

Agenda

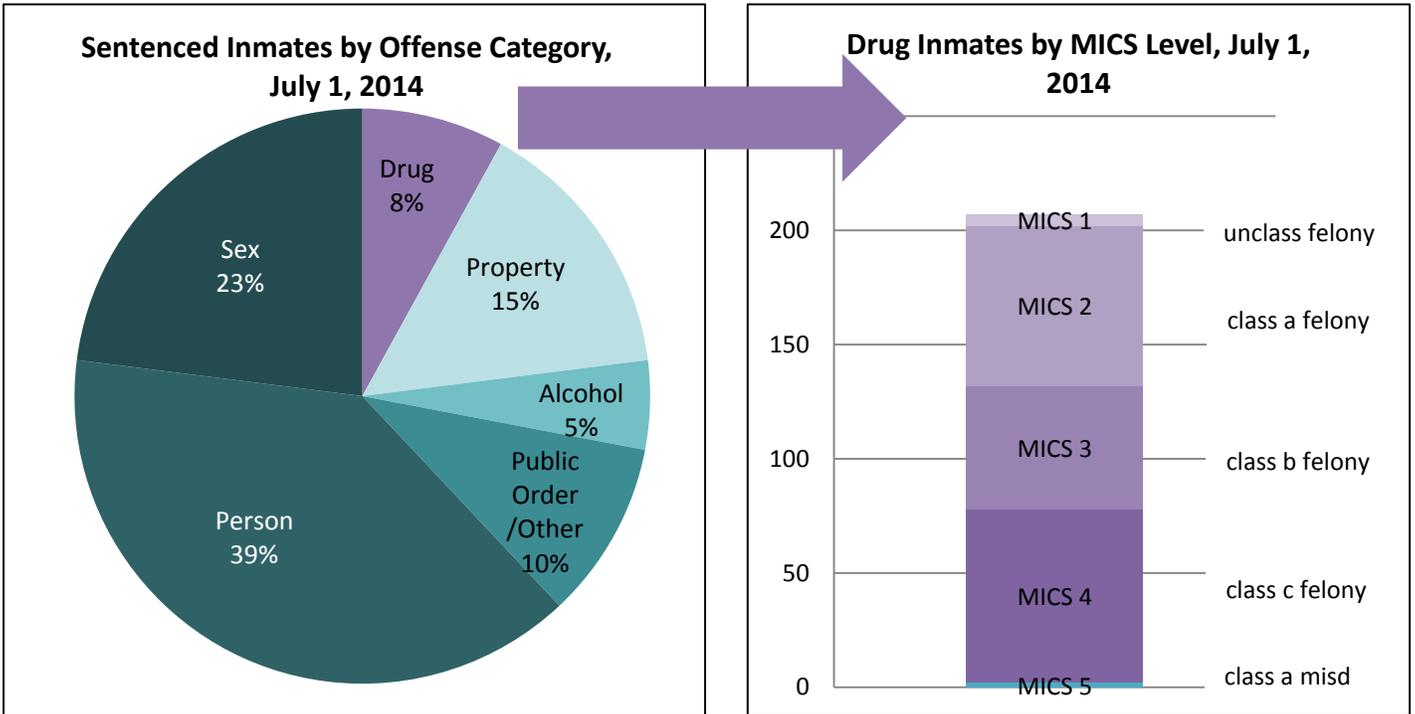
Sentencing Subgroup – September 9th, 2015

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

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

Drug Offenses

Overview of Alaska's drug offender population. —



*misconduct involving a controlled substance

MICS 1 (N=5) – includes continuing criminal enterprise²

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

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

MICS 4 (N=76) – includes **possession of any amount of opiates, cocaine, meth** and higher weights of tranquilizers, cough syrup; manufacture, sale, possession with intent to sell tranquilizers, cough syrup⁵

MICS 5 (N=2) – includes possession of lower weights of tranquilizers, cough syrup⁶

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

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

What the research says about lengthy drug sentences. —

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

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

Comparison drug offense grids.—

Heroin			
Amount	Alaska¹¹	North Carolina¹²	Iowa¹³
Possession (base offense)			
Any amount	[0 – 2] – 5* years	4 – 6 mos probation	0 – 1 year (misd)
Possession (3rd felony offense)			
Any amount	3 – 5* years	8 – 10 mos probation or jail “serious or violent criminal history”	0 – 5 years (2+ prior convictions, drug only)
Sale, possession with intent, manufacture or delivery (base offense)			
<100g	[5 – 8] – 20* years	5 – 13 mos	0 – 10 years
100g – 1kg			0 – 25 years
>1kg			0 – 50 years
Methamphetamine/Cocaine			
Possession (base offense)			
Any amount	[0 – 2] – 5* years	4 – 6 mos probation	0 – 1 year (misd)
Possession (3rd felony offense)			
Any amount	3 – 5* years	8 – 10 mos probation or jail “serious or violent criminal history”	0 – 5 years?
Sale, possession with intent, manufacture or delivery (base offense)			
<100g	[1 – 3] – 10* years	5 – 13 mos	0 – 10 years
100g – 500g	*manufacture of meth:	*manufacture of meth	0 – 25 years
>500g	[5 -8] – 20* years	58 – 73 months	0 – 50 years

*Alaska has a mitigator for small quantities of drugs.

Drug Offense Policy Options

Reclassify simple possession.—

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

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

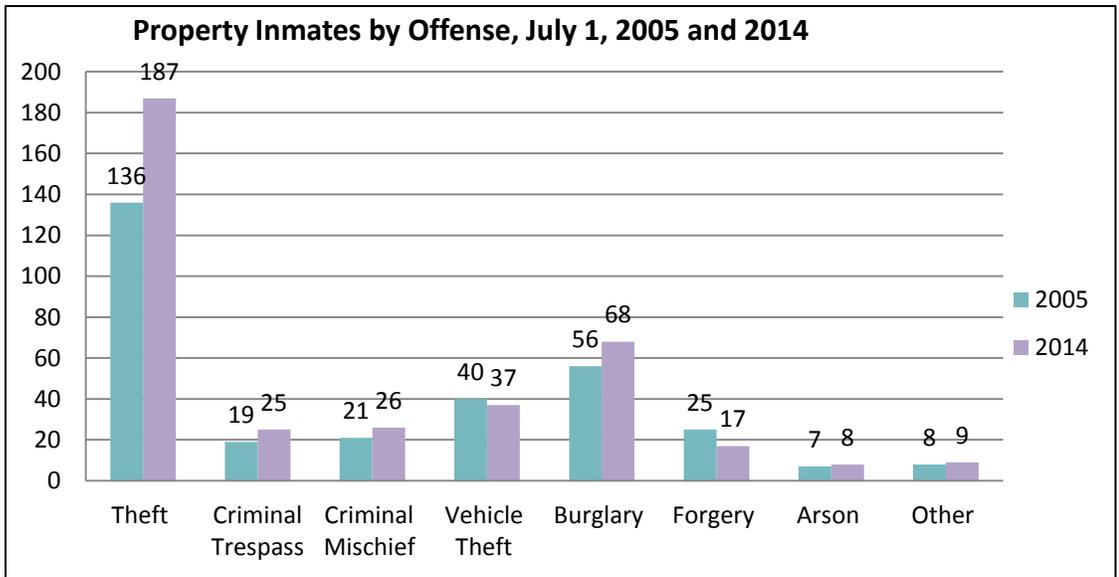
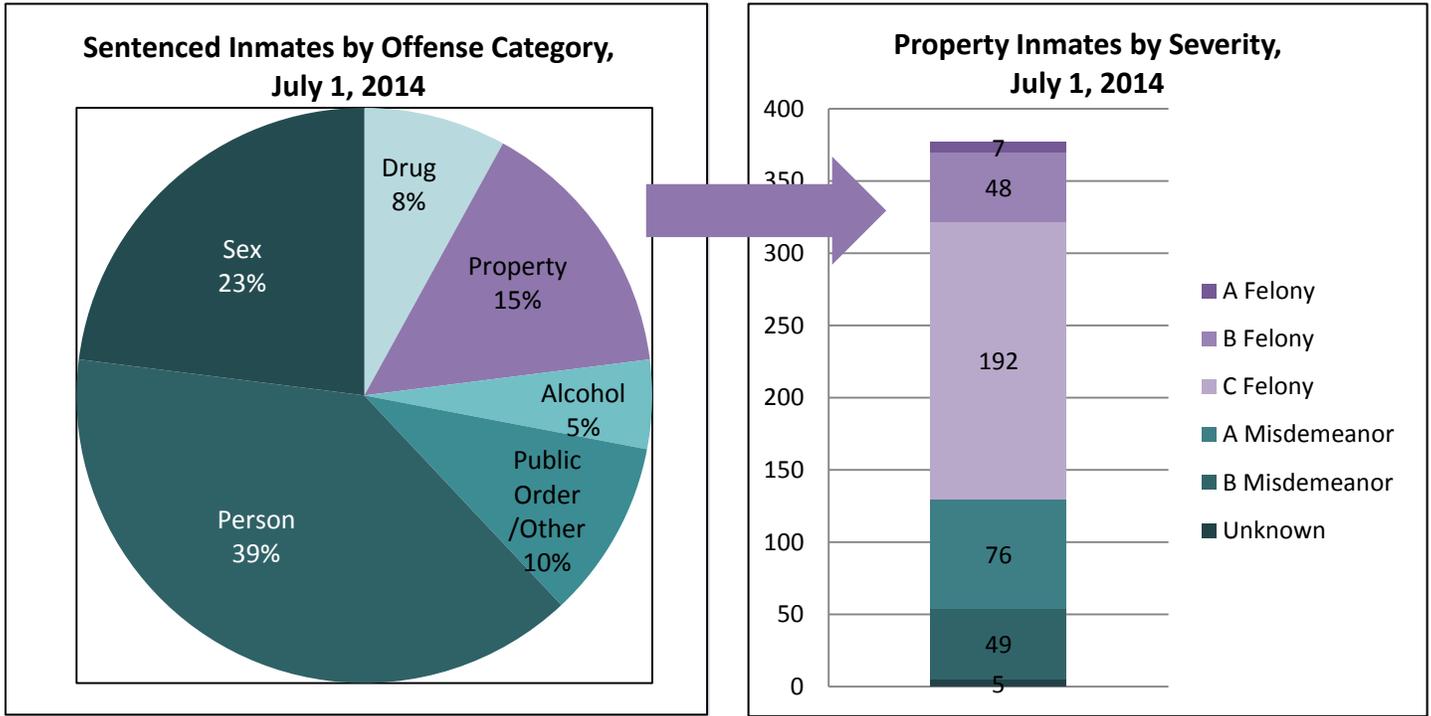
Equalize penalties for distribution of opiates to those of other serious drugs.—

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

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

Property Offenses

Overview of Alaska’s property offender population. —



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

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

What the research says about lengthy property sentences.—

Property crime rates not linked to severity of punishment.—States that have recently raised their felony theft thresholds – the monetary amount at which a property offense qualifies as a felony – have not seen an increase in property crime rates. In fact, many states have seen a decline in their property crime rates since raising their felony theft thresholds. Kansas, for example, which raised its felony theft threshold to \$1,000 in 2004, has seen 27 percent decline in its crime rate (to the most recent year for which crime data is available – 2013).¹⁶ South Carolina, which raised its theft threshold to \$2,000 in 2010, saw an 8 percent drop in property crime from 2010 to 2013.¹⁷

Comparison property offense grids. —

Theft

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

Burglary

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

See next page for policy options.

Property Offense Policy Options

Raise the felony theft threshold.—

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

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

Differentiate between burglary of occupied and unoccupied dwellings.—

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

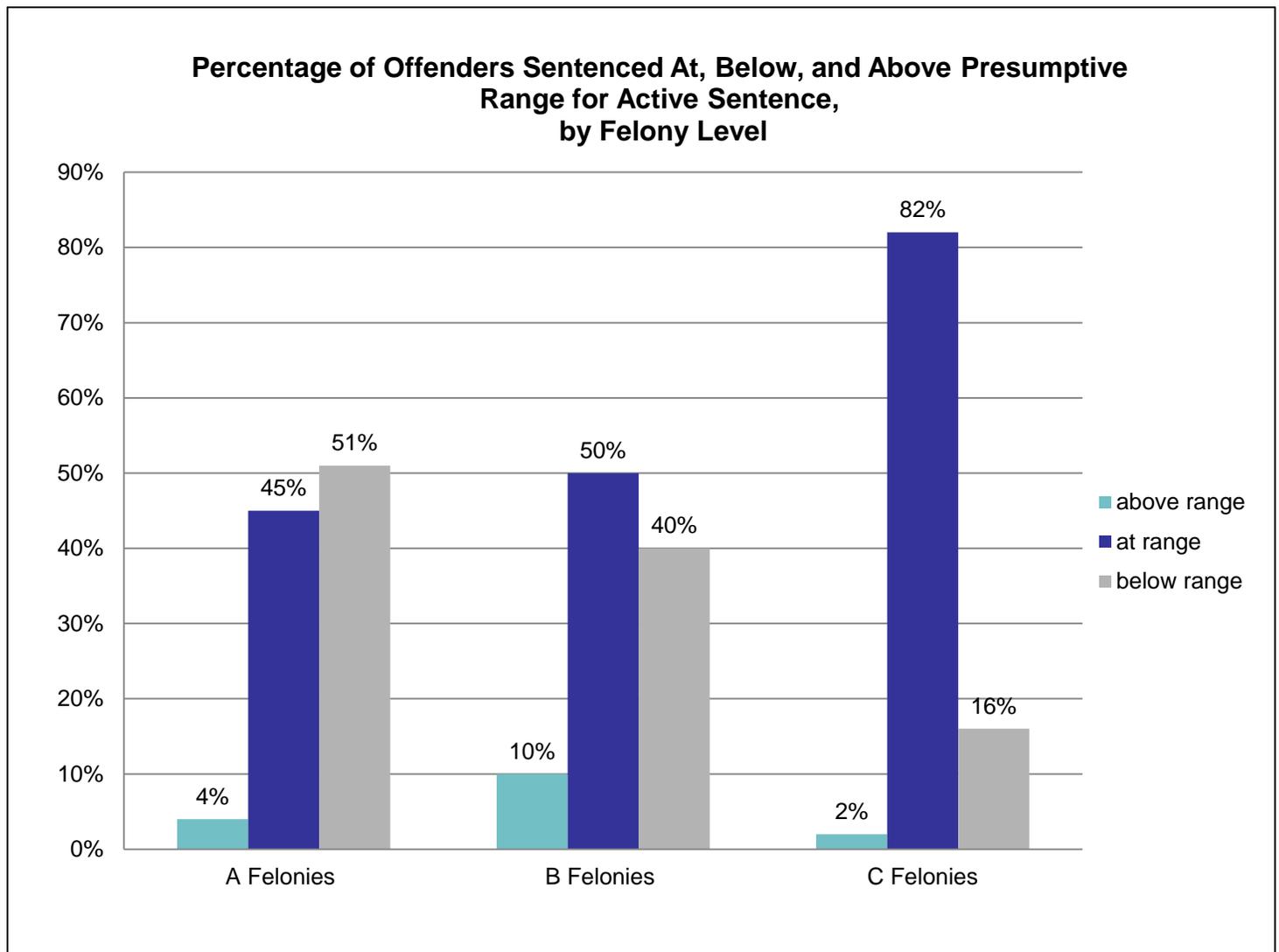
Alaska's presumptive sentencing system (non-sex offenses)

Overview of Alaska's current presumptive sentencing system.—

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

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

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



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

Options to revise Alaska’s presumptive ranges and statutory maximums

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

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

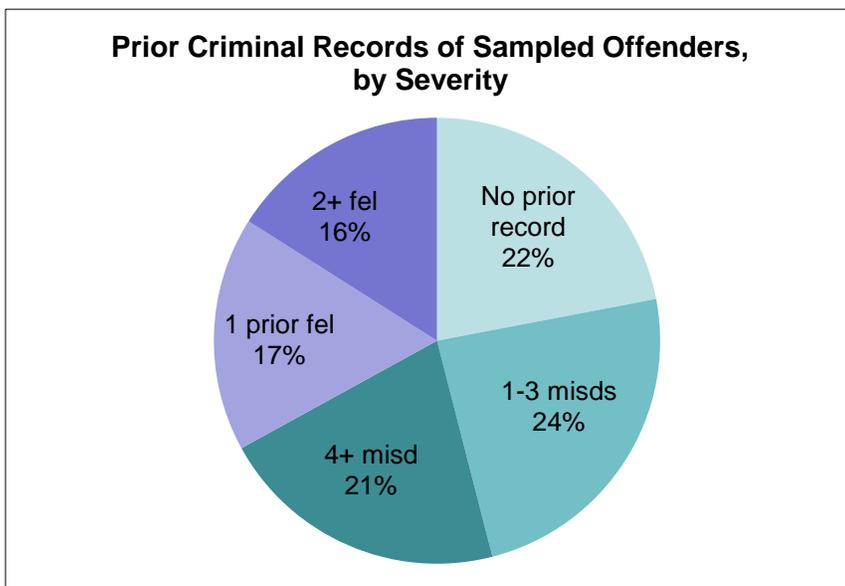
Offense	No prior felony	One prior felony	Two prior felonies
A Felony	[5 – 8] – 20	[10 – 14] – 20	15 – 20
B Felony	[1 – 2] - 8	[3 – 6] – 8	4 – 8
C Felony	[0 – 1] – 4	[1 – 3] – 4	2 – 4

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

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

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

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



Sex Offenses

Overview of Alaska's sex offender population.—

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

Alaska's sex offender sentencing system.—

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

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

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

See next page for research on sex offender populations.

What the research says about sex offender populations.—

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

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

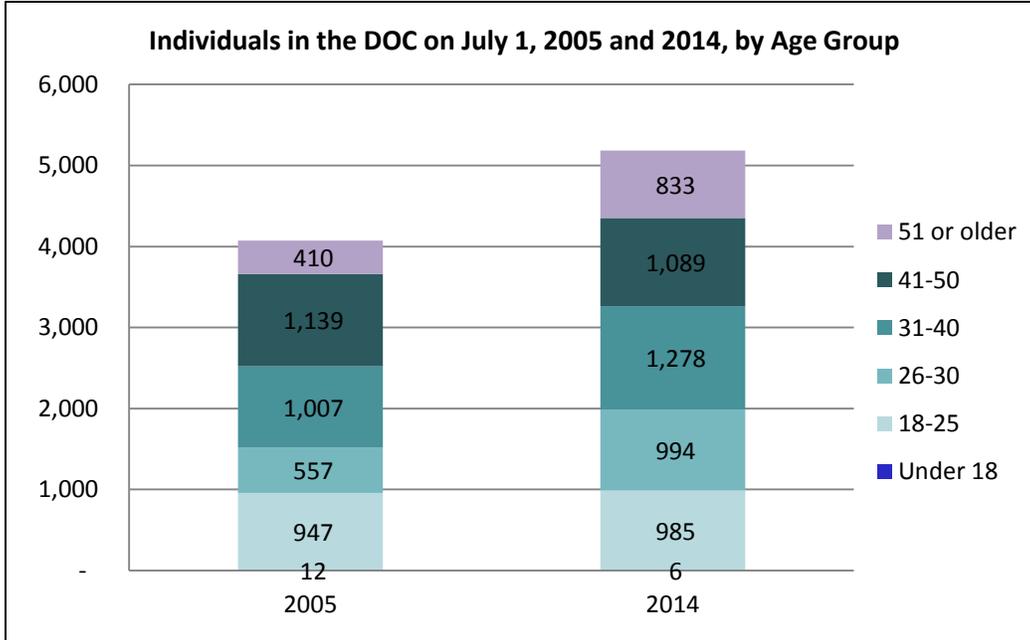
Violent offenses	36%
Other	36%
Property offenses	34%
Drug offenses	24%
Alcohol offenses	21%
Sex offenses	18%

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

Geriatric Inmate Population

Overview of Alaska's geriatric inmate population.—

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



What the research says about geriatric inmate populations.—

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

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

Geriatric inmate policy options

Implement a geriatric parole provision. —

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

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

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

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

Endnotes

- ¹ G. Matthew Snodgrass et al “Does the Time Cause the Crime? An Examination of the Relationship Between Time Served and Reoffending in the Netherlands,” *Criminology* 49 (2011):1149–1194; Thomas A. Loughran et al “Estimating a Dose-Response Relationship Between Length of Stay and Future Recidivism in Serious Juvenile Offenders,” *Criminology* 47 (2009): 699–740.
- ² Alaska Stat. § 11.71.010.
- ³ Alaska Stat. § 11.71.020.
- ⁴ Alaska Stat. § 11.71.030.
- ⁵ Alaska Stat. § 11.71.040.
- ⁶ Alaska Stat. § 11.71.050; Alaska Stat. § 11.71.060.
- ⁷ The Pew Charitable Trusts, “Public Safety Aspects of the Heroin Abuse Epidemic,” June 2015. <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/07/public-safety-aspects-of-the-heroin-abuse-epidemic>.
- ⁸ The Pew Charitable Trusts, “Public Safety Aspects of the Heroin Abuse Epidemic.”
- ⁹ Nagin, Daniel, Francis T. Cullen, and Cheryl Leo Jonson (2009). *Imprisonment and Reoffending*, The University of Chicago
- ¹⁰ Spohn, Cassia and David Holleran (2002), *The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders*, *Criminology*, 40: 329-358.
- ¹¹ Alaska Stat. § 11.71.020; Alaska Stat. § 11.71.030; Alaska Stat. § 11.71.040.
- ¹² N. C. Gen. Stat. § 90-95.
- ¹³ Iowa Code § 124.401.
- ¹⁴ Forest Dunbar, “Reclassifying Nonviolent, Small Quantity Drug Possession as a Misdemeanor: Potential Impacts on Alaska’s Budget and Society,” January 2013. <http://www.ajc.state.ak.us/acjc/drugs/reclassnonviol.pdf>.
- ¹⁵ The Pew Charitable Trusts, “Public Safety Aspects of the Heroin Abuse Epidemic.”
- ¹⁶ House Bill 2771, 2004-2005; FBI uniform crime reports, <https://www.fbi.gov/about-us/cjis/ucr/ucr>.
- ¹⁷ Omnibus Crime Reduction and Sentencing Reform Act of 2010, H.B. 1154, 118th session, 2009-2010, http://www.scstatehouse.gov/sess118_2009-2010/bills/1154.html; FBI uniform crime reports, <https://www.fbi.gov/about-us/cjis/ucr/ucr>.
- ¹⁸ Alaska Stat. § 11-46-120, § 11-46-130, § 11-46-140, § 11-46-150.
- ¹⁹ Wis. Stat. Ann. § 943.20.
- ²⁰ S.C. Code Ann. §16-13-30.
- ²¹ Utah Code § 76-6-404.
- ²² Alaska Stat. § 11.46.300(a)(1)
- ²³ North Carolina Code § 14-51.
- ²⁴ Iowa Code § XVI.713
- ²⁵ National Center for State Legislatures, “Making Sense of Sentencing: State Systems and Policies,” June 2015. <http://www.ncsl.org/research/civil-and-criminal-justice/making-sense-of-sentencing-state-systems-and-policies.aspx>
- ²⁶ National Center for State Legislatures, “Making Sense of Sentencing: State Systems and Policies.”
- ²⁷ Courtesy of an Alaska Judicial Council study of data on a random sample of 2,970 felony offenders sentenced in 2012 and 2013.
- ²⁸ Pew Charitable Trusts, “Utah’s 2015 Criminal Justice Reforms,” June 2015, <http://www.pewtrusts.org/~media/Assets/2015/06/Utahs2015CriminalJusticeReforms.pdf>
- ²⁹ Pew Charitable Trusts, “Federal Drug Sentencing Laws Bring High Cost, Low Return,” August 2015. http://www.pewtrusts.org/~media/Assets/2015/08/PSPP_FedDrug_brief.pdf
- ³⁰ Courtesy of an Alaska Judicial Council study of data on a random sample of 2,970 felony offenders sentenced in 2012 and 2013.
- ³¹ Alaska Stat. Ch. 2 SLA 20005, codified at 12.55.125
- ³² Unlawful exploitation of a minor under AS 11.41.455(c)(2) and online enticement of a minor under AS 11.41.452€ were removed from the lower category and added to this category in 2011.
- ³³ Bureau of Justice Statistics, “Recidivism of Sex Offenders Released from Prison in 1994,” November 2003. <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1136>
- ³⁴ Alaska Judicial Council, “Criminal Recidivism in Alaska, 2008 and 2009,” November 2011. <http://www.ajc.state.ak.us/reports/recid2011.pdf>
- ³⁵ Washington State Institute for Public Policy, “What works and what does not?: Cost-Benefit Findings from WSIPP”, February 2015. http://www.wsipp.wa.gov/ReportFile/1602/Wsipp_What-Works-and-What-Does-Not-Benefit-Cost-Findings-from-WSIPP_Report.pdf

³⁶ Vera Institute for Justice. "It's About Time: Aging Prisons, Increasing Costs, and Geriatric Release" April 2010.

<http://www.vera.org/download?file=2973/its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf>.

³⁷ B Jay Annot et al., *Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates*, U.S. Department of Justice, National Institute of Corrections, 2004.

³⁸ Alaska Stat. § 33.16.085.

³⁹ Courtesy of Jeffrey Edwards, Director, Alaska Parole Board.

⁴⁰ Va. Code Ann §53.1 – 40.01.

⁴¹ Miss. Code Ann. §47-7-1.

⁴² Md. Code Ann., Crim Law § 14-101(g).