

***The Alaska Criminal Justice Commission and Criminal Justice
Change in Alaska: 2015-2022***

Alaska Judicial Council

July 29, 2022

Alaska Judicial Council staff

Susanne DiPietro, Executive Director
Teri White Carns, Special Projects
Brian Brossmer, Research Analyst

Based in part on work by Barbara Dunham, Project Attorney, ACJC
Staci Corey, Research Analyst, ACJC

Contact information

Alaska Judicial Council
510 L St. Suite 450
Anchorage, AK 99501

Phone: (907) 279-2526

Email: postmaster@ajc.state.ak.us

Website: <http://www.ajc.state.ak.us/>

Executive Summary

This report reviews the 2015 recommendations of the Alaska Criminal Justice Commission, the subsequent legislation and policy changes associated with them, and changes occurring in the state between 2015 and 2022. The legislation triggered significant changes in pretrial and post-conviction practices during a time of deep cuts (and more recently, increases) in state revenue related to world-wide oil prices. COVID-pandemic-related restrictions during much of 2020 and all of 2021 complicated the understanding of the legislative changes and budget issues. This information provides context for the environment for the Commission's recommendations.

The Commission's recommendations aimed to stabilize Alaska's incarcerated population¹ which had increased steadily for many years. Although the Commission hoped to reduce the number of people incarcerated by as much as 25%, the fact that the number incarcerated dropped in 2015, and has remained about the same since 2016 suggests that the changes may have played a role in stabilizing the incarcerated population, but other factors may have been as or more significant. The state also created more protection and resources for victims, more oversight of people released pretrial, and fewer people incarcerated for probation violations. Crime rates have continued to drop for most offenses throughout this period, suggesting that these changes did not adversely affect public safety.

Highlights of the report

- Incarcerated populations have stayed about the same, rather than increasing by more than 20%, as was projected in 2015. People charged with or convicted of felonies, more than half of them unsentenced, dominated the incarcerated population. A majority of them were charged with or convicted of violent or sex offenses. By 2021, they were about 42% Alaska Native/American Indian, 41% White, and 17% other ethnicities.
- Substantial budget cuts and significant loss of staff for justice system agencies in the mid 20-teens, and COVID-related suspension of most jury trials between March of 2020 and January of 2022 for people charged with felonies was associated an increasingly large backlog of felony cases in the courts, and larger

¹ Throughout the 2015 report, the term "prison" is used. This term is commonly used in states in which incarcerated populations are divided into a state prison system that handles convicted felons with a year or more to serve, and county or local jails that handle pretrial incarcerated, misdemeanor sentenced people with less than a year to serve, and some felons with shorter sentences. Because Alaska has one of the few unified corrections systems in the United States, the Alaska Department of Corrections manages all institutions for incarceration, as well as Community Residential Centers (also known as half-way houses), and post-conviction electronic monitoring, probation and parole, and pre-trial supervision of some people charged with offenses. In this report, we substitute the term "incarceration" or an equivalent for "prison" throughout the original recommendations because Alaska's criminal justice laws apply to all people supervised by the Alaska Department of Corrections.

numbers of people charged with felonies incarcerated pretrial for longer periods of time.

- Other changes possibly associated with lasting effects from the 2016 legislation included the creation and use of pretrial evidence-based risk assessments, and supervision for a sizable proportion of people released before trial; alternative sanctions available for probation and parole officers associated with a 69% reduction in the percentage of people incarcerated for supervision violations; and increased procedural resources to protect victims of crimes.

***The Alaska Criminal Justice Commission and Criminal Justice
Change in Alaska: 2015-2022***

Contents

Executive Summary

Part 1. The Goals of the Commission, the 2016 Legislation, and subsequent legislation

Part 2. The context: Population decline, budget cuts (and rebounds), declining crime rates

Part 3: The focus of the 2015 Recommendations: the Incarcerated Population

Part 4: Other Specific Recommendations and their follow up

Strengthen supervision and interventions to reduce recidivism

Ensure oversight and accountability

Advance crime victim priorities

Recommendations for which no data were (easily) available

Summary of status of the ACJC 2015 Recommendations

Part 5: Summary and Looking Ahead

Part 1. The Goals of the Commission, the 2016 Legislation, and subsequent legislation

The Alaska Criminal Justice Commission was formed in 2014, in legislation signed by Governor Parnell in July 2014. The Commission consisted of thirteen members, with staffing by the Alaska Judicial Council. Members represented all of the major criminal justice agencies, the Alaska Native community, victims' organizations, and the legislature (on a non-voting basis). It first met in September of 2014, and ended its work on June 30, 2022. The commission evaluated and made recommendations to improve criminal laws and practices, with the goals of enhancing public safety, offender rehabilitation, victim restitution and reducing costs.²

The commission was part of a bipartisan effort to introduce evidence-based “smart justice” reforms to Alaska’s criminal justice system. Such reforms had proven successful in other states, and Alaska’s legislators were concerned about the growth of Alaska’s prison population and high rates of recidivism.³ The commission received technical assistance from The Pew Charitable Trusts as part of the Justice Reinvestment Initiative, a partnership between Pew and the U.S. Department of Justice’s Bureau of Justice Assistance.

In December 2015, the Alaska Criminal Justice Commission recommended that the legislature act quickly to halt the trend toward rapidly increasing numbers of people incarcerated in the state.⁴ Two-thirds of those released from incarceration returned to custody within three years of release, and the number of incarcerated people was growing nearly three times as fast as the state’s population. Without changes, the state would soon have to add more institutions to hold the new and repeating people charged with or convicted of crimes. The commission advanced twenty-one specific recommendations to the Legislature.

The recommendations were intended to:

- Implement evidence-based pretrial practices;
- Focus incarceration beds on serious and violent offenders;

² Page 1, 2015 ACJC Report. <http://www.ajc.state.ak.us/acjc/docs/ar/2015.pdf>

³ Page 1, 2016 ACJC report. <http://www.ajc.state.ak.us/acjc/docs/ar/2016.pdf>

⁴ At the end of its first year, the Commission published the *Alaska Criminal Justice Commission Justice Reinvestment Report*, December 2015 (hereafter, *2015 Reinvestment*) created with the participation of dozens of Alaska entities and individuals. The Public Safety Performance Project of the Pew Charitable Trusts provided advice and assistance), http://www.ajc.state.ak.us/acjc/docs/resources/reinvestment/ak_jri_report_final12-15.pdf.

- Strengthen supervision and interventions to reduce recidivism;
- Ensure oversight and accountability; and
- Advance crime victim priorities.⁵

The Legislature responded by passing an omnibus bill addressing many of the recommendations and on July 11, 2016, Alaska Governor Bill Walker (I) signed into law research-driven legislation that aimed to deliver a greater public safety return on the state's spending.

The pretrial, sentencing, and corrections reforms were expected to reduce the number of incarcerated people by 13 percent. The state estimated that the law would yield savings of \$380 million, and it planned to invest nearly \$100 million of that in victims' services and evidence-based prison alternatives.⁶

Between 2017 and 2019, the Legislature made substantial changes to the 2016 legislation, and repealed much of it in 2019. The net effect was that many sentencing parameters returned to their pre-2016 shape. However, changes made in 2016 and subsequent years that increased penalties for second-degree murder, changed sex offense laws to include new behaviors not previously covered and increased some penalties, and created a new Class A drug offense remained in place. Other parts of the 2016 legislation that remained are discussed in more detail below.

The criminal justice commission's and legislature's attempts to change criminal justice outcomes through legislation in 2016 was confounded over the next five years by (1) midstream shifts in legislative actions and goals, (2) significantly reduced state income and resulting budget cuts to criminal justice agencies and the court, (3) the unprecedented disruption of the Covid-19 pandemic. Other forces on crime rates and population demographics may also have had significant effects on the criminal justice system. Due to all of these confounding forces, it was difficult to gauge whether or how the goals of the commission were realized, although the changes that did occur are documented in this report.

⁵ Page 14, *2015 Reinvestment Report*.

⁶ Page 1, Alaska's Criminal Justice Reforms,

http://www.ajc.state.ak.us/acjc/docs/resources/new/alaskas_2016_criminal_justice_reforms.pdf

The goals of the commission and legislature, the other factors, and criminal justice changes are discussed in the following sections. The criminal justice changes reported here should be read as descriptive only. Due to the numerous confounding factors, ascribing changes to any particular recommendation, legislation, or other factor remained elusive.

Part 2. Context: Budget cuts (and rebounds), declining crime rates, and COVID-related restrictions

The proposed criminal justice changes, and the legislation that followed, happened in the context of several other significant changes in Alaska: loss of population, overall reductions in reported crime, severe budget cuts, and later, the COVID-19 pandemic–related restrictions. Nonetheless, policies created by the 2016 legislation continued to shape how the criminal justice system responded to people affected by crime.

Declining population

The state experienced population declines from 2017 on, with out-migration at 3,609 in 2016, and more than double that for the next four years. The net loss was driven by fewer people moving to Alaska than in earlier years.⁷

Table 4: Alaska Population Change, 2015 – 2021

Year	Total state population	% change from prior year	Net migration (in/out)
2015	739,657	+0.15	-5,923
2016	742,874	+0.43	-3,609
2017	741,509	-0.18	-7,684
2018	738,300	-0.43	-9,163
2019	736,012	-0.31	-7,540
2020	733,578	-0.33	-7,472
2021	734,323	+0.10	-3,327

Data source: <https://live.laborstats.alaska.gov/pop/index.cfm>, Annual Components of Population change for Alaska, 1945-2021.

Changes in state revenues

Declining oil revenues led to severe state government budget cuts between 2015 and 2018. Between about FY2014 and FY 2018, all of the criminal justice budgets experienced substantial cuts.⁸ The Department of Law lost 25% of its

⁷ C. Mathews, “Alaska’s Population declines for 4th year in a row,” *Anchorage Daily News*, January 7, 2021. <https://www.alaskanewsresource.com/2021/01/08/alaskas-population-declines-for-4th-year-in-a-row/>

⁸ Beginning in 2015, a variety of political movements arose, related to the minority disparities and deaths in the context of the criminal justice system, including deaths in Ferguson, MO and Minneapolis, MN. It is not clear how these movements (including Black Lives Matter) may have affected the course of criminal justice changes during these years.

funding; the state’s two public defense offices lost 6% ⁹ the Alaska Court System lost 7%; the Department of Public Safety lost 13%; and the Department of Corrections lost 15%.¹⁰ The cuts led to reduced agency staffing, and limits on other services throughout the justice system. Even after budgets rebounded sharply in FY 20-22 (Table 5 and Figure 1) agencies struggled to hire and train new staff and replace lost programs.

Table 5: Justice agency budgets between FY 2013 and FY2022 (in millions)

Fiscal year*	Court System	Dept. of Law	Criminal Defense	Public Safety	Corrections
FY 13 ¹¹	107,201	65,635	48,373	170,469	304,914
FY14	111,092	63,966	49,294	178,737	313,661
FY15	112,410	62,003	50,527	177,966	312,881
FY16	110,403	53,973	49,807	163,274	281,178
FY17	106,614	48,876	47,141	156,255	266,372
FY18	104,839	49,160	47,621	159,549	267,008
FY19	105,445	50,423	50,191	161,823	291,137
FY20	107,214	50,746	50,337	169,223	299,637
FY21	110,798	52,084	54,595	180,029	339,286
FY22	117,962	57,953	58,345	187,890	351,652

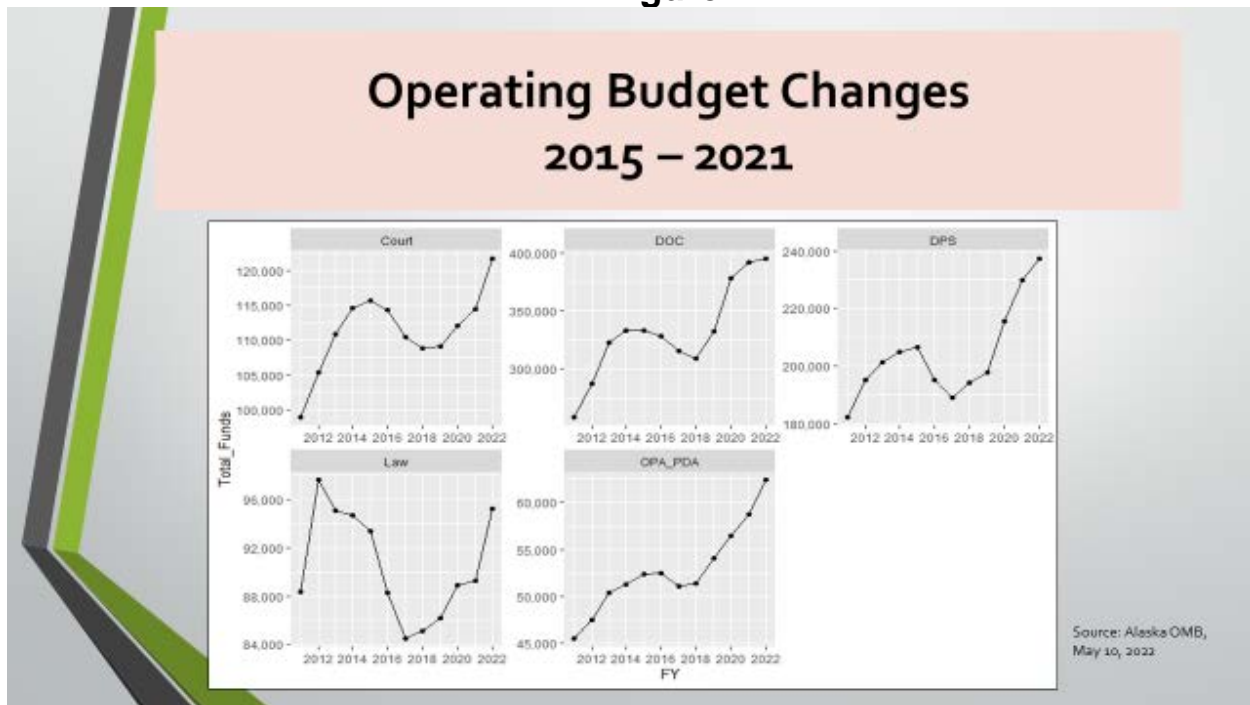
Data from <https://omb.alaska.gov/budget-reports/>, from “Total Funds” charts. May 2, 2022.

⁹ They are the Public Defender Agency and the Office of Public Advocacy, both of which handle criminal defense cases for indigent people.

¹⁰ The Anchorage Municipal Attorney’s office prosecutes about one-third of the misdemeanors filed in the state, and may not have experienced substantial cuts; no information was available. If it did not, that could explain why misdemeanors continued to be processed at about the same rate throughout the state’s significant fiscal crisis.

¹¹ All agencies except Dept. of Law saw increases from FY 2012; Dept. of Law took a 6% cut.

Figure 1



Overall fewer reported crimes, especially violent crimes

Crime rates for aggravated assault, robbery, and property crimes increased between 2013 and 2017 and then began to drop.¹² Reported property crimes, both felonies and misdemeanors, declined substantially after 2017,¹³ the first year after the legislative changes made in 2016.¹⁴ Reported robberies and felony assaults (“aggravated assault”) decreased after 2018.

COVID-related restrictions

On March 13, 2020, the governor issued the first of a series of COVID-related mandates designed to reduce transmission of the new virus and protect vulnerable populations. These included remote learning for all public schools, remote work for most executive branch employees, quarantine and isolation requirements, closure of many public places, suspension of elective medical

¹² ACJC 2021 Annual report, page 39.

¹³ Figures 32 and 33, 2021 ACJC report, page 39.

¹⁴ Some of the legislative changes included provisions that substantially limited bail and sentencing options for less serious property offenses (see pages 7-9, *Alaska’s Criminal Justice Reforms*, http://www.ajc.state.ak.us/acjc/docs/resources/new/alaskas_2016_criminal_justice_reforms.pdf). Practitioners said that this reduced that the likelihood that people would be arrested for these, and may have reduced the reporting of them.

procedures, and travel restrictions. By late April, some of these were reduced or removed, but long-term requirements for testing, social distancing, some masking, and other mandates remained in place. In-person visiting was not allowed in most correctional institutions for a year or more; most court events happened via video or teleconferencing; and many employees including attorneys and some court staff worked from remote locations.

An analysis of the short-term effects in 2020 by the ACJC showed that many possible measures of the effects of these restrictions had to be viewed in the context of pre-existing trends. For example, both arrests and court case filings had started to decrease after July of 2019, and although arrests continued to decrease after March of 2020, case filings began to rise after January of 2020 and continued to increase for the next few months. By 2021, the longer-term trends showed both arrests and cases filed were noticeably lower than in 2019, continuing the trend since mid-2019.

Part 3. Major Changes to Criminal Justice System 2016 – 2021

A. Changes to the Incarcerated Population

The Alaska Criminal Justice Commission’s 2015 report to the legislature identified as primary concern the increasing number of people incarcerated in the state’s correctional institutions. It noted:

Alaska’s prison population has grown by 27 percent in the last decade, almost three times faster than the resident population. . . . These trends are projected to continue: Alaska will need to house an additional 1,416 inmates by 2024, surpassing the state’s current prison bed capacity by 2017. This growth is estimated to cost the state at least \$169 million in new corrections spending over the next 10 years.

The rising cost of Alaska’s prison population coupled with the state’s high recidivism rate – almost two-thirds of inmates released from the state’s facilities return within three years – have led policymakers to consider whether the state is achieving the best public safety return on its corrections spending.¹⁵

The Commission set three benchmarks to counter this trend: At a minimum, the state would avert all further incarcerated population growth. A second benchmark aimed for a 15% reduction in the incarcerated population, and the third, for a 25% reduction. The Commission set out twenty-one policy recommendations that could be used to achieve these benchmarks. The recommendations also focused on protecting public safety and holding offenders accountable.¹⁶

The Commission’s twenty-one consensus recommendations,¹⁷ taken together, were “projected to reduce the average daily incarcerated population by 21 percent by 2024, achieving an estimated net savings to the state of \$424 million over the next decade.”¹⁸

The recommendations related to incarceration were intended to:

¹⁵ Page 1, *2015 Reinvestment Report*.

http://www.ajc.state.ak.us/acjc/docs/resources/reinvestment/ak_jri_report_final12-15.pdf

¹⁶ Page 2, *2015 Reinvestment Report*.

¹⁷ Pages 14-28, *2015 Reinvestment Report*. The report also contained several other recommendations that were supported by a majority of the ACJC commissioners, but not the whole group.

¹⁸ Page 14, *2015 Reinvestment Report*.

- Implement evidence-based pretrial practices (to “ensure that expensive incarceration beds during the pretrial period are occupied [by] those facing serious charges;”¹⁹
- Focus incarceration beds on serious and violent offenders;
- Strengthen supervision and interventions to reduce recidivism.

Many of these recommendations were incorporated into the 2016 legislation discussed above, which took effect on July 11, 2016.

Table 1: Changes in Alaska DOC incarcerated population, 2014-2021

Date	Total N of incarcerated people
July 1, 2014	5,267
July 31, 2015	4,928
June 30, 2016	4,654
June 30, 2017	4,214
July 1, 2018	4,295
June 30, 2019	4,469
January 31, 2020	4,653
June 30, 2021	4,630

Data sources: July 1, 2014 count from 2015 Reinvestment Report, page 1; other years, counts come from DOC daily count sheets.

The two major components of the incarcerated population are people who were unsentenced, most of whom were held pretrial because they could not meet bail conditions; and those who were serving a sentence after a conviction of a crime or an adjudication of guilty of a probation or parole violation.²⁰ Much smaller groups of the incarcerated population included people being held on a federal offense or who had been charged with probation or parole violation that was not yet adjudicated.²¹

¹⁹ Page 15, 2015 *Reinvestment Report*.

²⁰ Alaska’s state Department of Corrections holds all defendants charged with state and municipal crimes. With only small exceptions, Alaska does not have county or city jails.

²¹ Unsentenced population numbers in this report do not include people held under specific Alaska laws related to inebriation or mental health conditions. Elsewhere in the report, references to “pretrial incarcerated population” include only those people being held before conviction.

During the years 2016-2021 covered by this report, the number of incarcerated individuals remained about the same. Prior to 2016, however, the number of incarcerated people had already begun to drop, raising questions about the cause of the decline and stabilization.

During the years covered in this report, the legal status of the people incarcerated changed substantially, from a majority (61%) being sentenced, to a majority (57%) being unsentenced. Unsentenced people are generally ineligible for treatment, education and other services, meaning that there is little they can do for rehabilitation. In addition, pretrial incarceration negatively affects those incarcerated and public safety, resulting in higher rates of recidivism.²²

To shed light on the possible reasons for the shift to a majority unsentenced population, the Alaska Criminal Justice Commission carried out numerous analyses between 2015 and 2021 using data provided by the Alaska Department of Public Safety, the Alaska Courts, and the Alaska Department of Corrections. Analyses showed that about half of the increase in unsentenced persons occurred between July 2019²³ and June 30, 2021 following the repeal of much the 2016 legislation, and the COVID-19 pandemic related restrictions of 2020 and 2021.²⁴

²² Page 7, 2015 Report

²³ On June 30, 2016, the unsentenced population was 39% of the total, and the sentenced population was 61% of 4,654 people.²³ Five years later, the incarcerated population was 4,636 people, virtually unchanged, but the unsentenced population was 57%, a net increase of 46%.

²⁴ ACJC 2020 Annual Report, pages 43-48. <http://www.ajc.state.ak.us/acjc/docs/ar/2020.pdf>.

Table 2: Changes in Sentenced and Unsentenced Incarceration, 2014-2021

Date	Total N of incarcerated people	% Sentenced	% Unsentenced
July 1, 2014	5,267	N/A	N/A
July 31, 2015	4,928	62%	38%
June 30, 2016	4,654	61%	39%
July 19, 2016: Substantial changes to pretrial, including mandatory use of risk assessment, release OR required for less serious offenses, and creation of pretrial supervision office.			
June 30, 2017	4,214	57%	43%
July 1, 2018	4,295	54%	46%
June 30, 2019	4,469	52%	48%
July 1, 2019: Bail release provisions revert to pre-2016 and risk assessments no longer mandatory, but pretrial supervision office continues.			
January 31, 2020	4,653	50%	50%
March 2020: COVID-19 pandemic restrictions take effect, including suspension of jury trials and more liberal pretrial release.			
June 30, 2021	4,630	43%	57%

Data sources: July 1, 2014 count from *2015 Reinvestment Report*, page 1; other years, counts come from DOC daily count sheets.

During the eighteen months between January 2020 and June 30, 2021, changes may have been related in part to COVID restrictions. However, they continued a clear trend since 2016 toward having an increasing percentage of the incarcerated population in unsentenced status.²⁵

B. Changes to pretrial practices

Several of the recommendations to the Legislature focused on reducing the unsentenced/pretrial incarcerated population as a significant way to reserve resources for the more serious sentenced population, while maintaining public safety. Chief among these were the creation of a pretrial services branch of the Department of Corrections, and creation of a valid risk assessment instrument that pretrial officers could use to better understand both the likelihood that a particular person would appear at all hearings, and the chance that a person would commit a new crime while on pretrial release. The Legislature incorporated these recommendations into its 2016 legislation and the provisions took effect in January of 2017.

²⁵ In July, 2022, the population was slightly higher (4,722), with the same percentage unsentenced (57%) and sentenced (43%).

The Pretrial Enforcement Division of the Department of Corrections started work in 2017. By 2021 the division supervised about 4,700 people charged with misdemeanors and felonies on pretrial release around the state (some defendants are not assigned to supervision by the Pretrial officers). Of these, 9% had absconded, and 29% were incarcerated because they could not meet their conditions of release. Pretrial staff monitored the remaining 62% in communities around the state.

Table 3: DOC Pretrial Supervisees		Table 4: Risk Level for Pretrial Supervisees	
Status	Number	Risk Level	Number and %
Absconder	426	Low	971 (36%)
Community Supervision	2,905	Moderate	1,273 (46%)
Incarcerated	1,387	High	361 (13%)
Total	4,718	Unclassified	137 (5%)
		Total, Active Cases	2,742

About one-third of the community supervision caseload included those assessed as low-risk using an Alaska-specific risk assessment tool. Moderate risk people comprised nearly half of the cases, and high risk or unclassified were about 20%.

Effectiveness of supervision: People released with Pretrial risk assessments and supervision did not fail to appear more often than those with other bail situations. People released with Pretrial supervision and risk assessment did have a higher chance of being charged with the new offense of Violating Conditions of Release (suggesting that Pretrial supervising officers were tracking the released persons' activities).²⁶

C. Changes to incarceration rates of serious and violent offenders

One goal of the commission was to use expensive incarceration beds primarily for serious and violent offenders. The Legislature incorporated these recommendations into its 2016 legislation, using several means of reducing pretrial incarceration (e.g., changing bail provisions, and providing lower penalties for some nonviolent misdemeanors), reducing sentence lengths for some nonviolent felonies and misdemeanors, and changing provisions for incarcerating people who violated probation and parole conditions.

²⁶ Data on file with Alaska Judicial Council.

The percentage of the total population incarcerated for felony offenses increased between 2016 and 2021. Meanwhile, as was seen in the overall incarcerated population, the sentenced population convicted of felonies decreased and the unsentenced population increased.

People charged with felonies made up an increasingly large percentage of the unsentenced incarcerated population after 2019. As of July 1, 2021, about 70% of the unsentenced incarcerated population was felons held pretrial; about 12% were unsentenced misdemeanants, and about 17% were other unsentenced people.

One purpose of the legislative changes, however, was to “prioritize incarceration space for those *convicted of* [emphasis added] serious and violent offenses.²⁷ The policies intended to do this included measures that would reduce incarceration, including pretrial, for people convicted of less serious, and nonviolent acts.²⁸ The percentage of the incarcerated population sentenced for violent offenses in fact decreased by about 4%,²⁹ but a larger portion of the unsentenced population could be made up of post-conviction people who had not yet been sentenced.

Looking just at violent (including sex offenses) felonies, the percentage of total incarcerated population facing or sentenced for these did increase by about 14%, from 70% to 79% between July 1, 2016 and July 1, 2021.³⁰ Although there were no specific data showing the sentenced and unsentenced populations by type of offense,³¹ the finding that there were fewer incarcerated people sentenced on violent crimes than in the past implies that increase was occurring entirely among the unsentenced population.

D. Changes to incarceration rates of Alaska Native/American Indian people

During the time that the 2016 legislation was proposed and passed, Alaska Natives were 15% of the state’s population, but 36% of the incarcerated population. To address this disparity, the Commission’s membership included

²⁷ *Alaska’s Criminal Justice Reforms*, Page 8, December 2016, http://www.ajc.state.ak.us/acjc/docs/resources/new/alaskas_2016_criminal_justice_reforms.pdf

²⁸ Sentences for most misdemeanors were reduced; penalties for non-violent offenses (e.g., drugs, DUI, thefts) were reduced or non-incarceration options created; eligibility for parole was increased; and diversion options were created.

²⁹ Figure 10, page 20, ACJC 2021 report.

³⁰ *2021 ACJC Annual Report*, Figure 11, page 21.

³¹ DOC Offender Profile 2021, pages 24- 25 has sentenced/unsentenced (“legal status”) populations by location and by male/female.

representation from the Native community.³² As it was developing its recommendations, and since that time, the Commission has worked closely with Alaska Federation of Natives, tribes, Alaska Native Justice Center, and other organizations concerned with these issues.

However, since 2016, an increasingly large share of the incarcerated population (sentenced and unsentenced people) was made up of Alaska Natives/American Indians, rising from 36% in 2015 to 42% in 2021, a 17% increase in six years.³³ Other minorities maintained about the same percentages, but the percentage of Whites decreased between 2016 and 2021 from 46% to 41%.³⁴

The Commission's 2021 Annual report stated:

This increasing disparity appears to be driven by diverging rates of incarceration for violent (including Sexual offenses) and nonviolent offenses. . . . While the number of people incarcerated for nonviolent offenses has decreased for Black, Alaska Native, and White people, the rate of decline was steeper for White people than for Black or Alaska Native people. The number of people incarcerated for violent offenses has increased for Alaska Native people but has stayed flatter for White and Black people.³⁵

The Department of Corrections' 2020 Annual report showed that more than half (54%) of Natives (sentenced and unsentenced together) were incarcerated for Person offenses (33%), and registerable Sex offenses (21%). Less than half (45%) of Caucasians were incarcerated for these offenses (27% person, and 18% registerable Sex offenses).³⁶

³² Page 15, *Alaska's Criminal Justice Reforms*, published in 2016.

http://www.ajc.state.ak.us/acjc/docs/resources/new/alaskas_2016_criminal_justice_reforms.pdf

³³ Blacks continued to be over-represented in the criminal justice system. This part of the report focused on Alaska Natives/American Indians in large part because their numbers were much larger than Blacks and other minorities.

³⁴ *ACJC 2021 Annual Report*, Figure 7, page 18, <http://www.ajc.state.ak.us/acjc/docs/ar/2021.pdf>.

³⁵ *ACJC 2021 Annual Report*, page 19, <http://www.ajc.state.ak.us/acjc/docs/ar/2021.pdf>. [These data include both sentenced and unsentenced people.](#)

³⁶ Offense data by race/ethnicity was not available in the 2021 DOC Offender Profile, so information for 2020 is used here (page 11; the percentage of Natives in the incarcerated population at that time was 40%). Two hundred and forty-nine people were incarcerated in Community Residential Centers (CRCs) in 2020. The DOC Offender Profile for 2020 showed that 51% of these were Native, and 36% White (page 28). Another 165 were on Electronic Monitoring (EM); of these, 16% were Native, and 63% were White. People in CRCs or on EM received day-for-day incarceration credit for time spent in either situation.

One area of concern was the extent to which the unsentenced population might be increasingly disparate, with Natives constituting larger percentages over the past few years.³⁷ The concern was based on previous findings of disparity in pretrial populations,³⁸ and on data showing that pretrial incarceration was associated with worse outcomes in cases overall.³⁹ Data from the risk score revalidation study released in August 2019 showed that Natives were less likely to be released pretrial even after the risk-assessment scores and seriousness of the offenses were taken into account.⁴⁰

Data from the 2021 DOC Offender Profile showed that the unsentenced population was about 54% of the total population, and 46% were sentenced people.⁴¹ However, the 2021 Profile did not include data about the percentages of the unsentenced and sentenced populations by race/ethnicity.

The Profile did include data about Pretrial supervision by race/ethnicity.⁴² Of the 4,718 people under Pretrial Supervision at the time of the Profile publication,⁴³ 32% were Native, 12% were Black, and 46% were white.⁴⁴ Overall,⁴⁵ Natives were 41% of the incarcerated population in 2021, so at 36% they were proportionately less well-represented in the pretrial supervision group. In other words, relatively fewer Natives were referred to Pretrial Supervision. This finding could be explained, at least in part, by the relative lack of pretrial supervision offices and services in the most rural areas of the state, where the residents are primarily Native Alaskans.

Of those under Pretrial supervision, 9% were considered “absconders,” 62% were “under Community Supervision,” and 29% were “Pending Release,” incarcerated until they could meet court-ordered obligations before being released

³⁷ Cite to DOC Offender Profile Reports, 2015-2021.

³⁸ *ACJC 2018 Annual Report*, pages 24 – 25, citing Alaska Judicial Council, *ALASKA FELONY PROCESS: 1999* (2004), at page 164, and Alaska Court File Review bail study, http://www.ajc.state.ak.us/sites/default/files/imported/acjc/bail%20pretrial%20release/alaska_pretrial_release_study_released_2-2016.pdf.

³⁹ *ACJC 2018 Annual Report*, pages 24 – 25, citing Alaska Judicial Council, *ALASKA FELONY PROCESS: 1999* (2004), at page 164.

⁴⁰ AJiC, *AK-2S Revalidation Final Results*, page 52.

⁴¹ Excluding 217 federal prisoners, the sentenced population, plus unsentenced population totaled 4,380 incarcerated people.

⁴² These data do not overlap completely with the unsentenced incarcerated population, which includes people who are convicted, but not yet sentenced, and people with probation revocations filed, but not yet adjudicated.

⁴³ DOC Offender Profile, 2021, page 41. This is the July 1, 2021 number of people under DOC supervision and is a distinct method of looking at those under DOC control. It is not the same as the data from snapshot days used elsewhere in the report.

⁴⁴ The remaining 11% were Asian/Pacific Islander, Hispanic/Latinx, or Other.

⁴⁵ Page 11, DOC 2021 Profile.

to supervision. While about one-third of both Natives and Blacks were incarcerated pending release, about one-quarter of whites were.⁴⁶ Conversely, more whites were supervised in the community than were Natives or Blacks.

Table 3: Pretrial supervision status by race/ethnicity

	Absconders	In Community	Pending release
Natives	8%	59%	33%
Blacks	9%	54%	34%
Whites	11%	65%	26%

Data from Dept. of Corrections 2021 Offender Profile, page 42

A final factor that could contribute in a small way to the increasing percentage of Natives in the sentenced incarcerated population is the fact that the Parole Board granted parole to Natives at about half the rate that it granted parole for Whites.⁴⁷ However, the number of Parole Board hearings and parole grants overall was quite small, and this disparity did not significantly affect the numbers of people incarcerated.⁴⁸

E. Changes to Court caseloads, filings and dispositions

Court caseloads, filings, and dispositions

Despite low budgets and decreasing crime rates, arrests and filed charges (cases) increased between 2017 and July of 2019,⁴⁹ before beginning to fall.⁵⁰ After a sharp drop in 2020, they began to rise again in 2021. Felony case filings increased statewide in 2021.

Although felony filings increased, there were more delays in disposing of cases. These were in the face of declining crime reports – but at a time when budgets began to increase, and the number of police was also increasing.⁵¹ Even

⁴⁶ Some Pretrial supervision people are on electronic monitoring, and would be categorized as “Community Supervision.” Although no data directly address this, post-conviction electronic monitoring for Natives is relatively low, which may mean that EM is not available in more rural areas. This would not account for the even lower rates of Blacks supervised in community, because almost all Blacks in Alaska live in the largest urban areas.

⁴⁷ “The number of Alaskans released on discretionary parole fell sharply in 2020,” Alaska Public Media, June 3, 2021, quoting from an interview with Parole Board Executive Director, Jeff Edwards, and data provided by him. <https://www.alaskapublic.org/2021/06/03/the-number-of-alaskans-released-on-discretionary-parole-fell-sharply-in-2020/>. The article also says, “Data from 2020 shows incarcerated white people were about twice as likely as Alaska Native and American Indian people to be granted discretionary parole. The disparity is even higher for people who identify as Asian or Pacific Islanders.”

⁴⁸ Figure 16, page 27, 2021 ACJC Annual Report.

⁴⁹ Figure 37, page 42, 2021 ACJC report.

⁵⁰ Figure 34, 2021 ACJC Report, page 40.

⁵¹ Figure 36, page 41, 2021 ACJC report.

with more funds available for hiring, the difficulties with retaining, hiring, and training attorneys and staff for the state prosecutors and public defense offices meant substantially higher caseloads for individual attorneys, and increasing numbers of resignations.⁵²

Dispositions included convictions by pleas and trials, and dismissals (and acquittals). Felony case dispositions did not keep pace with filings after FY2016,⁵³ leading to a consistent backlog.⁵⁴ The gap grew after 2019, with a 90.5% filings to dispositions ratio in 2019⁵⁵ that dropped to an 81.4% ratio in FY 21.⁵⁶

⁵² Interviews with agency heads emphasized their staffing and training issues after 2015, and continuing into 2022.

⁵³ Other states also experienced dispositions lagging behind filings. Court Statistics Project, *Pandemic Caseload Highlights*, “Trends in Criminal Cases,” March 22, 2021, Robertson and Gibson, https://www.courtstatistics.org/__data/assets/pdf_file/0022/61519/2020_4Q_pandemic.pdf

⁵⁴ The district court experienced a slowdown between FY 20 and FY 21, disposing of about 3% fewer cases (N=1,700), before returning to its previous filing/disposition ratio.

⁵⁵ 2021 Court System Annual Report Statistics, Tables 4.06 and 4.09 (felonies), and 5.08 and 5.11 (misdemeanors) show the filings and dispositions. The rates vary considerably from year to year. The FY 18 felony rate was 85%, and the FY17 rate was 97% (due, at least in part, to a court project to clear backlogs during FY17).

⁵⁶ Felony dispositions (in both superior and district court) dropped by 10% (600 cases) between FY 20 and FY21. Nancy Meade, General Counsel for the Courts, confirmed this finding; she reported on January 27, 2022 that the number of pending felony cases was increasing. She also confirmed that pending misdemeanor cases had stayed about the same.

Table 6: Trial and Dismissal/Acquittal Rates, FY 19 – FY 21, In District and Superior Courts

Year*	N of trials	% of dispositions by trial	N of cases filed	N/% of dismissals/acquittals	N of all disposed cases
<i>Misdemeanors in District Court</i>					
FY 12	237	0.8%	29,824	9,788 (33%)	30,013
FY 13	238	0.8%	29,562	9,565 (32%)	29,692
FY 14	259	0.9%	28,009	9,307 (33%)	28,088
FY 15	211	0.8%	25,887	9,217 (35%)	26,658
FY 16	155	0.7%	24,100	8,237 (35%)	23,206
FY 17	125	0.6%	19,030	6,894 (35%)	19,697
FY 18	127	0.7%	21,232	8,294 (43%)	19,271
FY19	146	0.6%	25,288	10,660 (46%)	23,289
FY 20	92	0.4%	23,591	10,040 (48%)	21,059
FY 21	32	0.2%	20,994	10,811 (56%)	19,359
<i>Felonies in Superior & District Court</i>					
FY 12	223	3.5%	6,274	1,429 (23%)	6,296
FY 13	227	3.6%	6,675	1,328 (21%)	6,284
FY 14	261	4.2%	6,448	1,517 (25%)	6,155
FY 15	233	3.6%	6,457	1,699 (26%)	6,553
FY 16	170	2.6%	6,618	1,958 (30%)	6,514
FY 17	140	2.3%	6,198	1,828 (30%)	6,005
FY 18	155	2.5%	7,186	2,012 (33%)	6,140
FY 19	148	2.5%	7,321	2,289 (35%)	6,626
FY 20	149	2.5%	7,504	2,116 (34%)	6,179
FY 21	37	0.7%	6,854	2,095 (38%)	5,579

All data from Alaska Court System annual reports.

The gap between district court (misdemeanor) filings and dispositions, however, remained about the same (about 92%, FY 2018 – FY 2021). This suggested that district court (misdemeanor) cases were not backlogged, and the availability of trial dates was not an issue in the parties’ decisions about managing misdemeanor cases.

Dismissal rates⁵⁷ during the same period increased by about 70% for misdemeanors and 50% for felonies. During FY 20 and FY 21, filings dropped overall (but began to increase in FY 2021), and dismissals increased to 38% of all felony filings and 56% of all misdemeanor filings. The majority of felony case dismissals occurred while the case was still in the district court. The rate of

⁵⁷ Almost all dismissals were initiated by prosecutors. Dismissals included acquittals, but acquittals amounted to only a fraction of one percent.

dismissals was lower for cases filed under municipal codes: dismissals accounted for 37% of muni-filed misdemeanor dispositions.⁵⁸

Trial issues

As discussed above, the total incarcerated population remained stable from FY 2016 and on (See Table 2), but the percentage of unsentenced people increased, a trend that started before 2016, and accelerated after March of 2020.

One hypothesis for the most recent increases in people being held pretrial was that COVID restrictions suspended most jury trials.⁵⁹ Although about 98% of all felony cases were eventually dismissed or ended in pleas of guilty or nolo, neither prosecutors nor defense attorneys were willing to discuss the final outcome of a case until they had a firm trial date.⁶⁰ While this may have been a manageable practice when jury trial dates were readily available, the system broke down when there were no trial dates to act as the impetus for realistic assessment of cases and negotiations.⁶¹ Many cases went unresolved for longer periods.⁶²

Court staff, judges, prosecutors and defense attorneys agreed that COVID-related suspension of almost all jury trials after March of 2020 caused significant backlogs in felony cases.⁶³ The likelihood of a felony case going to trial, although small, was much greater than for misdemeanors. Table 6 shows that felony trials dropped from 2.5% of dispositions to 0.7%, and misdemeanor trials dropped from 0.6% to 0.2% of dispositions after pandemic restrictions took effect.⁶⁴ Attorneys feared that a logjam would result when the trial suspensions were lifted,⁶⁵ causing

⁵⁸ Cities and municipalities that prosecuted misdemeanor level offenses included Anchorage, Fairbanks, Juneau, Ketchikan, Kodiak, and Sitka.

⁵⁹ The Alaska Court System maintains list of all COVID-related orders on its website at <http://www.courts.alaska.gov/covid19/index.htm#statewide>

⁶⁰ Interviews with agency heads and experienced defense attorneys and prosecutors highlighted these concerns.

⁶¹ The court continued to allow some judge only trials, and court data showed 37 trials were conducted in FY2021 (see Table 6).

⁶² See Figure 39, page 44, 2021 ACJC report showing longer disposition times, especially for felonies, after April 1, 2021.

⁶³ The actual numbers of felony and misdemeanor trials are similar, however district court jury trials are much simpler. They need only six jurors, while superior court trials require twelve. The court's numbers include bench trials (case tried before a judge without a jury), and include both acquittals and convictions. When the court showed data on bench trials compared to jury trials (before FY18), the bench trials were about 16% of district court trials, and 4% of superior court trials. Almost all of the trials in FY 21 were judge trials, without a jury. As the court starts conducting jury trials again, COVID safety protocols will complicate the process substantially.

⁶⁴ No data were available about how many of these were tried before a judge with a jury, as distinct from trials before a judge without a jury.

⁶⁵ Special Order of the Chief Justice #8352 issued on December 2, 2021, mandated that scheduling jury trials would become the default on January 10, 2022. <http://www.courts.alaska.gov/covid19/docs/socj-2021-8352.pdf>. The court's website showed that as of January 21, 2022, jury trials were only suspended in Kotzebue (through January

further delays and problems as the courts tried to handle regular cases and backlogged cases at the same time.

The short term drop in the number of trials could be clearly connected to COVID-related prohibitions, but it was not the full explanation. During the six years preceding the COVID restrictions, the number of tried cases dropped steadily and substantially (about 44% by FY 19). This was largely related to a nearly 70% decline after 2013 in the state's main source of funds for state government, oil production and oil revenues.⁶⁶ According to agency heads, budget cuts led to significant losses of employees for the state prosecutors and offices of public defense attorneys, and the court's decision to reduce its budget request by decreasing the number of hours during which non-emergency hearings and trials were held.⁶⁷

Times to disposition

As noted above, the percentage of the incarcerated population that was unsentenced in Alaska's correctional institutions climbed steadily after 2015 (Table 2), in spite of statutory changes in 2016 intended to reduce the unsentenced population. Other analyses showed that the unsentenced population was increasingly composed of people charged with felonies, and disposition times for felonies were increasing.

It is likely that the larger numbers of incarcerated unsentenced people were related to the increased time that it took to dispose of felony court cases (Table 7).⁶⁸ The average times were relatively stable between July 1, 2019, and July 1, 2020. They rose sharply between then and January 1, 2021, and dropped back after that to a higher point than 2019. Instead of 8.5 months to get to a felony dismissal in mid-2019, the average January-March 2022 time was just over a year. A felony guilty/nolo plea took longer, 15.4 months instead of 10.8 months.

Misdemeanor disposition times were somewhat shorter, but still took 11.5 months for a dismissal, and 10.8 months for a guilty/nolo plea at the beginning of

31, 2022), and Palmer ("until further notice") <http://www.courts.alaska.gov/covid19/index.htm#suspended>. Jury trials were being scheduled as usual in other locations.

⁶⁶ Mike Lee, Heather Richards, "Raise taxes or bet on oil rally? Alaska at a crossroads," E&E News, Dec. 10, 2019, <https://www.eenews.net/articles/raise-taxes-or-bet-on-oil-rally-alaska-at-a-crossroads/>.

⁶⁷ Interviews with agency heads and others highlighted their beliefs that these were the primary factors contributing to increased times to dispositions.

⁶⁸ Also see, Figure 39, page 44, 2021 ACJC report. Trial dispositions were so few, and time to disposition often so long that they were excluded to give a more accurate picture of most dispositions.

2022. The time to get to a guilty/nolo plea for a misdemeanor was 105% higher than it had been in 2019.

Table 7: Times to Disposition, July 1, 2019 – January 1, 2022

Time to Disposition	Felony Dismissal	Felony Guilty/nolo		Misdemeanor Dismissal	Misdemeanor Guilty/nolo
July 1, 2019	254	326		229	158
Jan. 1, 2020	283	337		210	182
July 1, 2020	240	339		242	177
Jan. 1, 2021	488	374		424	230
July 1, 2021	379	432		303	280
Jan. 1, 2022	371	461		344	324
% change 7/1/2019 to 1/1/2022	+46%	+41%		+50%	+105%

F. Changes to supervision violator populations

The number of adjudicated supervision violators who were incarcerated decreased by 69% between July of 2017 and July of 2021,⁶⁹ suggesting that the alternative sanctions available to probation officers as part of the 2016 legislation significantly reduced incarceration as a sanction for technical violations. Those alternatives were not repealed in 2019. Although a smaller percentage of adjudicated supervision violators was incarcerated, the average length of stay increased by 118% from 76.6 days (FY 2019) to 166.9 days (FY 2021).⁷⁰ It could be that the less serious supervision violators were being placed in community residential centers (“halfway houses”), leaving the more serious violators in the institutions. No data were available to support the hypothesis, but anecdotal accounts suggested this was happening.⁷¹

In sum, the percent of people incarcerated for probation and parole supervision violations dropped from about 20% in 2016 to about 8% in 2021. This change was consistent with the goals of the 2016 legislation to strengthen post-conviction supervision and interventions.

⁶⁹ ACJC 2021 Report, page 30, Figure 21.

⁷⁰ ACJC 2021 report, page 29.

⁷¹ ACJC Report, page 30.

Part 4: Other Specific Recommendations and their follow up

This section reviews the 21 consensus recommendations submitted to the legislature by the Alaska Criminal Justice Commission in 2016, and shows which were embodied in legislation, and some outcomes related to them. The recommendations fell into four categories:

- Strengthen supervision and interventions to reduce recidivism;
- Ensure oversight and accountability;
- Advance crime victim priorities;
- Recommendations for which no data were (easily) available

Implement evidence-based pretrial practices

Generally, the purpose of these recommendations was to ensure that those facing or convicted of more serious charges occupied more of the expensive incarceration beds.

1. *Expand use of citations in place of arrest for lower-level nonviolent offenses (misdemeanors and C felonies).* The 2016 law provided for increased use of Own Recognizance releases, many of which might have been accompanied by the use of citations.⁷² No data were available about the use of citations instead of arrest. However, a 2018 bail study showed that more than twice as many individuals were released OR in 2018 than in 2015.⁷³ It was likely that a substantial percentage of them were released with a citation. The 2019 law, effective in July of that year, repealed mandatory OR provisions, and returned the statutory standards for bail decisions to their pre-2016 status, with the court-mandated bail standards still applicable.

⁷² Separately, the Presiding Judges in 2016 revised the court's bail schedules and guidance for judges, again encouraging much more frequent use of own recognizance, and reduced reliance on monetary bail and other restrictive conditions of release. The statewide bail schedule adopted in 2020, calling for OR (own recognizance) release for most misdemeanor offenses (except Domestic Violence, Stalking 2, some DUIs, non-DV Assaults, Escape, and VCORs), is currently in effect. The court's bail schedule is binding on judges, with the provision that an arresting officer, correctional officer or defendant may ask for judicial review at any time, per Section 9, pages 3-4. <http://www.courts.alaska.gov/jord/docs/2020/bail-schedule02-20.pdf>.

⁷³ Alaska Judicial Council, 2018 *Pretrial/Bail Study: Findings and Analysis*, Page 6.

2. *Use risk-based release decision-making.* The DOC Pre-trial supervision program (part of the Division of Pretrial, Probation, and Parole) used a two-part risk assessment instrument developed by The Crime and Justice Institute, and revalidated by the University of Alaska Justice Center to determine the risk of failure to appear, and (separately) the risk of committing a new offense while on pretrial supervision.⁷⁴ This was administered to all people assigned to DOC pretrial supervision (4,700 in August 2021, of whom about 2,700 were released pretrial). Of those released pretrial, 36% were assessed as low-risk, 46% as moderate risk, 13% as high risk, and 5% as unclassified.⁷⁵ People were supervised more or less intensely depending on the risk level.

After 2019, the risk assessments continued, but judges were no longer required to give the same level of consideration to the risk assessment as they were earlier.

3. *Implement meaningful pretrial supervision.* In August 2021, more than 2,700 people who were released pre-trial were actively supervised by DOC pretrial supervision. One analysis of whether people on pretrial supervision were more or less likely to fail to appear showed no significant differences between those supervised and those not supervised.⁷⁶ The same study showed an association between PED supervision and the increased likelihood of being charged with VCOR (Violating Conditions of Release).⁷⁷

4. *Focus supervision resources on high-risk defendants.* There were no data to specifically show whether this was happening. However, nearly two-thirds (64%) of those supervised by DOC pretrial were assessed as higher-risk,⁷⁸ suggesting that substantial DOC pretrial supervision resources were allocated to them.

⁷⁴ See, AJiC, *AK-2S Revalidation Final Results*, August 2019.

⁷⁵ 2021 ACJC Annual Report, pp. 25 and 26, <http://www.ajc.state.ak.us/acjc/docs/ar/2021.pdf>

⁷⁶ Judicial Council 2018 Bail study, page 10, available from the AJC on request.

⁷⁷ Judicial Council 2018 Bail study, page 13, available from the AJC on request.

⁷⁸ 2021 ACJC Annual Report, p. 25, Table 2, <http://www.ajc.state.ak.us/acjc/docs/ar/2021.pdf>

Focus incarceration beds on serious and violent offenders

5. *Limit the use of incarceration for lower-level misdemeanor offenders.* The 2016 legislation reduced misdemeanor penalties; the 2019 bill returned them to pre-2016 levels. As of August 2021,⁷⁹ sentenced violent offenders made up a *slightly smaller* percent of incarcerated people than in 2014 (64%, down from 68% in 2017), compared to sentenced non-violent offenders (36%, up from 32%).
6. *Revise drug penalties to focus the most severe punishments on higher-level drug offenders.* A Class A felony drug offense was created with a recommendation by the Commission.⁸⁰ The percentage of incarcerated people (unsentenced and sentenced) charged with or convicted of drug offenses declined steadily after 2015 when it was 9% of the total, to 2021, when it was 4% of the total.⁸¹ As of July 2021, 24% of the 165 incarcerated people in the drug offenses category were charged with or convicted of Unclassified or Class A offenses; 20% of those incarcerated on a snapshot day were misdemeanants.⁸²
7. *Use inflation-adjusted property thresholds.* The 2016 legislation created inflation-adjusted thresholds. A 2017 bill returned the threshold between misdemeanor and felony thefts to \$750, but kept the inflation adjustment provision. The 2019 bill repealed the inflation adjustment.
8. *Align non-sex felony presumptive ranges with prior presumptive terms.* The post-2019 terms are the same as post-2005, with a couple of minor exceptions (which were lower than pre-2016).⁸³ Sentences for sex offenses were not included in this item; those sentences were increased in some instances.

⁷⁹ Figure 10, 2021 report, page 20.

⁸⁰ A Class A drug offense existed before 2016, and was eliminated by the 2016 legislation. At the recommendation of the ACJC, based on commentary by a number of stakeholders, the ACJC recommended a new Class A drug offense, which was adopted in 2019.

⁸¹ DOC 2021 Offender Profile, page 26.

⁸² The daily DOC count sheet for July 1, 2020 shows that 50% of those incarcerated were sentenced; and 50% were unsentenced. We do not have data to show whether the people charged with/convicted of Drug offenses were evenly distributed within those groups.

⁸³ Table B-1, page 102, *Alaska Felony Sentencing Patterns: 2012-2013*, June 2016, [http://www.ajc.state.ak.us/publications/docs/research/AKFelonSenPatterns2012-2013\(June%202016\).pdf](http://www.ajc.state.ak.us/publications/docs/research/AKFelonSenPatterns2012-2013(June%202016).pdf).

9. *Expand and streamline the use of discretionary parole.* The 2016 legislation provided mandatory parole hearings and greater opportunities for discretionary parole, and the number of hearings increased substantially between October 2016 and April 2019.⁸⁴ After 2019 legislation that in theory returned the parole provisions to their pre-2016 situation, discretionary hearings dropped to slightly above their 2016 levels.⁸⁵

There were substantially more hearings while the 2016 legislation was in effect, but the rate at which the Board granted parole dropped. Parole was granted in 58% or more of the hearings before July 1, 2016. By the second quarter of 2017, parole was granted in about one-quarter to one-third of the hearings. After the repeal of these provisions in 2019, the grant-rate dropped again, to 16%, and then 10% in the pre-COVID quarters (no data were available for hearings during the pandemic).⁸⁶

10. *Implement a specialty parole option for long-term, geriatric inmates.* An email from the DOC to the FAMM organization dated March 16, 2021 said that there was one hearing for this type of parole in 2019 and 2020, and the petition was denied.⁸⁷ The option continued to be available, but did not seem to be used.
11. *Incentivize completion of treatment for sex offenders with an earned time policy.* This proposed change never became law.

Strengthen supervision and interventions to reduce recidivism

Felony recidivism after three years, as shown in Department of Corrections' analyses, dropped from about 67% in FY 2013 to about 61% in FY 2017.⁸⁸ Measures that included both felons and misdemeanants show some stability in post-conviction new criminal activity, although not as much reduction.⁸⁹

⁸⁴ Figure 16, page 27, *ACJC 2021 report*

⁸⁵ Figure 16, page 27, *ACJC 2021 report*

⁸⁶ *2021 ACJC report*, Figure 16 and 17, pp. 27 and 28.

⁸⁷ FAMM Alaska guide, "Compassionate Release," page 10, December 2021, https://famm.org/wp-content/uploads/Alaska_Final.pdf.

⁸⁸ Figure 22, 2021 ACJC Report, page 31.

⁸⁹ Figure 26, page 34, 2021 ACJC report.

12. *Implement graduated sanctions and incentives.* These provisions were incorporated by the 2016 legislation, and not repealed in 2019. Overall, the percentage of the incarcerated population made up of people serving time for probation and parole violations dropped from 20.9% in January of 2015 to 8.6% in July of 2021; it was 10% or less between October 2019 and June 2021.⁹⁰

13. *Reduce pre-adjudication length of stay and cap overall incarceration time for technical violations of supervision.* These provisions, intended to reduce the percent of the incarcerated population serving time for supervision violations (rather than new offenses), were incorporated in the 2016 legislation, and the 2019 bill, effective July 2019, repealed them. While these provisions were in effect, the percent of successful discharges from probation increased from 66% in FY2016 to 88% in FY2019.⁹¹ As noted above in point #12, the percentage of the incarcerated population made up of those serving time for probation and parole violations dropped by 59% between 2015 and 2021.

The average length of stay for people charged with petitions to revoke probation was measured for both people who were adjudicated guilty of a violation of probation and sentenced, and those who were incarcerated but not yet adjudicated. The amount of time spent by unadjudicated people did not vary substantially between FY2015 and FY 2021. The amount of time spent by adjudicated people averaged 142 days in FY2015; dropped to 77 days in FY2019 (before the repeal of much of the 2016 legislation), and rose to 167 days in FY2021 after its repeal in 2019 (an increase of 117%).⁹²

14. *Establish a system of earned compliance credits.* The 2016 legislation established 30 days of compliance credit for every thirty days that a

⁹⁰ The 2019 provisions applied only to those whose conduct occurred on or after July 9, 2019. As a result, it would have taken a year or more for the effects of these changes to appear; the existence of various COVID restrictions will likely delay the effects further. The Commission's 2021 report noted (page 30) that more people incarcerated for violations of supervision were being placed in CRCs. The CRC population is around 250 persons; even if all of these were added to the institutionalized incarcerated population, it would not substantially change the percentage of people incarcerated for probation violations.

⁹¹ *ACJC 2019 Annual Report*, page 33, <http://www.ajc.state.ak.us/acjc/docs/ar/2019.pdf>. The data were not compiled after FY 2019.

⁹² *2021 ACJC report*, Figure 20, p. 29.

probationer or parolee spent under supervision without incurring sanctions. The 2019 legislation reduced the credits to ten days credit for every thirty in compliance.⁹³ Data described in the 2018 Annual report showed that “over 80% of those eligible for earned compliance credits received them. In other words, the great majority of supervised people complied with all of their probation/parole conditions.”⁹⁴

15. *Reduce maximum lengths for probation terms and standardize early discharge proceedings.* Both provisions were included in the 2016 legislation. The 2019 legislation returned maximum probation lengths to their earlier levels. Probation/parole officers continued to be able to recommend early discharge, but were not required to. No data were specifically available on the effectiveness of these provisions while they were in place.
16. *Extend good time eligibility to offenders serving sentences on electronic monitoring.* The 2016 bill incorporated this provision; 2019 legislation repealed it. Although there were no data available about the effects of this provision, it was likely that it had little effect. The provision was in effect for a fairly short period, and there were relatively small numbers of people on EM.⁹⁵
17. *Focus ASAP (Alcohol Safety Action Program) resources to improve program effectiveness.* There were no data available to measure this.
18. *Improve treatment offerings in CRCs and focus use of CRC resources on high-need offenders.* There were no data available to analyze this objective.

Ensure oversight and accountability

19. *Require collection of key performance measures and establish an oversight council.* The ACJC has carried out this task since the passage of

⁹³ 2021 ACJC report, Figure 18, p. 28.

⁹⁴ Page 31, 2018 ACJC report, <http://www.ajc.state.ak.us/acjc/docs/ar/2018.pdf>.

⁹⁵ There were 354 people on post-sentencing electronic monitoring on June 30, 2016; 167 on EM on June 30, 2019; and 199 on EM on June 30, 2021.

the 2016 legislation, and subsequent legislation did not change its mandate. Each of the annual reports published by the ACJC documents the performance measures and outcomes using data supplied by the Department of Corrections, the Courts, the Department of Public Safety, and the Department of Law. The ACJC completed its work on June 30, 2022.

New legislation, effective on September 27, 2022, created the Criminal Justice Data Analysis Commission to continue the research needed by the different branches of state government for an effective and just criminal justice system.

20. *Ensure policymakers are aware of the impact of all future legislative proposals that could affect prison populations.* This has not been systematically carried out.

Advance crime victim priorities

Several laws passed between 2016 and 2022 increased the resources available to victims, strengthened victims' roles in case processing, increased the likelihood that they would receive restitution, and provided more information to them at different stages of the criminal justice process.⁹⁶ This met a goal of the 2016 legislation to advance victim priorities.⁹⁷

The recommendations on which these laws were based came from studies, workgroups, a major survey, and committee work. The 2016 legislation and later bills ensured that victims would be more informed throughout the criminal justice process. The Roundtables Summary Report helped set the priorities for victims' needs that were enacted in 2016 and later legislation.⁹⁸

Among the changes:⁹⁹

⁹⁶ Page 3, 2021 report, and other ACJC annual reports.

⁹⁷ Page 14, *2015 Reinvestment Report*.

⁹⁸ Victim/Survivor/Advocate Roundtables Summary Report and Priorities, Anne Seymour, October 2015. http://www.ajc.state.ak.us/acjc/docs/resources/reinvestment/alaska_victim_survivor_advocate_roundtables_report_priorities_oct_2015.pdf

⁹⁹ See the ACJC website, <http://ajc.alaska.gov/acjc/victimsurvey.html>, for a listing of materials related to these changes.

- Prosecutors must confer with victims of felony or domestic violence offenses before entering into a plea agreement (Note: 2019 legislation added victims of all sex offenses to this list). In addition, other 2019 legislation required that prosecutors notify the victim if a defendant in a DV or Sex offense case was discharged from treatment before trial for noncompliance.¹⁰⁰
- DOC, through the VINE notification system, must notify these same victims of their option to ask for a protective order, and must give these victims information about victims’ service agencies.
- Probation/Parole officers must help those who owe restitution to their victims to set up payment schedules.
- At sentencing, courts should provide victims with information on the defendant’s potential for release. In addition, 2019 legislation required that judges should presume that a “no-contact” order with the victim until the offender is unconditionally discharged should be put in place as part of the sentence for any sex offense or domestic violence conviction.
- The Department of Corrections must notify victims of an offender’s earliest possible date of release within 30 days of sentencing.
- The parole board must notify sexual assault and domestic violence victims 30 days before a discretionary parole hearing, and must also make every effort to do so for other victims who request it.
- The commission prepared a report on restitution in 2016, and part of one recommendation was included in a bill enacted in 2018.
- Recommendation 10-2017 to require courts to provide some types of notifications to victims, if practical, was enacted in 2017.

Recommendations for which no data were available within the Commission’s resources.

- Expand use of citations.
- Implement meaningful pretrial supervision.
- Focus supervision resources on higher-risk defendants.
- Incentivize completion of treatment for sex offenders with an earned time policy [provisions in 2016 bill; repealed in 2019].
- Focus ASAP resources to improve program effectiveness.

¹⁰⁰ AS 12.61.015.

- Improve treatment offerings in CRCs and focus use of CRC resources on high-need offenders.

Part 5: Summary and Looking Ahead

There was no significant change in the number of people incarcerated between about 2016 and 2022, one of the most significant reference points for understanding changes in the criminal justice system. It is unknown how much the legislation passed in 2016 affected this outcome, or how it was related to changes inside and outside the criminal justice system. The stable population numbers remained despite the legislature's repeal or amendment in 2017, 2018, and 2019 of substantial parts of the 2016 legislation. Although COVID-related restrictions slowed court-case processing, the incarcerated population remained steady – but those changes may have played a part in the increasing percentage of unsentenced people in the DOC incarcerated population.

During the five years between July 2016 and July 2021, other events affected the justice system. The state's population declined. Loss of revenues from oil taxes led to large budget decreases that reduced the ability of police, attorneys, and courts to provide their usual services. When state revenues began increasing in 2018 and budgets were higher than before, agencies could not respond effectively because of limited staffing.

The COVID-19 pandemic–related measures (starting mid-March, 2020) exacerbated many pre-existing trends. COVID-related restrictions included suspensions of jury trials statewide, and reductions in (or ceasing of) many in-person services. Substantial backlogs occurred, especially in felony cases because jury trials were not scheduled in most locations until January of 2022.

Although many parts of the 2016 legislation were subsequently repealed, some, such as alternative sanction options for probation and parole officers, and pretrial supervision services, were not. This indicated that lawmakers and others found them effective and useful changes.

Other data showed that some ethnic minority disparities increased after the 2016 legislation took effect, and the disparities continued to grow after the 2019 repeal of many of the 2016 changes.

Governor Dunleavy signed new legislation on July 9, 2022, creating the Alaska Criminal Data Analysis Commission, effective September 27, 2022. The new commission includes more representation from rural areas and other groups. The Alaska Judicial Council will staff the commission, continuing to receive and analyze data from criminal justice agencies and other sources. The new

commission will submit an annual report, and may make recommendations, if requested by the legislature, governor, or chief justice.