4 (misd.)	3	3%	
		Att Sexual Assault 3 (misd.)	1	1%	
		Att SAM 3 (misd.)	2	2%	
		Contributing to Delinquency of Minor (misd.)	4	4%	
		Criminal Trespass (misd.)	1	1%	
		<i>Dismissed/Acquitted</i>	6	6%	

**Table B-1  
Charge Changes for Single Most Serious Charge\*\* 1999**

Original Single Most Serious Charge	Number of Defendants With This Charge	Final Disposition of Single Most Serious Charge Against Defendants	N	Percent of Each Disposition	Percent Convicted of Misdemeanor
<b>Sexual Offenses (Continued)</b>					
<b>Sexual Assault 2</b> (Class B)	<b>47</b>	<b>Sexual Assault 2</b> Att Sexual Assault 2 Burglary 2 Sexual Assault 3 Assault 4 (misd.) Att SAM 3 (misd.) Criminal Trespass (misd.) Harassment (misd.) Reckless Endangerment (misd.) Sexual Abuse Minor 4 (misd.) Sexual Assault 4 (misd.) Violation DV Protective Order (misd.) <i>Dismissed/Acquitted</i>	<b>8</b> 8 1 6 6 2 1 3 1 1 1 1 8	<b>17%</b> 17% 2% 13% 13% 4% 2% 6% 2% 2% 2% 2% 17%	<b>34%</b>
<b>Attempted SAM 2</b> (Class C)	<b>2</b>	<b>Att SAM 2</b>	<b>2</b>	<b>100%</b>	<b>0%</b>
<b>Attempted Sexual Assault 2</b> (Class C)	<b>3</b>	<b>Att Sexual Assault 2</b> Harassment (misd.)	<b>2</b> 1	<b>67%</b> 33%	<b>33%</b>
<b>Indecent Exposure 1</b> (Class C)	<b>3</b>	<b>Indecent Exposure 1</b> Indecent Exposure 2 (misd.)	<b>2</b> 1	<b>67%</b> 33%	<b>33%</b>
<b>Sexual Abuse Minor 3</b> (Class C)	<b>21</b>	<b>Sexual Abuse Minor 3</b> Probation Revocation F Alcohol to Minor (misd.) Assault 4 (misd.) Att SAM 3 (misd.) Contributing to Delinquency of Minor (misd.) Resist Arrest (misd.) <i>Dismissed/Acquitted</i>	<b>8</b> 1 2 2 3 1 1 3	<b>38%</b> 5% 10% 10% 14% 5% 5% 14%	<b>43%</b>
<b>Sexual Assault 3</b> (Class C)	<b>6</b>	<b>Sexual Assault 3</b> Assault 3 Att Sexual Assault 2 Assault 4 (misd.) <i>Dismissed/Acquitted</i>	<b>2</b> 1 1 1 1	<b>33%</b> 17% 17% 17% 17%	<b>17%</b>
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**Table B-1  
Charge Changes for Single Most Serious Charge\*\* 1999**

Original Single Most Serious Charge	Number of Defendants With This Charge	Final Disposition of Single Most Serious Charge Against Defendants	N	Percent of Each Disposition	Percent Convicted of Misdemeanor
<b>Drug Offenses</b>					
<b>MICS 1</b> (Unclassified)	<b>3</b>	MICS 2 Custodial Interference 2 (misd.) <i>Dismissed/Acquitted</i>	<b>0</b> 1 1 1	<b>0%</b> 33% 33% 33%	<b>33%</b>
<b>MICS 2</b> (Class A)	<b>2</b>	<b>MICS 2</b> <i>Dismissed/Acquitted</i>	<b>1</b> 1	<b>50%</b> 50%	<b>0%</b>
<b>MICS 3</b> (Class B)	<b>150</b>	<b>MICS 3</b> Att MICS 3 Conspiracy/Cocaine MICS 4 Probation Revocation F Assault 4 (misd.) Att MICS 4 (misd.) Contributing to Delinquency of Minor (misd.) DWLR/S (misd.) MICS 6 (misd.) MICS 5 (misd.) Promoting Prostitution 3 (misd.) Resist Arrest (misd.) <i>Dismissed/Acquitted</i>	<b>46</b> 8 1 53 1 1 1 1 2 1 3 1 1 30	<b>31%</b> 5% 1% 35% 1% 1% 1% 1% 1% 1% 2% 1% 1% 20%	<b>7%</b>
<b>MICS 4</b> (Class C)	<b>310</b>	<b>MICS 4</b> Probation Revocation F Assault 4 (misd.) Assaulting a Police Officer (misd.) Att MICS 4 (misd.) Criminal Mischief 3 (misd.) Criminal Trespass 2 (misd.) Disorderly Conduct (misd.) DWI (misd.) DWLR/S (misd.) Improper Use/Evidence/Registration (misd.) MICS 5 (misd.) MICS 6 (misd.) MIW 4 (misd.) NVOL (misd.) Prostitution (misd.) Resist Arrest (misd.) <i>Dismissed/Acquitted</i>	<b>149</b> 2 3 1 26 1 1 1 6 3 1 18 5 1 1 1 1 1 89	<b>48%</b> 1% 1% 1% 8% 1% 1% 1% 2% 1% 1% 6% 2% 1% 1% 1% 1% 29%	<b>23%</b>
<i>Alaska Judicial Council 1999 Felony Report</i>					



**Table B-1  
Charge Changes for Single Most Serious Charge\*\* 1999**

Original Single Most Serious Charge	Number of Defendants With This Charge	Final Disposition of Single Most Serious Charge Against Defendants	N	Percent of Each Disposition	Percent Convicted of Misdemeanor
<b>Other Offenses</b>					
<b>Escape 1</b> (Class A)	<b>1</b>	<b>Escape 2</b>	<b>0</b> 1	<b>0%</b> 100%	<b>0%</b>
<b>MIW 2</b> (Class B)	<b>13</b>	<b>MIW 2</b> MIW 3 Resist Arrest (misd.) <i>Dismissed/Acquitted</i>	<b>2</b> 3 1 7	<b>15%</b> 23% 8% 54%	<b>8%</b>
<b>Interfere Official Proceedings</b> (Class B)	<b>2</b>	<i>Dismissed/Acquitted</i>	<b>0</b> 2	<b>0%</b>	<b>0%</b>
<b>Contraband 1</b> (Class C)	<b>1</b>	<b>Contraband 1</b>	<b>1</b>	<b>100%</b>	<b>0%</b>
<b>Endangering Welfare Minor 1</b> (Class C)	<b>1</b>	<b>Welfare of a Minor 1</b>	<b>1</b>	<b>100%</b>	<b>0%</b>
<b>Failure to Appear</b> (Class C)	<b>1</b>	<b>Fail to Appear F</b>	<b>1</b>	<b>100%</b>	<b>0%</b>
<b>Hindering Prosecution 1</b> (Class C)	<b>1</b>	Att Hindering Prosecution (misd.)	<b>0</b> 1	<b>0%</b> 100%	<b>100%</b>
<b>License/Permit Alcohol Req.</b> (Class C)	<b>1</b>	DWI (misd.)	<b>0</b> 1	<b>0%</b> 100%	<b>100%</b>
<b>MIW 3</b> (Class C)	<b>8</b>	<b>MIW 3</b>	<b>8</b>	<b>100%</b>	<b>0%</b>
<b>Sale Without License or Permit</b> (Class C)	<b>1</b>	<b>Sale Without License or Permit</b>	<b>1</b>	<b>100%</b>	<b>0%</b>
<b>Tamper with Public Records</b> (Class C)	<b>1</b>	<b>Tamper with Public Records</b>	<b>1</b>	<b>100%</b>	<b>0%</b>
<b>Tampering with Evidence</b> (Class C)	<b>3</b>	<b>Tampering with Evidence</b>	<b>3</b>	<b>100%</b>	<b>0%</b>
<b>Violation of Conditions</b> (Class C)	<b>2</b>	<b>Violation of Conditions</b> Violation of Conditions (misd.)	<b>1</b> 1	<b>50%</b> 50%	<b>50%</b>
<b>Driving Offenses</b>					
<b>Failure to Render Assistance</b> (Class C)	<b>2</b>	<b>Fail to Render Assistance F</b>	<b>2</b>	<b>100%</b>	<b>0%</b>
<b>Failure to Stop</b> (Class C)	<b>15</b>	<b>Fail to Stop F</b> Fail to Stop (misd.)	<b>13</b> 2	<b>87%</b> 13%	<b>13%</b>
<b>Felony DWI</b> (Class C)	<b>142</b>	<b>Felony DWI</b> Probation Revocation F DWI (misd.) Reckless Driving (misd.) <i>Dismissed/Acquitted</i>	<b>126</b> 2 7 5 2	<b>89%</b> 1% 5% 4% 1%	<b>8%</b>
<b>Refuse Test</b> (Class C)	<b>15</b>	<b>Refuse Test F</b> Att Perjury F Refuse Test (misd.)	<b>12</b> 1 2	<b>80%</b> 7% 13%	<b>13%</b>
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## Appendix B - Part II

### Charge Changes - 1984-87\*

<b>Table B-2</b>					
<b>Charge Changes for Single Most Serious Charge** 1984-87</b>					
Original Charge	N	Final Charge	N	% Convicted Original	% Convicted Misdemeanor
<b>Murder 1</b>	<b>91</b>	<b>Murder 1</b>	<b>46</b>	<b>50.5</b>	<b>0%</b>
		Murder 2	29		
		Manslaughter	8		
		Negligent Homicide	3		
		Assault 1	1		
		Sexual Abuse 1	1		
		Hinder Prosecution 1	1		
		Attempted Assault 1	1		
		Sexual Assault 1	1		
		<b>Murder 2</b>	<b>23</b>		
Manslaughter	10				
Negligent Homicide	3				
Tampering w/Phys. Evidence	1				
Crim. Neg. Burning (misd.)	1				
Assault 4 (misd.)	1				
<b>Manslaughter</b>	<b>51</b>	<b>Manslaughter</b>	<b>23</b>	<b>45.1</b>	<b>5.8</b>
		Negligent Homicide	17		
		Assault 1	1		
		Assault 2	2		
		Assault 3	1		
		Burglary 1	1		
		Criminal Mischief 2	1		
		Unlawful Possession	1		
		Fail to Render Aid	1		
		Assault 4 (misd.)	2		
		DWI (misd.)	1		

\* This table originally appeared as Table C-1 of the Council's 1991 report, ALASKA'S PLEA BARGAINING BAN RE-EVALUATED, *supra* at note 19. Unlike Table B-1 of this appendix which contains data on 1999 all charge changes in the sample, this table only provides data on the most frequent convicted offenses. It does not include defendants who were acquitted or who had all charges dismissed. The table has revised the names used to describe some charges, to be consistent with the 1999 tables.

\*\* This table shows each of the more common single most serious filed charges that resulted in a conviction for the defendant on any charge. The "final charge" is the single most serious charge left standing against the defendant at the time of conviction. Thus, a Manslaughter charge may not actually have been reduced to Unlawful Possession, the most serious convicted charge, but one defendant who was originally charged with Manslaughter was convicted of Unlawful Possession.

<b>Table B-2</b>					
<b>Charge Changes for Single Most Serious Charge** 1984-87</b>					
Original Charge	N	Final Charge	N	% Convicted Original	% Convicted Misdemeanor
<b>Negligent Homicide</b>	<b>8</b>	<b>Negligent Homicide</b>	<b>3</b>	<b>37.5</b>	<b>25.0</b>
		Manslaughter	2		
		Fail to Render Aid	1		
		Reckless Endanger. (misd.)	1		
		Reckless Driving (misd.)	1		
<b>Assault 1</b>	<b>150</b>	<b>Assault 1</b>	<b>38</b>	<b>25.3</b>	<b>18.0</b>
		Assault 2	42		
		Assault 3	37		
		Murder 2	1		
		Manslaughter	1		
		Negligent Homicide	1		
		Burglary 1	1		
		Attempted Murder 1	1		
		Fail to Render Aid	1		
		Assault 4 (misd.)	20		
		Reckless Endanger. (misd.)	2		
		Crim. Trespass 1 (misd.)	2		
		DWI (misd.)	1		
		Reckless Driving (misd.)	1		
		Rules of the Road (misd.)	1		
<b>Assault 2</b>	<b>237</b>	<b>Assault 2</b>	<b>38</b>	<b>16.0</b>	<b>55.7</b>
		Assault 1	9		
		Negligent Homicide	1		
		Assault 3	50		
		Robbery 2	1		
		Theft 2	1		
		Criminal Mischief 2	1		
		Terrorist Threat	1		
		Leave Scene Injury Accident	1		
		Fail to Render Aid	2		
		Assault 4 (misd.)	110		
		Reckless Endanger. (misd.)	4		
		Theft 4 (misd.)	1		
		Crim. Mischief 3 (misd.)	2		
		Resist/Inter w/Arr (misd.)	2		
		Make False Report (misd.)	1		
		Disorderly Conduct (misd.)	1		
		Harassment (misd.)	1		
		Misc. Inv. Weapon 2 (misd.)	1		
		Att. Assault 3 (misd.)	1		
		DWLS (misd.)	1		
DWI (misd.)	5				
Reckless Driving (misd.)	2				

<b>Table B-2</b>					
<b>Charge Changes for Single Most Serious Charge** 1984-87</b>					
<b>Original Charge</b>	<b>N</b>	<b>Final Charge</b>	<b>N</b>	<b>% Convicted Original</b>	<b>% Convicted Misdemeanor</b>
<b>Assault 3</b>	<b>824</b>	<b>Assault 3</b>	<b>238</b>	<b>28.9</b>	<b>69.7</b>
		Assault 1	1		
		Assault 2	1		
		Crim. Mischief 2	2		
		Escape 1	1		
		Tamp. w/Witness 1	1		
		Misc. Inv. Weapon 2 (MIW2)	1		
		Leave Scene Injury Acc.	2		
		Fail to Render Aid	2		
		Attempted Assault 2	1		
		Assault 4 (misd.)	340		
		Reckless Endanger. (misd.)	52		
		Theft 3 (misd.)	1		
		Crim. Trespass (misd.)	4		
		Crim. Mischief 3 (misd.)	12		
		Crim. Mischief 4 (misd.)	2		
		Escape 4 (misd.)	1		
		Resis/Inter w/Arr (misd.)	9		
		Disorderly Conduct (misd.)	15		
		Harassment (misd.)	2		
		Misc. Inv. Weapon 2 (misd.) (MIW2)	65		
		Misc. Inv. Weapon 3 (misd.) (MIW3)	11		
		Minor Cons/Poss (misd.)	1		
		Contempt of Court (misd.)	1		
		Driver Must be Licensed (misd.)	2		
		DWLS (misd.)	6		
		DWI (misd.)	37		
		Reckless Driving (misd.)	10		
		Fail Immed. Rpt. Acc. (misd.)	1		
Disobey Peace Officer (misd.)	1				
Attempted Theft 2 (misd.)	1				
<b>Kidnaping</b>	<b>84</b>	<b>Kidnaping</b>	<b>12</b>	<b>14.3</b>	<b>21.4</b>
		Negligent Homicide	1		
		Assault 2	2		
		Assault 3	10		
		Sexual Assault 1	17		
		Sexual Assault 2	4		
		Sexual Abuse 2	1		
		Robbery 1	8		
		Robbery 2	2		
		Burglary 1	2		
		Hinder Prosecution 1	1		
		Misc. Inv. Weapon 1 (MIW1)	1		
		Attempted Kidnaping	1		
		Attempted Sexual Assault 1	1		
Attempted Sexual Assault 2	2				

<b>Table B-2</b>					
<b>Charge Changes for Single Most Serious Charge** 1984-87</b>					
Original Charge	N	Final Charge	N	% Convicted Original	% Convicted Misdemeanor
<b>Kidnaping (continued)</b>		Attempted Sexual Abuse 2	1		
		Assault 4 (misd.)	15		
		Reckless Endanger. (misd.)	2		
		Harassment (misd.)	1		
<b>Sexual Assault 1</b>	<b>227</b>	<b>Sexual Assault 1</b>	<b>98</b>	<b>43.2</b>	<b>6.6</b>
		Sexual Assault 2	32		
		Sexual Assault 3	1		
		Sexual Abuse 1	8		
		Sexual Abuse 2	18		
		Sexual Abuse Minor 3	3		
		Assault 1	2		
		Assault 2	3		
		Assault 3	7		
		Sexual Abuse before 10/17/83	5		
		Incest	4		
		Robbery 2	1		
		Burglary 1	4		
		Drugs (4 <sup>th</sup> ) (MICS4)	1		
		Attempted Sexual Assault 1	12		
		Attempted Sexual Assault 2	8		
		Attempted Sexual Abuse 1	3		
		Attempted Sexual Abuse 2	2		
		Assault 4 (misd.)	7		
		Crim. Trespass 1 (misd.)	2		
		Harassment (misd.)	3		
		Minor Cons/Poss (misd.)	2		
		Att. Sexual Abuse Minor 3 (misd.)	1		
<b>Sexual Assault 2</b>	<b>64</b>	<b>Sexual Assault 2</b>	<b>15</b>	<b>23.4</b>	<b>42.2</b>
		Sexual Abuse 2	3		
		Sexual Abuse Minor 3	4		
		Incest	1		
		Burglary 1	1		
		Assault 3	1		
		Attempted Sexual Assault 1	1		
		Attempted Sexual Assault 2	11		
		Indecent Exposure (misd.)	2		
		Crim. Trespass 1 (misd.)	5		
		Harassment (misd.)	8		
		Assault 4 (misd.)	9		
		Minor Cons/Poss (misd.)	1		
		Attempted Sexual Assault 3 (misd.)	1		
		Attempted Incest (misd.)	1		

<b>Table B-2</b>									
<b>Charge Changes for Single Most Serious Charge** 1984-87</b>									
Original Charge	N	Final Charge	N	% Convicted Original	% Convicted Misdemeanor				
<b>Sexual Abuse 1</b>	<b>248</b>	<b>Sexual Abuse 1</b>	<b>104</b>	<b>41.9</b>	<b>1.6</b>				
		Sexual Abuse 2	89						
		Sexual Abuse Minor 3	5						
		Sexual Assault 1	8						
		Sexual Abuse before 10/17/89	8						
		Attempted Sexual Assault 2	1						
		Attempted Sexual Abuse 1	23						
		Attempted Sexual Abuse 2	4						
		Incest	2						
		Assault 4 (misd.)	1						
		Contr. Del. Minor (misd.)	3						
		<b>Sexual Abuse 2</b>	<b>240</b>			<b>Sexual Abuse 2</b>	<b>152</b>	<b>63.3</b>	<b>8.8</b>
						Sexual Abuse Minor 3	16		
Sexual Abuse 1	2								
Sexual Assault 1	1								
Sexual Assault 2	1								
Sexual Assault 3	1								
Sexual Abuse before 10/17/83	16								
Burglary 1	3								
Attempted Sexual Abuse 1	2								
Attempted Sexual Abuse 2	25								
Assault 4 (misd.)	4								
Indecent Exposure (misd.)	2								
Crim. Trespass 1 (misd.)	1								
Contr. Del. Minor (misd.)	5								
Harassment (misd.)	7								
Att. Sexual Assault 3 (misd.)	1								
Att. Sexual Abuse Minor (misd.)	1								
<b>Robbery 1</b>	<b>181</b>	<b>Robbery 1</b>	<b>110</b>	<b>60.8</b>	<b>9.4</b>				
		Robbery 2	28						
		Theft 2	3						
		Assault 2	5						
		Assault 3	9						
		Sexual Abuse 1	1						
		Burglary 1	5						
		Crim. Mischief 2	1						
		Hinder Prosecution 1	1						
		Misc. Inv. Weapon 1 (MIW1)	1						
		Theft 3 (misd.)	5						
		Conceal Merchandise (misd.)	1						
		Theft 4 (misd.)	1						
		Assault 4 (misd.)	4						
		Crim. Mischief 3 (misd.)	2						
		Forgery 3 (misd.)	1						
		Resis/Inter w/Arr (misd.)	2						
		Attempted Theft 2 (misd.)	1						

<b>Table B-2</b>					
<b>Charge Changes for Single Most Serious Charge** 1984-87</b>					
Original Charge	N	Final Charge	N	% Convicted Original	% Convicted Misdemeanor
<b>Robbery 2</b>	<b>70</b>	<b>Robbery 2</b>	<b>21</b>	<b>30.0</b>	<b>44.3</b>
		Robbery 1	2		
		Assault 3	2		
		Theft 2	12		
		Tamp. w. Phys. Evid.	1		
		Failure to Appear	1		
		Assault 4 (misd.)	16		
		Theft 3 (misd.)	9		
		Theft 4 (misd.)	1		
		Crim. Trespass 1 (misd.)	1		
		Disorderly Conduct (misd.)	1		
		Attempted Theft 2 (misd.)	1		
		Attempted Theft 3 (misd.)	2		
		<b>Theft 1</b>	<b>57</b>		
Theft 2	11				
Bad Checks	1				
Burglary 2	6				
Crim. Mischief 2	1				
Crim. Mischief 3	1				
Scheme to Defraud	2				
Misapplication Property	1				
Attempted Theft 1	1				
Theft 3 (misd.)	2				
Forgery 3 (misd.)	1				
Unsworn Falsification (misd.)	1				
<b>Theft 2</b>	<b>592</b>	<b>Theft 2</b>	<b>329</b>	<b>55.6</b>	<b>38.0</b>
		Theft 1	1		
		Removal of ID Marks	1		
		Bad Checks	2		
		Fraud-Use Credit Card	5		
		Burglary 1	1		
		Burglary 2	5		
		Crim. Mischief 2	3		
		Forgery 1	1		
		Forgery 2	8		
		Scheme to Defraud	1		
		Misc. Inv. Weapon 1 (MIW1)	4		
		Misc. Inv. Weapon 2 (MIW2)	3		
		Failure to Appear	1		
		Felony Title/Reg.	1		
		Drugs (4th)	2		
		Theft 3 (misd.)	162		
		Theft 4 (misd.)	6		
		Assault 4 (misd.)	1		
		Conceal Merchandise (misd.)	1		
		Crim. Trespass (misd.)	2		
		Crim. Trespass 2 (misd.)	6		
		Crim. Mischief 3 (misd.)	23		

<b>Table B-2</b>					
<b>Charge Changes for Single Most Serious Charge** 1984-87</b>					
Original Charge	N	Final Charge	N	% Convicted Original	% Convicted Misdemeanor
<b>Theft 2 (continued)</b>		Forgery 3 (misd.)	1		
		Contr. Delinq. Minor (misd.)	1		
		Unsworn Falsification (misd.)	2		
		Make False Report (misd.)	1		
		Misc. Inv. Weapon 3 (misd.) (MIW3)	3		
		Minor Cons/Poss (misd.)	1		
		DWLS (misd.)	3		
		DWI (misd.)	3		
		Reckless Driving (misd.)	1		
		Disobey Peace Officer (misd.)	1		
		Attempted Theft 2 (misd.)	3		
		Attempted Theft 3 (misd.)	2		
		Attempted Forgery 2 (misd.)	1		
		<b>Burglary 1</b>	<b>597</b>	<b>Burglary 1</b>	<b>268</b>
		Burglary 2	51		
		Assault 3	8		
		Sexual Abuse 2	2		
		Theft 1	3		
		Theft 2	45		
		Crim. Mischief 1	1		
		Crim. Mischief 2	5		
		Forgery 2	1		
		Escape 3	1		
		Hinder Prosecution 1	1		
		Misc. Inv. Weapon 1 (MIW1)	1		
		Drugs (4 <sup>th</sup> ) (MICS 4)	1		
		Failure to Appear	1		
		Attempted Murder 1	1		
		Attempted Sexual Assault 2	1		
		Attempted Burglary 1	1		
		Crim. Trespass 1 (misd.)	108		
		Crim. Trespass 2 (misd.)	12		
		Assault 4 (misd.)	25		
		Theft 3 (misd.)	26		
		Theft 4 (misd.)	7		
		Crim. Mischief 3 (misd.)	14		
		Resist/Inter w/Arr (misd.)	1		
		Disorderly Conduct (misd.)	3		
		Harassment (misd.)	1		
		Minor Cons/Poss (misd.)	1		
		DWLS (misd.)	2		
		Attempted Theft 2 (misd.)	1		
		Attempted Burglary 2 (misd.)	1		



<b>Table B-2</b>					
<b>Charge Changes for Single Most Serious Charge** 1984-87</b>					
Original Charge	N	Final Charge	N	% Convicted Original	% Convicted Misdemeanor
<b>Burglary 2</b>	<b>598</b>	<b>Burglary 2</b>	<b>369</b>	<b>61.7</b>	<b>29.9</b>
		Burglary 1	15		
		Fraud - Use Credit Card	1		
		Crim. Mischief 2	9		
		Forgery 1	1		
		Misc. Inv. Weapon 1 (MIW1)	1		
		Coercion	1		
		Theft 2	22		
		Crim. Trespass 1 (misd.)	26		
		Crim. Trespass 2 (misd.)	68		
		Crim. Mischief 3 (misd.)	23		
		Crim. Mischief 4 (misd.)	4		
		Contr. Delinq. Minor (misd.)	1		
		DWLS (misd.)	1		
		DWI (misd.)	1		
		Theft 3 (misd.)	26		
		Theft 4 (misd.)	6		
		Attempted Assault 4 (misd.)	1		
		Attempted Theft 2 (misd.)	1		
		Attempted Theft 3 (misd.)	1		
		Attempted Theft 4 (misd.)	1		
Attempted Burglary 2 (misd.)	18				
Att. Crim. Trespass (misd.)	1				
<b>Crim. Mischief 2</b>	<b>240</b>	<b>Crim. Mischief 2</b>	<b>80</b>	<b>33.3</b>	<b>64.2</b>
		Misc. Inv. Weapon 1 (MIW1)	1		
		Misc. Inv. Weapon 2 (MIW2)	1		
		Assault 3	1		
		Burglary 2	1		
		Leave Scene Injury Acc.	2		
		Crim. Mischief 3 (misd.)	99		
		Crim. Mischief 4 (misd.)	5		
		Resis/Inter w/Arr (misd.)	4		
		Disorderly Conduct (misd.)	3		
		Assault 4 (misd.)	7		
		Reckless Endanger (misd.)	2		
		Crim. Trespass 1 (misd.)	1		
		Crim. Trespass 2 (misd.)	1		
		Rules of the Road (misd.)	1		
		Driver Must be Licensed (misd.)	3		
		DWLS (misd.)	3		
		DWI (misd.)	19		
Reckless Driving (misd.)	5				
Disobey Peace Officer (misd.)	1				
<b>Forgery 1</b>	<b>20</b>	<b>Forgery 1</b>	<b>10</b>	<b>50.0</b>	<b>15.0</b>
		Forgery 2	6		
		Scheme to Defraud	1		
		Forgery 3 (misd.)	2		
		Resis/Inter w/Arr (misd.)	1		

<b>Table B-2</b>					
<b>Charge Changes for Single Most Serious Charge** 1984-87</b>					
Original Charge	N	Final Charge	N	% Convicted Original	% Convicted Misdemeanor
<b>Forgery 2</b>	<b>213</b>	<b>Forgery 2</b> Scheme to Defraud Theft 2 Bad Checks Fraud - Use Credit Card Forgery 3 (misd.) Crim. Impersonation (misd.) DWLS (misd.) Theft 3 (misd.) Attempted Forgery 2 (misd.)	<b>175</b> 5 3 2 2 19 1 1 3 2	<b>82.2</b>	<b>12.2</b>
<b>Misc. Inv. Weapon 1</b> (MIW1)	<b>89</b>	<b>Misc. Inv. Weapon 1 (MIW1)</b> Crim. Poss Explosives Drugs (4th) Theft 2 Burglary 1 Misc. Inv. Weapon 2 (misd.) (MIW2) Misc. Inv. Weapon 3 (misd.) (MIW3) Driver Must Be Licensed (misd.) DWI (misd.) Assault 4 (misd.) Reckless Endanger. (misd.)	<b>61</b> 2 1 1 1 5 10 1 3 2 2	<b>68.5</b>	<b>25.8</b>
<b>Drugs (1<sup>st</sup> Degree)</b> Misconduct Involving Controlled Substance 1 (MICS1)	<b>16</b>	<b>Drugs (1<sup>st</sup> degree)</b> Drugs (3 <sup>rd</sup> degree) Drugs (4 <sup>th</sup> degree) Sexual Abuse 2 Sexual Abuse Minor 3 Drugs (5 <sup>th</sup> degree) (misd.) Att. Drugs (4 <sup>th</sup> ) (misd.)	<b>3</b> 7 2 1 1 1 1	<b>18.8</b>	<b>12.5</b>
<b>Drugs (2<sup>nd</sup> Degree)</b> Misconduct Involving Controlled Substance 2 (MICS2)	<b>36</b>	<b>Drugs (2<sup>nd</sup> degree)</b> Drugs (3 <sup>rd</sup> degree) Drugs (4 <sup>th</sup> degree) Assault 4 (misd.)	<b>28</b> 3 4 1	<b>77.8</b>	<b>2.8</b>
<b>Drugs (3<sup>rd</sup> Degree)</b> Misconduct Involving Controlled Substance 3 (MICS3)	<b>534</b>	<b>Drugs (3<sup>rd</sup> degree)</b> Drugs (4 <sup>th</sup> degree) Deliv. Fake Drugs Fail to Render Aid Sexual Abuse 2 Forgery 3 Tamp. w/Phys. Evid. Hinder Prosecution 1 Attempted Narcotics Attempted Drugs (3 <sup>rd</sup> degree) Drugs (5 <sup>th</sup> degree) (misd.) Drugs (6 <sup>th</sup> degree) (misd.) Drugs (7 <sup>th</sup> degree) (misd.) Furn. Liq./Minor (misd.)	<b>411</b> 73 3 1 1 1 1 1 1 1 24 3 1 1	<b>77.0</b>	<b>7.5</b>

<b>Table B-2</b>					
<b>Charge Changes for Single Most Serious Charge** 1984-87</b>					
Original Charge	N	Final Charge	N	% Convicted Original	% Convicted Misdemeanor
<b>Drugs (3<sup>rd</sup> Degree)</b> <b>(continued)</b>		Assault 4 (misd.)	1		
		Theft 3 (misd.)	1		
		Crim. Trespass 2 (misd.)	1		
		Contr. Delinq. Minor (misd.)	3		
		Disorderly Conduct (misd.)	1		
		Attempted MICS4 (misd.)	4		
<b>Drugs (4<sup>th</sup> Degree)</b> Misconduct Involving Controlled Substance 4 (MICS4)	<b>311</b>	<b>Drugs (4<sup>th</sup> degree)</b> Drugs (3 <sup>rd</sup> degree) Deliv. Fake Drugs Theft 2 Prom. Contraband 1 Liq. w/o License Drugs (5 <sup>th</sup> ) (misd.) Drugs (6 <sup>th</sup> ) (misd.) Drugs (7 <sup>th</sup> ) (misd.) Assault 4 (misd.) Theft 4 (misd.) Crim. Trespass 2 (misd.) Forgery 3 (misd.) Make False Report (misd.) Disorderly Conduct (misd.) Misc. Inv. Weapon 2 (misd.) Misc. Inv. Weapon 3 (misd.) Allow Drunk Premises (misd.) Bottle Club (misd.) Driver M/B Licensed (misd.) DWLS (misd.) DWI (misd.) Reckless Driving (misd.) Attempted Theft 4 (misd.) Att. Drugs (4 <sup>th</sup> ) (misd.) Att. Drugs (5 <sup>th</sup> ) (misd.)	<b>187</b> 4 1 1 1 1 32 9 2 1 1 2 2 1 2 1 1 1 1 4 1 1 1 20 2 1 27 2	<b>60.1</b>	<b>37.3</b>
<b>Perjury</b>	<b>20</b>	<b>Perjury</b> Forgery 2 Theft 2	<b>18</b> 1 1	<b>90.0</b>	<b>0.0</b>
<b>Prom. Contraband 1</b>	<b>58</b>	<b>Prom. Contraband 1</b> Prom. Contraband 2 (misd.) Misc. Inv. Weapon 3 (misd.) (MIW3) Drugs (4 <sup>th</sup> ) (misd.) Att. Prom. Contraband 1 (misd.)	<b>40</b> 10 1 2 5	<b>69.0</b>	<b>31.0</b>

## Appendix C Mean Sentence Lengths

Table C-1 Sentence Length for Single Most Serious Charge at Conviction* Murder and Kidnaping											
	Number of Offenders	Mean Active Sentence		Standard Deviation	Probation		1Day - 12 Months	13-24 Months	25-60 Months	61-96 Months	Over 96 Months
		Months	N		%	N					
Murder 1	2	1044.0	2	203.6	-	-	-	-	-	-	2
Murder 2	5	360.0	5	112.3	-	-	-	-	-	-	5
Kidnaping	3	108.0	3	63.5	-	-	-	-	1	1	1
Att Murder 1	3	200.0	3	127.2	-	-	-	-	-	1	2

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\* Only the sentence for the single most serious charge remaining against the defendant at the time of conviction appears in this table. A defendant may have been convicted of other charges, or had probation revoked, and therefore had a longer sentence. This table does not reflect either situation. If all the charges against the defendant were dismissed or acquitted, the table does not include the defendant. Cases for this study were a representative two-thirds sample of all 1999 felony cases filed in the Alaska courts. As a result, the number of defendants in each category does not equal the total number of defendants convicted of a particular crime in felony cases filed in 1999.

Table C-1  
Sentence Length for Single Most Serious Charge at Conviction\*  
Violent Offenses

	Number of Offenders	Mean Active Sentence		Standard Deviation	Probation		1Day - 12 Months	13-24 Months	25-60 Months	61-96 Months	Over 96 Months
		Months	N		%	N					
<b>Class A</b>											
Arson 1	1	60.0	1	-	-	-	-	-	1	-	-
Assault 1	8	90.0	8	55.2	-	-	-	-	5	1	2
Manslaughter	8	124.5	8	68.5	-	-	-	-	3	1	4
Misconduct Involving Weapons 1	4	84.0	4	0.0	-	-	-	-	-	4	-
Robbery 1	20	89.7	20	37.8	-	-	-	-	8	7	5
<b>Class B</b>											
Assault 2	24	29.1	23	22.2	4%	1	8	6	6	3	-
Att Robbery 1	2	30.0	2	8.5	-	-	-	1	1	-	-
Conspiracy to Commit Robbery	3	26.0	3	12.5	-	-	1	-	2	-	-
Robbery 2	12	23.2	11	19.8	8%	1	5	4	1	1	-
<b>Class C</b>											
Assault 3	130	14.3	121	12.2	7%	9	77	30	14	-	-
Att Assault 2	1	9.0	1	-	-	-	1	-	-	-	-
Coercion	3	6.7	3	5.0	-	-	3	-	-	-	-
Crim. Neg. Homicide	3	30.0	3	21.6	-	-	1	-	2	-	-
Stalking 1	2	18.0	2	8.5	-	-	1	1	-	-	-
<b>Misdemeanor (Started as Felony)</b>											
Assault 4	264	3.1	223	3.2	16%	41	223	-	-	-	-
Assaulting a Police Officer	1	6.0	1	-	-	-	1	-	-	-	-
Att Assault 3	1	3.0	1	-	-	-	1	-	-	-	-
Att Coercion	1	6.0	1	-	-	-	1	-	-	-	-
DV violation	1	1.0	1	-	-	-	1	-	-	-	-
Interfering w/ report crime DV	2	6.5	2	7.8	-	-	2	-	-	-	-
Reckless Endangerment	26	3.3	15	3.1	42%	11	15	-	-	-	-
Stalking 2	1	12.0	1	-	-	-	1	-	-	-	-
Violation DV Protective Order	5	0.9	5	0.8	-	-	5	-	-	-	-

Table C-1  
Sentence Length for Single Most Serious Charge at Conviction\*  
Property Offenses

	Number of Offenders	Mean Active Sentence		Standard Deviation	Probation		1Day - 12 Months	13-24 Months	25-60 Months	61-96 Months	Over 96 Months
		Months	N		%	N					
<b>Class B</b>											
Arson 2	3	48.0	3	36.0	-	-	1	-	1	1	-
Burglary 1	19	21.4	16	18.4	16%	3	8	3	5	-	-
Scheme to Defraud	4	26.7	3	39.3	25%	1	2	-	-	1	-
Theft 1	3	49.0	3	39.8	-	-	1	-	-	2	-
<b>Class C</b>											
Att Burglary 1	5	21.8	4	13.7	20%	1	1	2	1	-	-
Att Theft 1	1	4.0	1	-	-	-	1	-	-	-	-
Bad Check	1	-	-	-	100%	1	-	-	-	-	-
Burglary 2	45	18.4	38	17.5	16%	7	22	5	11	-	-
Criminal Mischief 2	16	8.5	12	14.0	25%	4	10	1	1	-	-
Defraud/Credit Card	1	-	-	-	100%	1	-	-	-	-	-
Falsifying Records (Fraud)	1	-	-	-	100%	1	-	-	-	-	-
Forgery 2	42	13.5	30	11.3	29%	12	19	7	4	-	-
Misapplication of Property (F)	2	3.0	2	-	-	-	2	-	-	-	-
Theft 2	110	15.2	71	15.7	36%	39	43	15	13	-	-
Vehicle Theft 1	48	14.7	42	13.0	13%	6	25	7	10	-	-
<b>Misdemeanor (Started as Felony)</b>											
Att Vehicle Theft	7	2.2	5	1.3	29%	2	5	-	-	-	-
Att Burglary 2	5	1.7	4	1.0	20%	1	4	-	-	-	-
Att Theft 2	12	2.1	9	1.9	25%	3	9	-	-	-	-
Att Forgery 2	3	3.3	3	2.5	-	-	3	-	-	-	-
Att Criminal Mischief 2	2	0.6	2	0.6	-	-	2	-	-	-	-
Att Bad Check	1	-	-	-	100%	1	-	-	-	-	-
Att Vehicle Theft 1	17	4.2	13	3.9	24%	4	13	-	-	-	-
Bad Check	1	-	-	-	100%	1	-	-	-	-	-
Crim. Neg. Burning	1	2.0	1	-	-	-	1	-	-	-	-
Criminal Trespass 1	41	3.0	30	3.2	27%	11	30	-	-	-	-
Criminal Trespass 2	5	3.5	2	3.5	60%	3	2	-	-	-	-
Criminal Trespass 3	1	-	-	-	100%	1	-	-	-	-	-
Criminal Trespass	4	1.7	3	0.6	25%	1	3	-	-	-	-
Criminal Mischief 3	52	1.8	31	1.9	39%	21	31	-	-	-	-
Criminal Mischief 4	10	1.7	7	1.1	30%	3	7	-	-	-	-
Defraud/Credit Card	1	-	-	-	100%	1	-	-	-	-	-
Forgery 3	16	2.5	12	2.8	25%	4	12	-	-	-	-
Theft 3	111	3.2	66	3.1	41%	45	66	-	-	-	-
Theft 4	3	1.3	3	1.5	-	-	3	-	-	-	-
Vehicle Theft 2	2	0.5	2	0.6	-	-	2	-	-	-	-

Table C-1  
Sentence Length for Single Most Serious Charge at Conviction\*  
Sexual Offenses

	Number of Offenders	Mean Active Sentence		Standard Deviation	Probation		1Day - 12 Months	13-24 Months	25-60 Months	61-96 Months	Over 96 Months
		Months	N		%	N					
<b>Unclassified</b>											
Sexual Abuse Minor 1	10	128.4	10	82.0	-	-	-	-	-	6	4
Sexual Assault 1	5	182.4	5	115.9	-	-	-	-	-	2	3
<b>Class A</b>											
Att SAM 1	9	95.3	9	51.8	-	-	-	-	5	1	3
Att Sexual Assault 1	1	96.0	1	-	-	-	-	-	-	1	-
<b>Class B</b>											
Exploit Minor	1	24.0	1	-	-	-	-	1	-	-	-
Sexual Abuse Minor 2	54	35.2	53	20.1	2%	1	11	7	32	3	-
Sexual Assault 2	25	29.8	25	18.1	-	-	6	7	10	2	-
<b>Class C</b>											
Att Sexual Assault 2	17	21.6	17	13.8	-	-	7	4	6	-	-
Att SAM 2	22	16.2	22	12.5	-	-	13	4	5	-	-
Indecent Exposure	1	1.0	1	-	-	-	1	-	-	-	-
Indecent Exposure 1	1	36.0	1	-	-	-	-	-	1	-	-
Sexual Abuse Minor 3	18	12.7	17	10.8	5%	1	13	1	3	-	-
Sexual Assault 3	12	20.9	12	15.0	-	-	5	5	2	-	-
<b>Misdemeanor (Started as Felony)</b>											
Att Sexual Assault 3	2	5.5	2	3.5	-	-	2	-	-	-	-
Att SAM 3	7	6.2	6	4.3	14%	1	6	-	-	-	-
Indecent Exposure 2	1	3.0	1	-	-	-	1	-	-	-	-
Sexual Abuse Minor 4	1	4.0	1	-	-	-	1	-	-	-	-
Sexual Assault 4	1	2.0	1	-	-	-	1	-	-	-	-

Table C-1  
Sentence Length for Single Most Serious Charge at Conviction\*  
Drug Offenses

	Number of Offenders	Mean Active Sentence		Standard Deviation	Probation		1Day - 12 Months	13-24 Months	25-60 Months	61-96 Months	Over 96 Months
		Months	N		%	N					
<b>Class A</b>											
Misconduct Involving a Controlled Substance 2	2	174.0	2	8.5	-	-	-	-	-	-	2
<b>Class B</b>											
MICS 3	46	21.5	44	22.2	4%	2	28	4	9	3	-
<b>Class C</b>											
Att MICS 3	8	12.9	7	9.3	13%	1	4	3	-	-	-
Conspiracy/Cocaine	1	36.0	1	-	-	-	-	-	1	-	-
MICS 4	202	15.1	126	13.9	38%	76	70	31	25	-	-
<b>Misdemeanor (Started as Felony)</b>											
Att MICS 4	27	2.6	18	3.1	33%	9	18	-	-	-	-
MICS 5	21	2.2	9	2.7	57%	12	9	-	-	-	-
MICS 6	7	2.5	2	0.7	71%	5	2	-	-	-	-

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Table C-1  
Sentence Length for Single Most Serious Charge at Conviction  
Other Offenses

	Number of Offenders	Mean Active Sentence		Standard Deviation	Probation		1Day - 12 Months	13-24 Months	25-60 Months	61-96 Months	Over 96 Months
		Months	N		%	N					
<b>Class B</b>											
Escape 2	1	48.0	1	-	-	-	-	-	1	-	-
Misconduct Involving Weapons 2*	4	7.8	4	5.3	-	-	4	-	-	-	-
Perjury	1	-	-	-	100%	1	-	-	-	-	-
<b>Class C</b>											
Att Perjury	1	4.0	1	-	-	-	1	-	-	-	-
Contraband 1	1	1.0	1	-	-	-	1	-	-	-	-
Fail to Appear	1	24.0	1	-	-	-	-	1	-	-	-
MIW 3	11	23.7	10	12.2	9%	1	3	3	4	-	-
Violation of Conditions (felony)	1	18.0	1	-	-	-	-	1	-	-	-
Sell Alcohol Without License or Permit	1	36.0	1	-	-	-	-	-	1	-	-
Tamper with Public Records	1	-	-	-	100%	1	-	-	-	-	-
Tampering with Evidence	3	18.3	3	17.5	-	-	1	1	1	-	-
Welfare of a Minor	1	12.0	1	-	-	-	1	-	-	-	-
<b>Misdemeanor (Started as Felony)</b>											
Alcohol to Minor	4	1.7	4	1.0	-	-	4	-	-	-	-
Att MIW 3	1	1.0	1	-	-	-	1	-	-	-	-
Att Hindering Prosecution	1	0.2	1	-	-	-	1	-	-	-	-
Contributing Delinquency Minor	9	3.9	8	3.2	11%	1	8	-	-	-	-
Custodial Interference 2	1	1.0	1	-	-	-	1	-	-	-	-
Disorderly Conduct	9	0.2	6	0.2	34%	3	6	-	-	-	-
Fail to Appear	2	6.5	2	7.8	-	-	2	-	-	-	-
Harassment	8	1.7	6	1.2	25%	2	6	-	-	-	-
Improper Use Evidence/ Registration	1	0.4	1	-	-	-	1	-	-	-	-
MIW 4	18	2.2	13	3.3	28%	5	13	-	-	-	-
MIW 5	1	-	-	-	100%	1	-	-	-	-	-
Practicing Medicine w/out License	1	-	-	-	100%	1	-	-	-	-	-
Promoting Prostitution 3	1	6.0	1	-	-	-	1	-	-	-	-
Prostitution	1	0.2	1	-	-	-	1	-	-	-	-
Resist Arrest	7	3.7	6	3.7	14%	1	6	-	-	-	-
Unlawful Contact	2	1.1	2	1.3	-	-	2	-	-	-	-
Unsworn Falsification	2	2.0	1	-	50%	1	1	-	-	-	-
Violation of Conditions	1	7.0	1	-	-	-	1	-	-	-	-

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\* Misconduct Involving Weapons 1 is included under Class A Violent offenses.

Table C-1  
Sentence Length for Single Most Serious Charge at Conviction\*  
Driving Offenses

	Number of Offenders	Mean Active Sentence		Standard Deviation	Probation		1Day - 12 Months	13-24 Months	25-60 Months	61-96 Months	Over 96 Months
		Months	N		%	N					
<b>Felony</b>											
Fail to Render Assistance	2	9.0	2	4.3	-	-	2	-	-	-	-
Fail to Stop	14	20.3	12	18.7	14%	2	6	3	3	-	-
Felony DWI	127	13.7	127	11.7	-	-	80	32	15	-	-
No Valid Operator's License	1	1.0	1	-	-	-	1	-	-	-	-
Refuse Breath or Blood Test	12	18.8	12	7.9	-	-	4	7	1	-	-
<b>Misdemeanor (Started as Felony)</b>											
DWI (M)	43	1.6	42	2.2	2%	1	42	-	-	-	-
Drive wth License Susp. or Revoked	10	1.4	7	1.3	30%	3	7	-	-	-	-
DWOL	2	1.0	1	-	50%	1	1	-	-	-	-
Fail to Stop	4	1.1	3	0.9	20%	1	3	-	-	-	-
Leaving scene of accident	3	2.5	2	2.1	33%	1	2	-	-	-	-
Negligent Driving	1	-	-	-	100%	1	-	-	-	-	-
NVOL	2	3.0	1	-	50%	1	1	-	-	-	-
Reckless Driving	9	2.7	7	3.1	22%	2	7	-	-	-	-
Refuse Breath or Blood Test	4	1.1	4	0.7	-	-	4	-	-	-	-

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## Appendix D

Table D-1 Charged Offenses by Offense Type			
<b>Murder &amp; Kidnapping</b>		<b>Sexual Offenses</b>	
Attempted Murder	1	Attempted SAM 1	1
Attempted Murder 1	8	Attempted SAM 2	2
Kidnaping	12	Attempted Sexual Assault 1	2
Murder 1	9	Attempted Sexual Assault 2	3
Murder 2	7	Exploit Minor	1
<i>Total</i>	37	Indecent Exposure	1
<b>Violent Offenses</b>		Indecent Exposure 1	2
Arson 1	3	Sexual Abuse Minor 1	43
Assault 1	58	Sexual Abuse Minor 2	95
Assault 2	98	Sexual Abuse Minor 3	21
Assault 3	371	Sexual Assault 1	46
Conspiracy to commit robbery	1	Sexual Assault 2	47
Crim. Neg. Homicide	2	Sexual Assault 3	6
Extortion	1	<i>Total</i>	270
Manslaughter	5	<b>Drug Offenses</b>	
MIW 1	5	MICS 1	3
Robbery 1	56	MICS 2	2
Robbery 2	15	MICS 3	150
Stalking 1	7	MICS 4	310
Terroristic Threat	2	<i>Total</i>	465
<i>Total</i>	624	<b>Other Offenses</b>	
<b>Property Offenses</b>		Contraband 1	1
Arson 2	1	Endangering Welfare of a Minor 1	1
Attempted Vehicle Theft 1	1	Escape 1	1
Bad Check	5	Failure to Appear	1
Burglary 1	107	Hindering Prosecution 1	1
Burglary 2	67	Interfere with Official Proceedings	2
Criminal Mischief 1	2	License/Permit Alcohol Required	1
Criminal Mischief 2	77	MIW 2	13
Defraud/Credit Card	2	MIW 3	8
Falsifying Business Records	1	Sale Without License or Permit	1
Forgery 1	2	Tamper w/Public Rec	1
Forgery 2	66	Tampering with Evidence	3
Misapplication of Property	2	Violation of Conditions	2
Scheme to Defraud	3	<i>Total</i>	36
Theft 1	9	<b>Driving Offenses</b>	
Theft 2	242	Failure to Render Assistance	2
Vehicle Theft 1	136	Failure to Stop	15
<i>Total</i>	723	Felony DWI	142
		Refuse Test	15
		<i>Total</i>	174

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Anchorage		Southcentral	
<i>Total</i>	935	Cordova	5
Fairbanks		Glennallen	16
<i>Total</i>	260	Homer	28
Juneau		Kenai	90
<i>Total</i>	89	Palmer	231
Other		Seward	12
Barrow *	57	Valdez	25
Bethel *	190	Whittier	1
Dillingham *	19	<i>Total</i>	408
Healy	2	Southeast	
Kotzebue *	92	Craig	6
Kodiak *	53	Haines	2
Naknek	8	Ketchikan	93
Nome *	52	Petersburg	15
Sand Point	1	Sitka	24
Tok	2	Wrangell	7
Unalaska	15	<i>Total</i>	147
Unalakleet	1		
<i>Total</i>	492		

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\* These six courts were grouped together as "rural" for the multivariate analyses.

	Statewide		Anchorage		Out of Anchorage	
	Mean Sentence	N	Mean Sentence	N	Mean Sentence	N
<b>Violent</b>	<b>169 Days</b>	N=437	<b>163 Days</b>	N=156	<b>173 Days</b>	N=281
<b>Property</b>	<b>94 Days</b>	N=492	<b>83 Days</b>	N=213	<b>102 Days</b>	N=279
<b>Sexual</b>	<b>588 Days</b>	N=130	N/A (not enough data)		<b>587 Days</b>	N=102
<b>Drug</b>	<b>88 Days</b>	N=219	<b>95 Days</b>	N=68	<b>85 Days</b>	N=151
<b>Driving</b>	<b>155 Days</b>	N=177	<b>182 Days</b>	N=63	<b>141 Days</b>	N=114
<b>All Offenses Combined</b>	<b>167 Days</b>	N=1,455	<b>122 Days</b>	N=500	<b>179 Days</b>	N=927

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## Table D-4 Summary of Mandatory Minimum Sentences

Alaska statutes provide presumptive sentencing for most serious felonies for first felony offenders, and for repeat felons convicted of Class B and C felonies. The presumptive sentencing structure is discussed in the report. First-time felony offenders convicted of a Class B or C felony are sentenced in accordance with guidance and benchmarks established by Alaska’s appellate courts. Misdemeanor offenses generally have a range of sentences from 0 to 90 days (Class B misdemeanor) and 0 to 360 days (Class A misdemeanor).

A number of Alaska offenses have mandatory minimum sentences. A handful of the most serious offenses are subject to mandatory minimums: Murder 1, Murder 2, Attempted Murder 1, Kidnaping, and Unclassified Misconduct Involving a Controlled Substance 1. Mandatory minimums also apply to specified conduct in particular situations.<sup>1</sup>

### Alaska Mandatory Minimums for Serious Offenses

<b>Unclassified Felonies</b>		
<b>Murder I</b>	20-99; or 99 <sup>a</sup>	N/A
<b>Murder II</b>	10-99; or 20-99 <sup>b</sup>	N/A
<b>Other</b>	5-99 years	N/A

<sup>a</sup> Ninety-nine years was mandatory when a defendant killed an identifiable peace officer, firefighter or correctional employee who was engaged in the performance of official duties at the time of the murder, or was previously convicted of murder, or the defendant subjected a victim to substantial physical torture.

<sup>b</sup> In most cases, ten years was the mandatory minimum; 20 years was the mandatory minimum if the defendant murdered a child under 16 and was a parent or person in authority over a child, or caused the death of the child by committing a crime against a person prohibited under AS 11.41.200-11.41.530 (9/20/99).

The legislature has assigned mandatory minimum sentences to less serious offenses. The 1999 versions of these are described briefly below. For additional information see the cited statutes.

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<sup>1</sup> For a summary of statutory sentencing structure *see* TERESA WHITE CARNS, LARRY COHN AND SUSIE MASON DOSIK, ALASKA JUDICIAL COUNCIL, ALASKA FELONY PROCESS: 1999 37 (2004).

## **1. Felony DWI and Refusal**

For felony DWI and felony Refusal to Submit to a Chemical Test, Class C felonies, the mandatory minimum sentence was 120, 240, or 360 days depending on whether the defendant had two, three, or four or more prior convictions for either offense in the five years preceding the date of offense.<sup>2</sup> In 2001, the legislature amended the look-back period to ten years, but this amendment did not apply to sentences considered in this report.<sup>3</sup> If any of the defendant's prior convictions for these offenses was a felony conviction, then the defendant would have qualified for a presumptive sentence as a repeat felony offender.

## **2. Misdemeanor DWI and Refusal**

For misdemeanor DWI and misdemeanor Refusal to Submit to a Chemical Test, both Class A misdemeanors, the mandatory minimum sentence was 72 hours or 20 days, depending on whether the defendant had no prior convictions or one prior conviction for either offense. Mandatory minimums were 60, 120, 240, and 360 days respectively if the defendant had two, three, or four or more prior convictions that were not within the five year look-back period to qualify for felony prosecution.<sup>4</sup>

## **3. Misdemeanor Assaults**

A mandatory minimum 20 day sentence applied to defendants convicted of Assault 4, a Class A misdemeanor, if the defendant's offense involved domestic violence committed in violation of a domestic violence order.<sup>5</sup> Mandatory minimum sentences of 30 and 60 days applied to defendants convicted of Assault 4 if the defendant had one, or two or more convictions for crimes against a person or involving domestic violence.<sup>6</sup>

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<sup>2</sup> AS 28.35.030(n) (1999) (felony DWI); AS 28.35.030(p)(1) (1999) (felony refusal).

<sup>3</sup> Ch. 63, §§ 9-11, SLA 2001.

<sup>4</sup> AS 27.35.030(b)(1) (1999) (giving sentences for misdemeanor DWI); AS 28.35.032(g)(1) (1999) (giving sentences for misdemeanor Refusal).

<sup>5</sup> AS 12.55.135(c) (1999).

<sup>6</sup> AS 12.55.135(g) (1999).

Mandatory minimum sentences of 30 or 60 days applied to defendants convicted of Assault 4 if the defendant's conduct was directed at an identifiable peace officer or emergency responder who was engaged in the performance of official duties at the time of the defendant's offense, depending on whether the defendant caused physical injury or merely placed the victim in fear of imminent physical injury.<sup>7</sup>

#### **4. Other Misdemeanors with Mandatory Minimums**

A mandatory minimum 72 hour sentence applied to defendants convicted of Vehicle Theft 2, a misdemeanor.<sup>8</sup>

A mandatory minimum sentence of 35 days applied to defendants convicted of Failure to Register as a Sex Offender or Child Kidnaper 2, a misdemeanor.<sup>9</sup>

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<sup>7</sup> AS 12.55.135(d) (1999).

<sup>8</sup> AS 12.55.135(f) (1999).

<sup>9</sup> AS 12.55.135(h) (1999).

## Table D-5 1999 Felony Report, AJC Variables

The Judicial Council collected data about nearly 200 variables for the 1999 felony cases that it reviewed, from defendant name and case number, to conditions of probation, length of sentence, restitution and victim information. Some of the variables existed primarily to help track the case. For other variables, staff could find little or no information, so they could not be used in the analyses. The list following shows the approximately 142 variables that were sent to the Institute for Social and Economic Research to include in its multivariate analyses. They are listed in alphabetical order by the database name for the variable, with a brief description following. Appendix D-6 lists the variables that ISER used in its final equations, with their comparison groups.

To report the data and conduct some of the analyses, staff summarized original data. For example, LocCity and LocREC summarize the information about the court location in which the case was filed into variables that include several cities at once. Staff at both ISER and the Judicial Council re-coded some of the variables again, to make them easier to understand (e.g., days sentenced was used by ISER as days for the multivariate analyses, but was re-coded to months sentenced for some of the Part II analyses).

ISER reviewed the variables to decide how many variables were missing substantial portions of the data, or were not present in enough cases. Restitution, for example, was not ordered in a large number of cases, so it was not a useful variable in the multiple regression analyses in Part III of this report, but was discussed in Part II. So few cases were appealed that the Council could not use statistical analysis to see how they might have differed from the other cases convicted. No cases in this sample were sent to the three-judge panel, so the panel was not discussed in the final analysis.



## Variables in Final Felony SPSS File as of March 11, 2002

<b>Offld</b>	Offender ID - unique number assigned by AJC <sup>10</sup>
<b>ageoffrc</b>	Age at offense (calculated from date of birth and offense date)
<b>aggrav_</b>	Aggravators found Y/N
<b>alcoff_</b>	Under influence of alcohol at time of the offense Y/N
<b>alcpob_</b>	Alcohol problem Y/N
<b>app</b>	Type of appeal
<b>app_</b>	Case appealed? Y/N
<b>appbond_</b>	Appearance bond Y/N
<b>casenumb</b>	Case number
<b>CDalcohol</b>	Condition of probation was alcohol restrictions Y/N
<b>Cdanger</b>	Condition of probation was anger management Y/N
<b>CDasap</b>	Condition of probation was ASAP evaluation Y/N
<b>CDbttrs</b>	Condition of probation was batterers' intervention Y/N
<b>CDdnatst</b>	Condition of probation was DNA testing Y/N
<b>CDdrivng</b>	Condition of probation was driving restrictions Y/N
<b>Cdelecmn</b>	Condition of probation was electronic monitoring Y/N
<b>CDMnHtlh</b>	Condition of probation was mental health evaluation. Y/N
<b>CDmovers</b>	Condition of probation was movement restrictions Y/N
<b>CDotherc</b>	Condition of probation: other conditions (see notes field). Y/N
<b>CDotheri</b>	Condition of probation: other conditions while incarcerated Y/N
<b>CDparent</b>	Condition of probation was parenting classes Y/N
<b>CDperson</b>	Condition of probation was person contact restrictions Y/N
<b>CDresjus</b>	Condition of probation was restorative justice Y/N
<b>CDSbsAbs</b>	Condition of probation was substance abuse treatment. Y/N
<b>CDSxOfIn</b>	Condition of probation was sex offender treatment while incarcerated Y/N
<b>CDSxOut</b>	Condition of probation was sex offender treatment not incarcerated Y/N
<b>CDweapon</b>	Condition of probation: weapons restrictions Y/N
<b>chfilerc</b>	# Charges filed - ChFiled is the original data field Y/N
<b>chsentr</b>	# Charges sentenced - ChSent is the original data field Y/N
<b>city</b>	City where offender lived <sup>11</sup>
<b>concas</b>	Contemporaneous cases? Y/N
<b>conccrc</b>	Consecutive or concurrent sentences
<b>cond_</b>	Failure to comply issued Y/N
<b>convict</b>	Convicted on single most serious charge? Y/N
<b>cs_ctRC</b>	Court locations
<b>cs_dist</b>	Judicial district
<b>cws_</b>	Was community work service assigned? Y/N

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<sup>10</sup> The Council collected other identifying information such as name, social security number, ATN (arrest tracking number), state ID or driver's license number, and so forth. This information was needed to identify defendants during data collection, but was not used in the analysis.

<sup>11</sup> The location of the case was described in the court case number.

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<b>CWSHrRC</b>	Hours of community work service assigned. Cwshrs is original data field
<b>Darrest</b>	Date of arrest
<b>daysalrc</b>	Overall sentence. Daysynta was original data field
<b>DaySMSRC</b>	Sentence for single most serious charge in days. Daysnsm was original data field
<b>Ddism</b>	Date charge dismissed
<b>Dindctwv</b>	Date indictment waived
<b>dispo</b>	Disposition
<b>dob</b>	Date of birth
<b>dom_</b>	Is victim in same domestic unit? Y/N
<b>dopen</b>	Date case opened (filed in court)
<b>Dplea</b>	Plea date
<b>dpsalch</b>	Two or more prior alcohol convictions from DPS data Y/N
<b>dpsmics</b>	One or more prior drug convictions from DPS data Y/N
<b>drgoff_</b>	Under drugs at time of offense Y/N
<b>drgprob_</b>	Drug problem Y/N
<b>dsent</b>	Date charge sentenced
<b>dtrial</b>	Date of trial
<b>dv_</b>	Any prior adult convictions that were DV? Y/N
<b>dvofftbc</b>	Was domestic violence involved in this charge? Y/N
<b>DWIRC</b>	Number of prior DWI convictions from file. DWI is the original data field.
<b>edu</b>	Education level
<b>emp</b>	Employment
<b>engdiff_</b>	English difficulty Y/N
<b>ethnicrc</b>	Ethnicity of offender. Ethnicit is original data field
<b>finalcd</b>	Final offense category showing all 32 categories
<b>Finaloff</b>	Name of final offense
<b>FinechRC</b>	Fine per charge. Finechrg is original data field
<b>finerc</b>	Overall fine. Fine is the original data field
<b>finICdRc</b>	Final offense categories showing the eight major groupings
<b>fta_</b>	Failure to appear issued Y/N
<b>gender</b>	Gender of offender
<b>harmrc1</b>	Harm to victim
<b>hisp_</b>	Hispanic surname Y/N
<b>inctrlrc</b>	Time incarcerated before sentence - inctrial is the original data field
<b>Ind_</b>	Indicted on this charge? Y/N
<b>inout</b>	Assigned any time to serve on the single most serious charge? Y/N
<b>inoutall</b>	Assigned any time to serve on the overall sentence? Y/N
<b>juvdv_</b>	Any prior juvenile DV convictions? Y/N
<b>juvfelRC</b>	Number of juvenile felony convictions. Juvfel is original data field
<b>juvmisRC</b>	Number of juvenile misdemeanors convictions. Juvmsd is the original data field.
<b>juvviol_</b>	Any prior juvenile convictions that were Violent? Y/N
<b>LocCity</b>	Location by city. Anchorage, Fairbanks, Juneau, Other
<b>LocREC</b>	Location by three cities, Southeast, Southcentral and Other
<b>Locur</b>	Location urban or rural. Recode of locrec - Anch, Fairbks, SCentral, SE, Other
<b>married_</b>	Married? Y/N

<b>mdfeIRC</b>	Misdemeanor or felony final charge
<b>menthlth</b>	Mental health status from file or presentence report (if available)
<b>mhdevdis</b>	Developmentally disabled from file or presentence report (if available)
<b>mhdoc</b>	Any indication of a mental health history - from DOC files
<b>mhhdinj</b>	Head injury from file or presentence report (if available)
<b>mhill</b>	Mental illness from file or presentence report (if available)
<b>mhothr</b>	Mental health other condition, from file or presentence report (if available)
<b>mhsendem</b>	Senile dementia from file or presentence report (if available)
<b>mitig_</b>	Mitigators found Y/N
<b>naggrav_</b>	Notice of aggravators given? Y/N
<b>nmitig_</b>	Notice of mitigators given? Y/N
<b>off</b>	Name of charged offense
<b>offcdRc</b>	Charged offense category showing 8 major categories
<b>offcode</b>	Charged offense category showing all 32 categories.
<b>panel_</b>	Three judge panel? Y/N
<b>parent_</b>	Parent of dependent child Y/N
<b>pdpayrc-</b>	Amount to pay to state for public attorney services
<b>perbond_</b>	Performance bond Y/N
<b>plea</b>	Type plea per charge
<b>postcon_</b>	Post conviction relief motion? Y/N
<b>preind_</b>	Pre-indictment hearing Y/N
<b>presump_</b>	Was this sentence a presumptive sentence? (per charge) Y/N
<b>priorin_</b>	Incarcerated before trial - Y/N
<b>priorrec</b>	Prior convictions - Created field from combined information from data collection and DPS data.
<b>probalrc</b>	Total probation in months for the overall screen - proball is the original data field
<b>probchrc</b>	Probation in months per charge - probchrg is the original data field
<b>probrev_</b>	Probation revoked? Had probation been revoked at time of data collection? Y/N
<b>prsntnc</b>	Was there a presentence report? Variable created after data collection
<b>rest_</b>	Was there any restitution on the overall screen? Y/N
<b>rest_ch</b>	Was there restitution for this charge? Y/N
<b>restallR</b>	Restitution amount from overall screen. Restit was original data field
<b>restchRc</b>	Restitution amount per charge. Restitch is original charge
<b>sis_</b>	Did this sentence receive a suspended imposition of sentence? Y/N
<b>TypDfARC</b>	Type of defense attorney
<b>vagerc -</b>	Victim age - Vage is original data field
<b>vbus_</b>	Was the victim a business? Y/N
<b>vethnrc</b>	Ethnicity of victim
<b>vgender</b>	Victim gender
<b>violent_</b>	Any prior adult convictions of violent offenses? Y/N
<b>vrc</b>	Number of victims - V_ is original data field
<b>vrelat</b>	Defendant's relationship to victim
<b>weap_</b>	Was a weapon used during this offense? Y/N
<b>xrdpty_</b>	Was third party custodian required? Y/N



**Table D-6  
ISER Variables for Multivariate Analysis**

Definition and Coding		Pre-disposition				Post-disposition		Total Time
		All Defendants (SMS) Predisposition Incarceration Days	Charge Reduction Equation			Days of SMS Presumptive Unsuspended Post-disposition Incarceration	Days of SMS Non-presumptive Unsuspended Post-disposition Incarceration	Total days Incarcerated on SMS (either before or after disposition)
			All Defendants (SMS) Charge Reduction to 2 Levels	All Defendants (SMS) Most Serious Convicted Charge, Given Initial Charge	All Defendants (SMS) Convicted of a Felony			
Variable Name		<i>inctrial</i>	<i>reduce2</i>	<i>convictd</i>	<i>felon</i>	<i>Intot</i>	<i>Insent</i>	<i>Intotal</i>
Drug	Indication of a drug problem, coded as 1 if any of 5 drug related problems or treatment conditions were noted in the record.	yes	yes	yes	yes	yes	yes	yes
Mental	Indicator of mental illness coded as 1 (yes) and 0 (no) if the person had any one of 8 mental health problems recorded in the presentence report or if the defendant received mental health services from the Alaska Department of Corrections.	yes	yes	yes	yes	yes	yes	yes
Pubdef	Coded as 1 if the defendant was represented by a public defender or an attorney from the Office of Public Advocacy (OPA), 0 for private counsel or pro-se representation. Used in equations where there was no significant difference between public defender, OPA staff and OPA contract attorney representation.	yes	no	no	no	yes	yes	yes
PD	Public Defender. Coded as 1 (yes) and 0 (no).	no	yes	yes	yes	no	no	no
OPAstaff	OPA staff attorney. Coded as 1 (yes) and 0 (no).	no	yes	yes	yes	no	no	no
OPAct	OPA contract attorney. Coded as 1 (yes) and 0 (no).	no	yes	yes	yes	no	no	no
Priorec	Data range: none, 1 to 3 misdemeanors, 4 or more misdemeanors, 1 felony, 2 felonies, 3 or more felonies; coded as 0 thru 5.	yes	yes	yes	yes	yes	yes	yes
Contemp	Whether the defendant faces charges in other cases. Coded as 1 (yes) and 0 (no).	yes	yes	yes	yes	yes	yes	yes
Chfiled	The total number of charges filed in the case, includes misdemeanor and felony charges.	yes	no	no	no	no	no	yes
Chsent	Number of charges sentenced	no	no	no	no	yes	yes	no

**Table D-6  
ISER Variables for Multivariate Analysis**

Definition and Coding		Pre-disposition				Post-disposition		Total Time
		All Defendants (SMS) Predisposition Incarceration Days	Charge Reduction Equation			Days of SMS Presumptive Unsuspended Post-disposition Incarceration	Days of SMS Non-presumptive Unsuspended Post-disposition Incarceration	Total days Incarcerated on SMS (either before or after disposition)
			All Defendants (SMS) Charge Reduction to 2 Levels	All Defendants (SMS) Most Serious Convicted Charge, Given Initial Charge	All Defendants (SMS) Convicted of a Felony			
Variable Name		<i>inctrial</i>	<i>reduce2</i>	<i>convictd</i>	<i>felon</i>	<i>Intot</i>	<i>Insent</i>	<i>Intotal</i>
Class	Class of single most serious charge in the case at the time of filing. This variable is scaled by the maximum sentence, in years, for each class.	yes	no	no	no	no	no	no
Classchg	Class of single most serious charge in the case at the time of filing the court case. Classes are: Unclassified, A, B, or C felony. This variable is scaled by the log of the maximum sentence for each class.	no	no	no	no	yes	yes	yes
Charged	Unclassified Murder, Kidnaping=6 Unclassified Sexual Assault 1, SAM 1=5 Class A=4 Class B=3 Class C=2	no	yes	yes	yes	no	no	no
Convclss	Class of single most serious charge still pending at disposition. This variable has six levels - Unclassified Murder Kidnaping, Sexual Assault 1 and SAM 1, A, B, C felony or misdemeanor - scaled by the log of the maximum sentence for each class.	no	no	no	no	yes	yes	no
Preschg	Whether the charged offense at the time of filing the court case carries a presumptive sentence. Based on prior record and class of charge. Coded as 1 (yes) and 0 (no).	yes	yes	yes	yes	no	no	yes
Presump	Whether the charge of conviction carries a presumptive sentence. Coded as 1 (yes) and 0 (no).	no	no	no	no	yes	yes	no
Inctrial	Predisposition incarceration days	no	no*	no*	no*	no	no	no
Naggr	Whether notice of aggravators was in file. Coded as 1 (yes) and 0 (no).	yes	yes	yes	yes	no	no	yes

**Table D-6  
ISER Variables for Multivariate Analysis**

Variable Name	Definition and Coding	Pre-disposition				Post-disposition		Total Time
		All Defendants (SMS) Pre-disposition Incarceration Days	Charge Reduction Equation			Days of SMS Presumptive Unsuspended Post-disposition Incarceration	Days of SMS Non-presumptive Unsuspended Post-disposition Incarceration	Total days Incarcerated on SMS (either before or after disposition)
			All Defendants (SMS) Charge Reduction to 2 Levels	All Defendants (SMS) Most Serious Convicted Charge, Given Initial Charge	All Defendants (SMS) Convicted of a Felony			
		<i>inctrial</i>	<i>reduce2</i>	<i>convictd</i>	<i>felon</i>	<i>Intot</i>	<i>Insent</i>	<i>Intotal</i>
Nmitig	Whether notice of mitigators was in file. Coded as 1 (yes) and 0 (no).	yes	yes	yes	yes	no	no	yes
Aggr	Whether aggravators were found. Coded as 1 (yes) and 0 (no).	no	no	no	no	yes	yes	no
Mitig	Whether mitigators were found. Coded as 1 (yes) and 0 (no).	no	no	no	no	yes	yes	no
Weapon	Weapon used. Coded as 1 (yes) and 0 (no).	no	yes	yes	yes	no	no	no
Party3rd	Third party custodian required in this case. Coded as 1 (yes) and 0 (no).	yes	no	no	no	no	no	no
Chgbarg	Charge bargain recorded in case. Coded as 1 (yes) and 0 (no).	no	no	no	yes	yes	yes	no
Sentbarg	Sentence bargain recorded in case. Coded as 1 (yes) and 0 (no).	no	no*	no*	no*	yes	yes	no
Bothbarg	Charge and sentence bargain recorded in case. Coded as 1 (yes) and 0 (no).	no	no	no	yes	yes	yes	no
Trial	Case went to trial. Coded as 1 (yes) and 0 (no)	no	no	no	yes	yes	yes	no
Plea without a Bargain	Plea without a bargain in this case. Coded as 1 (yes) and 0 (no).	no	no	no	yes	yes	yes	no
Vstrange	Included for only for Violent crimes. Initially, also included for Sexual crimes but the variable was not significant and did not improve the equation. Coded 1 (stranger) or 0 (other).	no	no	no	no	yes	yes	no
Consec	Defendant sentenced to consecutive terms. Coded as 1 (yes) and 0 (no).	no	no	no	no	yes	no	no
Concur	Defendant sentenced to concurrent terms. Coded as 1 (yes) and 0 (no).	no	no	no	no	yes	no	no
Mixed	Defendant sentenced to mixed consecutive and concurrent terms. Coded as 1 (yes) and 0 (no).	no	no	no	no	yes	no	no

**Table D-6  
ISER Variables for Multivariate Analysis**

Definition and Coding		Pre-disposition				Post-disposition		Total Time
		All Defendants (SMS) Pre-disposition Incarceration Days	Charge Reduction Equation			Days of SMS Presumptive Unsuspended Post-disposition Incarceration	Days of SMS Non-presumptive Unsuspended Post-disposition Incarceration	Total days Incarcerated on SMS (either before or after disposition)
			All Defendants (SMS) Charge Reduction to 2 Levels	All Defendants (SMS) Most Serious Convicted Charge, Given Initial Charge	All Defendants (SMS) Convicted of a Felony			
Variable Name		<i>inctrial</i>	<i>reduce2</i>	<i>convictd</i>	<i>felon</i>	<i>Intot</i>	<i>Insent</i>	<i>Intotal</i>
Violent	Defendant convicted of Violent offense. Coded as 1 (yes) and 0 (no).	no	no	no	no	yes	yes	no
Property	Defendant convicted of Property offense. Coded as 1 (yes) and 0 (no).	no	no	no	no	yes	yes	no
Sexual	Defendant convicted of Sexual offense. Coded as 1 (yes) and 0 (no).	no	no	no	no	yes	yes	no
Drug	Defendant convicted of Drug offense. Coded as 1 (yes) and 0 (no).	no	no	no	no	yes	yes	no
Driving	Defendant convicted of Driving offense. Coded as 1 (yes) and 0 (no).	no	no	no	no	yes	yes	no
Other	Defendant convicted of Other offense. Coded as 1 (yes) and 0 (no).	no	no	no	no	yes	yes	no
Offmurd	Defendant charged with Murder. Coded as 1 (yes) and 0 (no).	yes	yes	yes	yes	no	no	no
Offviol	Defendant charged with Violent offense. Coded as 1 (yes) and 0 (no).	yes	yes	yes	yes	no	no	yes
Offprop	Defendant charged with Property offense. Coded as 1 (yes) and 0 (no).	yes	yes	yes	yes	no	no	yes
Offsex	Defendant charged with Sexual offense. Coded as 1 (yes) and 0 (no).	yes	yes	yes	yes	no	no	yes
Offdrug	Defendant charged with Drug offense. Coded as 1 (yes) and 0 (no).	yes	yes	yes	yes	no	no	yes
Offdrive	Defendant charged with Driving offense. Coded as 1 (yes) and 0 (no).	yes	yes	yes	yes	no	no	yes
Offother	Defendant charged with Other offense. Coded as 1 (yes) and 0 (no).	yes	yes	yes	yes	no	no	yes

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\*inctrial (pretrial incarceration) and sentbarg (sentence bargain) were included in reduced form version of these equations