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Alaska Felony Process: 1999

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February 2004

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Acknowledgments

The Judicial Council thanks the many people who made this report possible. Former Chief Justice Jay A. Rabinowitz (1927 - 2001), throughout his many years on Alaska's Supreme Court made the issues discussed in the report his top priorities. He chaired the Supreme Court's Advisory Committee on Fairness and Access, which made the original recommendation for this review of felony practices, and wholly supported the court's other initiatives directed to fairness for all in the Alaska courts.

We thank the other members of the Fairness and Access Committee, and the members of the Fairness and Access Implementation Committee who have encouraged and contributed to the design and conduct of the report. Their suggestions have been an important influence on the design and structure of the research and the report. We also thank the Alaska Supreme Court and the court administration, which made many court system resources available to help in the data collection.

Other agencies contributed data to the report, including the Departments of Public Safety, Law, and Corrections. Our thanks to them for their continuing cooperation in data collection. Many professionals and community members throughout the state assisted in the review of draft reports. These included representatives of Alaska's ethnic communities, academics, and judges and attorneys in the field. Their thoughtful comments helped orient and clarify the final draft.

The Judicial Council relied on Matt Berman and Stephanie Martin at the UAA Institute for Social and Economic Research for the multivariate analyses. They worked many hours, first analyzing the data and then working patiently to explain the concepts to the Judicial Council and others. Their participation has been invaluable. Susan McKelvie, the Council's Research Analyst, oversaw the data collection, carried out much of the Part II analyses, and formatted and prepared the final report.

Former Council members and staff who contributed substantially to this report during their tenures at the Judicial Council included former Chief Justice Dana Fabe, Katie Hurley, Vicki Otte, and Robert Wagstaff (Council members); William Cotton (former Executive Director); and Alan McKelvie, Josefa Zywna, and Peggy Skeers, former staff. Kathy Grabowski, Rosalie Pleiman, and Melissa Winegar Howard collected the underlying data with care and consistency.

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Executive Summary

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

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

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

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

² See *id.* at 65-73.

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

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

A. Summary of Major Findings

Briefly, the most important findings were:

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

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

1. Data Sample and Analysis

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

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

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

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

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

⁶ *Id.* at 77-80.

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

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

2. Defendants and Cases in Alaska

a. Alaska compared to other states

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

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

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

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

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

2) Location of case

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

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

4) Type of attorney

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

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

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

3. Case Processing Findings

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

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

4. Background Predisposition Incarceration Findings

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

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

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

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

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

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

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

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

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

1. Lack of Systematic Disparity

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

2. Disparities Associated with Ethnicity

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

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

4. Type of Attorney Disparities

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

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

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

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

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

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

The Council published its last major review of felony cases in 1991, using data from the years 1984-1987.¹⁹ A comparison of the data from those years with the 1999 felony outcomes showed that many more charge reductions occurred in 1999. In the 1984-1987 data, a greater percentage of defendants were convicted of the most serious original charge against them in 1999 for all but one category of offense, MICS 4 (Misconduct Involving a Controlled Substance 4, a Class C felony). The percentage of defendants convicted of the same charge rose from 60% in 1984-1987 to 67% in 1999. For example, 43% of the Sexual Assault 1 defendants were convicted of Sexual Assault 1 in 1984-1987, as compared to 12% in 1999. Defendants charged with and convicted of Assault 1 dropped from 25% in 1984-1987 to 12% in 1999; those charged and convicted of Burglary 1 dropped from 45% to 17% in 1999.

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

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

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

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

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

9. New Felony Driving Offenses

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

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

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

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

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

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

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

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

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

Part I: Introduction

A. Overview

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

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

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

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

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

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

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

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

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

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

Part II: Background

A. Brief Description of Alaska Criminal Justice System

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

1. Early Stages of the Criminal Justice Process

The criminal justice process began when someone committed an offense, and the offense was reported to a law enforcement organization. Police³¹ investigated the incident (or may have made an immediate arrest), decided the charges, and either filed a complaint directly with the court,³² or took it to the prosecutors. Once prosecutors received complaints prepared by law enforcement, they looked over the evidence and the proposed charges, and decided what charges to file in court. This process, "screening," resulted in prosecutors declining to file charges in some cases and deciding to file lesser charges in other cases (see Chart 1, this section). If the police officer filed the complaint directly with the court, the prosecutors screened the case soon after filing.

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

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

³² Officers in smaller communities did this more frequently than in larger communities.

2. Cases Filed in Court

If a felony defendant was arrested, the court had 24 hours³³ in which to bring the felony defendant before a judicial officer.³⁴ Felony defendants appeared before a judge or judicial officer³⁵ by telephone, by live video conferencing, or in person. At this hearing, the judge set bail and any conditions (e.g., monetary bail, a third party custodian requirement), told the defendants about the charges, told defendants about their rights, and (usually) decided whether the defendants were indigent and appointed public counsel if they were.³⁶

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

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

³³ Alaska Criminal Rule 5 governed this process.

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

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

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

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

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

4. Appeal of a Criminal Case

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

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

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

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

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

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

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

6. Structure of Statutory Sentencing in 1999

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

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

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

⁴⁵ See *infra* Appendix A.

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

⁴⁷ For felony DWI and felony Refusal to Submit to a Chemical Test, Class C felonies, the mandatory minimum sentence was 120, 240, or 360 days depending on whether the defendant had two, three, or four or more prior convictions for either offense in the five years preceding the date of offense. AS 28.35.030(n) (1999) (felony DWI); AS 28.35.030(p)(1) (1999) (felony refusal). In 2001, the legislature amended the look-back period to ten years but this amendment did not apply to sentences considered in this report. Ch. 63, §§ 9-11, SLA 2001. If any of the defendant's prior convictions for these offenses was a felony conviction, then the defendant would have qualified for a presumptive sentence as a repeat felony offender.

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

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

Summary of Statutory Sentencing Structure in Alaska, 1999

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

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^a Presumptive terms were subject to adjustments described in AS 12.55.155.

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

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

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

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

^f If the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury.

Table 1
Distribution of Charged Offenses Among Age Groups

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

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a. Location

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

1) Location in the multivariate analyses

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

length of incarceration), as their values changed.

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

⁵⁵ The definition of "rural" was the same definition used for the statewide multivariate analysis described in note 54.

b. Offenses

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

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

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

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

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

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

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

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

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

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

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

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

c. Multivariate analyses⁶⁷

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

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

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

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

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

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

⁶⁸ See *infra* Tables 35, 35a, 35b, 35c.

C. Characteristics of Alaska Felony Defendants

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

1. Socioeconomic Characteristics

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

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

was associated with a longer sentence in Burglary, Larceny and Receiving offenses.⁷⁹ In Fraud and Forgery convictions, having an appointed counsel⁸⁰ (as distinct from public defender, private or prepaid) was associated with longer sentences.⁸¹ The findings about socioeconomic variables were independent of those about the type of attorney.

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

The Council's next report about felonies, *Alaska Felony Sentences: 1976-1979*, was undertaken at the request of the Alaska Supreme Court and funded by the Alaska Legislature.⁸⁴ It also found that socioeconomic factors had an effect independent of the type of attorney. For Fraud and Forgery offenses, both type of attorney (longer sentence for court-appointed attorney) and monthly income (shorter sentence if monthly income was less than \$500) played roles.⁸⁵ In that group of offenses, the socioeconomic factor had an effect of reducing the sentence length rather than, as hypothesized by many, increasing the sentence length.⁸⁶ In "rural" cases in that report⁸⁷ defendants with incomes less than \$500 received longer sentence in Violent offenses; and in Property offenses, defendants

⁷⁹ *Id.* at 200.

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

⁸¹ *Id.* at Appendix B, Table VII-6.

⁸² *Id.* at 207-12.

⁸³ *Id.* at Appendix B, Table VII-8.

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

⁸⁵ *Id.* at 36-37.

⁸⁶ *Id.* at 37.

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

b. 1999 cases with charged felonies

In 1999, presentence reports were available for only about 31% of defendants with a non-presumptive conviction, as compared to 60% of defendants with a presumptive felony conviction. The primary reason for the difference was that over half (52%) of those convicted of a non-presumptive charge had only a misdemeanor for the single most serious charge of conviction.⁹⁷ Of the defendants convicted of a misdemeanor, twenty defendants⁹⁸ (3% of the defendants convicted of misdemeanors), had a presentence report, because they had a prior felony conviction for which a presentence report had been prepared. Of the defendants convicted of a non-presumptive felony charge, 61% (N=450) had a presentence report, almost exactly the same as the percentage of defendants convicted of a presumptive charge (60% of the defendants with a presumptive charge had a presentence report, N=213).

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

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

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

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

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

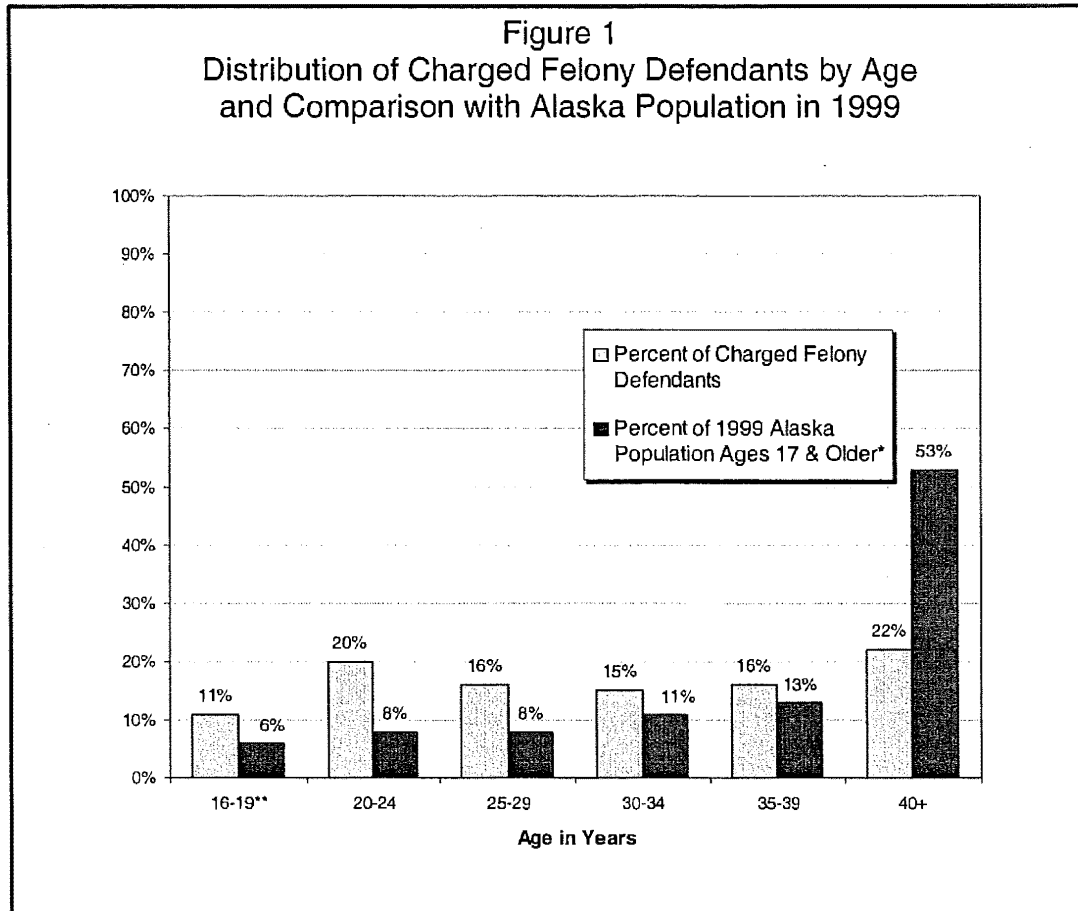
⁹⁹ The Education variable included values of 8th grade or less, some high school, GED or diploma, some voc/tech, some college, and college degree.

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

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

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

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



Alaska Judicial Council, 1999 Felony Report

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

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

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

3. Gender

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

4. Ethnicity

The disproportionate numbers of ethnic minorities in Alaska's criminal justice system when compared to Alaska's population overall¹¹⁰ were the principal impetus for this report. This section reviews the disproportions for charged felony defendants from the 1999 sample.¹¹¹ It also describes the proportions of the charged felony defendants by types of offenses. There was little variation in ethnic disproportions between charged and convicted defendants. The ethnic disproportions that existed for convicted defendants existed at the beginning of the process that this report evaluated; from the time of formal charge to time of disposition.

a. Ethnicity of felony defendants compared to Alaska population

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

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

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

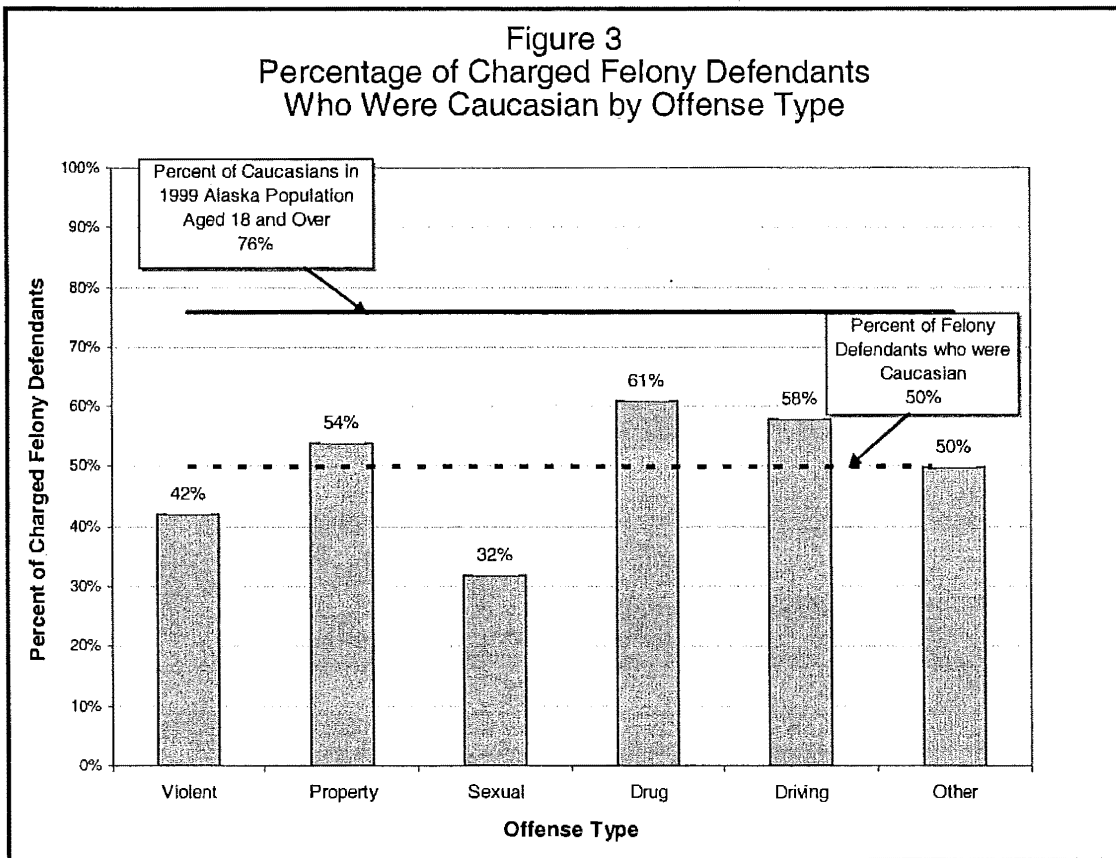
¹⁰⁹ Men were 85% of those convicted of felonies and 82% of the defendants charged with felonies and convicted of misdemeanors.

¹¹⁰ ALASKA POPULATION OVERVIEW: 1999 ESTIMATES, *supra* note 104.

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

b. Ethnicity by type of offense

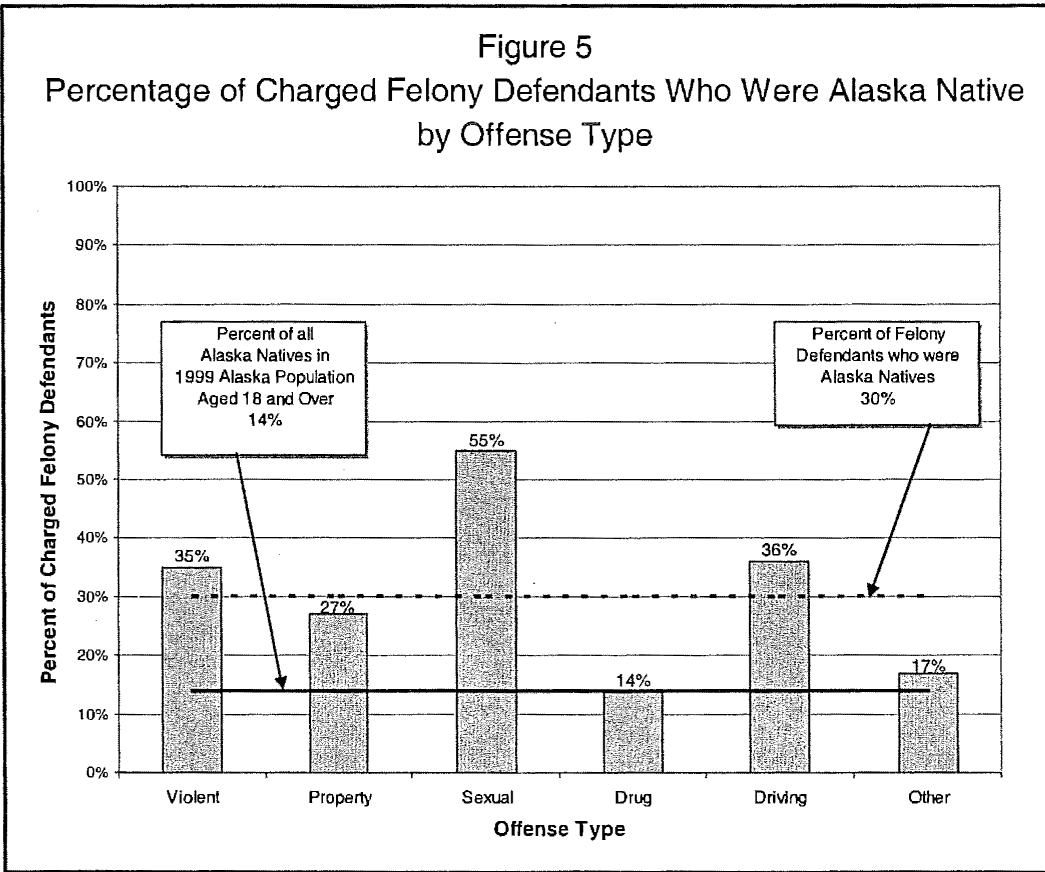
Figures 3, 4, and 5 show the distribution of ethnicities within the sample of felony defendants by the type of offense charged.¹¹⁴ Ethnicity and type of offense appeared to be related in some ways. For example, Figure 3 shows that while Caucasians were 76% of the state's adult population and 50% of the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



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

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



Alaska Judicial Council, 1999 Felony Report

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

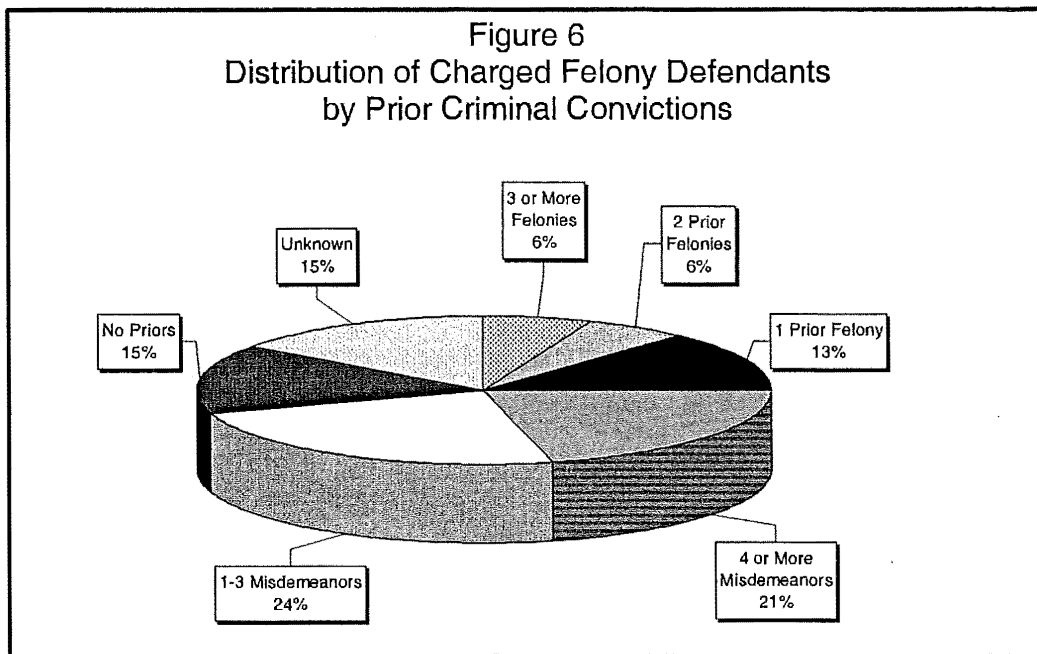
The Council also analyzed relationships between the defendant’s ethnicity and the specific offense of which the defendant was convicted. Most specific offenses had too few cases to look at the relationships, but for those that did, differences in convictions occurred that appeared related to ethnicity.¹¹⁸

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

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

5. Prior Criminal Convictions

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



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b. Prior convictions by type of offense

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

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

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

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

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

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

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

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

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

7. Type of Attorney

a. Appointment of public attorneys

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

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

b. Socioeconomic characteristics

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

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

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

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

c. Type of offense

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

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

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d. Ethnicity

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

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

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

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

g. Location of case

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

h. Repayment of attorney fees

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

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

¹²⁸ Data available from the Judicial Council.

¹²⁹ See discussion *infra* pp. 112-113.

¹³⁰ Alaska R. Crim. P. 39(c).

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

b. Type of offense

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

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

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

¹³⁹ See discussion of "Nygren credit" *infra* p. 167.

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

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d. Third party custodian requirement

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

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

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

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

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

a. Presentence reports

At the time guilt was established in a felony conviction by verdict or plea, the judge was required to order the Department of Corrections to conduct a presentence investigation. The Department was required in many instances to file the presentence report in court at least thirty days prior to sentencing. The report described the current offense(s), the defendant's prior criminal convictions and findings of delinquency, and included a victim impact statement, and other information about the defendant's characteristics, financial condition, and circumstances that might have affected the defendant's behavior, to help the judge impose an appropriate sentence. Presentence reports were not required for first felony offenders convicted of felony DWI, Refusal to Take a Chemical Test, and Vehicle Theft 1.¹⁴⁴ If the defendant had a sentencing agreement with the state as part of a negotiated plea, the judge could impose sentence without a presentence investigation or report.¹⁴⁵

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

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

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

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

¹⁴⁴ See Alaska R. Crim. P. 32.1.

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

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

c. Presumptive sentencing

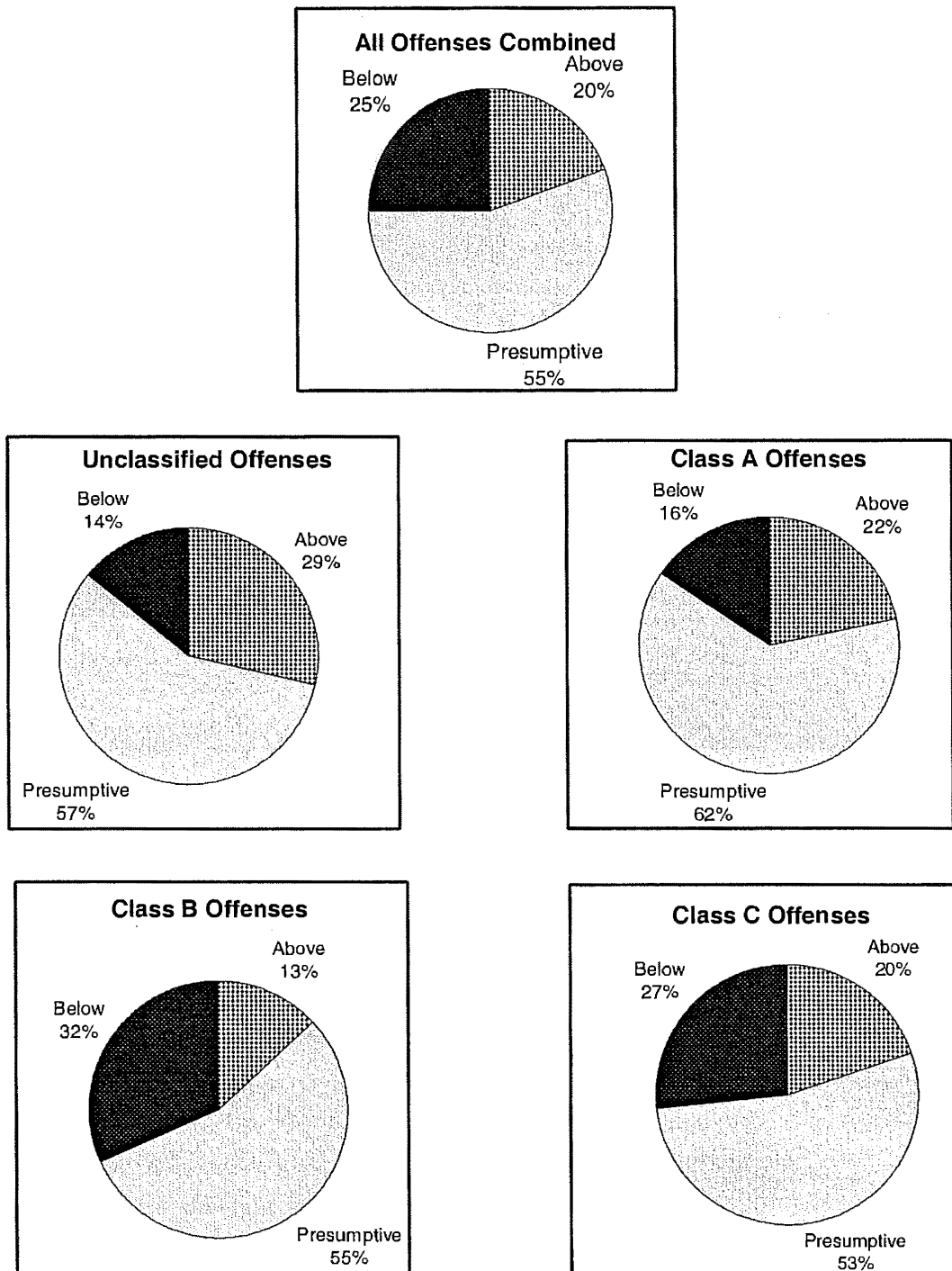
Among defendants convicted of felonies, 31% were subject to presumptive sentencing. Table 7 shows how often judges imposed the exact presumptive sentence in those cases rather than an aggravated or mitigated presumptive sentence. The table lists the presumptive sentences applicable in each category,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

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

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

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

Figure 8
Distribution of Sentences in Presumptive Sentencing Cases



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

d. Probation

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

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

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

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

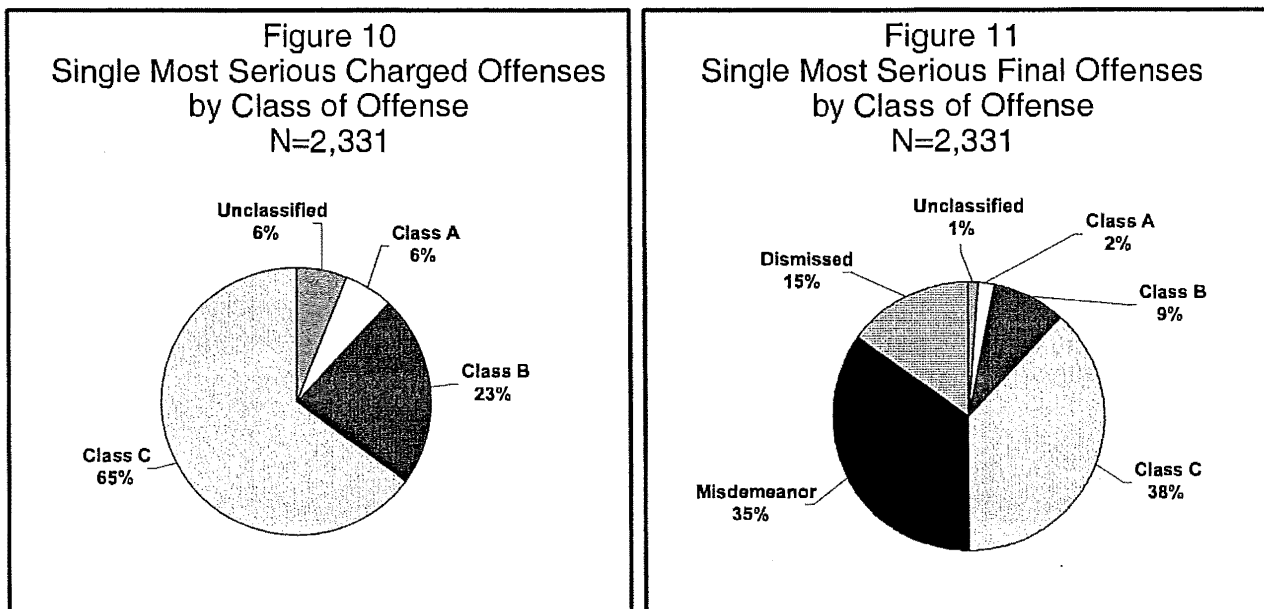
¹⁵⁰ AS 12.55.090 (1999).

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

D. Analysis of Charging and Disposition Patterns

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

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

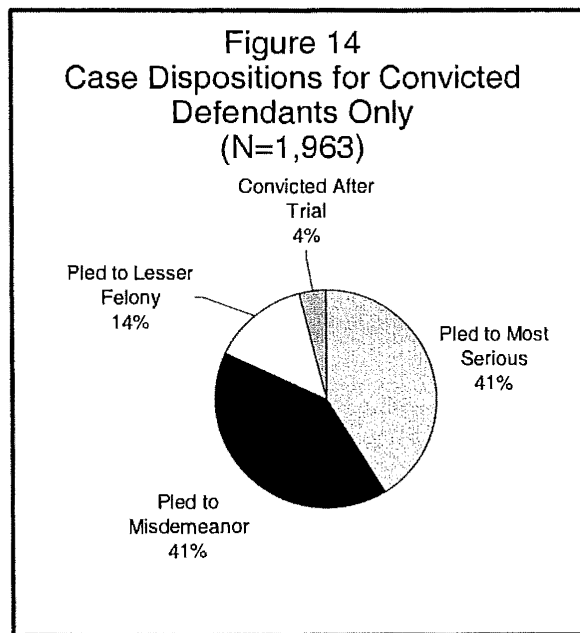
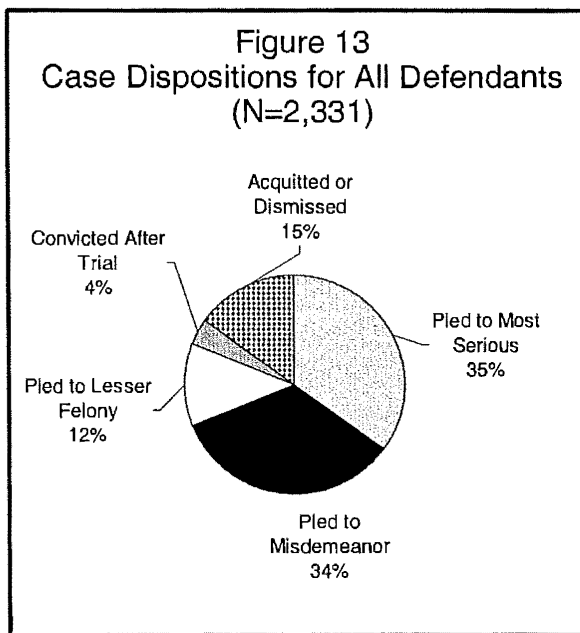


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Nearly 85% of all defendants were convicted of some offense, whether felony (50%) or misdemeanor (35%). Figure 11 shows that about 15% were acquitted or had all their charges dismissed. Slightly more than one-third of the felony convictions (38%) were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

3. Types of Case Dispositions

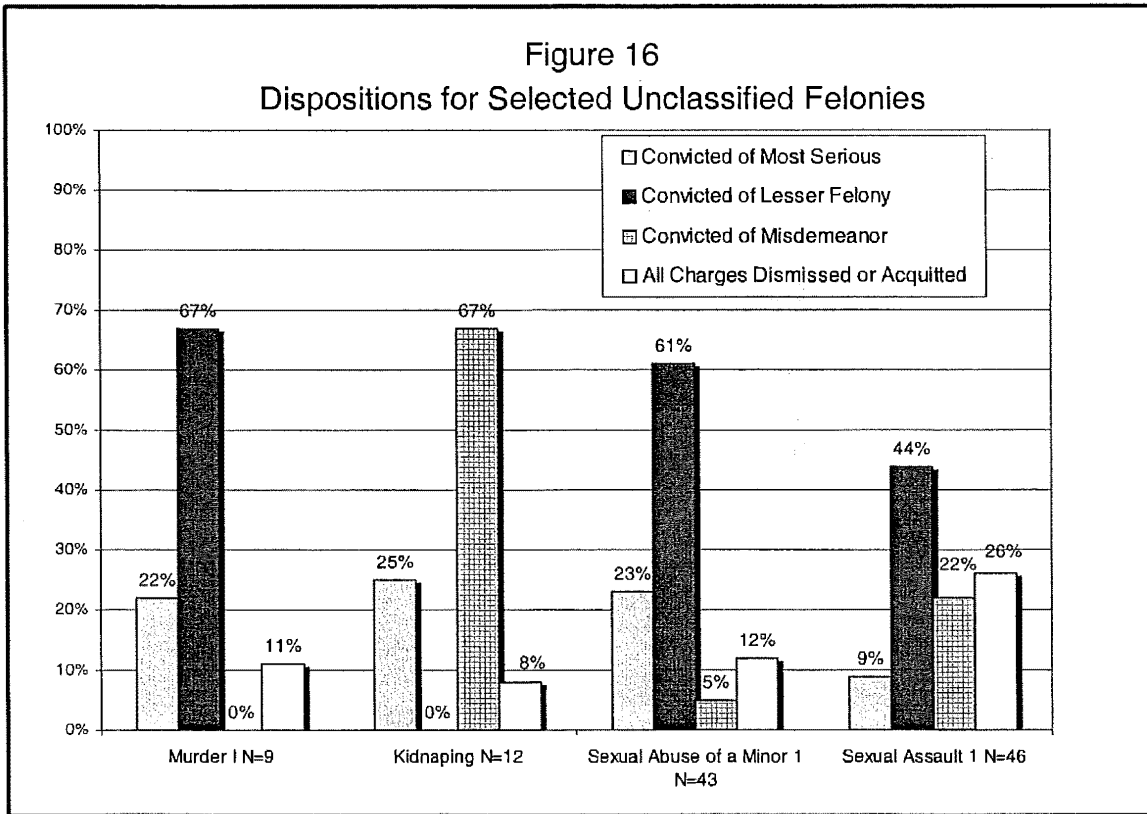
Figure 13 shows the distribution of case dispositions, and Figure 14 shows the distribution for convicted defendants only. About one-third (35%) of the defendants charged with felonies pled to the most serious felony charge against them. Twelve per cent pled to a lesser felony, and one-third (34%) pled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



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

Dispositions also varied by specific offense as shown in Figures 16-19. Figure 16 shows that most defendants charged with Murder 1 or Sexual Abuse of a Minor 1 were convicted of a felony (89% for Murder 1 and 84% for SAM 1). These were typically a lesser felony (67% of Murder 1 and 61% of SAM 1). Slightly more than half of defendants charged with Sexual Assault 1 were convicted of a felony (53%) but only 9% were convicted of the most serious charge. For the few defendants whose most serious charge was Kidnaping,¹⁶¹ 25% were convicted of the most serious charge, and none were convicted of lesser felonies. Among defendants whose most serious charge was Kidnaping but who were convicted of a lesser charge, most were convicted of Assault 4.¹⁶²

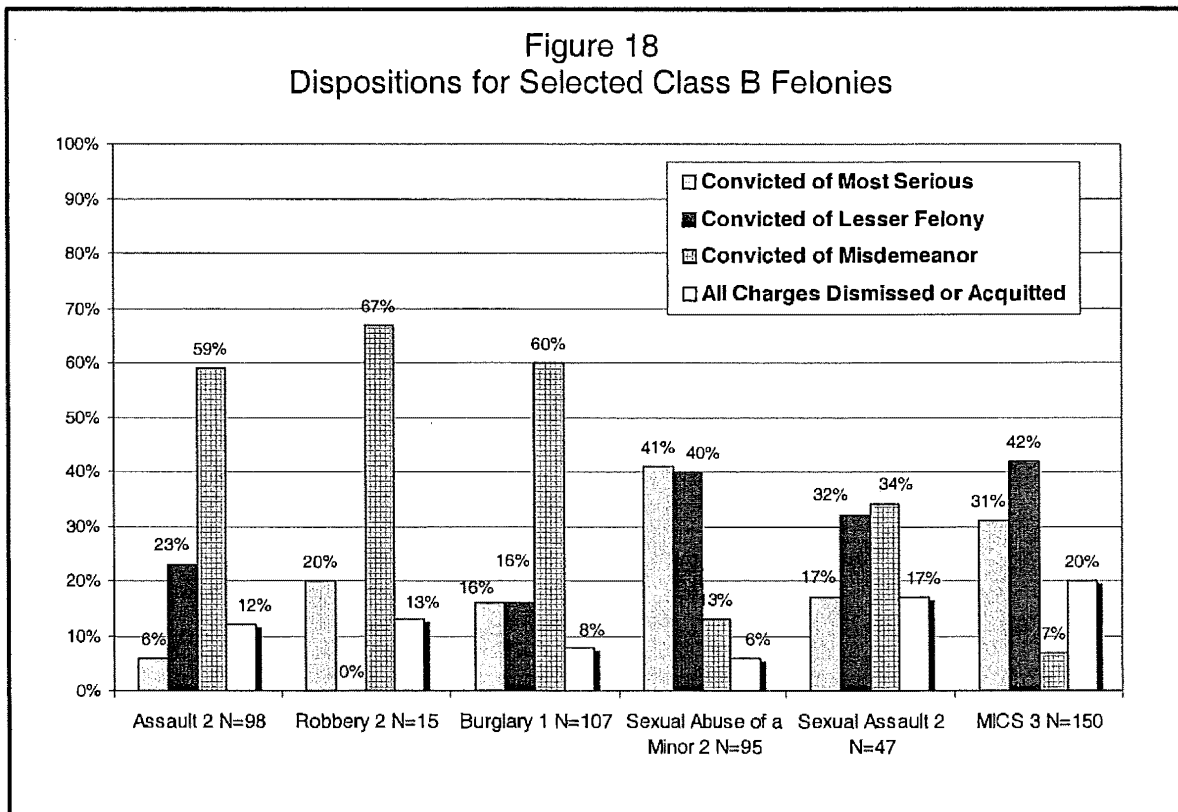


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¹⁶¹ Because the total number of offenses for Murder 1 and Kidnaping was very small, the patterns of dispositions could change significantly with the addition of a few cases.

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

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



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5. Comparison of 1984-1987 and 1999 Charge Reductions¹⁶⁴

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

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

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

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

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

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

¹⁶⁵ See discussion *infra* p. 99.

b. Case processing time by type of charged offense

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

c. Case processing time by type of attorney

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

¹⁷⁰ See discussion *infra* pp. 214-218.

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

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

Second, the legislature created several new felony offenses between 1984 and 1999.¹⁷⁶ Chief among these were Stalking 1 (N=7 charges in sample), Felony Driving While Intoxicated (N=142), Felony Refusal of Alcohol Test (N=15) and Felony Fail to Stop (N=15). In addition to the 179 cases in the sample that were new felonies, another 137 most serious charges filed were Vehicle Theft 1. Some of the Vehicle Theft 1 offenses would have been felonies under the previous statutes, but there is no

¹⁷² ALASKA COURT SYSTEM, 1984 ANNUAL REPORT; ALASKA COURT SYSTEM, 1999 ANNUAL REPORT.

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

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

¹⁷⁵ See *infra* Appendix A, page A-3.

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

2. Distribution of Felony Defendants

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

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

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

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

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

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^a Anchorage: 935 cases in the sample; 867 cases in Table 14.

^b Fairbanks: 260 cases in the sample; 230 cases in Table 14.

^c Juneau: 89 cases in the sample; 82 cases in Table 14.

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

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

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

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

^h Totals may not equal 100% due to rounding.

4. Ethnicity

The distribution of ethnic groups among charged felony defendants varied considerably by location. The Council examined the distribution of ethnic groups among charged felony defendants for the six location categories used above. The data represent disproportions that existed among defendants when formally charged. The Council compared the percentage of charged felony defendants that the ethnic group comprised in a location with the percentage that the ethnic group comprised of the general population for that location to determine the extent of any disproportion within that location. The findings are shown in Table 15¹⁸⁴ and Figures 20, 21, and 22.

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

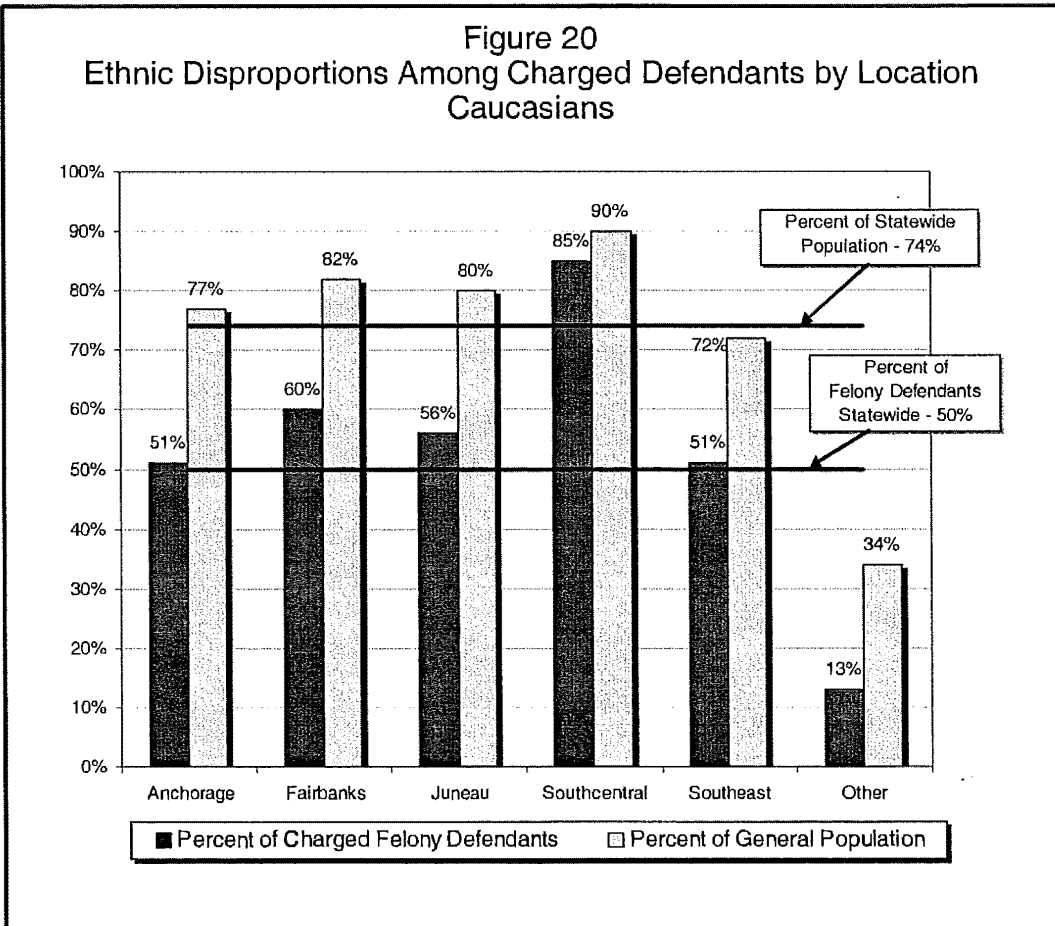
¹⁸⁴ Census figures used in this analysis were based on total population, including all ages. When discussing ethnic disproportions on a statewide basis earlier, the Council used Census data for Alaskans ages 18 and older for a more exact comparison to its felony data. *See* discussion *supra* pp. 52-54.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

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

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

a. Caucasian defendants

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



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