

**Reclassifying Nonviolent, Small Quantity Drug Possession as a Misdemeanor:
Potential Impacts on Alaska's Budget and Society**

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Author Note: Forrest Dunbar is a member of the Alaska Bar, originally from Cordova. He is currently receiving funding through a one-year fellowship awarded to recent graduates of the Yale Law School; his research is hosted by the Alaska Office of Public Advocacy.

Disclaimer #1: None of the judges, prosecutors, police officers, defense attorneys, probation officers, or other stakeholders interviewed for this report represented the official positions of their respective agencies. To promote candor, no one was asked to speak “on the record;” wherever there is any fear of professional reprisal, this report maintains the speaker’s anonymity.

Disclaimer #2: Prediction and forecasting is a difficult business, particularly in a dynamic system such as the “market” for crime. As one prosecutor stated: “Crime is a ... complex social ill. [It’s doubtful] anyone has figured out a way to capture it accurately and conduct accurate statistical analysis.” The same is true for many of the statistics and forecasts surrounding crime, such as estimates of a given reform’s impact on the prison population or on adjudication costs. To reflect this uncertainty the author has at times presented ranges of likely cost savings, rather than a simple predicted number; it is hoped that these ranges capture the array of probable outcomes.

Disclaimer #3: As a researcher with ISER pointed out, when criminal justice studies predict “cost savings,” the actual, real-world cost savings to government agencies are usually not so simple to observe. Sometimes a reform may cause the marginal costs of an agency to fall, but the average costs—due to the agency’s fixed costs—appear more stable. And agencies will be loath to report an actual reduction in budgetary need. The cost-savings predicted herein may thus be difficult for the legislature to identify, particularly in the first few years following reclassification. That being said, if a reform like reclassification can delay the need for a new mega-project like Goose Creek, the savings to the State government *as a whole* will be real, and substantial.

Disclaimer #4: This report is not a representation of the official position of the Department of Administration or the State of Alaska.

Executive Summary

This report examines the costs and benefits to Alaska of reclassifying the crime of non-violent, non-distributory possession of small quantities of drugs. At present, if an individual in Alaska is found with even trace amounts of a Schedule IA or IIA substance, they can be charged with a felony. In contrast, fourteen states currently classify this violation as a misdemeanor; in 2010, Colorado joined the ranks of these states in an attempt to reduce state expenditures.

Alaska's prison population is currently growing at one of the fastest rates in the nation, with much of that growth driven by incarceration of drug offenders. It costs the State approximately \$49,275 per year to incarcerate each of these prisoners. Capital expenses at the Goose Creek prison totaled more than \$250 million, and the Department of Corrections estimates that all of its facilities, including Goose Creek, will again be at capacity by 2016.

A conservative estimate of reclassification's fiscal impact—which did not include capital expenses from prison construction—found aggregate savings to the State of between \$5.77 and \$10.31 million over four years. These savings arise primarily from reduced incarceration, adjudication, and public defense costs, and are likely to grow over time.

This reform would also remove a plethora of collateral consequences imposed by federal statute, state law, and private actors. Removing these collateral consequences should have wide-ranging benefits for offenders and their families, and would improve employment prospects, a variable strongly correlated with decreases in alcoholism, domestic violence, and recidivism.

Comparative analysis of states in which drug possession is already a misdemeanor suggests that reclassification's effect on public safety should be minor. Misdemeanor states actually have slightly lower rates of violent crime (including intimate partner and sexual violence), property crime, and drug use, as well as higher rates of drug treatment.

The report concludes with a series of recommendations designed to alleviate concerns regarding reclassification that were raised in interviews with prosecutors, probation officers, and other stakeholders. Due to their own impact on recidivism, these policy responses should reduce total State expenditures over time. These recommendations include:

- 1) Improving and increasing the amount of evaluation Alaska does of its offenders.**
- 2) Structuring the drug possession statute as an “Escalating Punishment” regime, similar to Alaska’s current approach to DUI’s.**
- 3) Expanding treatment and supervision of offenders who are at high risk to recidivate.**
- 4) Expanding the “Probation Accountability with Certain Enforcement” program.**

With these additional safeguards in place, the benefits of reclassification appear to strongly outweigh the potential costs.

Table of Contents

I.	Introduction: Alaska’s Prison Population Growth.....	4
II.	Drug Policy and Prison Population Growth	5
A.	Increased Arrests and Charging of “MICS-4” Felony Possession	6
B.	Increase in DOC Population	9
III.	Focusing on Felony Convictions	10
A.	The Collateral Consequences of a Felony: Cascading Effects	12
B.	The Collateral Consequences of a Felony: Cataloged in Alaska.....	15
IV.	The Estimated Budgetary Impact of Reclassification	18
A.	Savings from Reduced Incarceration.....	18
B.	Savings from Reduced Costs in Prosecution, Public Defense, and Judicial Processing	23
C.	Constant Costs: Probation, Parole, and Law Enforcement Agencies	31
D.	Possible Sources of Budgetary Increase or Shifting.....	32
V.	Reclassification’s Effect on Public Safety.....	34
VI.	Challenges Posed by Reclassification	38
VII.	Policy Approaches to Address Reclassification’s Challenges.....	41
A.	Maintaining and Expanding Evaluation	43
B.	Structuring Reclassification Appropriately: Escalating Punishment.....	45
C.	Reinvestment	49
D.	PACE and “PACE Lite”	53
VIII.	Conclusion and Recommendations	56
	Appendix A: Alaska Court System Data on Cases Filed with MICS-4 Charge.....	58
	Appendix B: Collateral Consequences Connected to Felonies and/or Drug Felonies	59
	Appendix C: Crime Rates by State and Type, 2009 – sorted by violent crime rate in ascending order.....	81
	Appendix D: Crime Rates by State and Type, 2009 – sorted by property crime rate in ascending order..	83
	Appendix E: Drug Treatment Admission Rates	85
	Appendix F: Domestic Violence, Rape, and Other Sexual Violence Statistics by State.....	86

I. Introduction: Alaska's Prison Population Growth

Alaska is a national leader in prison population growth. Depending on the time period examined, Alaska's prison growth rate ranks 11th, 8th, or 4th among states.¹ The most recent study by the Federal Bureau of Justice Statistics, which analyzed data from 2009-2010, found a 5.9% year-to-year increase in the number of Alaskan prisoners, the fourth highest jump in the nation.² During that same measurement period, the number of prisoners nationwide actually fell, as many states embraced reforms to reduce prison populations and control costs.³

Alaska has not yet embarked on many of these reforms, and its prison population is projected to continue growing.⁴ Despite the construction of the 1,536 bed Goose Creek facility—at a cost of approximately \$250 million—the Department of Corrections (DOC) estimates that all of its beds will again be full by 2016 if the prison population continues to grow at 3% or more.⁵ Though budgetary ramifications will be discussed at length later in this report, it bears mentioning now: incarceration in an Alaskan prison costs approximately \$49,275 per inmate, per year, and the DOC's operating budget has increased from \$166.7 million in 2005 to \$323.2 million in 2013.⁶

This prison population growth might be justified if it indicated a response to a separate rise in dangerous crime. And indeed, according to a 2012 presentation by the Department of Public Safety (DPS), the number of violent crimes reported statewide increased from 2001 to 2010.⁷ However, evidence gathered by the DOC indicates that Alaska's substantial prison growth is *not* caused by increased incarceration of violent criminals. From 2002 to 2010, the proportion of violent to non-violent criminals incarcerated in Alaskan prisons actually flipped, from 58% violent

¹ Prisoner Reentry Task Force, *Five-Year Prisoner Reentry Strategic Plan, 2011 - 2016*, at ES1. Available at: <http://www.correct.state.ak.us/TskForce/documents/Five-Year%20Prisoner%20Reentry%20Plan.pdf>. See also, Guerino, Harrison, and Sabol, *infra* note 2.

² Paul Guerino, Paige M. Harrison, and William J. Sabol, *Prisoners In 2010 (Revised)*, Bureau of Justice Statistics, at 3 (February 9th, 2012). Available at: <http://bjs.gov/index.cfm?ty=pbdetail&iid=2230>

³ *Id.* See also Prisoner Reentry Task Force, *supra* note 1, at ES1 (“By 2009, ... other states had begun to examine what was driving [prison] growth and had begun to adopt new policies and practices that were more cost-effective and produced better outcomes. In 2009, for the first time in 38 years, the U.S. prison population contracted rather than grew; 26 states reduced their prison populations. Alaska was not among them. Instead, it was one of eight states with the highest increase in the rate of growth.”)

⁴ Gutierrez, Carmen, Deputy Commissioner, *Factors Driving Alaska's Prison Population*, Department of Corrections, at 1 (August 24, 2012).

⁵ *Id.*

⁶ *Id.*

⁷ Presentation by Joseph Masters, Commissioner Department of Public Safety and Colonel Keith Mallard, Director Division of Alaska State Troopers, at CRIME SUMMIT, Senate Judiciary Committee, Slide 9 (January 24 – 25, 2012) (citing Uniform Crime Reports, *Crime Reported in Alaska, 2005 & 2010*, Dept. of Public Safety, <http://dps.alaska.gov/Statewide/UCR.aspx>).

and 42% nonviolent, to 36% violent and 64% nonviolent.⁸ Increasingly, Alaska is locking up *nonviolent* offenders.

According to a report by then-Deputy Commissioner of the DOC Carmen Gutierrez, the primary drivers of Alaska's prison population growth are:

- An increase in Petitions to Revoke Probation (PTRP's) and underlying probation violations.
- Increased admission for Felony Theft in the Second Degree—thefts of property valued over \$500, an amount set in the 1970's and never adjusted for inflation—and an increase in sentence lengths associated with these offenses.
- A 63% rise in prison admission for drug offenders, particularly felony offenders convicted of possession offenses.⁹

Note that the latter two points are inexorably connected to the first; felony offenses result in formal probationary periods, which in turn increase the number of probationers subject to possible PTRP's. While each of these factors invites a policy response—and the Deputy Commissioner lays out realistic options in her report—this paper will focus on one driver in particular, the reform of which may hold significant promise for reducing prison growth while simultaneously preserving public safety: Alaska's small quantity drug possession laws.

II. Drug Policy and Prison Population Growth

Drug and alcohol abuse are serious problems in Alaska, and cause a tremendous amount of harm not only to their users, but also to users' friends, families, and the broader community. Many violent crimes and property crimes are connected to drug or alcohol use, and abuse of these substances cost the Alaskan economy an estimated \$1.2 billion in 2010.¹⁰ A recent report by the McDowell Group—commissioned by the Alaska Mental Health Board and the Advisory Board on Alcoholism and Drug Abuse—indicates that as much as 30% of property crime is associated with drug use (versus approximately 3-3½% associated with alcohol).¹¹ However, the same report found that violent crimes are tied far more closely with alcohol use than with drugs, including up to 30% of homicides, 30% of aggravated assaults, and 22.5% of sexual assaults (versus 15.8%, 5.1%, and 2.4% of the same crimes for drugs, respectively), not to mention the dangers posed by drinkers

⁸ Presentation by Deputy Commissioners Carmen Gutierrez and Sam Edwards, Department of Corrections, *ADOC BY NUMBERS*, at the SMART JUSTICE SUMMIT in Juneau, Slide 3 (October 3rd, 2011). Scanned copies of the materials are not currently available online, but can be produced upon request.

⁹ Gutierrez, *supra* note 4, at 2.

¹⁰ McDowell Group, *The Economic Costs of Alcohol and Other Drug Abuse in Alaska*, 2012 Update, at 1 (August, 2012). Available at: <http://www.hss.state.ak.us/abada/pdf/EconomicCostofAlcoholandDrugAbuse2012.pdf>

¹¹ *Id.* at 13.

driving while intoxicated.¹² National statistical studies have also found a causal link between alcohol use and domestic violence.¹³

Despite the significant dangers associated with both alcohol and drug use, state and federal policy makers have responded to these challenges in vastly different ways. The criminalization of the possession and sale of the latter has led to an additional host of ancillary costs and effects, and is one of the largest contributors to the State’s prison population. Specifically in Alaska, recent prison growth is at least partially attributable to the State’s approach towards nonviolent, non-distributory drug possession.

A. Increased Arrests and Charging of “MICS-4” Felony Possession

Alaska is one of 36 states in which the possession of any quantity—even trace amounts taken from clothing or a pipe scraping—of a Schedule IA or IIA substance is a felony.¹⁴ Common substances that bear Alaska’s Schedule IA label include opium and oxycodone;¹⁵ Schedule IIA substances include cocaine and psychedelic mushrooms.¹⁶ This notably differs from the federal schedule, which lists marijuana as a Schedule IA substance. When this report discusses small quantity drug possession offenses, it is never in reference to marijuana. This report makes no assertions regarding Alaska’s current marijuana policy.

Small quantity drug possession offenses fall under AS 11.71.040, which lays out “Misconduct Involving a Controlled Substance in the Fourth Degree,” or “MICS-4’s.” The MICS-4 statute describes a variety of offenses, including the manufacture or sale of certain substances, the possession of large amounts of marijuana (25 plants or more), and the possession of certain substances “within 500 feet of school grounds.” However, for the remainder of this report, discussion of “reclassification” of MICS-4 offenses refers only to the simple possession crime described in AS 11.71.040(a)(3)(A): “...[A] person commits the crime of misconduct involving a controlled substance in the fourth degree if the person ... possesses... any amount of a schedule IA or IIA controlled substance.”¹⁷

Because MICS-4 is not the only possession charge, and because simple possession is not the only offense that can lead to a MICS-4, it is difficult to isolate the exact relationship between MICS-4 charges, possession arrests, and the prison population. However, the correlation between

¹² *Id.*

¹³ See e.g., Cunradi, Carol and Genevieve Ames, *The Relationship of Alcohol Problems to the Risk for Unidirectional and Bidirectional Intimate Partner Violence Among a Sample of Blue-Collar Couples*, VIOLENCE AND VICTIMS, Volume 26, Number 2, pp. 147-158(12)(2001). See also Abramsky et al., *What factors are associated with recent intimate partner violence? findings from the WHO multi-country study on women’s health and domestic violence*, BMC PUBLIC HEALTH 11:109, at 13 (2011)(“In all sites odds of IPV were higher in relationships where one or both partners had problems with alcohol, compared to relationships where neither of them did...”).

¹⁴ See AS 11.71.040.

¹⁵ Statute available at: <http://www.touchngo.com/iglcntr/akstats/Statutes/Title11/Chapter71/Section140.htm>

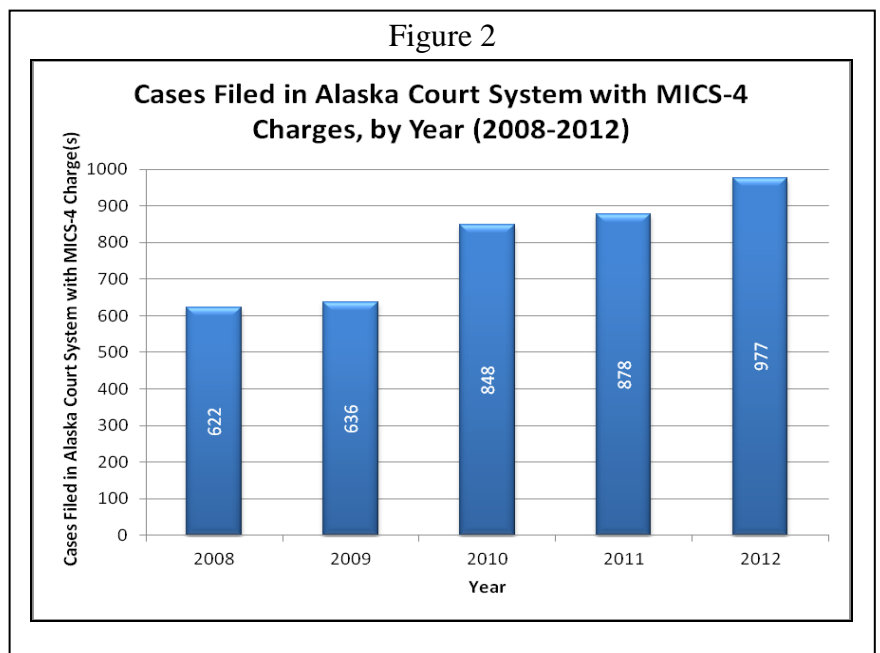
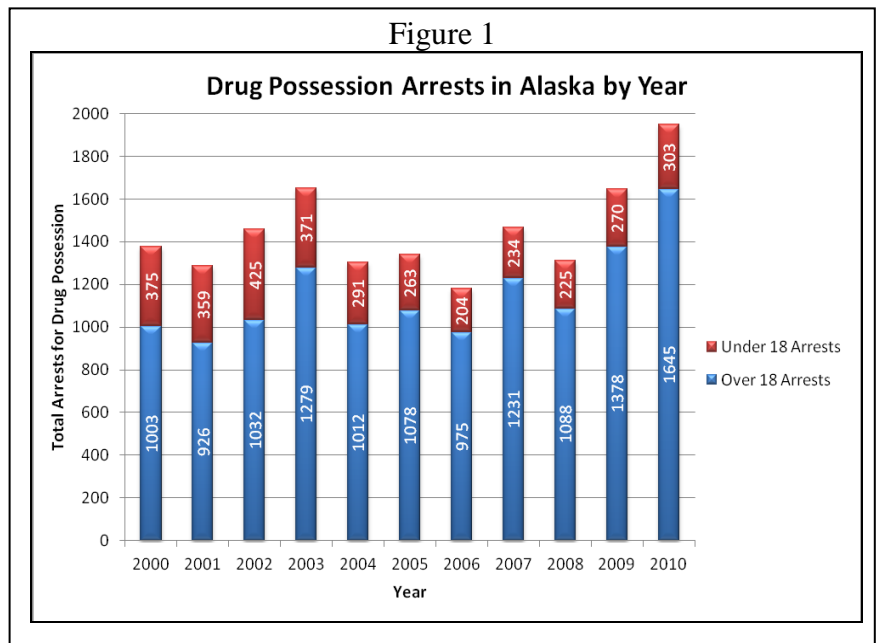
¹⁶ Statute available at: <http://www.touchngo.com/iglcntr/akstats/Statutes/Title11/Chapter71/Section150.htm>

¹⁷ *Id.*

MICS-4's and small quantity, non-marijuana possession charges is fairly tight,¹⁸ and the data laid out in the following section is highly suggestive.

According to data from the DPS—illustrated in Figure 1—between 2000 and 2010, drug possession arrests rose by 570 incidents.¹⁹ This represented an increase of 41.36% arrests, more than tripling Alaska's population growth rate over the same period.²⁰ Though the data for 2011 and 2012 is not yet available, complementary data from the Alaska Court System suggests that we will continue to observe growth in drug possession arrests.

The upward trajectory for arrests is consistent with the number of MICS-4 cases filed in the Court System over the last five years. Significantly more MICS-4 cases were filed in 2010 than in the preceding two years. Yet the 2010 count itself falls short of 2011, and pales in comparison to 2012; fiscal year 2012 tallied 15% more MICS-4 charges than 2010 and 57% more than 2008.²¹ While MICS-4 charges are not a perfect proxy for possession arrests, as explained above, one would expect a correlation between the two. The underlying data for Figure 2 is included in Appendix A.



¹⁸ For example, both interviews with prosecutors and data presented by the DOC revealed that Misconduct Involving a Controlled Substance in the Fifth Degree—which includes possession—is almost never charged.

¹⁹ Data compiled from the DPS reports to the FBI's Uniform Crime Reporting Database. All annual reports cited are available at: <http://dps.alaska.gov/statewide/ucr.aspx>.

²⁰ According to the U.S. Census, Alaska's population in 2010 was 710,231, an increase of 83,299 over the previous Census count of 626,932, taken in 2000. This represented an increase in population of 13.3% over that ten-year period. See U.S. Census Reports from 2000 and 2010, available at <http://quickfacts.census.gov/qfd/states/02000.html> and <http://www.census.gov/population/www/cen2000/briefs/phc-t2/tables/tab01.pdf>.

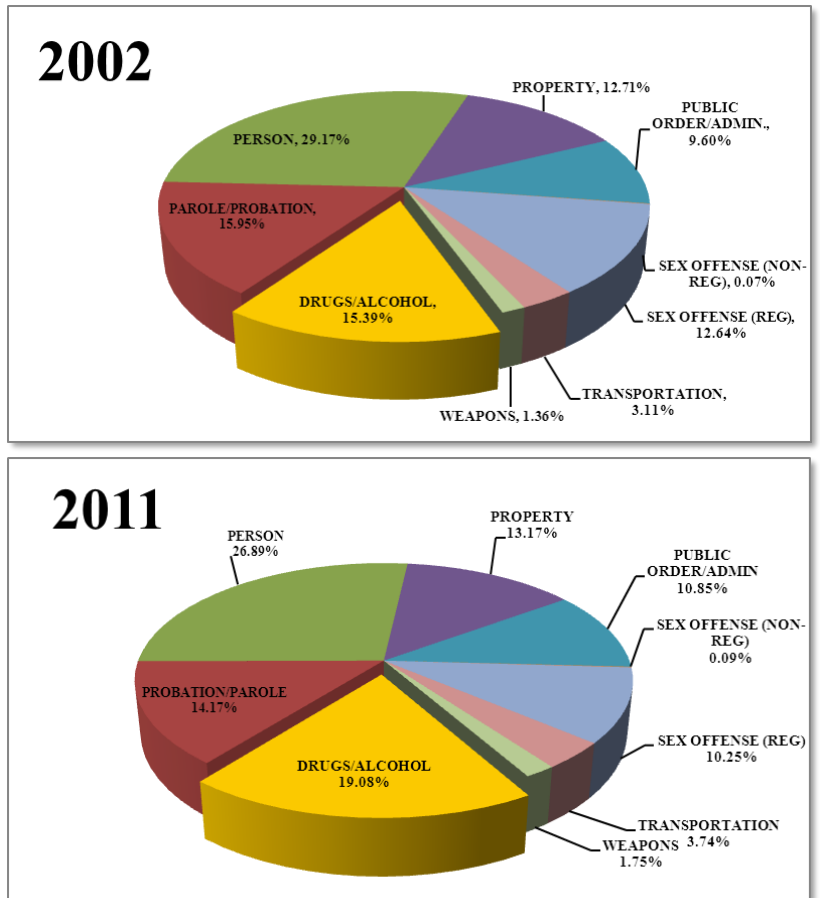
²¹ Alaska Court System, "Cases Filed with MICS 4 Charge(s) FY08 - FY12." Data table available upon request.

Cross-referencing the MICS-4 data with broader data on felonies from the Court System’s Annual Reports reveals an interesting trend. While the total number of felonies filed grew by 10.9% percent between 2009 and 2011, from 5,821 cases to 6,454 cases, the number of MICS-4’s filed grew at more than three times that rate (increasing by 242 cases, or 38%).²² In absolute terms, **more than one-third of the increase in all felony charges in Alaska over this period can be attributed directly to increases in the number of MICS-4’s charged.**

Extending this analysis back to 2002 reveals a less dramatic, but still substantial, growth trend. The number of MICS-4’s filed with the Court increased by 49.6% between 2002 and 2011, from a 2002 level of 587 filings.²³ This was slower than the overall growth in felony filings, which rose by a remarkable 81.8% (from a 2002 base of 3,550).²⁴ Broadening beyond the sharp 2009 to 2011 spike in MICS-4’s thus reveals a longer-term pattern in which about 10% of Alaska’s increase in felony filings is attributable to growth in MICS-4 filings.

Perhaps unsurprisingly, as the number of drug possession arrests and MICS-4 filings have increased, so too have the number and percentage of inmates serving time in Alaskan prisons on drug offenses. As represented in Figure 3, between 2002 and 2011 the proportion of Alaska’s prison population incarcerated due to a drug or alcohol offenses rose from 15.39% to 19.36%.²⁵ This was by far the fastest growing offense category, growing nearly three times faster than

Figure 3: Percent of Standing Offender Population in Alaska Department of Corrections Facilities by Offense Class



Graphs taken from DOC presentation at the State Senate Crime Summit of January 24th and 25th, 2012.

²² See Alaska Court System Annual Statistical Report 2009, at 37, Alaska Court System Annual Statistical Report 2011, at 37, and MICS-4 data presented in Appendix A.

²³ Alaska Court System data, “Alaska Court System Cases Filed with MICS 4 Charge(s) Fiscal Year 2002,” provided in an attachment by Doug Wooliver to email of November 1, 2012. Data table available upon request.

²⁴ Alaska Court System Annual Report 2002, at S-25. These numbers may be slightly deflated, as the 2001 and 2002 Annual Report Data lacked the “Other Court” felonies present in the more recent reports. However, as the overwhelming majority of felonies are filed in Superior Courts, the discrepancy should be minor.

²⁵ Department of Corrections, Powerpoint Presentation at State Senate Crime Summit, January 24th and 25th, 2012.

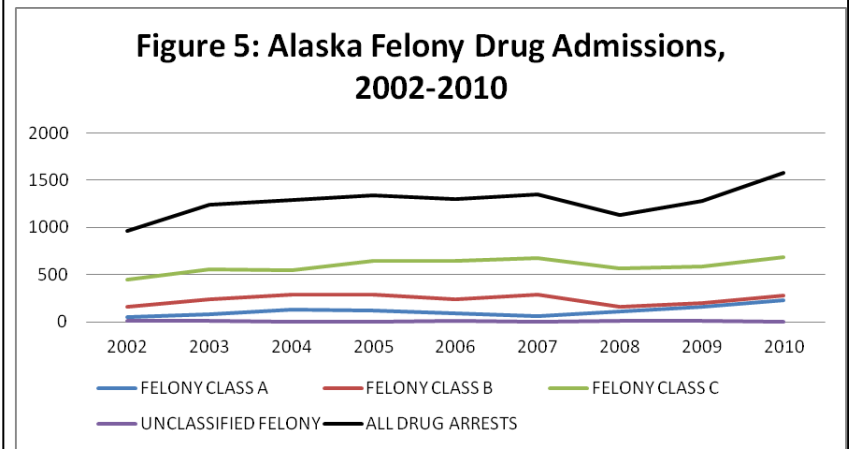
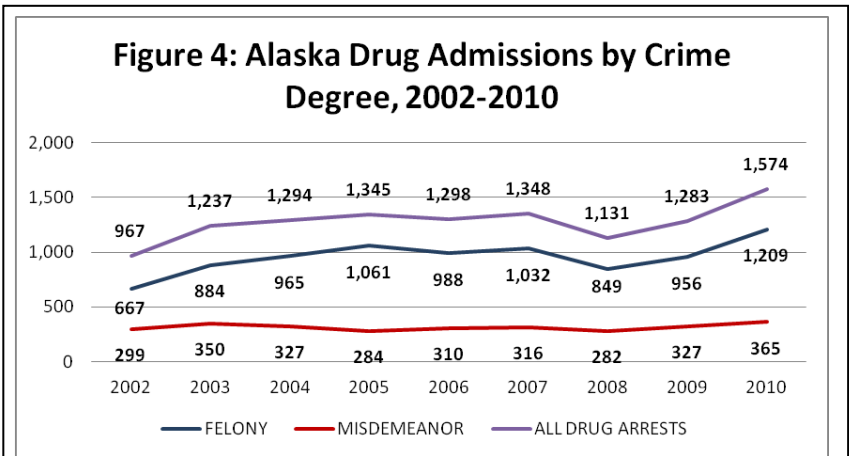
the next closest category (“Public Order/Admin” offenses).

B. Increase in DOC Population

As illustrated in Figures 4 and 5, the DOC saw an increased number of prisoners admitted on drug charges between 2002 and 2010. And while the number of misdemeanants remained relatively stable, the number of felony drug offenders increased substantially. Notable for our discussion here, the Figure 4 term “Felony Class C” is basically synonymous with a MICS-4 violation. While as a percentage the most growth from 2002 to 2010 occurred in the “Felony Class A” category—much more serious crimes than MICS-4’s—in absolute terms, the increase in “Felony Class C’s” is equal to or greater than that of “Felony Class A” or “Felony Class B.”

As the number of MICS-4’s and general felony charges filed has increased, the overall number of prisoners admitted to DOC facilities on felonies has also grown dramatically. According to DOC data, between 2002 and 2010, the number of felony admissions—for all charges—increased by 56.22%, versus an 11.33% increase in misdemeanor admissions.²⁶ Drug felonies were one of the fastest growing categories, increasing by 81% over this span.²⁷

Closely tied to the rise in felonies, the number and percentage of prisoners incarcerated for more than three years also increased from 2002 to 2010, from 6.94% to 17.14%.²⁸ And whereas in 2002 the DOC admitted approximately one felony offender per three misdemeanor offenders, by 2010 this ratio had narrowed to one felony offender for every two misdemeanants.²⁹



Graphs taken from DOC presentation at the Smart Justice Crime Summit of October 3rd, 2011.

²⁶ See ADOC By Numbers, *supra* note 8, Slide 8.

²⁷ *Id.* at 11.

²⁸ *Id.* at 24.

²⁹ *Id.* at 8.

In sum, compared to ten years ago, the State today incarcerates far more people, for longer periods, and more frequently on felony charges. A larger percentage of these prisoners are serving time based on drug convictions, and one of the most common and increasingly-charged drug offenses for which Alaskans receive a felony and are imprisoned is MICS-4 possession.

III. Focusing on Felony Convictions

Historically, a felony charge was reserved for only the most serious crimes. In early English history, the standard punishment for a felony conviction was death.³⁰ Today, felonies come with a much wider gamut of possible punishments; simultaneously, a far broader swathe of the population has been charged with or convicted of a felony.

Though less serious crimes today receive the “felony” label, much of the original stigma surrounding felonies—the perception that felonies represent the very worst offenses against the public—remains.³¹ To be a “convicted felon” in American society is to be an “outsider,” who is “‘branded’ as a felon with a permanent ‘F’ on their records.”³² Moreover, if an employer or coworker hears “felony,” they are probably more likely to think the offender’s crime was assault or embezzlement than, for example, breaking someone’s iPad.³³

While not every felony conviction leads to jail time, and misdemeanants can serve up to a year in prison, a felony conviction is associated with longer sentences.³⁴ In the Alaskan drug law context, a 2004 study found that an offender convicted of a MICS-4 felony received an average sentence of 15.1 months.³⁵ In contrast, defendants who were convicted but had the charges reduced to either an “Attempted MICS-4” or a MICS-5, both misdemeanors, received sentences of

³⁰ Blackstone, while demonstrating that “felony” was really connected to the idea of forfeiture of a man’s entire property holdings, nevertheless acknowledges that at the time of his writing “The idea of felony is indeed so generally connected with that of capital punishment, that we find it hard to separate them; and to this usage the interpretations of the law do now conform. And therefore if a statute makes any new offence felony, the law implies that it shall be punished with death, viz. by hanging, as well as with forfeiture” 4 W. Blackstone, Commentaries *98, cited in *Tennessee v. Garner*, 471 U.S. 1, n. 11(1985).

³¹ The powerful “labeling” effect of a felony conviction is discussed further below, on pages 14-15.

³² Christopher Uggen, Jeff Manza and Angela Behrens, *‘Less than the average citizen’: stigma, role transition and the civic reintegration of convicted felons*, in AFTER CRIME AND PUNISHMENT, at 285 (2004). Available at: http://www.socsci.umn.edu/~uggen/Uggen_Manza_Behrens_CH_04.pdf

³³ In Alaska, it is a felony to cause \$500 or more in damages in a case of Criminal Mischief. The relevant portion of AS 11.46.482 (Criminal Mischief in the Third Degree) reads:

- (a) A person commits the crime of criminal mischief in the third degree if, having no right to do so or any reasonable ground to believe the person has such a right,
 - (1) with intent to damage property of another, the person damages property of another in an amount of \$500 or more;

Based on listed price (\$529) as of 11/08/12 for 16 GB, Wi-Fi + 3G enabled iPad 2:

http://store.apple.com/us/buy/home/shop_ipad/family/ipad2.

³⁴ See e.g. Alaska Judicial Council, ALASKA FELONY PROCESS: 1999, Appendix C (2004).

³⁵ *Id.*

only 2.6 and 2.2 months, respectively.³⁶ It is important to stress that these average sentences do not equate to average jail time, as many sentences are suspended or reduced. But—combined with the longer formal probation terms imposed—the 2004 study points to a wide gap between felony and misdemeanor convictions in terms of incarceration and supervision.

Interviews conducted for this report also indicated that many felony convicts serve out their jail time on what is referred to euphemistically as the “installment plan,” as offenders violate their formal probation (often by missing appointments or submitting a urine sample indicating drug use) and enter jail on an originally suspended sentence.³⁷ The growth of petitions to revoke probation referenced above is part and parcel of this “installment plan” approach. When many offenders plea to a suspended sentence, almost every party involved—with the exception, perhaps, of the offender themselves—believes that they will serve all or most of that sentence eventually, now that a court has “hung paper” on them.

For those felons who do see time—particularly the nonviolent offenders targeted by reclassification—the impact on those they leave behind can be devastating. Researchers studying the communities left behind by incarcerated offenders have concluded that as “family caretakers and role models disappear or decline in influence, and as unemployment and poverty become more persistent, the community, particularly its children, becomes vulnerable to a variety of social ills, including crime, drugs, family disorganization, generalized demoralization and unemployment.”³⁸ A joint study by the Economic Mobility Project and the Public Safety Performance Project of the Pew Charitable Trusts found that “Incarceration carries significant and enduring economic repercussions for the remainder of the person’s working years. ... [Former] inmates work fewer weeks each year, earn less money and have limited upward mobility. These costs are borne by offenders’ families and communities, and they reverberate across generations.”³⁹

Because the decision to label a crime a felony or a misdemeanor is often left to the discretion of the state—even in the drug context where the federal government plays an active

³⁶ *Id.*

³⁷ This was a term related in interviews by both defense attorneys and prosecutors. Estimates differed wildly as to what percentage of those offenders given a “Suspended Imposition of Sentence” (SIS) who were placed on probation eventually had all or part of the sentence imposed. One prosecutor guessed the number was around 40%; a defense attorney placed this same percentage at 90%. Another prosecutor—with a tremendous amount of experience in this area—estimated that about 80% of drug offenders who receive an SIS eventually violate and have the time imposed. Probation and Petitions to Revoke Probation are discussed further below.

³⁸ Petersilia, Joan, *When Prisoners Return to Communities: Political, Economic, and Social Consequences*, Fed. Probation, at 3, 4 (June 2001)(citing Anderson, Elijah, *STREETWISE: RACE, CLASS, AND CHANGE IN AN URBAN COMMUNITY*, W.W. Norton & Company, New York, NY, at 4 (1990)).

³⁹ The Pew Charitable Trusts, *COLLATERAL COSTS: INCARCERATION’S EFFECT ON ECONOMIC MOBILITY*, 3 (2010). Available at: http://www.cnn.com/2012/11/26/world/cnnheroes-prison-children/index.html?hpt=hp_c1
http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/Collateral%20Costs%20FINAL.pdf?n=5996

role—reclassifying felony offenses has emerged as a possible method to reduce the prison population and avoid the broader governmental and societal costs associated with felonization.⁴⁰

A. The Collateral Consequences of a Felony: Cascading Effects

In addition to longer sentences, a felony conviction also carries with it a plethora of “collateral consequence.” These are “sanctions ... [that] are not imposed explicitly as part of the sentencing process, but [which apply to] persons convicted of particular crimes....”⁴¹ These consequences—along with the special stigma of a felony—make re-entry following jail time more difficult,⁴² and disrupt the offenders’ lives and communities long after felons have served their sentences. As a result, a felony conviction, even one that does not result in jail time, significantly reduces expected life outcomes.

First and foremost, “[a] prison record or felony conviction greatly lowers ex-offenders’ prospects in the labor market...”⁴³ These consequences come from both formal prohibitions and informal practices, as “apart from their limited human capital and social networks, a felony conviction imposes additional barriers to employment for the ex-offender, such as employer reluctance to hire convicted felons and occupational licensing restrictions.”⁴⁴ In interviews conducted with convicted felons, researchers found that “Because of [resistance] to hiring convicted felons and [felons] resulting restriction to secondary sector or ‘survival’ jobs, many felt they had ‘lost the right to get a good job that’s not paying minimum wage.’”⁴⁵ Other studies have confirmed that “the stigma of having a felony record can be an insurmountable obstacle when a former inmate is eligible for employment.”⁴⁶

Even offenders with significant work experience appear to struggle in the employment context after being convicted of a drug felony. A study from the American Southwest, which specifically examined the different effects of a misdemeanor and a felony on employability, found that “After the applicant [passed an] initial screening, relevant work experience increased the employability of those with no criminal history and those with a misdemeanor conviction, but had

⁴⁰ David B. Kopel and Trevor Burrus, *Reducing the Drug War’s Damage to Government Budgets*, HARV. J.L. & PUB. POL’Y, 550-553 (April 14, 2012).

⁴¹ See Freisthler, Marlaina and Godsey, Mark A., *Going Home to Stay: A Review of Collateral Consequences of Conviction, Post Incarceration Employment, and Recidivism in Ohio* (2005). Faculty Articles and Other Publications. Paper 86. Available at: http://scholarship.law.uc.edu/fac_pubs/86. The author has altered the original definition provided in the cited paper. That article referred to penalties imposed “by legislative creation” and the “operation of law.” That is too narrow of a definition, as research in this report makes clear. A number of collateral consequences are imposed by explicit policy decisions, but which are not written in statutes or regulations.

⁴² Reentry Task Force, *supra* note 1, Chapter Twelve.

⁴³ John Schmitt and Kris Warner, *Ex-offenders and the Labor Market*, Center for Economic and Policy Research, at 1 (November 2010). Available at: <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>

⁴⁴ Uggen, *supra* note 32, at 265.

⁴⁵ *Id.* at 266.

⁴⁶ Pew Charitable Trusts, *supra* note 39, at 22.

no effect on those with a felony. A felony conviction appears more difficult to overcome with relevant work experience alone.”⁴⁷

Unemployment, in turn, is tied to a variety of problems, including an **enormously elevated likelihood of recidivating**.⁴⁸ A study conducted outside of Alaska “found that former prisoners who are unemployed are *three times* more likely to return to prison than those with steady jobs.”⁴⁹ Another concluded that “[U]nemployment is one of the leading factors for the return of offenders to a life of crime...”⁵⁰ Felon unemployment has also been associated with increased drug and alcohol abuse,⁵¹ “which in turn is related to child and family violence.”⁵²

In addition to negative employment effects, a conviction for felony drug possession in particular carries with it a string of additional legal consequences, some of which seem punitive, arbitrary and disconnected from either the rehabilitation of the offender or the protection of the public. In a 2003 report, the American Bar Association’s Section of Criminal Justice summarized these collateral consequences and their effects to the ABA’s House of Delegates:

Consider a first offender who pleads guilty to felony possession of [drugs]. This offender may be sentenced to a conventional term of probation, community service, and court costs. Unbeknownst to this offender, and perhaps to any other actor in the sentencing process, as a result of his conviction he may be ineligible for many federally-funded health and welfare benefits, food stamps, public housing, and educational assistance. His drivers license may be automatically suspended, he may no longer be eligible for certain employment and professional licenses, and he may be unable to obtain life or automobile insurance. He will be precluded from enlisting in the military, possessing a firearm, or obtaining a security clearance. If the child of an elderly parent, he may be disqualified from serving as a court-appointed guardian, or as executor of his parent’s estate. If a citizen, he may no longer have the right to vote and serve on a jury; if not, he will become immediately deportable. In a case like this, the real punishment is imposed through the collateral consequences of the guilty plea that may only gradually become clear.⁵³

⁴⁷ Varghese, Femina P., Erin E. Hardin, and Rebecca L. Bauer, *Factors Influencing the Employability of Latinos: The Roles of Ethnicity, Criminal History, and Qualifications*, Springer Science+Business Media, LLC, 179. (2009).

Available at: <http://www.springerlink.com/content/g3915473691x5m1w/fulltext.pdf>

⁴⁸ Miriam Aukerman, *Criminal Convictions As A Barrier to Employment How Attorneys Can Help People with Records Get A Second Chance*, Mich. B.J., November 2008, at 33 (“Because employment at a living wage is closely linked to desistance from crime, high unemployment among former offenders presents a serious public safety risk.”)

⁴⁹ *Id.* (Citing *Rebuilding Lives. Restoring Hope. Strengthening Communities: Breaking the Cycle of Incarceration and Building Brighter Futures in Chicago*. Final Report of the Mayoral Policy Caucus on Prisoner Reentry (2006), at 15. Available at: <<http://www.chicagometropolis2020.org/documents/MPCFinalReport.pdf>>) (Emphasis added).

⁵⁰ Bonta, J. & Andrews, D., *Risk, Need, Responsivity Model for Offender Assessment and Rehabilitation*. Cat. No.: PS3-1/2007-6. Canada (2007).

⁵¹ Petersilia, *supra* note 38, at 3, 5.

⁵² *Id.*

⁵³ Kaitlin C. Gratton, *Desperate Times Call for Desperate Measures: Reclassifying Drug Possession Offenses in Response to the Indigent Defense Crisis*, 53 WM. & MARY L. REV. 1039, 1071-72 (2012) (Citing ABA Section of Criminal Justice, REPORT TO THE HOUSE OF DELEGATES, at R4-5 (2003). Available at:

http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_am03101a.authcheckdam.pdf). It is important to note that not all of the consequences cited by the ABA actually attach to

Beyond the legal sanctions, research has indicated that the social stigma attached to a felony is both a cause and a consequence of the other prohibitions that come with a felony conviction, and works to keep an offender mired in the criminal milieu. A unique study from the state of Florida helps illustrate this point.⁵⁴

Florida law allows judges to, on their discretion, “withhold adjudication” of certain felons who are entering probationary periods on plea deals. Importantly, these convicts do *not* have a felony placed on their record; on employment forms they can legally answer that they have never been found guilty of a felony. There is enough arbitrariness and randomness in the process that—with some statistical controls for defendant race, gender, etc.—this sentencing procedure is an excellent “natural experiment.” After analyzing some 95,919 cases, researchers concluded that:

“[I]ndependent of the effects of all other predictors, having been convicted of a felony increases the odds of recidivism by 17 percent when compared with those who had adjudication withheld.”⁵⁵

Again, this study did not compare serious criminals and non-serious criminals. The comparison groups here were convicted of the *same crimes*. However, in one group, the convicts were labeled as felons, with all the attendant stigma and collateral consequences. In the other, though they had the same length of formal probation, the convicts did not receive the “felon” label or the collateral consequences. Those who did not receive the “felon” label were 17 percent less likely to recidivate.

Finally, there is some evidence that collateral consequences and felon stigmas do not impact racial groups in a uniform way. The same employment study from the Southwest cited above found that “Latino offenders with a felony conviction faced greater bias than Anglo offenders with a felony conviction.”⁵⁶ For whatever reason, perhaps because a conviction reinforced already-existing stereotypes, “Latino ex-offenders appear to face greater employer bias than their Anglo counterparts, making it more difficult for them to obtain legal employment and stay out of prison.”⁵⁷ In other words, a potential employer may be more willing to overlook a conviction on the record of a prospective Caucasian employee—seeing the offense as a bad decision or a lapse in judgment by an otherwise good person—while interpreting the same conviction as a confirmation of unfit moral fiber or increased likelihood of bad behavior from a minority applicant.

Unfortunately, this research was not extended to Alaska Natives, the largest minority group in the state and one dramatically overrepresented in Alaska’s prisons. While a detailed study of the

felony offenses in Alaska (though there are additional consequences not mentioned here). The author has attempted to record as many of the Alaska-specific consequences as possible, presented in Figure 5 and Appendix B.

⁵⁴ Chiricos, Ted, Kelle Barrick, William Bales, Stephanie Bontrager, *The Labeling of Convicted Felons and Its Consequences For Recidivism*, CRIMINOLOGY, Vol. 45 No. 3 (2007).

⁵⁵ *Id.* at 565.

⁵⁶ Varghese, *supra* note 47, at 178.

⁵⁷ *Id.* at 179.

racial and ethnic disparity in Alaska’s prison population is outside the scope of this report, the potential for disparate impacts resulting from Alaska’s system of collateral consequences, particularly those based on the discretion of a private employer or a public official, warrants further research.

B. The Collateral Consequences of a Felony: Cataloged in Alaska

Private organizations, municipalities, the State of Alaska, and the federal government all impose their own collateral consequences. Many of these restrictions attach to any criminal conviction, not just a felony. Others apply only to drug convictions, but also to *all* drug convictions—felony or misdemeanor. Therefore, reclassifying drug possession as a misdemeanor would not remove or reduce all collateral consequences—nor would it necessarily be in the public’s interest to do so. However, analysis conducted for this report indicates that reclassification would substantially reduce collateral consequences imposed on nonviolent, small quantity drug possessors, without having to specifically address and reform each thread in the tangled web of private action and public policy that ensnares all those convicted of a crime.

What follows is an account of collateral consequences in Alaska that would apply to a conviction for *any felony* or a *drug felony*, but not to a *drug misdemeanor*. The more important collateral consequences that would be impacted by felony possession reclassification are summarized in Figure 6. A far more extensive list is included as Appendix B.

Unfortunately, these restrictions have become so numerous that they are difficult to catalog thoroughly. The Alaska Prisoner Reentry Task Force’s *Five-Year Prisoner Reentry Strategic Plan, 2011-2016* of March, 2011 recommended that, “By order of the Governor, [Alaska should] require all state agencies to: a) inventory state employment restrictions related to criminal offenders ... in a unified document... [and] compile baseline data on the number of people affected by the restrictions, the number of jobs that are restricted, [and] the impact of relief mechanisms.”⁵⁸ This report has not yet been produced; it will be hugely helpful for further research if it is. Still, working in part from an article by Dr. Deborah Periman of UAA, the author was able to conduct a partial survey of collateral consequences specific to drug felonies.⁵⁹ Federal restrictions were also gleaned from the ABA’s ongoing National Inventory of the Collateral Consequences of Conviction Project.⁶⁰

Not all of these collateral consequences are formalized in statutes or regulations. Calls and requests to a variety of organizations revealed a number of unwritten but uniformly imposed restrictions, such as the Anchorage School District’s ten-year ban on employing felons in non-

⁵⁸ Prisoner Reentry Task Force, *supra* note 1, at ES7.

⁵⁹ Deborah Periman, *The Hidden Impact of a Criminal Conviction: A Brief Overview of Collateral Consequences in Alaska*, Working Paper Number 6, Justice Center, University of Alaska Anchorage (December 2007). Available at: <http://justice.uaa.alaska.edu/workingpapers/wp06.collateral.pdf>

⁶⁰ This searchable database can be accessed at: <http://www.abacollateralconsequences.org/>.

teaching capacities. Again, reclassifying possession as a misdemeanor would allow an offender re-entering the community—or one who never served time—to avoid these collateral consequences.

Figure 6: Collateral Consequences Connected to Felonies and/or Drug Felonies

Citation ⁶¹	Title/Substance	Mandatory/Discretionary	Duration
AS 15.05.030(a); AS 33.30.241(a). <i>See also</i> AS 15.60.010(9) ...	Suspension of voting rights in federal, state and municipal elections until the date of unconditional discharge.	Mandatory/Automatic	Until completion of probationary period
10 USCS § 504(a)	Ineligible for enlistment in the armed forces.	Discretionary (waiver)	Permanent/Unspecified
Interview with former hiring professional for major pipeline subcontractor.	Ineligible for employment in most oil and gas related jobs on the North Slope or along the Alyeska Pipeline.	Mandatory/Automatic (private hiring policies)	Permanent/Unspecified
AS 43.23.005(d); AS 43.23.028 (public notice).	Ineligible for a dividend if during the qualifying year the individual was sentenced on a felony conviction or was incarcerated on a felony conviction or a misdemeanor following a prior felony or two or more prior misdemeanors.	Mandatory/Automatic	Year of sentencing
21 U.S.C Section 862a	Ineligible for food stamps and temporary assistance to needy families.	Mandatory/automatic	Permanent/Unspecified
AS 47.05.300-390; 7 AAC 10.900-990. Also Interview with HSS Background Check Program Teresa Narvaez	5-year employment barrier at any facility that is licensed, certified, approved or eligible to receive funding from the Department of Health and Social Services for “vulnerable populations.” ⁶²	Mandatory/Automatic	Five year term from end of probationary period.

⁶¹ In some cases, the full citation is abbreviated. Full citations are available in Appendix B.

⁶² This corresponds closely to programs receiving Medicaid or Medicare funds. Locations specified in Alaskan regulation 7 AAC 10.900-990 include:

(A) a nursing facility;

13 AAC 89.010.	Ineligible to become Village Police Safety Officer if offender “[has] been convicted of a felony or been incarcerated, placed on probation, or placed on parole after conviction of a felony, by a court of the United States or of any state or territory during the 10 years before application.”	Mandatory/Automatic	Ten year period
24 USCS § 412(b)	Ineligible for residency in Armed Forces retirement home.	Mandatory/Automatic	Permanent/Unspecified
18 U.S.C. § 922(g)(1)	Under federal law, a felon cannot possess “any firearm or ammunition.” “Ammunition” is defined as “cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.”	Mandatory/Automatic	Permanent
28 USCS § 1865(b)(5)	Ineligible for jury service	Mandatory/Automatic	Permanent/Unspecified
50 CFR 36.41(e)(11)(iv)	Ineligible to obtain via transfer competitive Alaskan wildlife refuge use permit (Mandatory and permanent for felonies) (fish/game)	Mandatory/Automatic	Permanent/Unspecified

(B) a hospital that provides swing-bed services or that is reimbursed under 7 AAC 43 for treatment described in the definition of "swing-bed day" set out in 7 AAC 43.709; ...

...

(C) an intermediate care facility for the mentally retarded or persons with related conditions;

(D) an assisted living home;

(E) a hospice agency;

(F) a home and community-based services provider as defined in 7 AAC 43.1110;

(G) a home health agency; or

(H) a personal care agency enrolled under 7 AAC 43.786 or 7 AAC 43.787;

(2) an individual providing care coordination, case management, adult day services, or respite care services.

Once again, the prohibitions listed in Figure 6 are only excerpts from a much longer list, which is provided in Appendix B. That Appendix itself is only a partial accounting; it may be logistically impractical to deliver a comprehensive report, as every private organization can establish its own policy. Reclassifying possession as a misdemeanor would allow at least some offenders to avoid these collateral consequences, and thus reintegrate into the community more easily.

IV. The Estimated Budgetary Impact of Reclassification

Fourteen states already classify simple possession of Schedule IA and IIA substances (and all lower substances) as a misdemeanor.⁶³ Unfortunately for the purposes of this paper, in most of those states the misdemeanor status of the offense is a historical artifact. While “[reclassification] of simple use or possession of drugs offers huge potential for cost savings in almost every jurisdiction,”⁶⁴ only Colorado has actually followed through with a reclassification effort in the last decade. Because the Colorado legislature changed the law in 2010, and because the other misdemeanor states did not arrive at their legal framework through recent reclassification, there is a paucity of “time-series” comparative data with which to demonstrate the effects of reclassification. Nevertheless, through projections developed in other states, and analysis of Alaska’s cost structure, we can develop a rough estimate of reclassification’s savings for Alaska’s state budget.

A. Savings from Reduced Incarceration

When the Colorado legislature debated reclassification in 2010, the Legislative Council Staff (similar to Alaska’s Legislative Research Service) estimated that the reclassification would save the state approximately \$56.5 million over 5 years, primarily through reduced incarceration costs.⁶⁵ A similar projection developed by California’s Legislative Affairs Office in 2012 predicted \$224 million in annual savings from a reclassification bill, of which \$56 million came from reduced state incarceration and probation expenses, and \$160 million arose from reduced incarceration and supervision at the county level (the remaining \$8 million came from reduced costs to the judiciary).⁶⁶ Alaska operates a “unified” prison system, making no distinction between costs to the state and to counties or municipalities; whatever combined saving the California LAO forecast would be analogous to the savings for Alaska’s DOC.

⁶³See Fact Sheet provided to OPA by the Drug Policy Alliance Office of Legal Affairs in California. It was produced as a resource for legislators considering California Senate Bill 1506 (Leno), March 2012 (Their tally leaves out Colorado, which made the change too recently). Fact sheet available upon request. See also David B. Kopel and Trevor Burrus, *Reducing the Drug War’s Damage to Government Budgets*, HARV. J.L. & PUB. POL’Y, 550-553 (April 14, 2012).

⁶⁴*Id.* at 553

⁶⁵Colorado Legislative Council Staff, Fiscal Note to HB10-1352 (2010). According to the estimates of the LCS, savings in the first year of full implementation would equal \$6.4 million, rising to \$17.35 million annually by 2014-2015.

⁶⁶California Legislative Affairs Office, Letter to Senator Mark Leno, at (February 28, 2012).

Precisely how many possession offenders will not serve time if they are convicted of a misdemeanor rather than a felony is a complicated question, as is the estimated decrease in average sentence length. Much of the reduction in the prison population will not come from offenders actually avoiding jail, but rather serving less time. It is important to remember that departments of corrections measure their populations by full beds, rather than individuals. So an offender spending two weeks in jail, rather than two months, makes a large difference when multiplied over hundreds of cases. Remember that the AJC study cited above found that MICS-4 felons received on average a sentence approximately seven times longer than “Attempted MICS4” or MICS-5 misdemeanants, and many end up serving this time on the “installment plan,” as they are sent to jail repeatedly on technical violations of probation.⁶⁷

Of those defendants that do avoid jail or a lengthy sentence following reclassification, many will come from the pre-disposition population—offenders who serve their sentence “on the front end,” before their case is adjudicated. These individuals are arrested, placed in jail, and for one reason or another remain there until the system determines their guilt or innocence; often they are unable to meet their bail requirements, either due to poverty, their perceived threat to the community, or their inability to find a “third party custodian” who can keep them in “sight and sound” for 24-hours a day, seven days a week.

After the individual has been incarcerated in this fashion long enough for their case to be resolved, a prosecutor will frequently agree to a “time-served” sentence—a plea deal with a sentence equal to the amount of time the offender has already spent in jail. Thus, the offender’s sentence is determined not just by the seriousness of the offense, but also by the original bail conditions set by the magistrate, the arguments offered at the subsequent bail hearings, the socioeconomic status of the offender (highly correlated with both the ability to raise funds and find an acceptable TPC), and the alacrity of the prosecutor and the defense attorney. A study by the Alaska Judicial Council found that “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.”⁶⁸

The AJC hypothesized—though they did not have the necessary data to demonstrate—that much of the disparity in predisposition incarceration might be explained by differences in socioeconomic status.⁶⁹

Under the Fairbanks Bail Schedule, a standard bail for “Other Class A Misdemeanors,” which includes what is today MICS-5 possession, is \$1000 cash/corporate.⁷⁰ Under Anchorage’s Bail Schedule, a first possession misdemeanor within five years (without other aggravators) results in the individual being released on their “own recognizance,” without posting bail.⁷¹ The second

⁶⁷ AJC, ALASKA FELONY PROCESS, *supra* note 34, Appendix C.

⁶⁸ *Id.* at 4.

⁶⁹ *Id.* at 20-21.

⁷⁰ Bail Schedule: Fourth Judicial District, at 2, January 1, 2008. Document available upon request.

⁷¹ Anchorage Misdemeanor Bail Schedule, at 4, September, 2011. Document available upon request.

offense leads to an initial bail of \$500 cash/corporate.⁷² In contrast, a sampling of cases assigned to OPA in which a MICS-4 felony was the highest charge revealed an average bail of approximately \$3000 cash/corporate. This evidence suggests that reclassification would likely reduce the amount of bail in many cases and—at the margins—increase the number of defendants released on bail before serving significant time.

As in Colorado and California, the largest single source of cost reduction for Alaska following reclassification would likely be reduced incarceration costs, regardless of whether the “bed days” saved came pre- or post-disposition. In 2011, there were 149 inmates in Alaska DOC prisons for whom a MICS-4 offense was their highest charge, and another 50 in Community Residential Centers (halfway houses).⁷³ However, this measure likely under-represents the true number of individuals in prison with MICS-4 as their underlying offense. Many offenders end up in prison, or return to prison, for technical violations of their probation and parole.⁷⁴ After including these additional MICS-4 offenders—which work out to approximately 32 prisoners in hard beds and 8 filling slots in Residential Centers⁷⁵—we can begin to compare Alaska’s prison population with the two states that have already produced estimates of the effect of reclassification.

In Colorado’s case, the Legislative Council estimated that the “Bed Impact”—that is, the reduction in full prison beds on an annual basis—would be 217 in the first full year of their reform’s implementation, rising to 589 by 2014-2015.⁷⁶ In California, the LAO predicted that “within a few years” the state prison population would decline by 2200 inmates, and the county jail population would also decrease by approximately 2000.⁷⁷ Of course, both Colorado and California have much larger prison populations than Alaska; this report hypothesizes that the anticipated impact of reclassification in those states would be proportionally larger as well.

In 2011, there were 355 total drug offenders incarcerated in Alaska.⁷⁸ This compared to 4,264 in Colorado in the same year,⁷⁹ for a ratio of approximately twelve drug inmates in Colorado for every one drug inmate in Alaska.⁸⁰

⁷² *Id.*

⁷³ Alaska Department of Corrections, Offender Profile, at 14 and 25 (2011). This data makes no distinction between pre- and post-disposition.

⁷⁴ Michael Matthews, DOC Data Analyst, Attachment to Email sent November 1st, 2012. Data table available upon request.

⁷⁵ According to the DOC’s Offender Profile, as of December 31st, 2011, there were 802 inmates serving time on technical violations of probation or parole, and another 158 technical violators in Residential Centers. *See* Offender Profile, *supra* note 72, at 14 and 15. While it is difficult to determine exactly how each offender ended up on probation or parole, and which violation returned them to prison, analysis provided by the DOC indicates that, on average, between 4% and 6% of those returned to prison on a technical violation of their probation had a MICS-4 conviction as all or part of their original conviction. *See* Email from Michael Matthews, *supra* note 74. Specifically in 2011, 5.45% of offenders had a MICS-4 conviction prior to their probation violation. *Id.* Multiplying this percentage by the number of inmates and CRC offenders returned on probation violations (591 and 140, respectively), yields an additional 32 prison beds and 8 CRC slots filled by MICS-4 offenders in 2011. Interestingly, this same DOC analysis also found that MICS-4 offenders are approximately twice as likely to violate their probation terms as the average probationer.

⁷⁶ Colorado Legislative Council Staff, *supra* note 65, at 5.

⁷⁷ California Legislative Affairs Office, *supra* note 66, at 3-4.

⁷⁸ Offender Profile 2011, *supra* note 73, at 14.

⁷⁹ Griesmer, Timothy, *Corrections Spending in Colorado: Examining the Effects of Alternatives to*

Unfortunately, similar statistics for 2011 are not available for California; the state’s data appears to lag by several years, and has only been compiled through 2009. In 2009, there were 28,736 drug inmates in California state prisons,⁸¹ compared to 350 in Alaska.⁸² Yet these numbers are further complicated by shorter-term jail admissions at the county level, for which good statistics appear to be lacking. Recent estimates of California’s county jail population placed it at almost exactly half the size of the prison population.⁸³ If we assume that the number of drug offenders is proportional, this would set the 2009 county jail drug offender population at approximately 14,300, for a total drug offender population of about 43,000, state-wide. This yields a ratio of one-hundred and twenty-three drug inmates in California for every one drug inmate in Alaska.

Using these ratios and estimates from the legislative offices of these two states, we can develop a rough estimate of the reduction in the incarcerated population for Alaska. These projections are presented in Figure 7.

Figure 7: Estimated Annual Prison Reduction in Alaska based on Analogous Projections			
State	Estimated Annual Reduction in Incarcerated Population	Ratio of Drug Incarceration to Alaska’s	Estimated Annual Prison Reduction in Alaska
Colorado	217 inmates rising to 589 inmates	12:1	18 inmates rising to 49 inmates
California	4200 inmates	123:1	34 inmates

If Alaska’s trends followed those projected by California, it would represent a 14% decrease in the 2011 MICS-4 population under DOC supervision, when adjusted to include those sentenced for probation violations.⁸⁴ If Alaska instead followed Colorado’s projections, that same calculation—using 2011 as the baseline—would predict a reduction of 7.5% in the MICS-4 population, rising to 20.5% after four years. Once again, it should be stressed that, because of differences in the economies, demographics, and legal structure of each of these states, as well as the imperfection of the original estimates developed by the other states’ legislative offices, this forecast contains a great deal of uncertainty.

Incarceration for Non-Violent Drug Offenders, at 7 (Spring 2012). Interestingly, this paper also projects the prison population of Colorado to decline, primarily as a result of the recent drug law reforms. Available at: <http://www.du.edu/ahss/docs/ipps/griesmer.pdf>

⁸⁰ Ideally, we could break down the offenders by category and compare the number of possession offenders in Colorado with possession offenders in Alaska. But these numbers do not appear to be publicly available for Colorado; moreover, because of differences in the law and in charging practices, we cannot even be sure that a possession offense in Colorado is identical to a possession offense in Alaska.

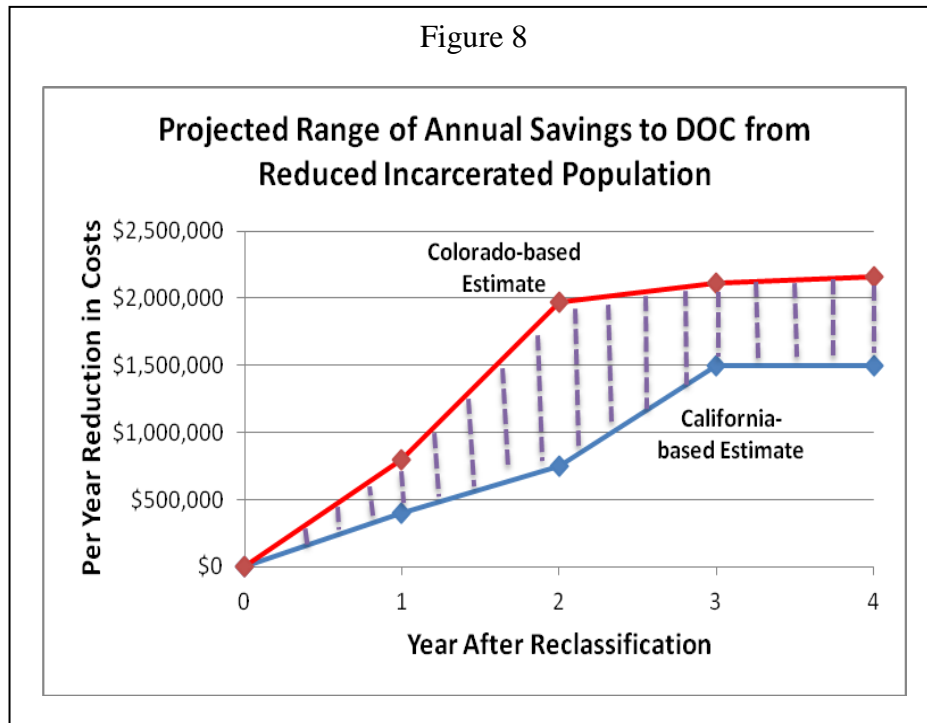
⁸¹ California Department of Corrections and Rehabilitation, *California Prisoners and Parolees*, 16 (2009). Available at: http://www.cdcr.ca.gov/reports_research/offender_information_services_branch/Annual/CalPris/CALPRISd2009.pdf

⁸² Alaska Department of Corrections, *Offender Profile* (2009) at 14.

⁸³ The Sentencing Project, *Interactive Map*. Data Source: US Bureau of Justice Statistics. Available at: <http://www.sentencingproject.org/map/map.cfm#map>

⁸⁴ Calculated by dividing the estimated reduction (34) by the total number of offenders in all DOC facilities (239).

Finally, in seeking a dollar figure to capture this reduction, our calculations are further complicated by the fact that it is difficult to predict which of the offenders who are projected to avoid DOC custody would have ended up in Alaska’s prisons versus Community Residential Centers. As it stands today, approximately one in four MICS-4 offenders are held in a CRC, rather than jail. Because CRC is considerably cheaper than jail time—approximately \$78 per offender, per day, versus \$135 or \$136 for prison⁸⁵— our projected cost savings are reduced.



Using the function $S = (X*(3/4)*49,275) + (X*(1/4)*28,470)$, where X is equal to the yearly projected reduction in the prison population based on our two analogous reforms, we can estimate savings for the four years after passage of a reclassification bill, while taking the CRC adjustment into account.⁸⁶ Figure 8 represents a possible range of savings based on these calculations.⁸⁷ **Aggregated savings based on reduced incarceration over the four years range from a low of \$4.14 million (based on the California estimate) to a high of \$7.04 million (based on Colorado’s estimate).**⁸⁸

⁸⁵ See ADOC Presentation of October 3rd, *supra* note 8, at Slide 20.

⁸⁶ Colorado actually provides enough data to run 4.5 years of estimates, but the first half-year does not line up well with Alaska’s typical implementation calendar for new laws, so was discarded.

⁸⁷ This calculation dealt with California’s nebulous projections in the earlier years by assuming that “Bed Impact” doubled each year until it reached the projection the legislative office had set for “several years” out.

⁸⁸ Projected dollar values:

Year After Implementation	CA-Based Dollar Projections	CO-Based Dollar Projections
First Year	396663.75	793327.5
Second Year	749253.75	1971000
Third Year	1498507.5	2115540
Fourth Year	1498507.5	2159613.75

A major concern when projecting savings in this fashion is that reclassification might impact Alaska's prison population in a fundamentally different way than it does California's or Colorado's. Both out-of-state legislative offices' projections also contain a great deal of uncertainty in and of themselves, meaning that the projected range captured in Figure 8 could be even wider. This would be particularly worrisome for the purposes of this paper if we are overstating likely savings in the forecast.

However, there are reasons to believe that the projections represented here are conservative estimates of reclassification's impact on DOC's prison population and the attendant savings. For example, **there is a strong possibility that following the replacement of many small quantity felony possession convictions with misdemeanors, the DOC would see a shift in population between its facilities, as many offenders who previously had occupied a prison's hard bed instead serve their time in a halfway house.** This shifting of the population was not captured in the Colorado or California's estimates, and would be a considerable source of cost savings.⁸⁹

In addition, these savings forecasts have not been adjusted upwards to factor in rising operating costs at DOC facilities—such as rising guard compensation—nor the upward trajectory of charging rates of possession offenses, which were discussed in *Section II.A: Increased Arrests and Charging of "MICS-4" Felony Possession* above. At several steps in the process—such as when estimating the ratio of Californian drug prisoners to Alaskan drug prisoners⁹⁰—the author skewed toward finding less impact in Alaska, rather than more. Whether this discounting was sufficient cannot be known until after reclassification occurs, but seemed more prudent than predicting extremely large cost savings, only to see those savings never materialize.

B. Savings from Reduced Costs in Prosecution, Public Defense, and Judicial Processing

While departments of corrections have been identified as the largest sources of cost savings associated with reclassification, many other governmental agencies would be impacted by this policy change. The judiciary and its partner legal agencies process hundreds of felony possession charges each year; reclassification would likely shorten these processing times, and require less resources, particularly on the defense side.

⁸⁹ As stated above, CRC slots are much cheaper than prison beds.

⁹⁰ Given the nature of the charges, it seems likely that a higher percentage of drug offenders were in state prison rather than local jail (after all, the California fiscal note found almost as many drug offenders avoiding state prison as local jail, when a far higher percentage of the local jails drug population was likely to have committed the minor offenses associated with possession reclassification). But without better data, assuming proportionality seemed a reasonable, if conservative, approximation.

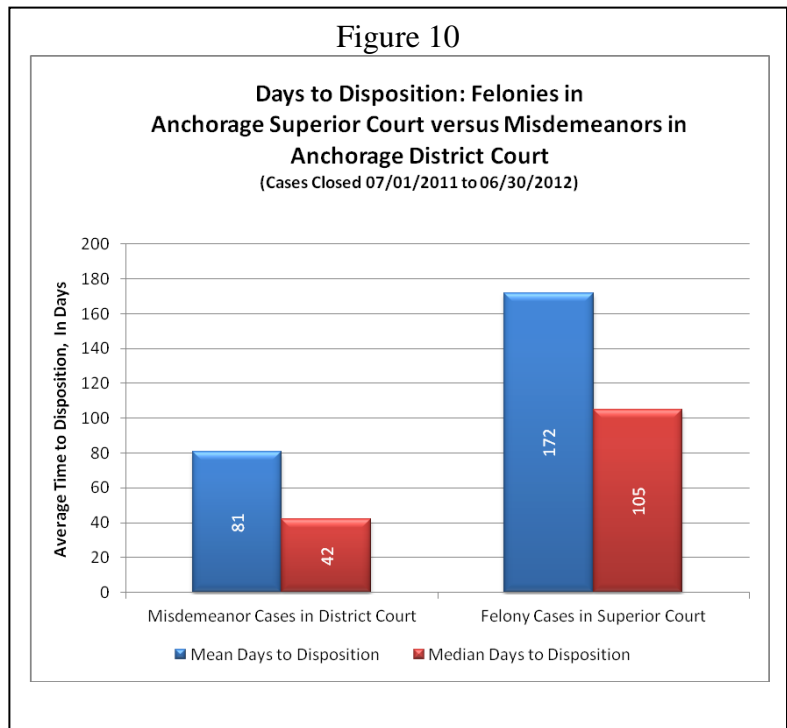
Figure 9

Alaska Court System					
Time to Disposition					
Cases Closed 07/01/2011 to 06/30/2012					
Anchorage					
Superior Court					
Case Type	Number of Cases	Minimum Length of Cases (Days)	Maximum Length of Cases (Days)	Mean	Median
Felony	2586	1	2276	172	105

District Court					
Case Type	Number of Cases	Minimum Length of Cases (Days)	Maximum Length of Cases (Days)	Mean	Median
Misdemeanor	11066	1	1162	81	42

Data provided by the Alaska Court System indicates that it takes more than twice as long for the average felony in Anchorage Superior Court to reach disposition—that is, to end in dismissal, sentencing, or some other resolution—than it does for a misdemeanor in Anchorage District Court (District Courts may not hear felonies). While the exact difference in terms of cost is difficult to estimate, this data suggests that an offense being designated a felony is associated with a longer legal process, with implications for the case-loads and man-hours of judges, prosecutors, public defenders, and their respective support staffs. The Court System data is presented in chart and graphical form in Figures 9 and 10.

Figure 10



A report issued by the Alaska Judicial Council in 2004 also found that misdemeanor cases settled much faster, on average, than felonies. Looking at data from 1999, the AJC found that “Statewide, pleas to misdemeanors took substantially less time (average of 97 days) than did pleas to the most serious original charge (average 184 days).” Importantly for reclassification, “Pleas to lesser felonies averaged 226 days,” higher even than the average for more serious crimes.⁹¹

⁹¹ AJC, ALASKA FELONY PROCESS: 1999, *supra* note 8, at 12.

Trying to put a dollar figure on these processing times is difficult. One approach is to estimate the overall costs, find the share dedicated to MICS-4's, and then work from that number.⁹² According to a McDowell Group study cited above, in 2010 it cost the State \$3.3 million in legal and adjudication costs to enforce drug prohibition (possession and manufacturing laws, as distinct from drug-related crimes like burglary).⁹³ Using the Court System data presented above, we know 45.5% of the "Drug" cases filed with the court in 2010 were MICS-4's.⁹⁴ Matching this percentage with the McDowell Group estimate would indicate overall legal and adjudication costs related to MICS-4's of approximately \$1.5 million.

However, this cost estimate must be revised downwards. The legal and adjudication costs associated with MICS-4's are probably considerably smaller than that \$1.5-million-per-year estimate, and the cost savings flowing from reclassification smaller still.

Because MICS-4's are comparatively simple cases, one can reasonably presume that more serious and complex drug cases like MICS-1's and MICS-2's cost far more to process on a case-by-case basis than MICS-4's.⁹⁵ MICS-4's also appear more likely to be resolved in the "Pre-Indictment Hearing" process, where a defense attorney and a prosecutor reach a plea agreement or a dismissal before the case even goes to a grand jury. Data from the Court System indicates that only 460 MICS-4 cases in 2011 and 538 in 2012 were actually presented to a grand jury, despite total MICS-4 cases filed with the Court in those years numbering 878 and 977, respectively (those counts include cases where some other felony may have been included on the charging document).⁹⁶

While we have data comparing processing times for average felonies and misdemeanors, even the Court System's impressive data analysts were unable to dig deeper and parse the difference in processing times for MICS-4's versus MICS-5's or MICS-6's. With this data point missing, it becomes more difficult to estimate the time and cost savings associated with reclassifying drug possession cases.

In attempting to calculate reclassification's impact on the number of possession cases each year, we must also consider how the charging practices of prosecutors would change in response to this reform. In conversations with prosecutors, it became clear that some cases that today are revised downwards from a MICS-3 (or higher) charge to a MICS-4 during negotiations with defense counsel—and in the prosecutors' own screening process—would no longer be revised downward in such a fashion. Simply put, in some cases where a prosecutor might be willing to drop a charge from one felony to a lower level felony, they are very resistant to reducing that same felony charge to a misdemeanor. This is not to suggest that dropping from a felony to a misdemeanor does not happen, or even happen regularly. But it is safe to conclude that in at least

⁹² Again, it must be acknowledged that not every MICS-4 is a possession charge. However, the other charges associated with the statute are sufficiently rare that MICS-4 is a useful proxy.

⁹³ McDowell Group, *supra* note 10, at 25.

⁹⁴ 1,065 felony cases in Superior Court and "other Courts" + 798 Misdemeanor Cases in District Court and "Other Courts" = 1863. Data available at: <http://courts.alaska.gov/reports/annualrep-fy10.pdf>

⁹⁵ As in the McDowell Group's report, here we are talking about a combination of legal costs to the defender/prosecutor, and adjudication costs to the judiciary.

⁹⁶ Alaska Court System, "MICS 4 Charges Indicted or No True Bill Cases Filed FY08 - FY12." Data table available upon request. For total number of Charges, see Alaska Court System, *supra* note 21.

some cases where MICS-2's or MICS-3's would have been revised down to a simple possession charge, that revision will no longer take place if the simple possession charge is a misdemeanor. Instead, the prosecutors are likely to press the felony distribution charge or use the lesser charge of "attempted" MICS-2 or MICS-3 (which would remain a felony) in their plea bargain negotiations.

In the following cost calculations, we will use three estimations of shifting charging practices by prosecutors in the face of reclassification, corresponding with a "high," "medium," and "low" projection of cost savings. Under the "high" projection, we assume that reclassification has a relatively small impact on charging practices, and only 1/3 of what are today MICS-4 possession felonies would instead be charged or prosecuted as MICS-2 or MICS-3 distribution felonies. In the "medium" range projection, we assume that the shift is equal to 1/2 of MICS-4 charges; for the "low" estimate, we set this shift at fully 2/3 of felony possession charges.

With those caveats, we turn towards projecting cost savings from legal and adjudication costs. **First, the Court System, and the anticipated cost savings associated with the reduction in days to disposition.**

While Court analysts were extremely helpful in the creation of this report, they did not have access to reliable statistics for a per-day or per-hour cost structure that might be applied to the halving of time-to-disposition demonstrated above. Therefore, we must again create a rough proxy, skewing as always towards a conservative forecast of cost savings. To calculate per-day-to-disposition costs in the Court System, we use the following formula: ((Total Operating Budget of the Courts) – (Costs Unrelated to Disposition of Cases))/((Total Number of Cases Disposed of that Year) X (365))

In 2011, the Court System's total expenditures amounted to \$96,136,900.⁹⁷ The system disposed of 160,599 cases at the trial level,⁹⁸ 253 in the Court of Appeals,⁹⁹ and an additional 375 cases at the Supreme Court.¹⁰⁰ After subtracting the funds spent on Therapeutic Courts (\$3.8 million) and Administration (\$9.8 million), the Court spent approximately \$84.54 million to resolve these 161,227 cases. This works out to about \$524 per case resolved that year. If we assume a relatively constant stream of cases being filed and disposed of in the system each year—that is, cases are not simply accumulating, and each year the court sees about the same number of each type of case—we can increase the denominator by a factor of 365 to find our average per-day-to-disposition cost.¹⁰¹

Now, this method is flawed in a number of ways. It may be that certain cases cost more on a per-day basis, whether because of different processes to resolve minor violations as compared to serious crimes, differences in which cases go to trial versus laying dormant on the court's calendar,

⁹⁷ See <http://courts.alaska.gov/ctinfo.htm#budget>

⁹⁸ Alaska Court System, Annual Report 2011, at 17.

⁹⁹ *Id.* at 9.

¹⁰⁰ *Id.* at 1.

¹⁰¹ \$524/365 = \$1.436

or other factors. Generally, it is the small minority of cases that go to trial that are the most expensive to the Court System. However, all of these mitigators again work to make our cost estimate more conservative: felonies are more likely to result in a lengthy trial than the thousands of minor offenses the District Courts zoom through each year. Once at trial, felonies are generally more expensive than misdemeanors: they require more jurors, more security, and a more expensive judge.¹⁰² It is thus likely that our average is vastly overstating the actual cost to the Judiciary of certain small-bore cases (like the 76,641 minor offenses disposed of by the District Courts in 2011¹⁰³) and significantly underselling the per-case cost of complex civil cases and felonies.

As stated above, 878 MICS-4 cases were filed with the Court in 2011, compared to 977 in 2012. Before finding an average of MICS-4 cases impacted by reclassification, we must revise these numbers downwards to account for cases in which some other felony is included in the charging documents, and for MICS-4's where simple possession of schedule IA or IIA substances is not the charged offense. For the purposes of this estimate, both numbers are reduced by 25%, to 648.5 and 732.75; averaging the two comes out to approximately 691.

Taking this revised average, discounting by our three anticipated levels of shifting charging practices, and then multiplying by the difference in the median days between felonies and misdemeanors yields a total, annual reduction of days to disposition of 14,511 for our low estimate, 21,767 for our medium, and 29,022 for our high.¹⁰⁴ Multiplying this number by our average days-to-disposition cost gives us total projected cost savings of approximately \$21,000, \$31,000, or \$42,000 per year (the deviation from exact proportionality is due to rounding).¹⁰⁵ Again, while these are rough estimates necessitated by a lack of data, they are more likely to be biased in a conservative fashion than otherwise.

Another source of cost savings to the Court relates to reduced grand jury costs. Misdemeanors do not require grand juries, and every hour of grand jury time costs the Court system money. However, this is likely a fairly small source of savings, as grand juries often hear many cases in a day, and drug possession cases are usually quickly disposed of. One prosecutor estimated that an average MICS-4 grand jury took "about 20 minutes." Another felt that, with an experienced grand jury panel, they could get an indictment in "15-20 minutes." For an inexperienced panel, it took up to half an hour.

If we take the average number of MICS-4 cases per year which reach grand jury, discount by changing prosecutorial practices, and multiply by the average time to reach a decision for each MICS-4 (using 20 minutes as our standard), we arrive at approximately 55, 83, or 111 hours of

¹⁰² Superior Court judges are paid more than District Court judges.

¹⁰³ Alaska Court System, Annual Report 2011, at 87.

¹⁰⁴ Low: $((691) \times 1/3) \times (105 - 42) = 14,511$; Medium: $((691)/2) \times (105 - 42) = 21,766.5$; High: $(691 \times 2/3) \times (105 - 42) = 29,022$

¹⁰⁵ Actually calculated amounts: $14,511 \times \$1.436 = \$20,837.80$; $21,767 \times \$1.436 = 31,257.4$; $29,022 \times \$1.436 =$

reduced Grand Jury time per year.¹⁰⁶ At an average cost of \$95 per hour to the court system,¹⁰⁷ this yields an additional \$5225, \$7885, or \$10,545 in annual savings to the Court.

Addendum: Shortly before the completion of this report the Court System produced its own estimate of savings in the wake of reclassification. The Court’s analyst concluded that there would be approximately \$35,000 per year in savings. While this is slightly lower than the mid-range estimate produced here, it is still remarkably close to this report’s forecasts.¹⁰⁸

Next we consider the reduced costs of Public Defense after reclassification. A recent survey of private defense attorneys, conducted by the AJC, offers the best available proxy for calculating public defense costs.¹⁰⁹ Currently, Criminal Rule 39.1(d)(1) establishes the following compensation schedule for appointing private counsel:

<i>Estimated Total Cost of Representation</i>	
<u>Charge</u>	<u>Cost of Representation</u>
Misdemeanor	2,000
C Felony	5,000
B Felony	7,500
A or Unclassified Felony	20,000

While the survey conducted by the AJC found that the reported costs were slightly higher than the Rule’s schedule (with most misdemeanors falling between \$3000 and \$5000, and most Class C and B felonies falling between \$5000 and \$10000), the report concluded that the “survey results [were] not a strong indication that the amounts listed in Criminal Rule 39.1(d) for the likely cost of private representation [were] unreasonable....” Moreover, the difference in representation costs between Class C Felonies and Misdemeanors appear similar between the survey and the schedule: around \$3000 per case, on average.¹¹⁰ Conversations with management at the Office of Public Advocacy confirmed that—while the agency does not maintain detailed statistics broken down in this fashion—the results of this survey are broadly analogous to OPA’s cost structures, if slightly higher than OPA’s management would estimate.

¹⁰⁶ Low: $((499 \times 1/3) \times 1/3) = 55.44$ hours; Medium: $((499/2) \times 1/3) = 83$ hours; High: $((499 \times 2/3) \times 1/3) = 110.89$

¹⁰⁷ Statistic provided by the Court System. Actual number is \$95.02, and is based on a ten-month average taken from January until September of 2012. It should be noted that these numbers are from the Anchorage court and likely understates the true statewide cost. Because jurors must be from taken within a 50 mile radius, the Anchorage courts can acquire the necessary jurors with needing to provide for air travel, room, or board. This is not always the case in rural areas, where the hourly rate of a grand jury can thus be much higher. This is another example of this report using the best statistics available, while simultaneously making a conservative estimate of reclassification’s savings.

¹⁰⁸ See Email from Meade, Nancy to the Legislative Research Service. Provided to the author by Doug Wooliver (December 12th, 2012).

¹⁰⁹ Meade, Nancy, Alaska Judicial Council, “Summary of Defense Attorney Survey re Cost of Representation,” November 1, 2012.

¹¹⁰ Here again, we are being conservative in our estimates. Many private attorneys charged up to \$10,000 for low-level felonies, meaning that with more specific data we would likely to find a difference of several thousand dollars more.

In 2011, the Public Defender was appointed to 544 cases in which MICS-4 was the highest charge.¹¹¹ In 2012, that number rose to 603.¹¹² This number encompasses the cases to be carried through to disposition by both the PD's and OPA, as the latter receive their cases after those cases have initially been assigned to the PD's office.

Taking the average of these two years and revising downward to account for changing prosecution practices in the wake of reclassification yields an estimated number of publicly-assigned drug possession cases of 191, 287, or 382.¹¹³ Multiplying these three estimates of case-load reduction by a cost differential 1/3 lower than that provided by the Criminal Rule and AJC survey (\$2000, rather than \$3000)¹¹⁴ provides an estimate of \$382,000, \$574,000, or \$764,000 in annual cost savings to the State from lowered defense costs. These estimates are quite consistent with an independent estimate of cost savings from the Public Defender's office, which predicted annual savings of approximately \$670,500.¹¹⁵

Finally, while it seems likely that reduced days to disposition would result in at least some cost savings for prosecutors—as would reduced Grand Jury time—the Department of Law was unable to produce statistics to demonstrate how reclassification would impact their balance sheets. An inquiry by the Legislative Research Service to the DOL was also unsuccessful.

Misdemeanor cases at the DOL are generally handled by less experienced and thus less expensive attorneys, suggesting cost savings from reclassification. However, prosecutors interviewed for the purpose of this report were skeptical that a revision would result in much cost savings. At least one prosecutor believed that some of the largest costs to the prosecution associated with a drug possession case—including the cost of having a substance tested by a crime lab to determine if it is indeed what the police or the prosecutors suspect it to be—would remain constant.

In the interests of again erring on the side of caution in estimating cost savings, this report assumes zero dollars in cost savings from the Department of Law.

¹¹¹ Email from Shannon Tetlow, Public Defenders Office, November 19, 2012.

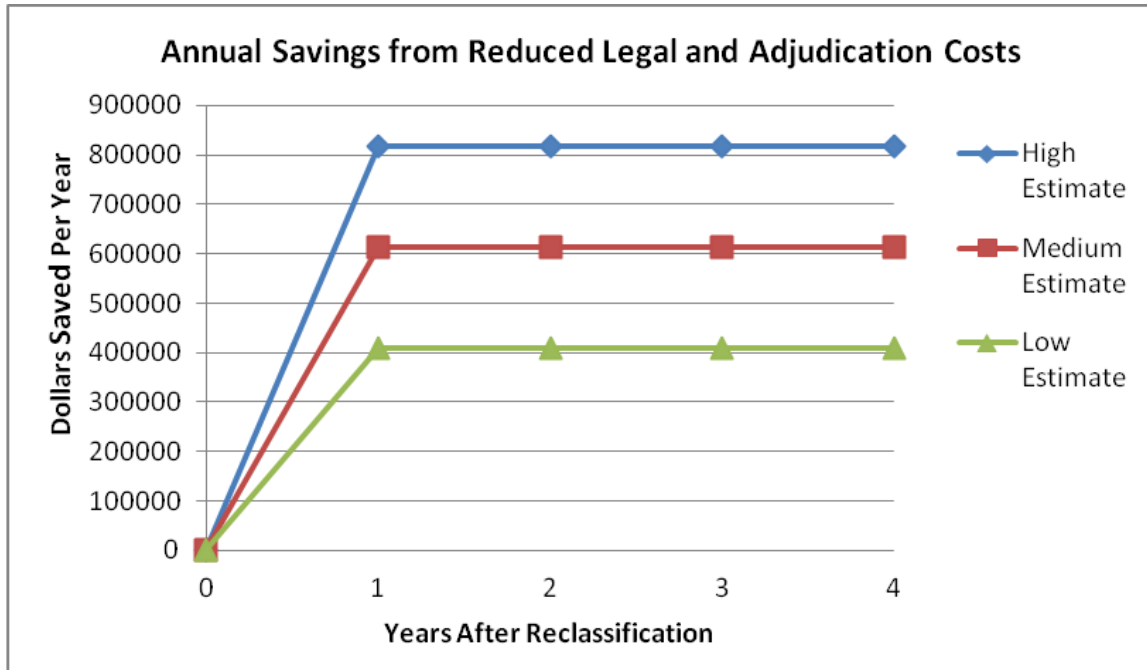
¹¹² *Id.*

¹¹³ Low: $(544+603/2) \times 1/3 = 191.17$; Medium: $(544+603/2)/2 = 286.75$; High: $(544+603/2) \times 2/3 = 382.33$

¹¹⁴ Again, this downward revision is justified by 1) the hesitancy of PD and OPA management in confirming that the public cost differential was as high as that represented by the AJC and 2) our desire for conservative estimates in the face of the uncertainty of AJC's conclusions.

¹¹⁵ See Email from Shannon Tetlow, Case Management & Legislation, Alaska Public Defender Agency, November 30, 2012. The exact estimate was \$670,536. This was based on a cost differential of approximately \$1300 per case, but no downward revision of the caseload reduction based on changing charging practices by the DOL.

Figure 11



This report thus projects between \$408,000 and \$817,000 in annual savings to the state from reduced legal and adjudication costs from reclassification, with a mid-range estimate of \$613,000 per year.¹¹⁶ Because we do not have time-series numbers to analogize to, as was the case in the number of prisoner bed days, here we assume uniform savings over the four years. These projections are expressed in Figure 11.

Given the prominence of MICS-4 felonies in Alaska’s drug prohibition system, these appear to be reasonable estimates of legal and adjudicatory savings, when compared to the McDowell Group’s multi-million dollar estimates.

If we add the projected savings from reduced legal and adjudicatory costs to those from reduced incarceration, we arrive at an aggregated four-year estimate of between \$5.77 and \$10.31 million in cost savings to the State.

¹¹⁶ The precise estimates break down thusly:

	Time to Disposition Savings	Grand Jury Savings	Defense Cost Savings	Sum Totals
Low	21000	5225	382000	408225
Medium	31000	7885	574000	612885
High	42000	10545	764000	816545

C. Constant Costs: Probation, Parole, and Law Enforcement Agencies

Aside from the Department of Law, from which this report assumes no savings, there are several other relevant agencies in which cost savings are possible, yet not large or likely enough to justify adding into our estimate.

One area where savings seem plausible is reduced supervision costs associated with probation and parole. Alaska has a unified probation/parole system, where formal supervision is performed on both types of offenders by the DOC's Division of Probation and Parole (DPP). In most cases, Alaska only provides formal supervision to felony offenders, meaning that we might expect a savings to the DPP from possession offenders receiving only informal probation. However, due to the current caseload of the DPP, and suggestions made in the *Policy Approaches to Address Reclassification's Challenges* section below, no estimated savings for DPP are included herein.

Currently, the DPP—particularly its Anchorage office—supervises many more offenders than is desirable, given its staffing. According to interviews with DPP staff, at present each DPP line probation officer in Anchorage supervises between 100 and 110 probationers.¹¹⁷ Optimally, probation officers performing the type of supervision expected at DPP would only have between 70 and 85 cases assigned to them.¹¹⁸ Therefore, while reclassification appears likely to reduce the number of offenders placed on formal probation, the Department is unlikely to reduce FTE's (the primary source of hypothetical cost savings). Instead, the DPP would probably use this decrease in formal probationers to reduce caseloads for probation officers, and improve services to the remaining probationers and parolees under their supervision. The budgetary impacts of this improvement in services is indeterminate, but probably be quite minimal.¹¹⁹

There are also reasons to suspect that costs to the Department of Public Safety and municipal law enforcement agencies like the Anchorage Police Department would remain fairly constant. A Class A misdemeanor is grounds for an arrest, just like a Class C felony, and law enforcement officers spoken to for this report expressed skepticism that many of those arrested now for drug possession would not be arrested or processed if the offense was reclassified to a high-level misdemeanor.¹²⁰ One APD officer stated that when the officers saw drugs on the job they “had to deal with it,” and that “it was easier to make an arrest, than to not make an arrest,” meaning that not making an arrest in many contexts—and certainly the drug context—would require the explicit sign-off from a commanding officer, often after consultation with the

¹¹⁷ Interview with Keith Thayer and Thomas Karpow, Department of Probation and Parole, November 2nd, 2012.

¹¹⁸ *Id.*

¹¹⁹ Except in that it might help reduce recidivism, which would provide significant savings to the state.

¹²⁰ This was an issue raised by prosecutors: that many MICS-4 or MICS-4 like cases were being “screened” by patrol officers “at the street level.” This did not appear to be the case in conversations with patrol officers, though perhaps a wider canvass of an organization like the APD would have produced different results.

prosecutors. This would be the case regardless if the offense was a Class C felony or a Class A misdemeanor.

Some patrol officers did believe that police discretion might lead to fewer charges following reclassification. But others took the opposite view, asserting that—discretion or no—police were not going to cease aggressively charging suspects caught with any amount of narcotics. One officer stated that, when an offender was caught with any amount of “hard” drugs, “they’re always going to be charged. They are both a criminal and a victim, but that’s for the courts to figure out [not the police].”¹²¹

Other non-budgetary concerns about reclassification’s impact on law enforcement are addressed in the section on Public Safety, below.

D. Possible Sources of Budgetary Increase or Shifting

There are several places in which reclassification may lead to a shifting of the State’s budget or the budgets of municipalities like Anchorage. For example, it is conceivable that with fewer possession offenders in prison law enforcement agencies may have increased workloads, assuming that some proportion of those offenders recidivate. However, given the modest number of offenders this report projects will completely avoid prison or Community Residential Centers—and the corroborating statistics introduced below in the discussion of Public Safety—whatever increase might occur should be quite small.

With fewer possession offenders carrying felony convictions on their records, more will be eligible for certain public benefits, such as food stamps. The State Department of Health and Social Services administers the food stamp program, paying half of the operating costs, but “the federal government funds 100% of the Food Stamp benefit.”¹²² As the federal government shoulders the vast majority of this cost, and food stamp eligible households containing felony offenders can already collect a portion of the benefit (simply subtracting the felony offender from the benefit calculation), the increased operating costs to the State should again be negligible.¹²³ In addition, the increased purchasing power of these offenders may provide a small economic stimulus to their communities, and free up personal funds to pay the fees many of them owe to the Court system and other government entities following their convictions.

¹²¹ Presumably, this officer meant “the courts” to include the prosecutors, who theoretically have broad discretion in whether or not they go forward with the initial charges brought by the police.

¹²² Alaska Department of Health and Social Services, Division of Public Assistance, “Food Stamp Benefits,” accessed on November 27, 2012. Available at: <http://dhss.alaska.gov/dpa/Pages/fstamps/default.aspx>

¹²³ It should be noted also that this increase in food stamp eligibility will act as an economic stimulus, as the federal government will be putting more of these funds into Alaska. Studies have shown that food stamps are one of the most direct forms of economic stimulus, with low overhead and excellent “bang for the buck.” See, e.g. Zandi, Mark, *The Economic Impact of the American Recovery and Reinvestment Act*, Moody’s Economy.com, at 9 (January 21, 2009). Available at: http://www.economy.com/mark-zandi/documents/Economic_Stimulus_House_Plan_012109.pdf

Similarly, following reclassification, a few hundred more Alaskans per year should be eligible for the Permanent Fund Dividend, though this should not have a direct impact on the State budget, as the PFD has its own funding mechanism.

Because these projected increases in expenditure are sufficiently small or indefinite, they are not forecast in detail in this report. Similar analysis of state expenditures produced in Colorado and California also elided tabulation of these increases.¹²⁴ To the extent that costs to the State increase, this report assumes that those increases will be overwhelmed by the conservative bias in the cost savings projections presented above.

More likely, given the fact that a disproportionate percentage of possession charges are brought in the Municipality of Anchorage, and that the MOA currently operates an efficient, speedy court for resolving possession misdemeanors (district courts cannot hear felonies), the criminal justice system as a whole is likely to see some shifting of costs from the State to the MOA after reclassification.¹²⁵ While this might be a significant source of savings for the State—given the time and difficulty in resolving felony cases—it fortunately should not be a large burden on the MOA, which appears to operate a cheaper, more efficient system for possession offenders.¹²⁶ While the MOA’s marginal costs might increase slightly, its average costs per year should hold fairly steady, and be outweighed by savings to the State.

Furthermore, as we broaden the scope of possible agencies impacted by reclassification, we should also take into account a broader measure of the societal costs currently imposed by “felonizing” possession—described in part in the *Focusing on Felony Convictions* section above. This broader measure suggests even more savings to the state in the wake of reclassification.

Increased offender employability, in particular, offers hope for a virtuous cycle of rising income and reduced recidivism. Without a felony conviction, a household’s breadwinner is less likely to lose their job or become ineligible for certain positions. This should actually lead to *fewer* households on public assistance, even factoring in the increase in food stamp eligibility following reclassification.¹²⁷ And if reclassification leads to even a modest decrease in the number of prisoners, this should have a positive impact on the economy of the state and local communities. As the Alaska Prisoner Reentry Task Force describes:

¹²⁴ For example, the California estimate stated explicitly:

To the extent the proposed sentencing changes reduce the number of individuals with disqualifying felony convictions, a greater number of individuals would be eligible to participate in certain government assistance programs. While this would increase the cost of these programs, these costs could be offset to the extent these programs help reduce the rate at which these individuals violate the terms of their supervision or are convicted of new crimes. The net effect of these factors is unknown.

California Legislative Affairs Office, *supra* note 66, at 5.

¹²⁵ This assumes that the police will bring more charges in the Municipality’s courts.

¹²⁶ Discussion with OPA Director Rick Allen, December 31st, 2012.

¹²⁷ *Id.*

Incarceration impacts the state's economy in a number of ways: the diversion of state funds from other public projects, the social and financial costs to children of incarcerated parents and the impact to the economy when wage earners are no longer financially productive.¹²⁸

It thus appears that any increase in the state budget flowing from reclassification should be outweighed by both the cost savings predicted in this report, and the positive economic impacts resulting from a reduction in felony labeling and incarceration. While these benefits seem likely, this report does not attempt to place a dollar value on them or include them in our savings forecast.

We turn now to the other side of the coin: reclassification's implications for public safety.

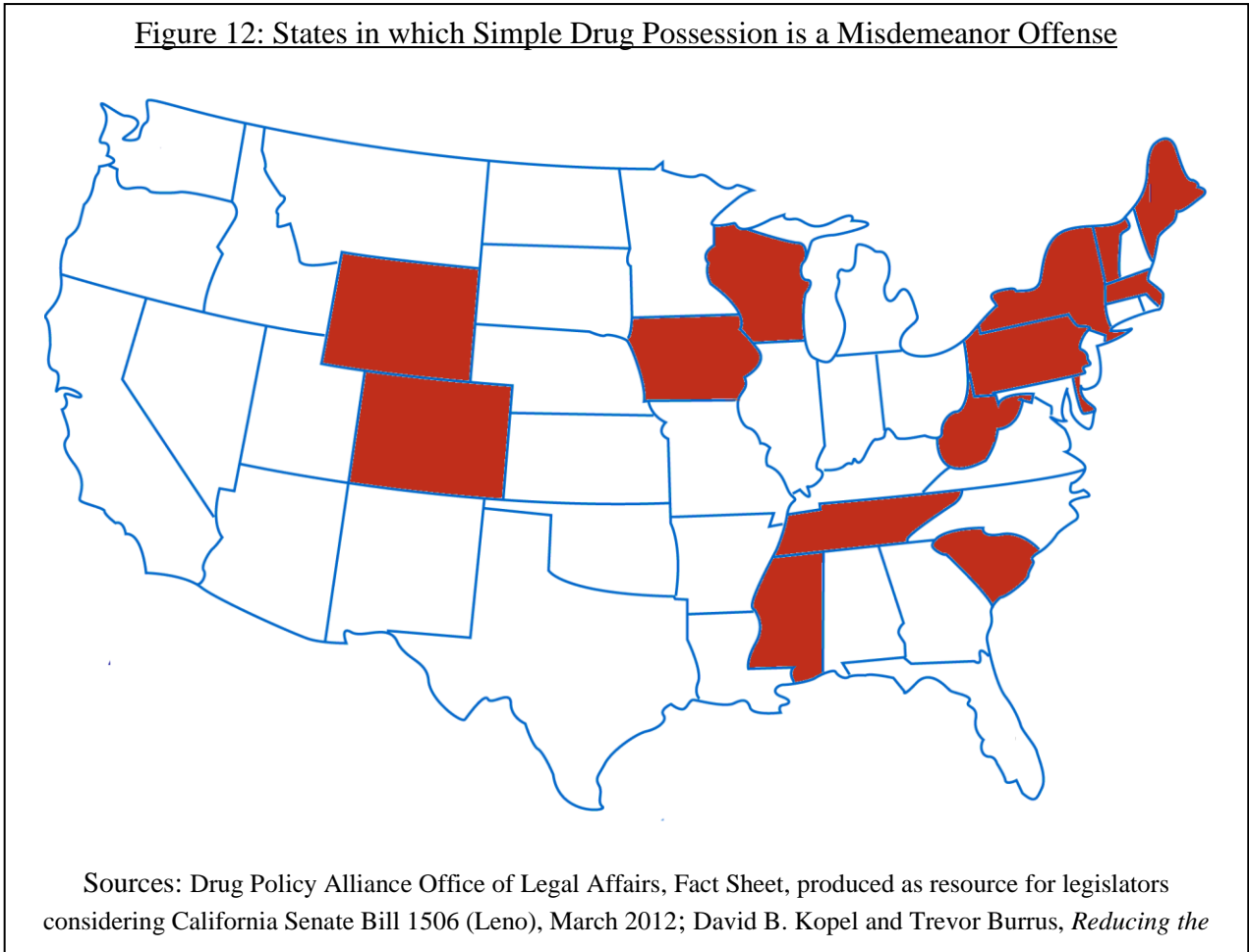
V. Reclassification's Effect on Public Safety

If simple drug possession is reclassified as a misdemeanor, one would expect a small number of offenders to avoid prison time, and a larger group to receive shorter prison sentences. These offenders would be returned to their communities sooner, and might perpetrate crimes that otherwise would have been prevented by their incarceration. One might also expect that, if potential drug offenders are rational actors, reclassification as a misdemeanor might reduce their disincentive to use and abuse drugs. As drug use increased, we would expect both drug distribution and crimes related to drug acquisition (like burglaries) to rise as well.

These are serious concerns, and provide much of the political justification for lengthy prison sentences as a part of our drug prohibition framework. Fortunately, these concerns about public safety do not appear to be borne out by the available data, at least when applied to the relatively modest reform of reclassification (in contrast to full decriminalization or legalization, about which this report makes no claims). While there may be some negative effects on public safety, circumstantial evidence from other states suggests that these effects will not be very large, and may be outweighed by the positive impact of avoiding the collateral consequences of felonies and incarceration discussed above.

¹²⁸ Alaska Prisoner Reentry Task Force, "Five-Year Prisoner Reentry Strategic Plan, 2011-2016," Part I, Chapter Two: The Alaska Department of Corrections' Institutions and Its Prisoners, Page 3 (March 2011).

Figure 12 is a map of the Lower 48 States, with the fourteen states that currently categorize drug possession as a misdemeanor highlighted in red. These states do not exhibit poorer outcomes on a number of measures that we would expect to observe if misdemeanor classification was causally linked with a large-scale deterioration in public safety; this suggests (though does not prove¹²⁹) that reclassification’s impact on public safety would not be substantial.



That being said, when using data comparing American states it is important not to overstate our conclusions. With such a small sample size and so many potential confounding factors, it is difficult to conduct rigorous statistical analysis that identifies causal relationships between policies and outcomes. Still, the almost random distribution of misdemeanor states in this instance helps

¹²⁹ As stated earlier in this paper, a paucity of time-series data prevents certain types of “scientific” statistical analysis. As always with this type of public policy in the real world, we are also unable to know the “counterfactual.” Perhaps these fourteen states would be *even better* off had they had a felony possession scheme in place. It is impossible to know. However, the assumption of this report is that such a counterfactual is unlikely, given the factors discussed in this section.

mitigate concerns that a major confounding factor—like misdemeanor states being disproportionately wealthy relative to felony states—might systematically skew the outcome data.

The misdemeanor states are geographically diverse (though a large portion are clustered in the Northeast), and include wealthy states like New York and Delaware, and impoverished states like Mississippi and West Virginia. They include traditionally conservative states, like Wyoming and South Carolina, and more liberally-leaning states like Vermont and Massachusetts. The Midwestern industrial state of Wisconsin is a misdemeanor state, as is the rural, coastal state of Maine.¹³⁰ While a detailed investigation of every state’s history and legal code was not conducted for this report, it seems unlikely that this cross-section of states would share an overarching similarity that allows each to classify drug possession as a misdemeanor without major detrimental effects.

Figure 13

	Felony States	Misdemeanor States
Rate of Violent Crime Per 100,000	397.5	376.4
Rate of Property Crime Per 100,000	3,071.9	2,913.2
Incarceration Rate Per 100,000	401.23	372.20
Illicit Drug Use, Excluding Marijuana	3.61%	3.55%
Drug Treatment Admission Rates Per 100,000	431.69	512.65

Based on report by the Drug Policy Alliance - Office of Legal Affairs, citing data from the US Census, the Justice Policy Institute’s Report: “Substance Abuse Treatment and Public Safety,” January 2008, the Substance Abuse and Mental Health Services Administration and the FBI’s Uniform Crime Reports Program. Full data tables are attached in Appendix C through E.

Without making direct claims about causality, it is the case that the fourteen states that classify simple possession as a misdemeanor do not appear to have worse drug abuse or public safety outcomes than the states that classify drug possession as a felony. **As presented in Figure 13, the misdemeanor states actually have slightly lower rates of violent crime, property crimes, and drug use.**¹³¹ These states also have higher drug treatment admission rates and lower incarceration rates.¹³² Of course, this presents a causality problem. It may be that the higher drug

¹³⁰Wickenheiser, Matt, *Census: Maine most rural state in 2010 as urban centers grow nationwide*, Bangor Daily News, March 26th, 2012. Available at: <http://bangordailynews.com/2012/03/26/business/census-maine-most-rural-state-in-2010-as-urban-centers-grow-nationwide/>

¹³¹ For all statistical comparisons in this section Colorado remains categorized as a “felony state,” because the law in that state changed so recently that any hypothetical effects of that change would be unlikely to appear in the data (much of which predates the reform). However, shifting Colorado to the “misdemeanor” category actually *improves* the standing of the misdemeanor states vis-à-vis the felony states in every category except “Lifetime Prevalence of Rape by Any Perpetrator” and “Lifetime Prevalence of Sexual Violence Other Than Rape by Any Perpetrator by State of Residence.” Also, the District of Columbia has been excluded from all averages with regards to violent crime; DC has unique problems and a violent crime rate that is three times the national average.

¹³² “Misdemeanor states had an average admissions rate of 512.65 per 100,000 people, or 18% above the

treatment admission rates in misdemeanor states are the primary cause of the more positive outcomes—rather than the classification of possession offenses itself. **But this data simultaneously undercuts the idea that the threat of a felony is necessary to incentivize an individual to enter treatment.**

Turning briefly to a topic of particular importance in Alaska—sexual and domestic violence—the Centers for Disease Control and Prevention found that, in 2010, rates of rape, physical violence, and/or stalking by an intimate partner with a female victim (as measured by lifetime prevalence) were lower in misdemeanor states. While 36.23% of women in felony states reported being abused by their intimate partner in this way, 35.5% in misdemeanor states reported abuse.¹³³ Rates of rape of women by any perpetrator and other sexual violence by any perpetrator with a female victim were also lower in misdemeanor states; in felony states, 20.01% of women reported being raped, and 45.02% reported being subject to some form of sexual violence other than rape, compared to misdemeanor-state rates of 16.9% and 41.04%, respectively.¹³⁴ Again, one cannot claim—based on this limited data—that misdemeanor possession classification was causally related to lower rates of intimate partner and sexual violence, but the numbers are at least suggestive that misdemeanor classification is uncorrelated with higher levels of these crimes.

Why do the misdemeanor states appear to have better public safety outcomes than felony possession states? Aside from statistical noise (that is, the classification of drug possession as a misdemeanor or a felony is basically irrelevant to these public safety outcomes, and these differences are just a coincidence), the most likely causal links between felonizing possession and negative public safety and health outcomes are 1) the criminogenic effects of prison¹³⁵ and 2) the collateral consequences of a felony conviction—discussed at length above. Relevant to both our discussion of cost savings and studies indicating that incarceration is criminogenic: a 2008 study by the Justice Policy Institute found that the average incarceration rate was 7% lower in the

national average of 433.70. Felony states, on the other hand, had an average admissions rate of 431.69, just slightly below the national average.” Drug Policy Factsheet

¹³³ See National Center for Injury Prevention and Control, *National Intimate Partner and Sexual Violence Survey 2010: Summary Report*, November, 2011.

¹³⁴ *Id.* Detailed tables are presented in Appendix F.

¹³⁵ That is, those who are imprisoned are actually *more* likely to commit further offenses than they otherwise would have been. See e.g. Daniel S. Nagin, Francis T. Cullen, and Cheryl Lero Jonson, *Imprisonment and Reoffending*, the University of Chicago, 0192-3234/2009/0038-0005, at 122 (2009) (“Sociologically inspired criminology portrays imprisonment as a social experience that is criminogenic due to in-prison and postprison experiences”). See also Francis T. Cullen, Cheryl Lero Jonson, and Daniel S. Nagin, *Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science*, the Prison Journal, September 2011 91: 48S-65S, first published on July 19, 2011. On page 50S, the authors state: “[H]aving pulled together the best available evidence, we have been persuaded that prisons do not reduce recidivism more than noncustodial sanctions.” Later, they assert that, “On balance, the evidence tilts in the direction of those proposing that the social experiences of imprisonment are likely crime generating.” *Id.* at 60S.

misdemeanor possession states that they studied—372.20 inmates per 100,000 residents for misdemeanor states, compared to 401.23 inmates per 100,000 for felony states.¹³⁶

While none of this data speaks to the immediate effect of reclassification in the short term—about which we do not have data—it does appear that, at least over the long term, misdemeanor states perform as well or better than felony states on certain important measures of public safety. The potential short-to-medium term challenges of reclassification are addressed in the next section; ideas to mitigate these possible, harmful effects are expanded in *Strategies to Alleviate Concerns Regarding Reclassification*, below.

VI. Challenges Posed by Reclassification

In interviews conducted for this report, some public officials and stakeholders reacted negatively to the idea of reclassification, at least if the reform was not structured to deal with their specific concerns. Some were opposed to the idea regardless of the reform’s final configuration.

In particular, some prosecutors spoken to for this report seemed unsupportive of reclassification, expressing a number of concerns, the most frequent of which was that the threat of a misdemeanor was not enough incentive to keep drug addicts in treatment. Other stakeholders speculated that the prosecutors’ opposition was based primarily on an unwillingness to part with the leverage a potential felony conviction provides during plea agreement negotiations. This report makes no guess as to the subjective motivations of either prosecutors or defense counsel.

One argument that can be dispensed with fairly quickly, however, is the notion that offenders need lengthy prison sentences in order to “get clean.” Whatever other benefits may come from incarceration—and the DOC’s recent efforts to improve and expand in-custody drug treatment may greatly increase those benefits—separation of addicts from an environment in which drugs are available is not one of them. Simply stated, if many of the interviewees for this report are to be believed, drugs are available in prison.¹³⁷ One defense agency employee even stated that drug addicts have been known to intentionally get arrested, so that they could enter the jail and pursue their habit.

Moving on to more serious critiques of reclassification: it is the case that Alaska provides relatively little structure or treatment to misdemeanants after release. The State requires formal probation supervision only for felony offenders. Formal supervision can lead to PTRP’s and re-incarceration, but it can also provide critical support for convicts with few other allies in their attempt at reentry or recovery. For example, the relationship between an offender’s probation

¹³⁶ Unfortunately, due to data restrictions, not every state was included in their analysis. Alaska, for example, was not included. See Justice Policy Institute, “Substance Abuse Treatment and Public Safety,” (January, 2008). Available at http://www.justicepolicy.org/images/upload/08_01_REP_DrugTx_AC-PS.pdf.

¹³⁷ Though one experienced prosecutor did feel that, while long term confinement for every offender did not often work to break addictions, “shock jail,” for a period of 30 days or so, might be effective in breaking through to offenders mentally and getting them off drugs. This “shock jail” approach is similar to the “swift and certain” philosophy of the PACE Program, discussed at length below.

officer and a non-profit treatment center is often the key to that offender getting one of the limited beds at an in-patient facility. According to the Reentry Task Force, “[Formal probation] can also facilitate communication with employers about a particular employee by establishing a single point of contact in the local probation office so that employers do not have to waste valuable time or resources to coordinate with various people regarding individual hires.”¹³⁸

Yet probation officers at the DPP were very resistant to the idea of providing formal supervision to misdemeanants. This resistance is driven in part by fiscal and staffing concerns, but also flows from P.O.s’ understanding of probationer psychology. They believe that the threat of a suspended misdemeanor sentence—which at most can be accompanied by a year of jail time, but usually carries far shorter sentences—is often not enough to keep an offender complying with formal probationary terms. This seems to confirm the prosecutors’ worries that reclassification will lead to fewer drug possession offenders getting the treatment that they need.

However, Alaska already has an intermediate program operating in the space between intensive DPP supervision and no supervision at all. Called the Alcohol Safety Action Program, or ASAP, this program is housed in the Alaska Department of Health and Social Services¹³⁹ and includes both formal probation officers and criminal technicians. The probation officers at the DPP suggested that ASAP might be able to handle many of the drug possession offenders. A supervisor at the ASAP program confirmed that they already work with a number of drug addicted convicts, some of whom have received a misdemeanor rather than a felony for purely technical reasons (like the date of the offense, rather than its underlying substance). ASAP supervision—outside of the wellness court context, where they provide formal supervision—primarily involves conducting an initial assessment, helping the offender find a treatment program, and then following up with the program to ensure that the probationer completed their treatment.

An important 2011 study conducted by the AJC offers another avenue for critique of reclassification. That study found that convicted misdemeanants in Alaska are more likely to reoffend after their release than convicted felony offenders.¹⁴⁰ According to data taken from the DOC and the DPS, “the more serious the underlying offense, the lower the recidivism rate. Misdemeanants had significantly higher recidivism rates than did felons...”¹⁴¹ Specifically, the study found that within two years 30% of felons had a new conviction, versus 40% of misdemeanants.¹⁴²

An argument can thus be made that something unique to a felony—whether it is the length of the sentence or the collateral consequences—dis-incentivizes reoffending. If that conclusion holds true, then a reduction from a felony to a misdemeanor may increase recidivism. However, it

¹³⁸ Reentry Task Force, *supra* note 1, at 74.

¹³⁹ In Anchorage it is in a state facility. In other parts of the state, it is run by private grantees.

¹⁴⁰ Alaska Judicial Council, *Criminal Recidivism in Alaska, 2008 and 2009*, Executive Summary (November 2011). Available at: <http://www.ajc.state.ak.us/reports/recid2011.pdf>

¹⁴¹ *Id.*

¹⁴² *Id.* at 15, 16.

should be noted that the study also found that “those convicted of drunk driving, drug, and sexual offenses had much lower recidivism rates than other types of offenders.” Drunk driving, at least, is initially a misdemeanor (except in special, egregious cases). Adapting drug possession statutes to be more like drunk driving statutes is considered in the following section.

Prosecutors interviewed for this paper also expressed skepticism that reclassification was necessary to prevent less serious, youthful, or first-time possession offenders from receiving a felony conviction. The perception expressed by some prosecutors was that there are already multiple screening points for drug possession offenders, particularly the discretion of patrol officers, and that those suspects who are not in some way involved in drug distribution or hard-core drug addiction are not often charged with felonies. Yet this did not square with some of the patrol officers’ accounts.¹⁴³ It may be that charges are often reduced by the prosecution during their initial screening of cases, or at the negotiating and plea bargaining phase. But when it came to schedule IA and IIA substances, APD officers did not seem inclined—or believe it was proper—to “look the other way.”¹⁴⁴

Another concern is that reclassification will cause law enforcement agencies, such as APD’s Vice Unit, to lose leverage in their investigations of more serious drug offenders, namely large-scale drug dealers. That is, police often need to convince drug possession offenders to become Confidential Informants in order to catch more serious drug distributors. The worry is that, without the threat of a felony, fewer drug users will assist the police. Fortunately for these types of operations, however, many drug users are repeat offenders; a felony charge—or a violation of probation conditions with significant jail time—should arise shortly (hence our conservative projections of reclassification’s impact on the prison population). In some circumstances a misdemeanor may be enough on its own to win cooperation, because, as one APD officer stated, “there is no honor among thieves.”

Beyond these practical concerns, there is a broader, public-morals argument against reclassification. As expressed by one prosecutor, treating drug possession as a misdemeanor “sends the wrong message” regarding the seriousness and danger of drug use. Stakeholders at many agencies described the horrors of a life addicted to drugs, and the collateral damage such a life can inflict upon friends, family, and the broader community.

Similarly, another prosecutor confessed that it was unsatisfying, from an emotional and ethical standpoint, to see defendants that they believed to be “bad guys” avoid felonies or jail time. Even when an offender pleads to a felony, if they get a suspended sentence and enter treatment, it often does not feel as gratifying to the prosecutor or the community as when the offender is locked up. The view among some prosecutors is that the offender is getting off easy when he or she gets

¹⁴³ See discussion of APD and DPS budget in *Section IV.C: Constant Costs*.

¹⁴⁴ Again, see discussion in *Section IV.C*. One officer did stress that they always had discretion, but seemed very cautious about stating that the officers should or were likely to use this discretion in the case of Schedule IA or IIA drugs.

to go into treatment, especially if this is not their first attempt at getting clean. Stated more succinctly: sometimes “treatment feels like it’s not justice.”¹⁴⁵ Of course, this is contrary to earlier arguments about using the threat of a felony to force offenders into and through treatment programs.¹⁴⁶

VII. Policy Approaches to Address Reclassification’s Challenges

As one prosecutor who was questioned about reclassification stated, it is very hard to know whether one should oppose or support it—or predict its exact impact on Alaska—without knowing the specifics of the reform. The “how” of a reform can be almost as important as whether that reform is passed or not.

Based on interviews, statewide data, and academic research, it appears there are ways to structure reclassification that would address all or most of the significant concerns introduced above. The four that hold the most promise are 1) improving and increasing the amount of evaluation Alaska does of its offenders 2) structuring reclassification as an “Escalating Punishment” regime, similar to Alaska’s current approach to DUI’s 3) expanding treatment and supervision of certain offenders who are at high risk to recidivate, and 4) expanding the PACE Program, a policy innovation the state has already begun to implement, which dovetails well with the treatment and supervision strategy.

Before diving into the specifics of these recommendation, it is first worth addressing the prosecutors’ and other stakeholders’ concerns about convincing offenders to complete drug treatment.

One common refrain echoed by judges, prosecutors, public defenders, and probation officers alike was the need for a drug addict to *decide* to get clean before treatment can be effective. This often involves the addict “bottoming out,” and realizing that their current life is unsustainable. The unique threat of a felony, the thinking goes, helps them come to that realization. It also hangs above their head during treatment—if the offender has received a suspended sentence—and motivates them to complete their program.

¹⁴⁵ To paraphrase a prosecutor interviewed for this report.

¹⁴⁶ A final policy concern, though one never expressed by any public official interviewed, is that reclassification will cause Alaska’s unemployment rate to rise slightly. This prediction is based on research done by labor economists, and is predicated on the notion that reclassification will lead to lower incarceration rates. See Petersilia, Joan, *When Prisoners Return to Communities*, FEDERAL PROBATION, Vol 65(1)(June, 2001)(Citing Western, Bruce and Katherine Becket, "How Unregulated Is the U.S. Labor Market.? The Penal System as a Labor Market Institution" (1999)). According to a study on reentry in the journal *Federal Probation*, “Recycling ex-offenders back into the job market with reduced job prospects will have the effect of increasing unemployment rates in the long run.” *Id.* This assumes that our current incarceration policy is basically warehousing a number of individuals in prisons who otherwise would likely be unemployed. However, given the huge expense of this warehousing, and the relatively small number of offenders impacted by the targeted reform of reclassification, the unemployment argument does not appear nearly as strong as some of the others offered above.

This view of the necessity of a felony, while it certainly has some validity, is undermined by a number of factors. First, under the State’s current approach to suspended sentences, many offenders still receive at least a portion of the collateral consequences of a felony upon completion of their treatment program.¹⁴⁷ This supports a view expressed by several prosecutors that it is the longer sentence lengths associated with felonies that provide the principle impetus to most offenders, not freedom from the collateral consequences attached to a felony conviction. Second, the necessity of a felony threat is undercut by the example of the Anchorage Municipality’s therapeutic court, which only serves misdemeanor offenders, including some with drug issues.¹⁴⁸ Certainly, there may be *some* offenders who will not be willing to enter or complete treatment without the threat of a felony.¹⁴⁹ But the municipal therapeutic court demonstrates that this is not universal.

Third, as presented above in the section on public safety, it is actually the case that the misdemeanor states have higher levels of drug admission and treatment than the felony states.¹⁵⁰ This is not dispositive, of course; it may be that those states would have *even higher* levels of treatment with the threat of a felony to pressure drug offenders with. But in the absence of evidence demonstrating that the diverse misdemeanor states share some confounding factor that makes them systematically different from the felony states, the higher levels of treatment in those states seems suggestive that a felony threat is not necessary.

A final point in support of the prosecutors’ concerns: defense counsel also has an important role to play in reform. If reclassification occurs and defense counsel is not on board with the need for treatment, it may lead to reduced treatment levels. In appropriate cases, encouraging offenders to enter and complete treatment should also be the goal of responsible defense attorneys.¹⁵¹

Defense attorneys are trained to seek the “best” result for their client. This is always a complicated calculation, due to the multifaceted nature of sentencing, but usually involves minimizing the length of time spent in jail or on probation, and getting felonies dropped to misdemeanors (or dismissed). Sometimes this calculation leads defenders to fight for the right of their client *not* to enter treatment. If the defendant seems likely to fail in treatment, or will have difficulty affording it (many treatment options are not fully funded by the State, and require significant expense by the offenders), they or their attorney may conclude that it is less painful to

¹⁴⁷ For example, most of the federal consequences are still imposed. Also, there is no mechanism to remove the felony charges from Courtview and—despite the disclaimer on the site—the felony charges likely have an adverse effect on employment.

¹⁴⁸ Interview with Anchorage municipal prosecutor Erin McCrum, October 12th, 2012. It should be noted that Mr. McCrum was uncomfortable with the idea of reclassification as it was presented in early October, and in no way provided any kind of official endorsement.

¹⁴⁹ Mr. McCrum felt that heroin addicts, in particular, were difficult to deal with successfully in the misdemeanor therapeutic court.

¹⁵⁰ See Section V: Reclassifications Effects on Public Safety, *supra*.

¹⁵¹ One judge specifically referred to the law firm of Gorton and Logue, and stated that—with regards to therapeutic courts—attorneys at the firm really needed to “sell it” to their clients.

simply “do the time.” This is particularly the case in low-level misdemeanors, with short sentence lengths.

In order to change the defense counsel’s calculation following reclassification, three supplemental goals should accompany reform: first, calibrating sentences lengths so that defendants will be incentivized to stay in treatment; second, providing cheaper and more numerous treatment options; and third, demonstrating to defenders—through evaluation and long-term results—that it is more often in their clients’ long-term interest that they complete treatment. Proposals for all three are considered in the following sub-sections.

A. Maintaining and Expanding Evaluation

Different types of offenders respond to different types of treatment and sentences. In order to reduce recidivism, the State must ensure that it is matching offenders with the appropriate sentences, wellness programs, and levels of supervision. Fortunately, the State has fairly sophisticated tools for determining prognostic risk levels and criminogenic needs. These tools are based on a wealth of social science, which has allowed researchers to predict with a relatively high degree of certainty an offender’s likelihood to recidivate. For example, researchers know that “[a]mong drug-involved offenders, the most reliable and robust prognostic risk factors include a younger age, male gender, early onset of substance abuse or delinquency, prior felony convictions, previously unsuccessful treatment attempts, a diagnosis of antisocial personality disorder, and regular contacts with antisocial or substance-abusing peers.”¹⁵²

Recent studies by Dr. Douglas Marlowe—a national expert on therapeutic courts—have demonstrated that “the most effective and cost-efficient outcomes are achieved when treatment and supervision services are tailored to the (1) prognostic risk level and (2) criminogenic needs of the participants.”¹⁵³ Dr. Marlowe’s key insight is that, while “...some services, such as drug testing, community surveillance, and positive incentives should be administered to *all* [drug offenders] regardless of their risk level or clinical diagnosis....,”¹⁵⁴ it is also the case that “[p]roviding too much treatment or too much supervision is not merely a potential waste of scarce resources. It can *increase* crime or substance abuse by exposing individuals to more seriously impaired or antisocial peers, or by interfering with their engagement in productive activities such as work, school, or parenting...”¹⁵⁵

The upshot of this research is that programs like therapeutic courts, which Alaska has implemented with some success, are not appropriate for everyone. The key is determining which offender is likely to respond, and which is not, and diverting the latter into a different type of program. The same is true of formal supervision for probationers: too often years of formal probation are tacked onto sentences simply because it is standard practice. At the same time, some

¹⁵² Marlowe, Douglas B., *Alternative tracks in Adult Drug Courts: Matching Your Program to the Needs of Your Clients*, DRUG COURT PRACTITIONER, VOL. VII, NO. 2, at 2. (February 2012)(Citing Andrews & Bonta, 2010; Taxman & Marlowe, 2006). Available at: http://www.ndcrc.org/sites/default/files/alt_tracks_3-14-12.pdf

¹⁵³ *Id.* at 2.

¹⁵⁴ *Id.* at 3.

¹⁵⁵ *Id.* at 2. (Citing Lowenkamp & Latessa, 2004; McCord, 2003)

offenders—such as drug addicts caught committing property crimes—slip through the sentencing process without receiving the release conditions needed to get them off drugs.

The Department of Corrections recently updated their approach to their long-standing evaluation tool, known as LSI-R (Level of Service Inventory-Revised), which provides most of the data our criminal justice system requires to determine the appropriate level of supervision needed for each offender.¹⁵⁶ According to the Rhode Island Department of Corrections, which also uses the LSI-R tool, “Appropriate case planning, effective case management and rehabilitation begin with [LSI-R’s] accurate and valid assessment of the individual.”¹⁵⁷ The LSI-R involves a structured interview conducted by a trained assessor, with the addition of supporting documentation and drug tests if needed. Each LSI-R interview takes about an hour of staff time, and there is a small fee each time the tool is used, as the system is proprietary.¹⁵⁸

The LSI-R is an effective way to identify the offenders who are a “low” or “low-moderate” risk to recidivate. For these offenders, “over-supervision,” usually in the form of formal probation with the DPP, can have a deleterious effect. Moreover, it takes DPP resources away from the higher risk offenders, increasing the probability that the latter group will re-offend.

At present, misdemeanants in Alaska are not evaluated with the LSI-R tool. If drug possession becomes a misdemeanor, it is important that the offenders who are today being charged with MICS-4 drug felonies continue to be evaluated with the LSI-R tool. This evaluation is important to understand the level of supervision required for that offender.¹⁵⁹

Other states have also begun to use the LSI-R tool at earlier stages in the sentencing process, such as the period between when the defendant pleads or is found guilty and when the sentence is handed down.¹⁶⁰ Conceptually, it seems to make good sense that, before the conditions of the sentence are agreed to, all the parties have a better sense of the likelihood that the defendant will recidivate and whether or not the defendant is substance dependant. But from the defense’s perspective, there is a Fifth Amendment issue in the defendant providing answers to such a detailed interview. In order to get both prosecutors and defense attorneys to agree to LSI-R’s before sentencing, it must be established that a defendant’s LSI-R answers can never be used as an aggravator or mitigator in sentencing, in the sense of increasing or decreasing their jail time. Moreover, the results of the evaluation can never be introduced at trial, on appeal, or for a subsequent charge.

¹⁵⁶ Specifically, the DOC aligned their supervisions standards to more fully embrace the LSI-R’s recommendations.

¹⁵⁷ <http://www.doc.ri.gov/administration/planning/docs/LSINewsletterFINAL.pdf>

¹⁵⁸ See Interview with Thayer and Karpow, *supra* note 117.

¹⁵⁹ At present misdemeanants only receive informal probation, so an LSI-R evaluation would have little effect.

However, as explained in the following section, reclassification will be more effective if the reform includes some type of increased supervision (*vis-à-vis* other misdemeanants) of those who today are charged with possession felonies and are identified by LSI-R as requiring supervision and treatment.

¹⁶⁰ Phone Interview with DPP’s Keith Thayer, December 6th, 2012. See also, this flow chart of the DUI process in Kansas: <http://www.doc.ks.gov/community-corrections/resources/dui-flow-chart/view>

Maintaining LSI-R evaluation for Schedule IA and IIA possession misdemeanants (which should be revenue neutral, as the MICS-4 felons receive it today), moving up LSI-R evaluation for drug offenders to before conditions of release are determined, and expanding the category of offenders who receive an LSI-R evaluation to include certain offenders who are not being charged with a drug crime—but likely have substance abuse issues—will provide the State with the information it needs to better target its supervision and treatment resources. Investing in evaluation, in conjunction with the reforms introduced in the following sections, will greatly assist the State in its efforts to mitigate the potential negative effects of reclassification. This report thus recommends \$250,000 in additional funding for LSI-R evaluation.

B. Structuring Reclassification Appropriately: Escalating Punishment

Reclassification requires a statutory change, passed by the Alaskan Legislature, if it is to become a reality. An effective reform law would both address some of the challenges reclassification might pose, and keep the law in a simple, understandable form that does not create too much confusion or disruption in the legal community.

The simplest way to enact reclassification involves making most of the changes to the *MICS-5* statute, rather than the *MICS-4*. The *MICS-5* statute currently prohibits the possession of certain amounts of Schedule IIIA, IVA, VA, and VIA controlled substances, as well as manufacturing or delivering at least one ounce of a schedule VIA substance (marijuana).¹⁶¹ A *MICS-5* violation is a Class A Misdemeanor; the statute currently makes no mention of Schedule IA or IIA substances.

Adding Schedule IA and IIA substances to the *MICS-5* statute, up to a certain non-distributory amount, would serve to make possession of these substances a misdemeanor. Of course, this would also require a small change to the *MICS-4* statute, upping the quantity of Schedule IA or IIA substances needed for a felony from “any amount” to some quantity larger than *MICS-5* but smaller than *MICS-3*. This report does not make a recommendation as to the precise amount preferable, but it should not be too difficult for the Legislature to consult with law enforcement agencies and drug rehabilitation professionals to determine the appropriate quantities.

This approach has the advantage of leaving the other, non-simple-possession felonies contained in the *MICS-4* untouched. It also leaves the door open for proposals to deal with “frequent flyer” repeat offenders, while avoiding an overly complex legal regime.

Over the course of many interviews for this report, an idea arose repeatedly—several times independent of any prompting—to adapt drug possession laws so that they mirror an approach Alaska already takes in several other contexts, including DUI’s, low-level assaults, and some types of theft. This approach adopts what might be called “escalating punishment” for repeat offenders.

¹⁶¹ See AS 11.71.050. Misconduct Involving a Controlled Substance in the Fifth Degree.

That is, if a defendant has offended multiple times in a given period (usually five or ten years), their charge escalates in seriousness, climbing from a low-level misdemeanor to a high-level misdemeanor, or from a high-level misdemeanor to a felony. This approach helps separate out the individuals who simply made a mistake, and are very unlikely to re-offend, from those who are more serious threats to public safety, and for whom longer sentences and stiffer collateral consequences may be appropriate. Under the DUI escalating punishment system, for example, the vast majority of first time offenders *never* re-offend;¹⁶² the harsh misdemeanor punishment serves as a potent wake-up call, while simultaneously not crippling an offender's future employment and life prospects in the way a felony conviction does.

In the drug possession context, an escalating structure fits well with an increased focus on evaluation, and with the State's desire to differentiate between occasional drug users and true drug addicts in providing appropriate treatment for each. This system also provides an opportunity to address the stakeholders' concerns about convincing drug addicts to enter and stick with treatment.

Several interviewees believed that it was possible to incentivize treatment (for those for whom treatment was appropriate) by imposing a sufficiently large amount of suspended time. This time hangs over an offender's head until completion of treatment and probation. A misdemeanor offense, even the first offense—the “first strike,” as it were—can lead to up to a year of jail time. In most cases, of course, not nearly so much time is assigned. But no interviewees spoken to expressed the belief that upper limits of sentences now available for drug possession—up to two years for the first offense, and up to five years for a third—were needed to convince most offenders to stay in treatment.

There will always be certain addicts who, because of their overriding drug dependence, will probably violate regardless of the amount of suspended time. They could be assigned 100 years of suspended time and it would make little difference; they cannot stop themselves. For that small group, the issue essentially becomes medical; the criminal justice system is ill-equipped to deal with these offenders through the traditional sentencing structure. These exceptional cases should not drive Alaska to over-supervise or over-sentence the majority of drug possession offenders. Today, court-ordered over-supervision is a major problem at the DPP, driven in part by sentencing

¹⁶² Anecdotally, the portion of first time offenders who never receive another DUI may be as high as 80%. In quantitative studies, the AJC has found that 75% of DUI offenders do not reoffend within two years, though this includes felony offenders and all types of reconvictions. The same study found that 31% of DUI misdemeanants received the same type of reconviction (for a DUI) within two years. However, this again inflates the proportion of first time offenders that re-violate, as it includes those who have received a second misdemeanor DUI (once an offender has been convicted of their second DUI, they are much more likely to receive a third than a first time offender is to receive a second conviction). See AJC, *Criminal Recidivism in Alaska, 2008 and 2009*, *supra* note 140, at 52, 55.

policy and plea bargaining that assigns multiple years of formal probation for possession offenders as standard operating procedure.¹⁶³

For a much larger group of possession offenders, a significantly shorter suspended sentence should be sufficient to achieve our treatment goals. One judge speculated that about 6 months of suspended time would be needed to incentivize a typical offender to stay in a 12 month drug treatment program; about 9 months would be needed to “win compliance” for 18 months of treatment. Eighteen months is the current standard for Alaska’s drug courts. Prosecutors actually gave lower estimates: one thought that 80 days would probably be sufficient, though 120 days would be preferable. Another felt that 120 to 180 days would be needed for an intensive 18 month program, and compared the drug users to felony DUI offenders, for whom the mandatory minimum is 120 days.¹⁶⁴

While an individual “bottoming out” might be the most effective means to get a drug user to commit to treatment, one prosecutor pointed out that we are always looking for ways to intervene *before* an individual reaches this nadir. The State does have the power to intervene in the criminal justice context, and concerns about paternalism are countered by the fact that the alternative today is prison, which is a far more expensive option. Crucially, studies have shown that **“Court ordered substance abuse treatment works as well as voluntary treatment.”**¹⁶⁵

There is a question as to whether suspended jail time or some other factor is the most important in convincing drug users to stay in treatment, though there was general agreement that punishments which are swift and certain are the most effective. One prosecutor thought that employment was the most important factor in sticking with treatment; employment, of course, becomes far more difficult with a felony record. Another prosecutor thought that the threat of jail time was the most useful method, particularly as most offenders are not sophisticated enough to fully understand the collateral consequences of a felony. Either way, this speaks in favor of a graduated approach to punishment that starts off as a misdemeanor, with the possible need for special sentencing guidelines or support structures for drug offenders.

While many researchers and stakeholders today are opposed to statutory-decreed minimum sentences, in this case the need to incentivize drug treatment appears to outweigh the intrusive effect such laws have on the judiciary. The following is a theoretical structure for the MICS-5

¹⁶³ This belief that over-supervision is a major problem, and that insufficient analysis is put into the length and formality of probationary periods, cropped up not only in interviews with DPP officers and defense attorneys, but also in conversations with prosecutors.

¹⁶⁴ Some judges, prosecutors, and other stakeholders did not want to speculate. It is admittedly a difficult hypothetical, and a good, randomized study on the question was not found. The interviewees spoken with on this question all had extensive experience with drug offenders and drug treatment.

¹⁶⁵ Reentry Task Force, *supra* note 1, at 85. Citing analysis conducted by the Washington State Institute of Public Policy.

possession offense, which should alleviate concerns that reclassification will lead to a drop in treatment participation:

- **First possession offense within five year period:** Misdemeanor offense, with minimum of 120 days of suspendable time. Mandatory assignment to ASAP supervision and screening. Mandatory assignment to drug treatment if determined appropriate by evaluation.
- **Second possession offense within five year period:** Misdemeanor offense, with minimum of 180 days of suspendable time. Mandatory enrollment in PACE or “PACE Lite” supervision (discussed further below), if determined appropriate by evaluation. Mandatory assignment to drug treatment if determined appropriate by evaluation.
- **Third possession offense within five year period:** Felony offense, under revised MICS-4 statute. Mandatory assignment to drug treatment and formal probation, with a PACE option, if determined appropriate by evaluation.
- **Any subsequent possession offenses within ten year period:** Felony offense, with felony guidelines tracking multiple MICS-4 offenses. Evaluation, supervision, and treatment at least as stringent as third offense.

This “escalating punishment” system should maintain a heavy hammer for prosecutors to bring down on repeat offenders, while simultaneously holding the probability a drug addict avoids treatment to a minimum.

Finally, in the context of prosecutors arguing that we need an incentive structure that encourages treatment, there is another simple reform that the State should pursue. It is common practice today that an offender who agrees to a plea deal and simply wants to serve their time in prison will receive less time than the suspended time of someone who agrees to enter a treatment program. So, for example, a drug offender might plea to 4 months of time to serve, or 6 months of time suspended contingent on completing drug treatment. This creates an added risk for those seeking treatment who might genuinely want to get clean, and is a major reason that defense counsel sometimes recommends that their client just enter jail immediately. Simply **equalizing the sentences** would remove this disincentive. It would also reduce recidivism—because jail has not been shown to be effective in breaking addiction—and save the State money: because treatment is so much cheaper than prison,¹⁶⁶ the expected cost of each individual who attempts treatment (with the same amount of time hanging over their head) is lower than that of the offender who immediately enters prison, so long as our evaluation tools are reasonably accurate in determining the probability someone will complete treatment. It is unclear whether this policy should be adopted by statutory change, or could be done by a Court Rule or a DOL directive. If prosecutors are serious about the need for drug treatment, they should not oppose this equalization.

¹⁶⁶ This is true even for inpatient treatment programs.

C. Reinvestment

Ultimately, the aim of effective drug policy is to prevent crime, break addiction, and reduce recidivism. Studies have shown that modern treatment—whether in-custody or out—is a more effective way to accomplish these latter goals than simple jail time.¹⁶⁷ The decrease in reoffending flowing from treatment, in turn, helps reduce incarceration. A 2008 study by the Justice Policy Institute found that “states with a higher drug treatment admission rate than the national average send, on average, 100 fewer people to prison per 100,000 in the population than states that have lower than average drug treatment admissions.”¹⁶⁸

When Colorado revised its statutes in 2010, it identified effective treatment as a method to address some of the same concerns raised by stakeholders in Section VI. In an attempt to stem any increase in drug use from reclassification, the reform bill began with a “legislative declaration” that “successful, community-based substance abuse treatment and education programs, in conjunction with mental health treatment as necessary, provide effective tools in the effort to reduce drug usage and criminal behavior in communities.”¹⁶⁹ The declaration continued: “savings recognized from reductions in incarceration rates should be dedicated towards funding community-based treatment options and other mechanisms that are accessible ... for the implementation and continuation of such programs.”¹⁷⁰

This approach—plowing savings from criminal justice reform back into programs that reduce drug addiction and recidivism, thereby creating a positive feedback loop that further lowers both incarceration and crime—is known in the reform community as “justice reinvestment,” or simply “reinvestment.” A study by researchers at the University of Alaska’s Institute of Social and Economic Research (ISER) found that “over time the benefits of strategically expanding [treatment

¹⁶⁷ See, e.g. Bahr, Stephen J., Paul E. (Lish) Harris, Janalee Hobsen Strobell, and Bryan M. Taylor, *An Evaluation of a Short-Term Drug Treatment for Jail Inmates*, INTERNATIONAL JOURNAL OF OFFENDER THERAPY AND COMPARATIVE CRIMINOLOGY (May 28, 2012)(Abstract: “Survival analysis was used to estimate the hazard of recidivism during 14 months following release from jail. The hazard ratio was significantly lower for the treatment than control group, and an analysis using propensity scores confirmed these results. Only 27% of the treatment participants were returned to jail or prison for more than 30 days, compared with 46% of the matched control group. According to qualitative responses from the participants, the program helped inmates recognize the consequences of their behavior and change their perspective.”); Andres F. Rengifo, Andres and Don Stemen, *The Impact of Drug Treatment on Recidivism: Do Mandatory Programs Make a Difference? Evidence From Kansas's Senate Bill 123*, CRIME & DELINQUENCY (January 22, 2010) (Abstract: “Using multinomial logistic regression, the authors found that participation in SB 123 was generally associated with a decrease in the likelihood of recidivism. ...”); Reichert, Jessica and Dawn Ruzich, *Community Reentry after Prison Drug Treatment: Learning from Sheridan Therapeutic Community Program Participants*, Illinois Criminal Justice Information Authority (January 2012) (Abstract: “This evaluation found that the Sheridan program is effective at reducing recidivism and improving offender’s chances for successful reentry”); Mitchell, Ojmarrh, David B. Wilson, Doris L. MacKenzie, *Does incarceration-based drug treatment reduce recidivism? A meta-analytic synthesis of the research*, JOURNAL OF EXPERIMENTAL CRIMINOLOGY, Volume 3, Issue 4, pp 353-375 (December 2007).

¹⁶⁸ Justice Policy Institute, *supra* note 136, at 7.

¹⁶⁹ H.B. 10-1352 § 1 (amending COLO. REV. STAT. § 18-18-406(1)(b)).

¹⁷⁰ *Id.* at (1)(b)

and prevention] programs that reduce crime and keep more Alaskans out of prison far outweigh the costs.”¹⁷¹ The ISER researchers continued:¹⁷²



The
Promise
Of
Reinvestment
In
Alaska

“These programs would serve inmates, at-risk juveniles, and young children. They are all intended to reduce future crime in some way. Programs that treat substance-abuse or mental health disorders have been shown to reduce recidivism—and ... almost all current [Alaskan] inmates have those disorders.

Education and substance-abuse treatment programs for inmates save two to four times what they cost, reduce recidivism by about four percentage points, and can reach the most people.

Intervention programs for juveniles who have committed crimes are very effective at saving money and reducing recidivism, but they serve a much smaller number of people.

...

Alternatives to prison for some people charged with lesser offenses save [the State of Alaska] money right away, and almost all reduce recidivism. ...”



Whether using funds won in reclassification or elsewhere, it is in Alaska’s best interest to expand the types of programs studied by ISER.

One common refrain from many stakeholders interviewed for this report was that, at present, Alaska does not have enough treatment options or treatment beds available.¹⁷³ For example, as explained by the Reentry Task Force:

One of the greatest programming needs [for reentry and recidivism reduction] is substance abuse treatment. Currently, the ADOC has the treatment capacity to provide substance abuse treatment in prison for up to 1,000 prisoners out of an estimated 5,040 that have been identified as needing treatment. The current treatment capacity is less than a fifth of the identified need.¹⁷⁴

¹⁷¹ Martin, Stephanie and Steve Colt, *The Cost of Crime: Could The State Reduce Future Crime and Save Money by Expanding Education and Treatment Programs?*, Institute of Social and Economic Research, University of Alaska Anchorage, 4 (January 2009). Available at: http://www.iser.uaa.alaska.edu/Publications/researchsumm/RS_71.pdf

¹⁷² Id. at 2, 3.

¹⁷³ Not every individual spoken with expressed this view, but it seemed to be held by a clear majority of interviewees.

¹⁷⁴ Reentry Task Force, *supra* note 1, at 28.

According to P.O.’s at the Anchorage office of DPP, there is more drug treatment available today than there has been previously.¹⁷⁵ Still, in-patient beds can be hard to come by. The DOC has begun to help pay for certain outpatient treatments, which, while sometimes not as effective as in-patient treatment for serious drug addicts, is much more affordable.¹⁷⁶ Determining which offenders most need intensive treatment is of crucial importance, and is another benefit of performing the more frequent and rigorous offender evaluations recommended above.

The ISER study estimated a staggering \$445 million in savings over the next 20 years (starting in 2009, the date of publication) in reduced incarceration costs, contingent on a \$4 million increase in per-year funding for treatment and prevention programs.¹⁷⁷ For the purposes of this report, we assume only a \$2 million in annual “reinvestment” (representing a mid-range estimate of our potential savings from reclassification), of which only \$1.5 million will be spent on programs analyzed in the ISER study.¹⁷⁸

If the state effectively targeted \$1.5 million of the projected savings from reclassification into programs like adult residential treatment and juvenile institutional transition, the ISER projections lead to an estimated \$8.28 million in aggregate cost savings over the course of four years, for a net fiscal benefit of \$2.28 million.¹⁷⁹ This projected investment and return is represented in Figure 14.

¹⁷⁵ See Interview Keith Thayer and Thomas Karpow, *supra* note 117.

¹⁷⁶ *Id.*

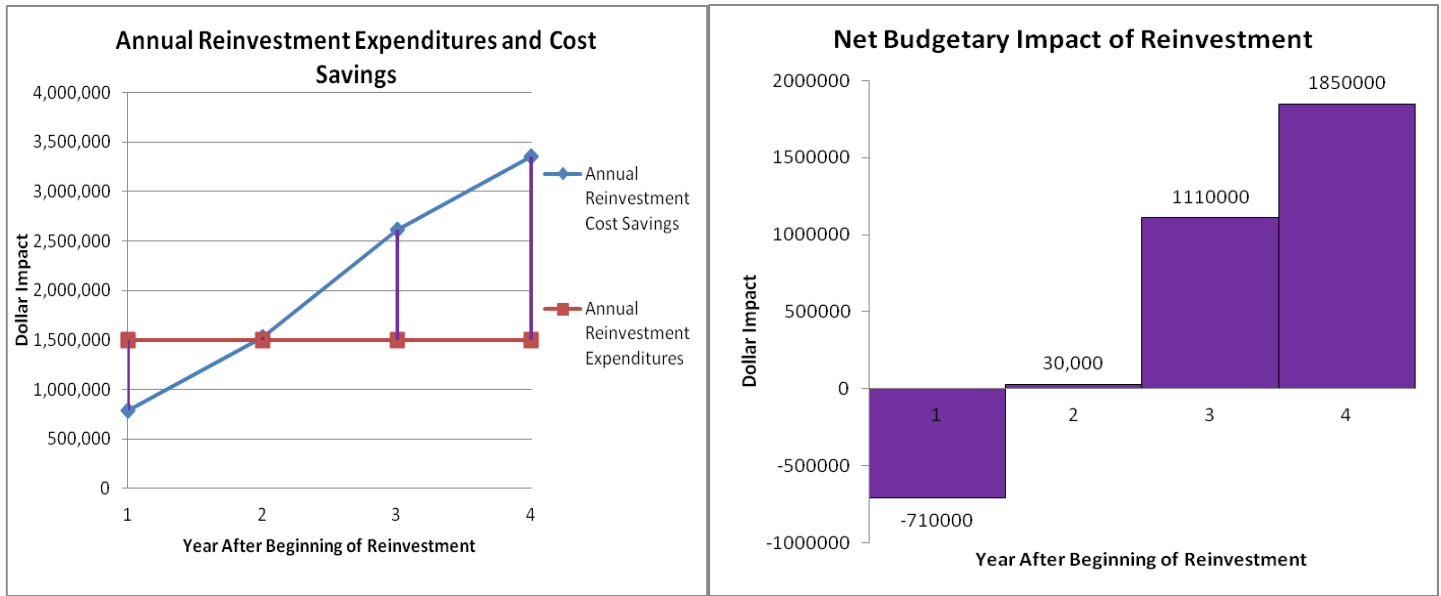
¹⁷⁷ Martin, *supra* note 171, at 1.

¹⁷⁸ The other \$500,000 in annual funds are recommended for expanding evaluation and the PACE program. While benefits of the type ISER found are likely for those investments as well—particularly for the PACE program—no cost savings are added here, because detailed cost-benefit analysis has not yet been done on those expenditures.

¹⁷⁹ The ISER report was based on an investment of approximately \$4 million per year, and included the projected difference between the prison population with and without the increase in programmatic spending. For this report’s calculation, projected investment and savings from increases in funding for Head Start and “Sex offender cognitive-behavioral treatment” have been removed as not germane. Removing those costs brings the total yearly ISER investment down to \$2.443 million. This report then assumes proportional impact; since \$1.5 million is approximately 3/5th of \$2.443 million (it is actually slightly more, but rounding down makes our estimate more conservative), we assume 3/5th of the impact on the prison population. Cost savings here are calculated using the formula: (ISER Projected Difference in Prison Population with Head Start and Sex Offender Removed X 3/5) X (\$49,275). Detailed data tables underlying the ISER research summary were provided by Dr. Stephanie Martin and are available upon request. Projected reduction in prison populations, using the above formula, is:

Full Year Out	Total projected Reduction in Prison Population	Sex Offender Reduction	Minus sex offender reduction	Multiplied by 3/5 for Smaller Investment
Year 1	28	1	27	16.2 = 16
Year 2	54	2	52	31.2 = 31
Year 3	92	4	88	52.8 = 53
Year 4	118	5	113	67.8 = 68

Figure 14



In an attempt to keep the projections conservative, the estimates expressed in Figure 14 do not include cost savings from reduced legal and adjudication costs. However, assuming that each non-incarcerated individual predicted by ISER represented just one felony case, and that those felonies took the average number of days to reach disposition, this leads to an estimated reduction in legal and adjudication costs of approximately \$770,000 over four years.¹⁸⁰

Finally, this reinvestment effort, combined with an expansion of evaluation, should also address most of the worries raised in the AJC study regarding recidivism in the misdemeanor community, at least as applied to drug possession offenders impacted by reclassification.¹⁸¹

¹⁸⁰ Reduced Costs to Defense Attorneys: Assuming just half of total cases reduced would have been assigned public counsel, and that a felony costs \$5000 to defend (the Criminal Rule 39.1(d)(1) price for a Class C Felony), estimated savings equal: $(292/2) \times (5000) = 730,000$.

Reduced Costs to Courts (Eliding Grand Jury Costs):

Total projected Reduction in Prison Population	Reduction multiplied by median days to disposition (105)	Multiplied by average days-to-disposition cost (\$1.43)
28	2940	4204.2
54	5470	7822.1
92	9660	13813.8
118	12390	17717.7
Total		43,557.8

¹⁸¹ The AJC recidivism study found that:

The length and seriousness of a misdemeanor’s prior criminal history predicted a misdemeanor’s likelihood of recidivism. Misdemeanants with lengthy misdemeanor records or any prior felony convictions had the highest recidivism rates. Misdemeanants with no prior criminal history were much less likely to recidivate.

D. PACE and “PACE Lite”

Another reinvestment opportunity, though one so new it was not analyzed by the ISER study, comes to Alaska from an innovative program in Hawaii. Called “Hawaii’s Opportunity Probation with Enforcement” or “HOPE,” this pioneering supervision model is known as “Probationer Accountability with Certain Enforcement” or “PACE” in Alaska. The HOPE/PACE model is based off of an understanding that swift and certain punishment is the most effective means of ensuring that probationers comply with their probationary terms. This is in line with “Classical deterrence theory [that] has long held that the threat of a mild punishment imposed reliably and immediately has a much greater deterrent effect than the threat of a severe punishment that is delayed and uncertain.”¹⁸² Speed and certainty is crucial because the offender population disproportionately exhibits “poor impulse control, high effective discount rates (i.e., valuing even slightly delayed consequences at a steep discount to more immediate consequences), and a strongly external locus of control (i.e., a tendency to attribute events in their lives to luck and the actions of others rather than to their own actions).”¹⁸³

The PACE program can thus achieve better compliance and reduced recidivism with markedly shorter overall sentence times, though it requires an up-front commitment of resources and close coordination between multiple agencies. As summarized by the DOC:

Under the HOPE model, when a PACE probationer violates a condition of probation for failure to make a probation office or drug/alcohol test appointment, or tests positive for the use of drugs/alcohol, the probation officer immediately files a [PTRP] with the court. The court in turn expeditiously processes the PTRP and the execution of a bench warrant. Then, with the cooperation of the local and state law enforcement, the warrant is given priority and served as quickly as possible. The probationer appears in court within 24 to 48 hours upon arrest. The arraignment, adjudication, and imposition of sanctions may occur in one single court hearing as opposed to multiple court hearings.¹⁸⁴

Alaska Judicial Council, *supra* note 140, at 30.

Evaluation will identify these high-risk misdemeanants, and steer them towards treatment and heightened supervision. Furthermore, the type of programs the ISER study recommends increasing funding for—and this report mirrors—include those specifically targeted at high risk and particularly juvenile offenders. This comports well with another AJC recommendation: “The state’s efforts to reduce recidivism could be most effective if targeted at less serious offenders, violent and property offenders, youthful and minority offenders, and the Anchorage and Southeast areas of the state.” *Id.* at Executive Summary.

¹⁸² Rosen, Jeffrey, “Prisoners of Parole,” *New York Times* (January 8th, 2010). Available at:

<http://www.nytimes.com/2010/01/10/magazine/10prisons-t.html?pagewanted=all>

¹⁸³ Hawken, Angela and Mark Kleiman, “Research Brief: Evaluation of HOPE Probation,” at 2 (July 2008). Available at: http://www.pewtrusts.org/uploadedFiles/HOPE_Research_Brief.pdf

¹⁸⁴ Gutierrez, Carmen, “Fairbanks PACE Misdemeanor Domestic Violence Demonstration Project Procedures, presented to the Criminal Justice Working Group (September 18th, 2012). Document available upon request.

Alaska opened the PACE program in July of 2010, beginning with an Anchorage test site; so far the results are promising. According to an AJC analysis of preliminary data from the test site, “PACE appeared to be successful at reducing positive drug tests. Data showed that the PACE group did significantly better during the three months after starting PACE than they did during the three months prior.”¹⁸⁵ ... Of the 59 probationers in PACE with drug use conditions, 64% ... had no drug test failures at all during the three months after admission to PACE, compared to 20% of the same probationers during the three months prior to PACE with no drug test failures.”¹⁸⁶ Anecdotally, one Anchorage judge—interviewed about a year after the AJC study—reported a “better than 50% reduction in jail time” for PACE probationers versus traditional probation. These results are comparable to a National Institute of Justice evaluation of HOPE, which found a 48% reduction in days served by HOPE probationers versus a control group on traditional probation.¹⁸⁷

Drug possession offenders evaluated as a high risk to re-offend are good candidates for PACE supervision; that their crime would be a misdemeanor following reclassification does not mean PACE cannot work for them, so long as they have an appropriate sentence that incentivizes them to stick with the program. While PACE was originally targeted exclusively at high-risk felons, the state is already experimenting with adding misdemeanants in the Fairbanks Domestic Violence Misdemeanor Demonstration Project.¹⁸⁸ Moreover, a preliminary evaluation by the AJC found that “94% of the final PACE evaluation group had a condition of no drug use, and 86% were required by the original probation conditions to subject to drug testing.” Possession offenders would fit within this group, even if they were misdemeanants after reclassification.

In keeping with the “escalating punishment” structure proposed above, when implemented correctly PACE quickly vamps up punishment on “frequent flyers,” who represent the most difficult and costly portion of the drug using population.¹⁸⁹ According to a DPP Probation Officer, PACE helps force these offenders into treatment, because the participants quickly “rack up PTRP’s.”

The AJC study of PACE also found that probation violations and PTRPS were “concentrated among a few PACE participants.”¹⁹⁰ In similar studies regarding the original HOPE program, researchers found that “HOPE identified a small minority of probationers who did not

¹⁸⁵ Carns, Teri and Stephanie Martin, “Anchorage PACE Probation Accountability with Certain Enforcement A Preliminary Evaluation of the Anchorage Pilot PACE Project,” Alaska Judicial Council, 13 (September, 2011). Available at: <http://www.ajc.state.ak.us/reports/pace2011.pdf> (“This pattern tracks closely that found in the study conducted of HOPE participants in Hawaii.”)

¹⁸⁶ *Id.* at 9.

¹⁸⁷ National Institute of Justice, “SWIFT AND CERTAIN” SANCTIONS IN PROBATION ARE HIGHLY EFFECTIVE: EVALUATION OF THE HOPE PROGRAM (February 3, 2012). Available at: <http://www.nij.gov/nij/topics/corrections/community/drug-offenders/hawaii-hope.htm>

¹⁸⁸ Gutierrez, Carmen, “Fairbanks PACE Misdemeanor Domestic Violence Demonstration Project Procedures, presented to the Criminal Justice Working Group (September 18th, 2012). Document available upon request.

¹⁸⁹ This perspective—that PACE was only effective when it incorporated escalating punishments for repeat offenders—was expressed by both probation officers and prosecutors.

¹⁹⁰ *Id.* at 13.

desist from drug use under sanctions pressure alone. This ‘behavioral triage’ function –identifying those in need of treatment by documenting their actual conduct rather than relying on assessment tools – is an independent benefit of HOPE processing.”¹⁹¹ Like the additional evaluation recommended above, PACE can help separate out those offenders who require in-patient treatment or some other additional intervention.

Despite this litany of positive outcomes, traditional PACE may actually represent more supervision than is necessary for moderate risk possession offenders.¹⁹² It is almost certainly too much supervision for those evaluated as low risk. At the 2012 National Association of Sentencing Commissions Conference, a researcher suggested that a “HOPE Lite” approach be developed for misdemeanants.¹⁹³ While the specifics of the researcher’s proposal may not be appropriate for drug-using misdemeanants in the wake of reclassification, the general promise of this idea was echoed by several interviewees for this report. Creating a “PACE Lite” program could involve a shorter participation period (12 rather than 18 months), slightly relaxed level of supervision, community work service rather than jail time for initial sanctions, and other changes agreed on by participating agencies. These changes would all aim to balance the need for swift and certain punishment with an understanding that “over-supervision” can have a negative effect on certain offenders, in addition to being a waste of funds.

Because both PACE and “PACE Lite” require dedication of agency resources, and the latter would require research and development, this report recommends devoting an additional \$250,000 annually towards these efforts. If PACE or “PACE Lite” is as effective as preliminary results from both inside and outside the state indicate, the reduction in long-term sentencing, and therefore overall incarceration, should lead to another boost to cost savings.¹⁹⁴ However, as PACE was not analyzed in the ISER study (or any similar cost-benefit studies since) this report includes no direct cost savings from these efforts in its forecasts.

¹⁹¹ *Id.*

¹⁹² OPA Director Rick Allen has expressed the view that “...a program like PACE would be too intrusive for the level of offending represented by a misdemeanor possession conviction.” However, this statement was made in an environment that treats simple drug possession as a felony. Following reclassification, these offenders—some of whom may now be subject to PACE—would join the misdemeanant population. *See* Criminal Justice Working Group, “Prevention and Recidivism committee Meeting Summary,” at 3 (July 31, 2012). Document available upon request.

¹⁹³ Carns, Teri and Carmne Gutierrez, “Criminal Justice Working Group Memorandum RE: NASC,” at 1 (September, 2012). Document available upon request.

¹⁹⁴ According to another report filed with the NIJ, “...[if] HOPE is successfully maintaining in the community those who would otherwise have been sent to prison, the cost savings are substantial.” Hawken, Angela and Mark Kleiman, Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii’s HOPE, National Institute of Justice, 39 (December 2, 2009). Available at: <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>

VIII. Conclusion and Recommendations

The total cost of the programs laid out in Section VII amount to \$2 million in additional annual spending, or \$8 million over four years. As it happens, the ISER study on reinvestment predicts about \$8.28 million in savings over that same period resulting from the \$1.5 million of this spending that would be steered towards ISER-recommended programs. Thus, even assuming that increased evaluation and expanding PACE do not lead to their own cost savings, this reform package should be revenue neutral over the span of 4 years.¹⁹⁵ More importantly, these additional reforms—including a DUI-like, escalating structure for reclassification—should address most of the concerns raised by skeptics of reclassification.

Analysis of reclassification conducted earlier in this report indicates that the measure should be a source of considerable cost savings to the State. Like reinvestment, those benefits should grow over time. Social science, combined with evidence from other states where drug possession is already a misdemeanor, indicates that these savings can be achieved with relatively little impact on public safety. Moreover, by removing the stigma and collateral consequences of felony convictions from hundreds of offenders per year, reclassification will reduce much of the indirect costs associated with felonizing this large group of non-violent offenders. While these costs are difficult to calculate precisely, they include reduced employment prospects, decreased civic participation, increased stress on the family of the offender, and an increased likelihood of recidivism.

Finally, it is worth reiterating the third disclaimer presented on the second page of this report. Cost savings—though theoretically present—will be hard to identify at some agencies. Broader social benefits will be ever more difficult to measure, as will the impact of this reform on government agencies not directly associated with the criminal justice system. There may be a time when the legislature has increased spending on programs like juvenile transitional services and adult residential treatment, but not yet observed reduced budgetary “asks” from State agencies. Ultimately, the State’s leadership may not know these reforms have been successful until Alaska’s prison population growth slows in a significant fashion. Still, due to the conservative nature of the cost savings estimates presented above, including the fact that no attempt was made to calculate the additional capital expenses of building new prisons, a cost-benefit analysis of reclassification tilts decidedly in favor of reform.

All source data is available upon request.

¹⁹⁵ The ISER study also predicts that the benefits of reinvestment grow tremendously over time. If we extended our projection out 10 or 25 years, the savings forecast grows into the hundreds of millions of dollars. This extended forecast was not included here, in keeping with this report’s policy of reducing uncertainty and keeping estimates conservative.

Recommendations:

- ❖ Amend the MICS-5 statute to include the possession of small amounts of Schedule IA and IIA substances. Increase the amount of these substances required to trigger the MICS-4 statute from “any amount,” to some larger amount that implies distribution.
- ❖ Shift from a “one-size-fits-all” felony charge for possession offenses to an escalating punishment strategy that reserves felony convictions for repeat offenders, similar to Alaska’s approach in the DUI context.
- ❖ Expand the State’s efforts at evaluating and triaging offenders, by increasing the use of the LSI-R tool. Using the evaluation results, shift appropriate offenders from formal DPP probation to ASAP substance abuse supervision.
- ❖ Expand treatment options in a manner similar to that proposed by ISER, focusing on substance abuse treatment for adults and programs for juvenile offenders that have been shown to reduce criminal activity and recidivism.
- ❖ Continue to implement and expand the PACE program, and ensure that drug offenders who would have received possession felonies and been eligible for PACE remain eligible as misdemeanants. Mandate enrollment in PACE or “PACE Lite” for those drug offenders who have been evaluated as appropriate candidates.

Appendix A: Alaska Court System Data on Cases Filed with MICS-4 Charge

Alaska Court System
Cases Filed with MICS 4 Charge(s)
 FY08 - FY12

	Fiscal Year				
	2008	2009	2010	2011	2012
Anchorage	317	303	393	326	361
Aniak	0	0	2	1	0
Barrow	11	8	15	15	18
Bethel	0	9	12	15	17
Chevak	0	0	1	1	1
Cordova	1	5	2	2	6
Craig	0	0	1	8	3
Delta Junction	0	0	3	0	1
Dillingham	0	4	2	6	0
Emmonak	0	0	1	1	1
Fairbanks	97	108	114	70	85
Fort Yukon	0	0	1	1	0
Galena	0	1	1	2	0
Glennallen	0	0	9	2	4
Haines	0	0	0	1	1
Healy	0	2	1	0	0
Homer	0	0	6	27	22
Juneau	0	0	2	23	43
Kenai	0	1	63	106	105
Ketchikan	0	0	4	37	46
Kodiak	0	4	15	10	14
Kotzebue	6	1	10	7	5
McGrath	0	2	0	0	0
Naknek	0	2	0	4	0
Nenana	0	3	1	0	1
Nome	15	26	12	16	18
Palmer	173	150	154	160	192
Petersburg	0	0	0	1	3
Saint Marys	0	0	0	1	4
Sand Point	0	1	2	6	4

Alaska Court System
Cases Filed with MICS 4 Charge(s)
FY08 - FY12

	2008	2009	2010	2011	2012
Seward	0	0	3	9	10
Sitka	0	0	1	4	7
Tok	1	2	2	0	1
Unalakleet	0	0	4	1	0
Unalaska	0	1	11	3	3
Valdez	1	2	0	5	1
Wrangell	0	1	0	7	0
Total	622	636	848	878	977

End of Report

[Appendix B: Collateral Consequences Connected to Felonies and/or Drug Felonies](#)¹⁹⁶

<u>State Restrictions</u>			
Citation	Title/Substance	Mandatory/Discretionary	Duration
AS 15.05.030(a); AS 33.30.241(a). <i>See also</i> AS 15.60.010(9) (defining felony of moral turpitude); AS 12.55.185 (defining unconditional discharge); AS 15.07.135 (cancellation of registration)	Suspension of voting rights in federal, state and municipal elections until the date of unconditional discharge.	Mandatory/Automatic	Until completion of probationary term.
AS 43.23.005(d); AS	An individual is not eligible	Mandatory/Automatic	Year of

¹⁹⁶ In many contexts, Alaska defines Misconduct Involving a Controlled Substance as a “Crime of Moral Turpitude.”

See e.g. 20 AAC 10.035:

For the purposes of AS 14.20.030 (a)(2),

(1) "moral turpitude" means conduct that is wrong in itself even if no statute were to prohibit the conduct; and

(2) "a crime involving moral turpitude" includes

...

(BB) felony possession of a controlled substance.

43.23.028 (public notice).	for a dividend if during the qualifying year the individual was sentenced on a felony conviction or was incarcerated on a felony conviction or a misdemeanor following a prior felony or two or more prior misdemeanors.		sentencing
AS 17.37.010(d).	An individual may not be listed as a primary or alternate caregiver if he or she has been convicted of a felony involving controlled substances or is on probation or parole.	Mandatory/Automatic	Permanent/Unspecified
AS 25.24.050.	Conviction of a felony is grounds for divorce.	Discretionary	Permanent/Unspecified
2 AAC 07.086; 2 AAC 07.091. See also 2 AAC 07.416	Application forms require applicants to report misdemeanor convictions within the preceding five years, and felony convictions regardless of date. The conviction may disqualify the applicant; factors include the seriousness and date of the offense and requirements of the position.	Discretionary	Permanent/Unspecified
AS 08.04.450(5),(6); AS 08.04.110. See also 12 AAC 04.520; 12 AAC 04.990	Accountants Accountant's license may be suspended or revoked for conviction of a felony or conviction of any crime of dishonesty or fraud. Applicant for license must be of good moral character.	Discretionary with regards to suspension. Mandatory with regard to application.	Time of conviction, for suspension. Five year period preceding application.

<p>15 AAC 155.530; 15 AAC 155.560.</p>	<p>Applications for authorization to perform energy ratings for AHFC must include a statement that the applicant is not under indictment for forgery, theft, extortion, conspiracy to defraud or any felony involving moral turpitude, and a statement whether the applicant has ever been convicted of the same. Said convictions are grounds for termination or suspension of an energy rater agreement.</p>	<p>Discretionary</p>	<p>Permanent</p>
<p>13 AAC 104.180; AS 04.11.370. See also 13 AAC 104.105 (application disclosure requirements); 13 AAC 104.535 (felony conviction as grounds for suspension or revocation of license).</p>	<p>Factors the Alcohol Control Board will consider in deciding whether to grant, suspend, revoke, renew or transfer a license include whether the applicant or applicant's affiliates have a history of commission of a crime involving moral turpitude or a felony during the 10 years preceding.</p>	<p>Discretionary</p>	<p>Ten year term</p>
<p>AS 08.48.171.</p>	<p>Architects, engineers, land surveyors, landscape architects Applicants for registration must be of "good character and reputation."</p>	<p>Discretionary</p>	<p>Permanent/Unspecified</p>
<p>7 AAC 75.215. 7 AAC 75.340 (reporting requirements for retirement homes); AS 47.05.300-390; 7 AAC 10.900-990. Also Interviews with HSS Background Check Program Coordinator Teresa Narvaez and Criminal</p>	<p>Any facility that is licensed, certified, approved or eligible to receive funding from the Department of Health and Social Services for "vulnerable populations," which is the vast majority, has a 5 year barrier for felony drug conviction versus misdemeanor drug</p>	<p>Mandatory/Automatic</p>	<p>Five year term from end of probationary period.</p>

Technician Patrice Frank (10/03/12)	conviction. ¹⁹⁷		
AS 06.26.510. <i>See also</i> AS 12.62.900 (Definitions).	A felony conviction or conviction for crime involving moral turpitude or breach of trust will bar work as director of a trust company unless the Department of Commerce and Economic Development consents in writing.	Discretionary	Permanent/Unspecified
AS 08.20.170. <i>See also</i> AS 08.20.141; AS 08.20.163	Chiropractors Licensure may be refused or disciplinary sanctions imposed for felony conviction: Felony conviction within last five years impairs eligibility for licensure by credentials. Felony conviction within last five years impairs eligibility for locum tenens practice	Discretionary	Five year period for licensure; ten year for locum tenens practice
AS 08.24.110; AS 08.24.290.	Collection agency operators: Conviction of a felony, or crime of larceny or	Discretionary	Permanent/Unspecified

¹⁹⁷ This corresponds closely to programs receiving Medicaid or Medicare funds. Locations specified in Alaskan regulation 7 AAC 10.900-990 include:

- (A) a nursing facility;
- (B) a hospital that provides swing-bed services or that is reimbursed under 7 AAC 43 for treatment described in the definition of "swing-bed day" set out in 7 AAC 43.709; ...
- ...
- (C) an intermediate care facility for the mentally retarded or persons with related conditions;
- (D) an assisted living home;
- (E) a hospice agency;
- (F) a home and community-based services provider as defined in 7 AAC 43.1110;
- (G) a home health agency; or
- (H) a personal care agency enrolled under 7 AAC 43.786 or 7 AAC 43.787;
- (2) an individual providing care coordination, case management, adult day services, or respite care services.

	embezzlement, or crime of moral turpitude bars issuance of license and constitutes grounds for revocation or suspension of existing license.		
AS 08.29.400.	Counselors (licensed, professional): Conviction of felony is grounds for denial of license or disciplinary proceeds against license, subject to proof of sufficient rehabilitation to merit public trust.	Discretionary	Penalties imposed at time of conviction.
AS 08.32.160. See also 12 AAC 28.910	Dental hygienists: Conviction of felony or other crime affecting ability to continue practicing is grounds for denial, revocation, or suspension of license.	Discretionary	Permanent/Unspecified
AS 08.36.315. See also 12 AAC 28.910	Dentists: Conviction of felony or other crime affecting ability to continue practicing is grounds for denial, revocation, or suspension of license.	Discretionary	Permanent/Unspecified
AS 08.38.040.	Dietitians and nutritionists: Conviction of felony or other crime affecting ability to continue practicing is grounds for denial, revocation or suspension of license.	Discretionary	Permanent/Unspecified
11 AAC 20.885.	Fishing guides (Kenai River sport): Individuals are ineligible for a sport fishing guide permit if they have been convicted of a felony within the past five years or convicted of more than one	Mandatory/Automatic	Five year term

	misdemeanor fish and game violation within the past five years.		
AS 05.15.105; AS 05.15.140 (permit application disclosure requirements). See also 15 AAC 160.880; 15 AAC 160.992 (termination of disqualification ten years after conviction).	Games of chance licenses: Felony conviction or conviction for crime involving theft or dishonesty or violation of gambling laws will disqualify applicant for license to operate games of chance and will bar employment in managerial capacity by licensee to operate the same for ten years following conviction.	Mandatory/Automatic	Ten year term
AS 08.54.605; AS 08.54.710.	Guides and outfitters (big game): Individuals are ineligible to receive or renew guide-outfitter licenses and related licenses if they have been convicted of a felony within the last five years	Mandatory/Automatic	Five year term
AS 08.55.130. See also AS 08.55.010 (application disclosure requirements).	Hearing aid dealers: Conviction of a felony or other crime that affects an individual's ability to practice is grounds for suspension, revocation or refusal to issue a license.	Discretionary	Permanent/Unspecified
AS 22.30.011; AS 22.30.070.	Judges: Conviction of crime punishable as a felony under state or federal or conviction of a crime of moral turpitude under state or federal law may provide grounds for suspension or removal from office. A judge is disqualified from	Discretionary	At time of conviction and time of indictment, in the period after individual has been appointed as a judge.

	acting while there is a felony indictment pending; a judge may be suspended when found guilty of felony or crime involving moral turpitude. When the conviction becomes final the supreme court will remove the judge from office.		
AS 24.45.041(i). See also subsection (j) (definitions).	A person may not register as a lobbyist if he or she has been previously convicted of a felony involving moral turpitude.	Mandatory/Automatic	Permanent
AS 29.20.280	Upon a 2/3 vote by the governing body, the office of mayor shall be declared vacant when the person elected is convicted of a felony or offense involving a violation of the oath of office or is convicted of a felony or misdemeanor involving corrupt election practices.	Discretionary	At time of conviction.
AS 08.65.110; AS 08.65.050.	Midwives (direct-entry): Conviction of a felony or other crime that affects an individual's ability to practice is grounds for disciplinary action and for denial of license.	Discretionary	Permanent/Unspecified
AS 08.42.090(13).	Morticians: Conviction of a felony involving moral turpitude is grounds for suspension, revocation or refusal to issue license.	Discretionary	Permanent/Unspecified
AS 45.25.120; AS 45.25.150	A manufacturer shall give notice of termination of a franchise agreement to a new motor vehicle dealer 15 days before the effective date of termination when the	Mandatory/Automatic	At time of conviction.

	dealer is convicted of a felony involving moral turpitude or fraud.		
AS 08.45.060.	Naturopath: Conviction of a felony or other crime that affects an individual's ability to practice is grounds for suspension, revocation or refusal to issue a license.	Discretionary	Permanent/Unspecified
AS 44.50.020; AS 44.50.036.	Notaries public: An individual is disqualified for commission as a notary public for ten years following a felony conviction or incarceration for a felony conviction.	Mandatory/Automatic	Ten year period.
AS 08.84.120.	Physical therapists and occupational therapists: Conviction of a state or federal felony or other crime that affects the ability to practice is grounds for refusal, revocation or suspension of license.	Discretionary	Permanent/Unspecified
13 AAC 85.210.	A person may not be hired as a probation, parole, or correctional officer if that person has been convicted of a felony ...	Mandatory/Automatic	Permanent/Unspecified
13 AAC 89.010.	Village Police Safety Officers: an individual may not be a VPSO if they "[have] been convicted of a felony or been incarcerated, placed on probation, or placed on parole after conviction of a felony, by a court of the United States or of any state or territory during the 10 years before application"	Mandatory/Automatic	Ten year period
13 AAC 62.020.	Prisoner guards (emergency) for	Mandatory/Automatic	Permanent

	Department of Public Safety: Applicants must be free of any felony conviction to be hired.		
13 AAC 67.020	Process servers (civilian process servers): persons may not be licensed as process servers if they have been convicted of a felony.	Mandatory/Automatic	Ten year period
13 AAC 67.020	Psychologists and psychological Associates: Conviction of a felony or conviction of another crime that affects the ability to practice is grounds for disciplinary sanctions.	Discretionary	Ten year period
15 AAC 116.021	Revenue license officers: The Department of Revenue will not appoint as a license officer any person convicted of a felony within the preceding five years.	Mandatory/Automatic	Five year term.
AS 45.55.060. See also AS 45.55.040 disclosure requirements of application); 3 AAC 08.010	Securities broker-dealers, agents and investment advisors: The Commissioner of Commerce, Community, and Economic Development may deny, suspend or revoke the registration of individuals convicted within the past ten years of a felony or a misdemeanor involving a security or the securities business.	Discretionary	Ten year term.
13 AAC 60.050	Security guard license: applicants who have been convicted of a felony within preceding ten years are ineligible for security guard license.	Mandatory/Automatic	Ten year period
AS 14.20.030; AS 14.20.020; 4 AAC 12.425; AS	Teachers: While having a felony conviction history is not an absolute bar on	Discretionary	At time of conviction, for duration of

14.20.170; AS 14.20.175; 4 AAC 12.300(j); 20 AAC 10.035; Also interview with Patricia Truman from the Professional Teaching Practices Commission (10/04/12) and Jim Seitz at UAA Teacher Preparations Program (10/04/12)	becoming a teacher; individualized evaluation. However, a felony conviction while a teacher will almost certainly lead to revocation. Also, it is impossible to be certified or work as a teacher during a period of formal probation.		probation, and often for several years thereafter.
AS 08.63.210; AS 08.63.100.	Therapists (marital or family): Conviction of a felony or other crime that affects an individual's ability to practice is grounds for disciplinary action and or denial of license application.	Discretionary	Permanent/Unspe cified
AS 08.98.235. See also 12 AAC 68.041; 12 AAC 68.048	Veterinarians: conviction of a felony or other crime which affects the ability to practice is grounds for disciplinary sanctions.	Discretionary	At time of conviction.
AS 11.61.200(a)(1), (b)(1),(a)(10)	May not own a concealable firearm (pistol) for a period of ten years after completion of probation or parole.	Mandatory/Automatic	Ten year term after completion of probation or parole.
<u>Federal Restrictions Contingent on State Classification</u>			
21 U.S.C Section 862a	Ineligible for food stamps and temporary assistance to needy families	Mandatory/automatic	Permanent/Unspecified
26 CFR Sec. 1.25A-3 Hope Scholarship Credit. (d)(1)(iv)	Felons lose the Hope Scholarship Credit claimed by themselves or their parents, if they are claiming the credit in the year of conviction.	Mandatory/Automatic	Restriction for year of conviction.
5 USCS § 7371	Discharge from	Mandatory/Automatic	Permanent/Unspecified

	employment as a federal law enforcement officer		
7 USCS § 2009cc-14	Ineligible to be an officer, director, or employee of any rural business investment company	Discretionary Discretionary (waiver)	Permanent/Unspecified
10 USCS § 504(a)	Ineligible for enlistment in the armed forces	Discretionary Discretionary (waiver)	Permanent/Unspecified
10 USCS § 2408	Ineligible for management-level employment with defense contractor	Mandatory/Automatic	Specific Term
12 USCS § 1708(d)(2)(E)(i)	Ineligible for certain employment or other participation with an organization providing FHA-insured mortgage loans - 7 years (bank)	Mandatory/Automatic	Specific Term
12 USCS § 1822(f)(4)(E)	Ineligible for employment with a receiver corporation (bank)	Mandatory/Automatic	Permanent/Unspecified
15 USCS § 80b-3(e)	Ineligible for association/employment with an investment advisor (10 years)	Discretionary	Specific Term
19 USCS § 1641(d)(1)(E)	Ineligible for employment with customs broker licensee	Discretionary	Permanent/Unspecified
22 USCS § 4010(a)(2)(B)	Discharge from employment in federal foreign service after felony conviction	Discretionary	Permanent/Unspecified
22 USCS § 4605(f)	Removal from Board of Directors of United States Institute of Peace	Discretionary	Permanent/Unspecified
25 USCS § 3207	Ineligible for employment with	Mandatory/Automatic	Permanent/Unspecified

	Departments of the Interior or of Health and Human Services requiring regular contact with tribal children		
28 USCS § 355(b)	Recommend impeachment of federal judge convicted of felony	Discretionary	Permanent/Unspecified
28 USCS § 364	Ineligible to accrue retirement benefits as judge of United States after felony conviction	Mandatory/Automatic	Permanent/Unspecified
28 USCS § 364	Suspension from service as federal judge	Discretionary Discretionary (waiver)	Permanent/Unspecified
42 USCS § 13726b	Ineligible for employment in prisoner transport companies	Mandatory/Automatic	Permanent/Unspecified
46 USCS § 70105(c)(1)(D)	Ineligible to enter high-security area of vessel or maritime facility (discretionary for felonies) (TWIC program)	Discretionary	Specific Term
50 USCS § 435c(c)	Ineligible for security clearance (federal agency employee or employee of federal contractor)	Discretionary Discretionary (waiver)	Permanent/Unspecified
50 USCS App'x § 456(m)	Ineligible for Selective Service registration (draft, armed forces)	Discretionary	Permanent/Unspecified
USCS Ct App 6th Cir, Cir R 46	Suspend/revoke attorney admission to the bar (6th Circuit)	Discretionary	Permanent/Unspecified
10 CFR 55.53(g)	Notify Nuclear Regulatory Commission of felony conviction by nuclear power operator	Mandatory/Automatic	Permanent/Unspecifie

10 CFR PART 73 APPENDIX B(VI)(B)(1)(A)(3-4)	Ineligible for employment as nuclear power security guard (reactor licensee employer) (law enforcement)	Mandatory/Automatic	Permanent/Unspecified
10 CFR PART 73 APPENDIX B(I)(A)(b)	Ineligible for employment as nuclear power security guard (non-reactor licensee employer) (law enforcement)	Mandatory/Automatic	Permanent/Unspecified
12 CFR 308.109	Suspend from practice before the Federal Deposit Insurance Corporation (FDIC) (attorney)	Mandatory/Automatic	Specific Term
12 CFR 336.4; 12 CFR 336.5	Deny/discharge from employment with the FDIC	Mandatory/Automatic	Permanent/Unspecified
12 CFR 508.3	Discharge officer/prohibit other interested party from participating in the affairs of a banking association (OTS)	Discretionary	Permanent/Unspecified
12 CFR 513.4(b)	Suspend from practice before the Office of Thrift Supervision	Mandatory/Automatic	Permanent/Unspecified
12 CFR 623.4	Suspend from practicing before the Farm Credit Administration	Mandatory/Automatic	Permanent/Unspecified
17 CFR 39.10	Ineligible for designation as chief compliance officer of derivative clearing organization (CFTC) (securities)	Discretionary	Permanent/Unspecified
17 CFR 49.22	Ineligible for designation as chief	Discretionary	Permanent/Unspecified

	compliance officer of swap data repository (CFTC) (securities)		
17 CFR 14.5	Ineligible to practice before the Commodity Futures Trading Commission	Mandatory/Automatic	Permanent/Unspecified
17 CFR 201.102	Suspend from practice before the Commodity Futures Trading Commission	Mandatory/Automatic	Permanent/Unspecified
19 CFR 111.53(e)	Ineligible for employment with customs broker	Discretionary Discretionary (waiver)	Permanent/Unspecified
19 CFR 112.30(a)(5)	Ineligible for employment as officer of corporate cartman/lighterman licensee (transportation)	Discretionary	Permanent/Unspecified
19 CFR 112.48(a)(2)	Ineligible for employment with cartman/lighterman licensee (transportation)	Discretionary	Permanent/Unspecified
19 CFR 118.21	Suspend/revoke Centralized Examination Station agreement (customs)	Discretionary	Permanent/Unspecified
19 CFR 122.176(a)	Ineligible for employment with Air Carrier Smuggling Prevention Program participants (customs)	Discretionary	Permanent/Unspecified
19 CFR 146.82(a)(3)	Suspend privilege of operating in foreign trade zone	Mandatory/Automatic	Permanent/Unspecified
19 CFR 151.12(g)(2), (k)(2)	Deny/suspend/revoke Customs and Border Protection laboratory accreditation (convictions of principals and	Discretionary	Permanent/Unspecified

	controlling individuals)		
19 CFR Part 171 App'x C Subsection VII	Ineligible for employment with customs broker (felonies; administrative penalty for employer)	Discretionary	Permanent/Unspecified
22 CFR 51.22(c)(4)	Ineligible for employment as a passport acceptance agent	Mandatory/Automatic	Permanent/Unspecified
24 CFR 115.311(b)	Ineligible for employment as tester for Fair Housing Assistance Program	Mandatory/Automatic	Permanent/Unspecified
24 CFR 200.219	Ineligible for FHA contract/program participation	Mandatory/Automatic	Permanent/Unspecified
28 CFR 58.15(h)(2)(v)	Ineligible for employment with nonprofit budget and credit counseling agency	Discretionary Discretionary (waiver)	Permanent/Unspecified
28 CFR 97.11	Ineligible for employment with private prisoner transportation company (felonies and domestic violence)	Mandatory/Automatic	Permanent/Unspecified
32 CFR 901.4(d)(3)	Ineligible for appointment to Air Force academy	Discretionary	Permanent/Unspecified
43 CFR 422.10(a)	Deny employment as Bureau of Reclamation officer (law enforcement)	Mandatory/Automatic	Permanent/Unspecified
49 CFR 384.228(j)(2)(i)	Deny/revoke commercial driver's license tester certification (ten years for felonies)	Mandatory/Automatic	Specific Term

	(transportation)		
49 CFR 1562.29(c)(1)	Ineligible for employment as security officer at DC National Airport (felonies) (law enforcement)	Mandatory/Automatic	Permanent/Unspecified
7 USCS § 12a(2)(D)	Deny/suspend/ revoke agriculture commodity dealer's license (enumerated felonies within 10 years)	Discretionary	Specific Term
12 USCS § 5104(b)(2)(A)	Ineligible for state mortgage loan originator license (7 years for felonies not related to fraud)	Mandatory/Automatic	Specific Term
15 USCS § 80b-3(e)	Deny/suspend/ revoke investment adviser registration (10 years)	Discretionary	Specific Term
15 USCS § 5902	Ineligible for weapons license as armored car company employee	Mandatory/Automatic	Permanent/Unspecified
20 CFR 404.1717(a)(4)(iii)	Ineligible for fee-withholding from awards of Social Security benefits (non-attorney representatives)	Mandatory/Automatic	Permanent/Unspecified
11 USCS § 522(q)(1)(A)	Ineligible to exempt interest in property from bankruptcy proceedings (felonies demonstrating abuse of bankruptcy laws)	Mandatory/Automatic	Permanent/Unspecified
15 USCS § 689n	Ineligible to serve as officer or employee of a New Markets Venture Capital Company	Discretionary Discretionary (waiver)	Permanent/Unspecified
18 USCS § 922(g)(1)	Ineligible to ship, transport, possess or receive firearms in	Mandatory/Automatic	Permanent/Unspecified

	interstate or foreign commerce (crimes punishable by imprisonment of more than one year)		
7 CFR 46.4	Deny license to market perishable agricultural commodities (Department of Agriculture)	Discretionary	Permanent/Unspecified
12 CFR 174.7	Deny authorization to acquire federal savings association (permanent for felonies) (OCC) (banking)	Discretionary Discretionary (waiver)	Permanent/Unspecified
12 CFR 238.15(c)(iv)	Deny application for acquisition of savings association securities and assets (permanent for felonies) (banking)	Discretionary Discretionary (waiver)	Permanent/Unspecified
12 CFR 367.6	Debar FDIC contractor (discretionary for felonies and crimes of dishonesty)	Discretionary	Permanent/Unspecified
12 CFR 391.46(d)(iv)	Deny acquisition of control of state savings institution (Permanent) (FDIC) (banking)	Discretionary Discretionary (waiver)	Permanent/Unspecified
12 CFR 574.7	Deny acquisition of control of a savings association (permanent) (OTS) (banking)	Discretionary Discretionary (waiver)	Permanent/Unspecified
13 CFR 120.140	Ineligible to serve as a business loan lender, intermediary or certified development company (SBA)	Mandatory/Automatic	Permanent/Unspecified
19 CFR 146.82(a)(3)	Suspend privilege of operating in foreign trade zone	Mandatory/Automatic	Permanent/Unspecified

19 CFR 151.13(e)(2), (i)(1)	Deny/suspend/revoke commercial gauger's license (customs)	Discretionary	Permanent/Unspecified
19 CFR 163.13(b), (c)	Deny/revoke Customs Recordkeeping Compliance Program accreditation	Discretionary	Permanent/Unspecified
19 CFR 191.194(e)(iv)	Ineligible to participate in Customs Drawback Compliance Program	Discretionary	Permanent/Unspecified
24 CFR 3400.105(b)(1)(i)	Ineligible for loan originator license (SAFE Act) (7 years for nonfraud felonies)	Mandatory/Automatic	Specific Term
25 CFR 533.6	Ineligible for management contract for class II Indian gaming license (felonies and gaming crimes)	Mandatory/Automatic	Permanent/Unspecified
27 CFR 1.24	Ineligible for basic alcohol permit (5 years)	Mandatory/Automatic	Specific Term
28 CFR 50.24(a)(5)	Ineligible to provide annuity brokerage services in connection with structured settlements entered by the United States	Mandatory/Automatic	Permanent/Unspecified
37 CFR 1.21(a)(10)	Increase fee for registration before Patent and Trademark Office after disbarment/suspension	Mandatory/Automatic	Permanent/Unspecified
50 CFR 36.41(e)(11)(iv)	Ineligible to obtain via transfer competitive Alaskan wildlife refuge use permit (hunting) (Mandatory and permanent for felonies) (fish/game)	Mandatory/Automatic	Permanent/Unspecified
42 USCS § 1395u(h)(8)	Ineligible to contract to	Discretionary	Permanent/Unspecified

	offer services/supplies under the Supplementary Medical Insurance Benefits for the Aged and Disabled Program		
19 CFR 19.3(e)(3)	Revoke/suspend bonded status of customs warehouse (transportation)	Discretionary	Permanent/Unspecified
19 CFR 112.30(a)(5)	Suspend/revoke cartman/lighterman license (transportation)	Discretionary	Permanent/Unspecified
13 CFR 115.13	Ineligible for SBA Surety Bond Guarantee Program bond	Discretionary Discretionary (waiver)	Permanent/Unspecified
13 CFR 123.101	Ineligible for a home disaster loan (SBA)	Mandatory/Automatic	Specific Term
13 CFR 123.502	Ineligible for a Military Reservist Economic Injury Disaster loan (SBA)	Mandatory/Automatic	Specific Term
34 CFR 686.32(a)(3)(vi)	Forfeit TEACH grant loan forgiveness (education)	Mandatory/Automatic	Permanent/Unspecified
38 USCS § 5507(b)	Ineligible to serve as fiduciary on behalf of minor entitled to veteran's benefits	Discretionary Discretionary (waiver)	Permanent/Unspecified
42 USCS § 1383(a)(2)(B)	Ineligible for designation as representative payee for SSI benefits (any felony)	Mandatory/Automatic	Permanent/Unspecified
25 CFR 11.201	Ineligible for service as magistrate judge of tribal court (permanent for felonies)	Mandatory/Automatic	Permanent/Unspecified
29 CFR 18.609	Impeach credibility of witness in Department	Mandatory/Automatic	Specific Term

	of Labor Hearings		
29 CFR 18.803(a)(22)	Admit conviction to prove facts essential thereto in proceedings before the Department of Labor (collateral estoppel/res judicata)	Discretionary	Permanent/Unspecified
5 USCS § 8148	Ineligible for worker's compensation benefits (period of incarceration for felony offense)	Mandatory/Automatic	Specific Term
10 USCS § 1132	Ineligible to receive military decoration	Mandatory/Automatic	Permanent/Unspecified
24 USCS § 412(b)	Ineligible for residency in Armed Forces retirement home (veterans)	Mandatory/Automatic	Permanent/Unspecified
7 CFR 273.11	Ineligible for inclusion as a household member for the purpose of calculating food stamp benefits	Mandatory/Automatic	Permanent/Unspecified
8 C.F.R. § 316.2	Ineligible for naturalization (good moral character) (immigration)	Mandatory/Automatic	Permanent/Unspecified
38 CFR 3.14	Forfeit Veteran's disability benefits (enlistment voided due to conviction)	Mandatory/Automatic	Permanent/Unspecified
28 USCS § 1865(b)(5)	Ineligible for jury service	Mandatory/Automatic	Permanent/Unspecified
42 USCS § 1973gg-6(g)	Notify State election official of felony conviction in United States District Court	Mandatory/Automatic	Permanent/Unspecified
48 USCS § 1423f	Ineligible for election to legislature (Guam)	Mandatory/Automatic	Permanent/Unspecified
48 USCS § 1572	Ineligible for election to	Mandatory/Automatic	Permanent/Unspecified

	legislature (Virgin Islands)		
7 CFR 7.15	Ineligible to hold office as an agricultural stabilization and conservation committee member delegate, or alternative (Department of Agriculture)	Discretionary Discretionary (waiver)	Permanent/Unspecified
7 CFR 7.18	Ineligible to hold office as state/county farm service agency committee member/alternate (agriculture)	Discretionary Discretionary (waiver)	Permanent/Unspecified
25 CFR 11.314	Ineligible for jury service (tribal courts)	Mandatory/Automatic	Permanent/Unspecified
18 USCS § 842(i)	Ineligible to receive, ship or transport explosive materials	Mandatory/Automatic	Permanent/Unspecified
36 USCS § 40723(b)	Ineligible to participate in Civilian Marksmanship Program activities	Mandatory/Automatic	Permanent/Unspecified
36 USCS § 40732	Ineligible to purchase firearms/supplies from Civilian Marksmanship Program	Mandatory/Automatic	Permanent/Unspecified
27 CFR 478.32	Ineligible to transport, possess, receive, or purchase firearms and ammunition	Mandatory/Automatic	Permanent/Unspecified
27 CFR 478.99	Ineligible to purchase firearm or ammunition	Mandatory/Automatic	Permanent/Unspecified
12 CFR 620.5	Disclose conviction in annual report to shareholders (Farm Credit Administration)	Mandatory/Automatic	Specific Term
16 CFR 436.5(c)(1)(iii)(A)	Disclose convictions by franchisor/promoter to	Mandatory/Automatic	Specific Term

	potential franchisee		
<u>Additional Restrictions</u>			
Interview with former hiring professional for major pipeline subcontractor.	Ineligible for employment in most oil and gas related jobs on the North Slope or along the Alyeska Pipeline.	Mandatory/Automatic (private hiring policies)	Permanent/Unspecified
Interview with Russell Ament, Director of Operations at Anchorage School District	The Anchorage School District will not consider an applicant for a non-teaching position for a period of 10 years after conviction.	Mandatory/Automatic	Ten year term
Interview with Small Business Administration Deputy District Director Sam Dickey (10/03/12)	Ineligible for loan during probation/parole period; otherwise, felony conviction may speak to "character" and affect lending.	Mandatory with regard to probation/parole period; discretionary for character and fitness test	Length of Probation/Parole; Permanent consideration for character/fitness.

Appendix C: Crime Rates by State and Type, 2009 – sorted by violent crime rate in ascending order¹⁹⁸

State	Violent Crime/100,000				
	Total	Murder	Rape	Robbery	Aggr. Assault
United States	439.7	5.1	28.5	137.6	268.6
Maine	119.9	2.0	28.4	30.3	59.2
Vermont	135.1	1.3	21.5	18.0	94.3
New Hamp.	169.5	0.9	31.2	37.2	100.1
South Dakota	201.0	3.6	59.5	14.9	123.1
Utah	216.2	1.4	33.7	47.3	133.8
Wyoming	219.3	2.0	31.7	14.3	171.3
North Dakota	223.6	2.0	43.5	17.2	161.0
Virginia	230.0	4.7	19.9	80.2	125.2
Idaho	238.5	1.5	37.2	16.5	183.4
Rhode Island	254.3	3.0	28.1	74.5	148.6
Wisconsin	259.7	2.6	19.8	87.7	149.6
Oregon	261.2	2.3	31.4	65.3	162.3
Kentucky	265.5	4.3	35.3	86.8	139.0
Hawaii	274.1	1.8	29.7	79.5	163.1
Montana	283.9	3.2	35.7	22.9	222.0
Iowa	294.5	1.3	30.9	42.2	220.2
Connecticut	300.5	3.0	18.7	113.6	165.2
Nebraska	305.5	2.5	35.5	74.7	192.8
Mississippi	306.7	6.9	37.0	117.3	145.4
New Jersey	311.3	3.7	12.0	133.7	162.0
West Virginia	331.2	4.9	28.4	56.2	241.7
Washington	338.3	2.8	38.5	103.4	193.5
Colorado	340.9	3.2	45.4	67.9	224.5
Ohio	358.1	5.0	37.7	167.6	147.8
Indiana	366.4	5.3	27.2	129.4	204.4
New York	385.5	4.0	13.2	144.5	223.7
Pennsylvania	388.9	5.4	28.4	142.4	212.6

¹⁹⁸ See U.S. Census Bureau, 2012 Statistical Abstract, Table 308. Crime Rates by State, 2008 and 2009, and by Type, 2009, available at <http://www.census.gov/compendia/statab/2012/tables/12s0308.pdf> (2012).

Kansas	412.0	4.7	42.7	66.7	297.9
N. Carolina	414.0	5.4	25.2	131.6	251.8
Arizona	423.2	5.5	32.7	123.9	261.1
Georgia	432.6	6.0	23.7	157.0	245.9
Alabama	459.9	7.1	32.8	142.5	277.5
Massachusetts	465.6	2.7	26.4	114.1	322.4
California	473.4	5.4	23.6	173.7	270.8
Texas	491.4	5.4	33.5	153.6	299.0
Missouri	500.3	6.6	27.3	127.1	339.2
Michigan	504.4	6.3	45.3	126.5	326.5
Oklahoma	510.4	6.5	42.1	92.9	369.0
Arkansas	530.3	6.3	48.7	93.5	381.8
Maryland	590.0	7.7	20.3	210.7	351.3
Florida	612.6	5.5	29.7	166.8	410.6
Louisiana	628.4	12.3	29.5	142.3	444.3
Alaska	632.6	3.2	73.4	94.0	462.0
Delaware	645.1	4.6	44.6	189.7	406.2
New Mexico	652.8	10.0	53.9	98.7	490.3
Tennessee	666.0	7.4	32.1	153.3	473.2
S. Carolina	675.1	6.7	36.5	126.0	506.0
Nevada	704.6	5.9	38.6	228.0	432.1
D.C.	1,348.9	24.2	25.0	734.4	565.3
Minnesota	(NA)	1.5	(NA)	70.4	142.3
Illinois	(NA)	8.4	(NA)	260.7	349.1

Appendix D: Crime Rates by State and Type, 2009 – sorted by property crime rate in ascending order.

State	Property Crime/100,000			
	Total	Burglary	Larceny	Vehicle Theft
United States	3,071.5	724.9	2,080.6	266.0
South Dakota	1,825.2	324.0	1,394.2	107.1
New York	1,927.5	321.6	1,493.6	112.3
North Dakota	2,008.6	375.7	1,497.9	135.0
Idaho	2,017.1	429.3	1,493.0	94.8
New Jersey	2,075.2	424.2	1,472.9	178.1
Pennsylvania	2,219.2	439.2	1,635.5	144.5
New Hamp.	2,283.4	383.7	1,810.2	89.5
Massachusetts	2,329.2	524.1	1,624.4	180.7
Connecticut	2,345.8	431.1	1,702.7	212.0
Maine	2,405.1	510.4	1,817.1	77.5
Iowa	2,436.4	570.1	1,730.4	136.0
Vermont	2,442.1	562.8	1,806.2	73.2
Virginia	2,456.1	404.8	1,903.4	148.0
Montana	2,544.0	374.1	2,007.6	162.2
Kentucky	2,558.5	697.8	1,718.2	142.4
Wisconsin	2,612.6	475.5	1,978.1	159.1
Wyoming	2,613.9	399.8	2,075.1	139.0
Rhode Island	2,616.6	546.2	1,842.3	228.1
Minnesota	2,653.6	489.6	2,002.0	162.0
Colorado	2,683.6	532.5	1,900.5	250.6
West Virginia	2,706.2	698.4	1,842.9	164.9
California	2,728.2	622.1	1,662.5	443.6
Michigan	2,856.3	768.1	1,790.5	297.7
Nebraska	2,878.4	499.4	2,171.8	207.1
Alaska	2,934.5	514.2	2,178.9	241.5
Oregon	2,987.3	513.0	2,212.8	261.5
Nevada	3,060.4	835.7	1,756.1	468.6
Illinois	3,185.7	720.6	2,188.1	276.9

Maryland	3,198.4	647.5	2,206.7	344.2
Kansas	3,249.4	690.0	2,341.3	218.2
Arizona	3,302.0	817.3	2,087.6	397.1
Indiana	3,305.6	815.9	2,256.3	233.4
Utah	3,308.8	548.7	2,509.0	251.1
Mississippi	3,335.9	1,085.2	2,037.7	213.0
Ohio	3,337.0	952.6	2,173.3	211.1
Delaware	3,351.7	784.0	2,352.3	215.4
Missouri	3,422.6	733.5	2,392.9	296.2
Oklahoma	3,637.8	1,044.7	2,305.4	287.7
Hawaii	3,668.7	713.7	2,580.0	375.0
N. Carolina	3,729.7	1,165.6	2,345.1	219.0
Washington	3,745.6	791.9	2,597.1	356.5
Georgia	3,748.0	1,025.2	2,368.9	354.0
Tennessee	3,766.6	1,013.8	2,514.3	238.5
Louisiana	3,820.8	1,036.4	2,517.3	267.1
Florida	3,841.1	981.2	2,588.7	271.2
New Mexico	3,866.0	1,117.3	2,409.4	339.3
Alabama	3,877.6	1,058.9	2,574.0	244.8
Arkansas	3,885.1	1,224.1	2,445.5	215.6
S. Carolina	3,887.1	991.7	2,596.7	298.7
Texas	4,017.2	967.4	2,740.9	308.9
D.C.	4,751.9	616.4	3,213.0	922.5

Appendix E: Drug Treatment Admission Rates¹⁹⁹

20 States with the Highest Drug Treatment Rates	Drug Treatment Admissions, Age 12 and over (per 100,000)	Incarceration Rate (per 100,000)	20 States with the Lowest Drug Treatment Rates	Drug Treatment Admissions, Age 12 and over (per 100,000)	Incarceration Rate (per 100,000)
U.S. Total	433.70	491	U.S. Total	433.70	491
New York	994.64	326	Georgia	369.28	533
Connecticut	973.05	373	Kansas	366.79	330
Maryland	932.35	394	Indiana	365.42	388
Rhode Island	875.33	189	South Carolina	351.81	525
Delaware	838.26	467	Oklahoma	336.20	652
Vermont	716.08	247	Nevada	334.53	474
Oregon	703.00	365	Virginia	288.94	464
Washington	691.02	273	Nebraska	278.76	245
Massachusetts	635.08	239	Alabama	275.80	591
Missouri	618.81	529	Arizona	247.81	521
Iowa	608.58	294	Kentucky	224.42	459
South Dakota	560.16	443	New Hampshire	206.91	192
New Jersey	546.89	313	North Dakota	184.10	208
Minnesota	540.69	180	Texas	179.94	691
Maine	530.09	144	North Carolina	168.83	360
Illinois	500.96	351	Wisconsin	162.46	380
Colorado	495.89	457	Mississippi	161.63	660
California	493.27	466	Florida	148.74	499
Utah	476.62	252	Tennessee	127.90	440
Montana	460.59	373	Idaho	105.56	472

¹⁹⁹ Source: Justice Policy Institute, "Substance Abuse Treatment and Public Safety," January 2008, p. 7. Available at http://www.justicepolicy.org/images/upload/08_01_REP_DrugTx_AC-PS.pdf.

Appendix F: Domestic Violence, Rape, and Other Sexual Violence Statistics by State

Lifetime Prevalence of Rape by Any Perpetrator by State of Residence—U.S. Women, NISVS 2010				
State	Weighted %	(95% C.I.)	Estimated Number of Victims¹	(95% C.I.)¹
United States Total	18.3	(17.2–19.5)	21,840,000	(20,346,000-23,334,000)
Alabama	17.1	(11.8–24.1)	321,000	(205,000-436,000)
Alaska	29.2	(21.3–38.6)	72,000	(49,000-96,000)
Arizona	18.0	(11.3–27.5)	441,000	(228,000-653,000)
Arkansas	20.4	(14.4–28.0)	230,000	(150,000-310,000)
California	14.6	(11.4–18.6)	2,024,000	(1,518,000-2,531,000)
Colorado	23.8	(16.8–32.6)	451,000	(286,000-616,000)
Connecticut	22.1	(14.8–31.5)	310,000	(183,000-437,000)
Delaware	14.2	(8.4–23.1)	50,000	(27,000-74,000)
District of Columbia	*	*	*	*
Florida	17.0	(12.3–23.1)	1,266,000	(860,000-1,672,000)
Georgia	17.6	(12.4–24.3)	655,000	(428,000-882,000)
Hawaii	*	*	*	*
Idaho	18.6	(12.9–26.1)	105,000	(66,000-144,000)
Illinois	18.6	(12.4–27.0)	930,000	(537,000-1,323,000)
Indiana	20.4	(14.7–27.5)	505,000	(336,000-674,000)

Iowa	16.9	(11.4–24.3)	198,000	(118,000-279,000)
Kansas	15.6	(9.5–24.6)	168,000	(82,000-254,000)
Kentucky	20.3	(14.4–27.8)	345,000	(223,000-467,000)
Louisiana	15.9	(10.1–24.1)	280,000	(153,000-406,000)
Maine	17.3	(11.9–24.5)	94,000	(61,000-126,000)
Maryland	20.5	(14.0–29.0)	466,000	(285,000-648,000)
Massachusetts	15.1	(9.2–23.8)	406,000	(201,000-612,000)
Michigan	25.6	(17.3–36.2)	1,005,000	(564,000-1,446,000)
Minnesota	22.2	(15.7–30.5)	452,000	(285,000-618,000)
Mississippi	*	*	*	*
Missouri	17.5	(11.5–25.6)	413,000	(235,000-591,000)
Montana	18.5	(12.5–26.5)	70,000	(43,000-98,000)
Nebraska	18.8	(13.2–26.1)	129,000	(84,000-174,000)
Nevada	26.1	(18.5–35.5)	252,000	(158,000-347,000)
New Hampshire	23.5	(15.4–34.2)	125,000	(66,000-183,000)
New Jersey	*	*	*	*
New Mexico	19.5	(13.2–28.0)	149,000	(88,000-211,000)
New York	17.7	(12.5–24.5)	1,398,000	(896,000-1,900,000)
North Carolina	21.6	(15.4–29.4)	794,000	(506,000-1,081,000)
North Dakota	19.3	(12.1–29.3)	48,000	(25,000-72,000)

Ohio	16.2	(10.9–23.4)	743,000	(456,000-1,030,000)
Oklahoma	24.9	(17.0–34.8)	353,000	(206,000-500,000)
Oregon	27.2	(20.0–36.0)	409,000	(268,000-550,000)
Pennsylvania	18.8	(13.1–26.1)	960,000	(603,000-1,316,000)
Rhode Island	14.8	(8.8–23.7)	64,000	(30,000-97,000)
South Carolina	15.0	(9.7–22.6)	273,000	(155,000-390,000)
South Dakota	*	*	*	*
Tennessee	13.6	(8.9–20.4)	340,000	(192,000-487,000)
Texas	21.7	(16.8–27.6)	1,963,000	(1,450,000-2,476,000)
Utah	18.1	(12.4–25.6)	174,000	(105,000-243,000)
Vermont	15.4	(9.9–23.1)	39,000	(22,000-56,000)
Virginia	11.4	(7.4–17.2)	354,000	(203,000-505,000)
Washington	23.7	(17.0–31.9)	608,000	(391,000-826,000)
West Virginia	18.9	(13.1–26.4)	139,000	(90,000-189,000)
Wisconsin	17.7	(12.4–24.6)	390,000	(252,000-528,000)
Wyoming	22.2	(14.2–33.1)	45,000	(24,000-67,000)

¹ Rounded to the nearest thousand.

* Estimate is not reported; relative standard error >30% or cell size ≤ 20.

Lifetime Prevalence of Rape, Physical Violence, and/or Stalking by an Intimate Partner by State of Residence—U.S. Women, NISVS 2010				
State	Weighted %	(95% C.I.)	Estimated Number of Victims¹	(95% C.I.)¹

United States Total	35.6	(34.1-37.1)	42,420,000	(40,310,000-44,529,000)
Alabama	31.0	(23.6-39.6)	582,000	(428,000-735,000)
Alaska	44.2	(34.9-53.9)	109,000	(81,000-137,000)
Arizona	36.5	(27.5-46.5)	891,000	(611,000-1,170,000)
Arkansas	37.3	(29.2-46.1)	420,000	(311,000-529,000)
California	32.9	(27.9-38.4)	4,563,000	(3,751,000-5,375,000)
Colorado	32.7	(24.8-41.6)	618,000	(439,000-797,000)
Connecticut	32.9	(24.4-42.7)	462,000	(317,000-607,000)
Delaware	34.9	(23.6-48.1)	124,000	(85,000-162,000)
District of Columbia	*	*	*	*
Florida	34.2	(27.1-42.2)	2,546,000	(1,878,000-3,214,000)
Georgia	35.1	(27.5-43.5)	1,310,000	(970,000-1,649,000)
Hawaii	35.7	(24.2-49.1)	179,000	(106,000-252,000)
Idaho	29.3	(22.3-37.4)	166,000	(122,000-209,000)
Illinois	37.7	(28.5-47.8)	1,882,000	(1,250,000-2,514,000)
Indiana	40.4	(32.7-48.5)	1,001,000	(771,000-1,232,000)
Iowa	31.3	(23.8-40.0)	368,000	(254,000-482,000)
Kansas	29.0	(20.3-39.6)	312,000	(187,000-437,000)
Kentucky	37.5	(29.9-45.8)	638,000	(482,000-794,000)
Louisiana	33.4	(24.9-43.0)	586,000	(408,000-765,000)

Maine	36.6	(26.5-48.1)	199,000	(120,000-277,000)
Maryland	42.1	(33.1-51.6)	957,000	(715,000-1,199,000)
Massachusetts	31.7	(23.2-41.5)	851,000	(565,000-1,138,000)
Michigan	41.8	(32.6-51.6)	1,638,000	(1,160,000-2,116,000)
Minnesota	33.7	(25.6-42.8)	684,000	(465,000-903,000)
Mississippi	40.1	(30.5-50.6)	460,000	(325,000-595,000)
Missouri	36.1	(28.0-45.1)	854,000	(618,000-1,089,000)
Montana	39.2	(30.7-48.4)	149,000	(111,000-187,000)
Nebraska	38.5	(30.3-47.4)	263,000	(197,000-330,000)
Nevada	48.1	(38.9-57.5)	465,000	(351,000-579,000)
New Hampshire	40.4	(30.8-50.7)	214,000	(143,000-286,000)
New Jersey	26.2	(18.0-36.5)	902,000	(562,000-1,241,000)
New Mexico	34.4	(26.7-43.0)	263,000	(193,000-333,000)
New York	32.3	(25.3-40.2)	2,544,000	(1,855,000-3,232,000)
North Carolina	43.9	(36.3-51.8)	1,615,000	(1,251,000-1,978,000)
North Dakota	25.3	(17.3-35.3)	64,000	(38,000-89,000)
Ohio	35.6	(26.9-45.2)	1,629,000	(1,140,000-2,118,000)
Oklahoma	49.1	(39.8-58.5)	697,000	(519,000-874,000)
Oregon	37.3	(29.7-45.7)	561,000	(423,000-698,000)
Pennsylvania	37.7	(30.2-45.9)	1,927,000	(1,453,000-2,401,000)

Rhode Island	29.9	(21.4-40.1)	129,000	(83,000-175,000)
South Carolina	41.5	(31.7-52.1)	752,000	(504,000-1,000,000)
South Dakota	33.7	(22.2-47.5)	104,000	(51,000-158,000)
Tennessee	40.0	(31.9-48.6)	997,000	(745,000-1,249,000)
Texas	34.5	(28.4-41.1)	3,116,000	(2,471,000-3,761,000)
Utah	36.9	(29.1-45.4)	355,000	(255,000-455,000)
Vermont	33.6	(25.2-43.1)	85,000	(60,000-110,000)
Virginia	31.3	(23.7-40.1)	971,000	(679,000-1,262,000)
Washington	42.6	(34.7-50.9)	1,094,000	(828,000-1,359,000)
West Virginia	33.6	(25.7-42.6)	249,000	(183,000-314,000)
Wisconsin	32.4	(25.3-40.4)	714,000	(529,000-898,000)
Wyoming	35.8	(26.4-46.4)	73,000	(49,000-97,000)

¹ Rounded to the nearest thousand.

*Estimate is not reported; relative standard error >30% or cell size ≤ 20.

Lifetime Prevalence of Sexual Violence Other Than Rape by Any Perpetrator by State of Residence— U.S. Women, NISVS 2010				
State	Weighted %	(95% C.I.)	Estimated Number of Victims¹	(95% C.I.)¹
United States Total	44.6	(43.1-46.2)	53,174,000	(50,947,000-55,400,000)
Alabama	39.3	(31.2-48.1)	737,000	(575,000-899,000)
Alaska	58.0	(48.1-67.2)	143,000	(111,000-175,000)

Arizona	43.6	(34.1-53.5)	1,064,000	(779,000-1,350,000)
Arkansas	42.2	(33.9-51.0)	475,000	(373,000-577,000)
California	40.7	(35.3-46.2)	5,634,000	(4,819,000-6,448,000)
Colorado	47.4	(38.4-56.5)	897,000	(674,000-1,120,000)
Connecticut	48.6	(38.8-58.5)	683,000	(504,000-862,000)
Delaware	34.9	(23.8-47.8)	123,000	(88,000-159,000)
District of Columbia	43.0	(26.4-61.4)	112,000	(57,000-167,000)
Florida	41.8	(34.4-49.7)	3,111,000	(2,451,000-3,771,000)
Georgia	46.4	(38.0-54.9)	1,731,000	(1,340,000-2,121,000)
Hawaii	41.9	(29.7-55.2)	210,000	(135,000-285,000)
Idaho	46.9	(38.0-56.0)	265,000	(197,000-333,000)
Illinois	50.6	(41.2-59.9)	2,526,000	(1,960,000-3,093,000)
Indiana	43.9	(36.1-52.0)	1,091,000	(852,000-1,329,000)
Iowa	33.1	(26.0-41.1)	389,000	(292,000-486,000)
Kansas	39.4	(29.9-49.8)	424,000	(285,000-562,000)
Kentucky	47.7	(39.5-56.1)	812,000	(638,000-986,000)
Louisiana	28.9	(21.3-38.0)	509,000	(353,000-664,000)
Maine	42.5	(33.2-52.5)	231,000	(185,000-277,000)
Maryland	54.9	(45.4-64.1)	1,248,000	(916,000-1,580,000)
Massachusetts	41.1	(32.1-50.7)	1,105,000	(817,000-1,392,000)

Michigan	45.2	(36.0-54.8)	1,773,000	(1,300,000-2,247,000)
Minnesota	48.4	(39.9-57.0)	982,000	(745,000-1,219,000)
Mississippi	33.8	(24.8-44.1)	387,000	(262,000-511,000)
Missouri	39.8	(31.2-48.9)	939,000	(683,000-1,194,000)
Montana	40.2	(31.6-49.4)	153,000	(115,000-190,000)
Nebraska	47.5	(38.5-56.6)	325,000	(240,000-410,000)
Nevada	48.0	(38.8-57.3)	463,000	(352,000-575,000)
New Hampshire	51.2	(41.6-60.7)	272,000	(201,000-342,000)
New Jersey	46.7	(35.9-57.7)	1,606,000	(1,121,000-2,091,000)
New Mexico	49.0	(40.3-57.7)	374,000	(292,000-457,000)
New York	48.2	(40.5-56.0)	3,798,000	(2,998,000-4,598,000)
North Carolina	51.0	(43.2-58.7)	1,875,000	(1,499,000-2,251,000)
North Dakota	30.6	(22.1-40.6)	77,000	(50,000-104,000)
Ohio	41.2	(32.2-50.7)	1,886,000	(1,402,000-2,369,000)
Oklahoma	48.0	(38.6-57.4)	680,000	(503,000-856,000)
Oregon	55.7	(47.2-63.9)	837,000	(666,000-1,008,000)
Pennsylvania	45.3	(37.4-53.4)	2,313,000	(1,827,000-2,798,000)
Rhode Island	34.9	(26.7-44.3)	151,000	(114,000-187,000)
South Carolina	45.9	(36.0-56.1)	831,000	(584,000-1,079,000)
South Dakota	38.7	(27.1-51.7)	120,000	(65,000-174,000)

Tennessee	44.4	(36.2-52.9)	1,108,000	(847,000-1,368,000)
Texas	46.5	(39.8-53.3)	4,201,000	(3,475,000-4,928,000)
Utah	47.8	(39.9-55.8)	459,000	(368,000-551,000)
Vermont	43.3	(33.7-53.4)	110,000	(78,000-142,000)
Virginia	42.0	(33.5-50.9)	1,302,000	(979,000-1,626,000)
Washington	53.2	(45.0-61.2)	1,367,000	(1,096,000-1,637,000)
West Virginia	35.9	(27.8-44.9)	265,000	(202,000-329,000)
Wisconsin	41.3	(33.6-49.6)	912,000	(711,000-1,112,000)
Wyoming	43.8	(33.5-54.6)	89,000	(61,000-117,000)

¹ Rounded to the nearest thousand.

* Estimate is not reported; relative standard error >30% or cell size ≤ 20.