

RECIDIVISM IN ALASKA

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ABSTRACT

Recidivism data are a tool that can help policymakers determine how effectively a criminal justice system is working to protect the public. Such data can help answer whether the current system is appropriate, whether alternative methods could provide better results, and whether specialized programs such as therapeutic courts can help reduce recidivism rates. The Alaska Judicial Council published two reports in 2007 that sought to address these questions and more. This Comment has combined much of the data from these two reports in order to present them in a unified fashion, providing direct comparisons and contrasts where appropriate. The Council has also been busy at work responding to requests regarding the data originally published, and some of this new information is printed here. Finally, the Council has proposed that alternatives to incarceration be looked at in certain situations as a result of the findings and also has encouraged agencies sponsoring therapeutic courts to do more work in order to show the costs and benefits of that approach.

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I. BACKGROUND

A. Introduction

The Alaska Judicial Council published the first general study of recidivism in Alaska in January 2007.¹ A second report on recidivism in three felony therapeutic courts followed in February 2007.² The two reports, combined with three Legislative Audit reports on recidivism and follow-up recidivism analysis at the request of legislators, gave Alaska's justice system new tools for measuring the outcomes of criminal justice policies.

Recidivism studies customarily measure both the number of recidivist events within a certain period and the time that elapsed before the first event occurred. The Judicial Council modeled its general recidivism

1. ALASKA JUDICIAL COUNCIL, CRIMINAL RECIDIVISM IN ALASKA (2007) [hereinafter CRIMINAL RECIDIVISM IN ALASKA], *available at* <http://www.ajc.state.ak.us/reports/1-07CriminalRecidivism.pdf>. The study was funded by the Alaska Department of Health and Social Services.

2. ALASKA JUDICIAL COUNCIL, EVALUATION OF THE OUTCOMES IN THREE THERAPEUTIC COURTS (2005) [hereinafter EVALUATION OF THE OUTCOMES IN THREE THERAPEUTIC COURTS], *available at* <http://www.ajc.state.ak.us/reports/TherCt2004.pdf>. The Alaska Department of Health and Social Services funded the report.

analysis on a Bureau of Justice Statistics study that has been widely cited since its publication in 2002.³ Measuring from the date on which the offender was released from custody for the sentence served for the targeted offense,⁴ the Council found the re-arrest date and type of new offense (if any), new case filed, and conviction for each new offense within the next three years. Remands during the three years following release from custody also were tallied. The Council applied a similar analysis in a separate report on recidivism in three of Alaska's felony therapeutic courts.

B. Why Criminal Recidivism is an Appropriate Measure of Criminal Justice System Effectiveness

Recidivism is the logical tool for measuring the performance of the criminal justice system in Alaska. Alaska's presumptive sentencing ranges are built on a just deserts theory of sentencing, which is commonly categorized as a retributive model.⁵

In Alaska's model, offenders are sentenced based on their past record of criminal convictions and the seriousness of their current offense.⁶ If the offender is convicted of a new offense after an earlier conviction, the offender's sentence is increased largely as a function of that fact. Thus,

3. PATRICK A. LANGAN AND DAVID J. LEVIN, BUREAU OF JUSTICE STATISTICS, RECIDIVISM OF PRISONERS RELEASED IN 1994 (2002) [hereinafter BJS REPORT], available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf>. This report served as a model for the Council's report and contains data about recidivism for offenders in other states. Similar data are used by all fifty states to report on and analyze criminal justice information. As a result, the Council's data on recidivism can be compared relatively easily to data from other jurisdictions.

4. TERESA W. CARNS, LARRY COHN & SUSIE M. DOSIK, ALASKA JUDICIAL COUNCIL, ALASKA FELONY PROCESS: 1999 (2004), available at <http://www.ajc.state.ak.us/reports/Fel99FullReport.pdf>. Eighty percent of all offenders (including non-convicted offenders) included in the 1999 felony sample served at least one day of incarceration, either before or after the disposition of their case. Some offenders may in fact have spent all of their incarcerated time pre-disposition. *Id.* at 72. Table 23 and the accompanying text of this report note that 85% of convicted Alaska felons received some incarceration, compared to 68% of convicted felons nationally. *Id.* at 131. Most persons originally charged with felonies, but ultimately convicted of misdemeanors (74%), were ordered incarcerated as part of their sentence. *See id.*

5. *See* Law Library – American Law and Legal Information, Sentencing: Disparity – Sentencing Disparity and Sentence Reform, <http://law.jrank.org/pages/2052/Sentencing-Disparity-Sentencing-disparity-sentence-reform.html> (last visited Mar. 16, 2008).

6. *See generally* ALASKA STAT. § 12.55.125 (2006). The presumptive ranges embodied in Alaska law allow proof of aggravating and mitigating factors to increase or decrease the severity of the sentences imposed. *Id.*

arrests and convictions of recent offenders are logical measures for the effectiveness of the system. Other measures that could be used, such as crimes prevented, new jobs obtained, and so forth, are not as directly related to the legal structure of sentencing and incarceration.

By these measures, Alaska's criminal justice system turned out offenders who tended to do worse with successive exposures to it. Overall, 55% of offenders were convicted of a new offense within the first three years after release from serving their sentences. Further analysis showed that the chances of new convictions tended to increase as the severity of the offenders' prior records increased,⁷ so that offenders were increasingly likely to return for longer periods of incarceration for comparable offenses.

Recidivism also helps to measure the success of criminal justice programs and policies such as the effectiveness of Alaska's therapeutic courts. Therapeutic courts use intensive programs of judicial monitoring, treatment for substance abuse, regular testing for abuse of addictive substances, and other techniques for offenders whose underlying addictions are related to repeat criminal behavior.⁸ If graduates and participants in the programs are less likely to be re-arrested than comparison offenders or offenders in the baseline recidivism group, policymakers then have some indication that the program is effective.⁹

To measure the success of particular programs, it is most useful to compare outcomes for participants in the programs to outcomes for similarly matched comparison offenders. Caution is required when comparing the baseline recidivism data reported here to recidivism rates for particular programs.¹⁰ The defendants in each population differ in significant ways that affect the analysis of the comparison.¹¹ However, a

7. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 6.

8. EVALUATION OF THE OUTCOMES IN THREE THERAPEUTIC COURTS, *supra* note 2, at 5-9.

9. Proving cause and effect scientifically is difficult. For example, the multiple regression techniques used in the Council's analyses show that younger age is associated with more frequent re-arrests and that graduation from a therapeutic court program is associated with fewer re-arrests. Although this is not proof that the therapeutic court program "causes" the improvement, it is strong evidence that offenders who graduate from a therapeutic court are less likely to be re-arrested than others.

10. The standard method for most evaluations like the therapeutic courts analysis requires the use of a comparison group. The group may be matched by a number of characteristics (the approach used by the Council) or may be randomly selected. See *id.* at 3; see also *id.* at 17 n.39 (discussing the advantages and disadvantages of each method and application to the Council's report).

11. However, it should be noted that the defendants were similar in some ways as well. For example, most offenders in both groups were indigent and slightly

comparison of the baseline recidivism data to the therapeutic courts data produced interesting results.

Different types of offenses appeared in each sample. The therapeutic courts included in their evaluation a defined field of offenses that included drunk driving and related offenses, property offenses, and lesser drug offenses, with a handful of violent offenses.¹² The baseline recidivism sample, in contrast, included the whole range of offenders, including, among others, violent offenders, sexual offenders, serious drug offenders.¹³

Furthermore, different levels of offenders appeared in each sample. The felony therapeutic courts served mostly offenders convicted of Class C felonies.¹⁴ In the baseline recidivism sample, in contrast, 41% of the offenders who were originally charged with felonies in 1999 had pled guilty to misdemeanors.¹⁵ The remaining offenders were those who pled guilty to the entire range of felonies, from Murder in the First Degree, to a variety of Class C offenses, to those convicted after a trial.¹⁶

Additionally, offenders had different types of problems. By definition, all of the therapeutic court offenders had identified alcohol and/or drug abuse problems. In the baseline recidivism sample, however, 68% of all offenders had an alcohol problem and only 48% had an indicator of a drug problem.¹⁷

Finally, therapeutic court participants tended to have worse prior criminal histories than did those in the baseline sample. In the baseline group, 19% of the offenders had no prior convictions at the time of their 1999 felony case and had no record of any new arrests after the 1999

more therapeutic court participants were represented by public counsel; 89% of graduates and 96% of discharged persons were represented by a public attorney. *Id.* at 7. This is compared to 86% of convicted baseline recidivism offenders. CARNES, COHN & DOSIK, *supra* note 4, at 147, Table 33.

12. ALASKA JUDICIAL COUNCIL, RECIDIVISM IN ALASKA'S FELONY THERAPEUTIC COURTS 8 (2007) [hereinafter RECIDIVISM IN ALASKA'S FELONY THERAPEUTIC COURTS], available at <http://www.ajc.state.ak.us/reports/RecidivismTherCt2-13-07.pdf>.

13. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 3.

14. RECIDIVISM IN ALASKA'S FELONY THERAPEUTIC COURTS, *supra* note 12, at 9 ("A handful had been convicted of Class B offenses, and a small number had been convicted of misdemeanor offenses."). All of the misdemeanor offenders were in the Bethel therapeutic court. *Id.*

15. CARNES, COHN & DOSIK, *supra* note 4, at 87.

16. *Id.*

17. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 6. It is important to note that offenders could have had both alcohol and drug problems, not merely one or the other.

charges.¹⁸ Of the original 154 therapeutic court participants evaluated, 3% had no prior record.¹⁹

Many of the differences between the baseline offenders and the therapeutic court participants emphasized characteristics of the therapeutic court offenders that increased the chances that they would recidivate:

- Property and driving offenders had higher baseline recidivism rates than others.²⁰
- Less serious baseline offenders (i.e., Class C convictions) were more likely to recidivate than more serious offenders.²¹
- Baseline offenders with drug and alcohol problems were more likely to re-offend than those without these problems.²²
- Baseline offenders with more serious prior records were more likely to re-offend than those with less serious records.²³

Participants in therapeutic courts were more serious offenders in many ways and had a much higher risk of re-offending. However, recidivism rates for the participants of these programs were the same as, or even lower than, the rates for offenders in the baseline group. This emphasizes the effectiveness of the therapeutic courts, even for those participants who did not complete the programs. The data showed that, in general, the rates for participants, whether or not they completed the programs, were the same as, or lower than, for the baseline recidivism group.²⁴ On the other hand, graduates and participants in the therapeutic courts combined did not have statistically significant better outcomes than similarly matched comparison offenders in the therapeutic court evaluation.

C. Measures of Recidivism

For its analysis of baseline recidivism data, the Council looked at four measures for the offenders charged with a felony filed in calendar year 1999 and convicted of a felony or a misdemeanor: re-arrests, new court cases filed, re-convictions, and remands to incarceration.

18. *Id.*

19. EVALUATION OF THE OUTCOMES IN THREE THERAPEUTIC COURTS, *supra* note 2, at 24.

20. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 4.

21. *See id.* at 25–26. This held true for re-arrests, new cases filed, and new convictions, but was not associated with remands to custody.

22. *See id.*

23. *See id.*

24. *See* RECIDIVISM IN ALASKA'S FELONY THERAPEUTIC COURTS, *supra* note 12, at 4, Table 1. *See infra* Table 1, at 21.

The data for re-arrests and re-convictions were drawn from the Alaska Department of Public Safety's electronic files. Court case file data came from the Alaska Court System, and remands to incarceration data came from the Department of Corrections. Since most states use similar databases to report information and conduct statistical analyses, the Council's data can relatively easily be compared to other jurisdictions.

Although many recidivism reports use only one or two of these measures, the Council chose to use all four.²⁵ Three of the four—re-arrests, new cases filed, and remands to custody—do not reflect proven criminal behavior. Instead, remands may reflect violations of conditions of probation or parole (e.g., a prohibition on drinking) that are not criminal behavior or they may be a remand because the offender was arrested for a new offense.²⁶ Re-arrests, new cases filed, and remands, however, shed light on the frequency with which the criminal justice system had new contacts with offenders. The fourth measure, new convictions, is the most conservative because it shows only criminal behavior that was proven in court whether by a plea from the defendant or conviction after trial.

To evaluate the effectiveness of the three felony therapeutic court programs, the Council looked at re-arrests and re-convictions. In therapeutic courts, a short remand to custody could be used as a tool to encourage compliance with the program, and, as a result, it was expected that therapeutic court participants might exhibit different patterns of being

25. As in other jurisdictions, this report relies on criminal justice record repositories that probably understate the actual level of re-arrests and re-convictions. The police agency making the arrest or the court disposing of the case and recording the conviction may not send the notifying documents to the repository. Even if a document is sent, the Department of Public Safety may not be able to match the person in the document to the correct person in the database or may for some reason not enter the new information. The court system data had fewer identifying numbers than did data from the other agencies, making it more time consuming (and not always possible) to match individual offenders to their cases.

The Department of Corrections provided computerized databases from its former data collection system (Offender Based Corrections Information System, or OBSCIS) and its current system (Offender Tracking Information System, or OTIS). Council staff worked carefully to account for any overlapping information that appeared in both systems. However, the Council did not have enough information to determine whether the remands were for new offenses, for probation violations, or for parole violations.

26. In addition, an offender may be arrested for a new offense and a violation of probation simultaneously. In these cases, prosecutors may decide to drop the new offenses charged and prosecute the offender only on the probation violation.

remanded. Cases filed were not used because the data resembled re-arrest data so closely that these two measures were superfluous.²⁷

II. DATA AND ANALYSIS

This Part will address the data and findings from both the baseline recidivism report and the therapeutic courts recidivism report. In doing so, the following items will be addressed: characteristics of the samples and the offenders, recidivism rates for different groups of offenders, types and seriousness of new convictions, timing of recidivism, and factors affecting the likelihood of recidivism.

A. Characteristics of the Samples and the Offenders

1. Samples

a. *Baseline Recidivism.* The Council reviewed the criminal justice records for a sample of 1,798 persons charged with felonies in 1999 during the three years following their release from their sentences.²⁸ All of the offenders were part of the Council's 1999 report on the criminal justice process, had been convicted of a felony or misdemeanor as a result of their 1999 charges,²⁹ and had been released from custody³⁰ for their 1999 offense for at least three years.³¹

27. Data is available upon request from the Alaska Judicial Council.

28. See CARNS, COHN & DOSIK, *supra* note 4, at 8. All 2,331 defendants (about two-thirds of all persons charged with a felony offense in 1999) included in the 1999 report were charged with at least one felony. The offenders in the present report were those who were convicted of at least one offense, felony, or misdemeanor and who met other criteria for selection (e.g., still alive; had been released from their sentences for at least three years). See *id.* at 5.

29. *Id.* at 5–6.

30. See *id.* However, they may have returned to custody during the three-year period for a subsequent offense or as the result of a probation or parole violation.

31. See *id.* Some of the offenders convicted in 1999 were not included in this report. Twelve had died, and thirty-one who had appeared twice in the 1999 report were used only once in this report. The remaining group of 1,934 offenders included forty-eight offenders who were still incarcerated as of November 2005 when the Council began its research. They had been convicted of assaults, homicides, robberies, sexual offenses, and a handful of other serious offenses. The still-incarcerated offenders were not part of the analysis. Another group of eighty-eight offenders had not been out of custody for three full years after their 1999 offense.

b. Felony Therapeutic Courts Recidivism. The offenders in this sample included 117 participants in the felony therapeutic court system evaluated in an earlier report by the Council and 97 matched comparison offenders who did not participate in the therapeutic courts.³²

2. Offenders

a. Baseline offenders. The following is a list of the characteristics of baseline offenders.

- The offenders were largely male (83%).
- The ethnic mix of the offenders consisted of 52% Caucasian, 33% Alaska Native or American Indian, and 12% Black.³³
- Over half of the offenders were convicted in their 1999 case of either Property (31%) or Violent (26%) offenses. The next largest conviction categories were Drugs (16%) and Driving (12%), with Sexual (9%) and Other (6%) comprising the smallest groups.³⁴
- Forty-one percent of the 1999 convicted offenders were convicted of a misdemeanor as their single most serious offense, and 59% were convicted of a felony.³⁵

32. RECIDIVISM IN ALASKA'S FELONY THERAPEUTIC COURTS, *supra* note 12, at 1. The report describes the methodology for selecting the comparison groups. *Id.* at 3 n.9.

33. CARNS, COHN & DOSIK, *supra* note 4, at 137, Table 27. At the time of the 1999 report, 76% of Alaskans aged eighteen and over were Caucasian, 14% were Alaska Native or American Indian, and 4% were African-American. *Id.* at 55–56.

34. *See id.* at 63, Table 4. In this report, violent offenses included assaults and robberies. Property offenses referred primarily to burglary, thefts, and frauds, as well as some criminal mischief and vehicle theft. Drug offenses were possession and sales. Sexual offenses included sexual assaults, sexual abuse of a minor, pornography offenses, and exploitation. Driving offenses included drunk driving, refusals of tests, eluding, leaving the scene of an accident, and driving without an appropriate license. Other offenses were weapons, public order, perjury, escape, and so forth, none of which occurred in large enough numbers to warrant separate categories for analysis.

35. *See id.* at 87, Figure 14. This is one of the most important differences between the BJS REPORT, *supra* note 3, and CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1. The BJS Report looked at a sample of all offenders released from prisons in 1994. Those offenders had been convicted of felonies and a few serious misdemeanors, and they had sentences of one year or more. In contrast, those in the Judicial Council's sample had been charged with felonies in 1999, although the individuals often were convicted of misdemeanors. The Judicial Council group, as a whole, probably consisted of a much different mix of serious and less-serious offenders when compared to the group analyzed in the BJS Report.

*b. Therapeutic court offenders.*³⁶ The following is a list of the characteristics of therapeutic court offenders.

- Twenty-nine percent of the graduates were female, as were 24% of the discharged participants.³⁷
- The ethnic mix of the offenders was as follows: 49% of the graduates and 41% of the discharged participants were Caucasian;³⁸ 39% of the graduates and 48% of the discharged participants were Native;³⁹ 12% of the graduates and 11% of the discharged participants were African-American and Other ethnicities.⁴⁰
- All of the offenders in the felony therapeutic courts had a drug or alcohol abuse problem.⁴¹
- The largest group of offenders—over half—consisted of those convicted of felony driving charges. Other types of charges, depending on the particular court, included drug convictions, property charges, and a small number of violent convictions.⁴²
- Most of the offenders in all three courts, and in the comparison groups, had been convicted of Class C felonies.⁴³

B. Recidivism Rates for Different Groups of Offenders

This section addresses the relationship between various characteristics of the offenders and the likelihood that different groups of offenders will

36. See RECIDIVISM IN ALASKA'S FELONY THERAPEUTIC COURTS, *supra* note 12, at 6 n.19 (providing a more detailed description of the participants).

37. *Id.* at 7. Discharged participants included both those who were asked to leave the program for various reasons and those who decided for their own reasons to leave the programs. If they left before completing the programs, the participants returned to the regular courts for sentencing as agreed to in their Rule 11 plea negotiations that were required before entry into the programs.

38. *Id.*

39. *Id.* Almost all of the Bethel Therapeutic Court participants and comparison group offenders were Native. The Anchorage felony therapeutic courts had a mix of ethnicities. *Id.* at 6 n.20.

40. *Id.* at 7 ("A separate analysis showed that Caucasians, Natives, and 'Other' ethnicities did not differ in any statistically significant way in the chances that they would graduate or be discharged.")

41. *Id.* at 8; CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 6, 25–26 (finding that both alcohol and drug problems significantly increased the likelihood of recidivism for offenders in the baseline study, independently of any other characteristics of the offender or offense).

42. RECIDIVISM IN ALASKA'S FELONY THERAPEUTIC COURTS, *supra* note 12, at 8–9. All of the offenders with violent convictions were in the Bethel Therapeutic Court. *Id.* at 9.

43. *Id.* at 9.

recidivate. Data from the baseline recidivism report will be addressed first, followed by data regarding therapeutic court participants.

In the baseline recidivism report, an offender's age and economic status were the most closely associated with a return to the justice system.⁴⁴ The next most important factors were whether the offender had an alcohol, drug, or mental health problem; whether the offender had a criminal history prior to the 1999 offense; and whether the offender was an Alaska Native.⁴⁵ Each of these factors increased the likelihood of recidivism.

By contrast, notably fewer characteristics of the offenders were related to the likelihood of recidivism in the therapeutic courts. Age, again, played a role, with older offenders being less likely to be re-arrested and re-convicted than younger offenders.⁴⁶ Ethnicity played a different role than it did in the baseline recidivism report. In the therapeutic courts report, Alaska Native and Caucasian offenders did about equally well; African-American and other offenders were somewhat more likely to recidivate.⁴⁷ Also in the therapeutic courts report, the Anchorage Felony Driving Under the Influence offenders were less likely to recidivate than participants in the other two felony courts.⁴⁸ Finally, the longer a participant stayed in a court—even without graduating—the less likely the participant was to be re-arrested.⁴⁹

1. Baseline Offenders

a. *Youthful Offenders.* The youngest offenders, defined as age 24 or younger, had the highest rates of recidivism, with 67% re-arrested during the first three years and 73% remanded to the custody of the Department of Corrections.⁵⁰ Offenders between the ages of 25 and 44 also had higher recidivism rates, particularly with regards to remands to custody.⁵¹ Those aged 45 years and older had significantly lower rates than all offenders viewed as a group.⁵² For example, the re-conviction rate for offenders between the ages of 17 and 24 was 62% in three years, but 37% for

44. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 25–26.

45. *Id.*

46. RECIDIVISM IN ALASKA'S FELONY THERAPEUTIC COURTS, *supra* note 12, at 10.

47. *Id.*

48. *Id.*

49. *Id.*

50. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 22, Part 3.C, Table 1.

51. *Id.*

52. *Id.*

offenders between 45 and 54. At age 55 and over, re-convictions dropped to 27%.⁵³

b. Indigent Offenders. One of the most important findings from the Council's report on 1999 filed felonies was that an offender's representation by a private attorney was consistently associated with less time incarcerated at every step of the process.⁵⁴ That earlier report discussed the possible reasons for the disparities in detail and concluded that the disparities existed independent of ethnicity, age, gender, prior criminal history, location in the state, type and seriousness of offenses, and the offender's substance abuse or mental health problems. The Council also considered whether information that was not available, such as income, education, employment and other socioeconomic factors, could have explained the disparities. However, earlier Council studies showed independent relationships between attorney type and outcomes, even when socioeconomic data were available.⁵⁵

For the purpose of the recidivism report, the Council treated an offender's representation by a private attorney during the 1999 case as an indication of socioeconomic status throughout the succeeding years.⁵⁶ It found that indigent offenders, defined as those represented by public attorneys in 1999, were more likely to recidivate than offenders who had used a private attorney in 1999.⁵⁷ Notably, 63% of the indigent offenders in 1999 were re-arrested compared to just 41% of the offenders who used a private attorney in that same year.⁵⁸ The difference in remands to custody was also notable, with 70% of indigent offenders remanded compared to 47% of those who had hired private attorneys in 1999.⁵⁹ Being indigent in 1999 increased the likelihood of all types of subsequent recidivism by about 50%.⁶⁰

c. Ethnicity of Offenders. In this report, 52% of the offenders were Caucasian, 33% were Native/Indian, 11% were African-American, 3% were

53. *Id.*

54. CARNIS, COHN & DOSIK, *supra* note 4, at 165–69 (discussing predisposition incarceration); *id.* at 214–18 (discussing post-disposition incarceration); *id.* at 248–49 (discussing total time incarcerated).

55. *Id.* at 248–49; *see also id.* at 47–51 (discussing socioeconomic factors).

56. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 5.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 12.

Asian/Pacific Islanders, and only 1% were Hispanic.⁶¹ Alaska Natives and African-Americans were the most likely to have a new arrest within the three-year period: 66% of each group.⁶² Caucasians had a re-arrest rate of 55%, and Asian/Pacific Islanders were re-arrested at a 35% rate.⁶³ Ethnicity also was tied to re-convictions and remands to custody. Seventy-five percent of the Native offenders were remanded to custody at least once, as were 73% of the African-American offenders, 61% of the Caucasian offenders, and 45% of the Asian/Pacific Islanders.⁶⁴

Ethnicity continued to be tied to the likelihood of more recidivism even when a variety of other factors were taken into account. If the offender was an Alaska Native, the chance of re-arrest increased by 24% and the chance of a remand to custody increased by 44%.⁶⁵ In contrast, Asian/Pacific Islander offenders had a 34% lower chance of re-arrest, lower chances of new cases filed, and lower rates of re-conviction.⁶⁶

d. Gender of Offenders. Of the offenders in the sample, 83% were men and only 17% were women.⁶⁷ Although the Council's earlier report found significant gender-based differences in incarceration durations for the most common types of offenses, men and women differed very little in their likelihood of re-arrest and re-conviction.⁶⁸ Significantly more men (67%) were remanded to custody at least once than were women (60%).⁶⁹

e. Offenders' Prior Convictions in 1999. Among convicted offenders in the earlier report, 25% had at least one prior felony and 16% had no prior convictions.⁷⁰ Among the offenders in this sample, 19% had no record of criminal convictions at the time of their 1999 felony case and no record of

61. *Id.* at 5.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* at 25–26.

66. *Id.*

67. *Id.* at 7.

68. CARNES, COHN & DOSIK, *supra* note 4, at 4 (“Men tended to receive longer times of incarceration in each of the analyses for Violent and Property crimes. There was generally little difference between men and women in Drug and Driving offenses.”).

69. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 7.

70. CARNES, COHN & DOSIK, *supra* note 4, at 63, Table 4. For 13% of the offenders in the 1999 report, prior criminal history was unknown based on information in the Department of Public Safety database. *Id.*

any new arrests after the 1999 charge or charges.⁷¹ In general, the more prior convictions that an offender had in 1999, the greater the likelihood that the offender would be re-arrested.⁷² For each additional level⁷³ of seriousness of prior criminal history in 1999, the likelihood of all types of recidivism increased by about 19%.⁷⁴

2. Therapeutic Court Participants and Comparisons

Unlike the baseline recidivism data, therapeutic court participants were matched to non-participants, and the likelihood that the various offender characteristics were related to the chances of success in the programs was reported. The Council conducted two different types of analyses, bi-variate and multi-variate analyses, to determine which factors were associated with re-arrests in the therapeutic courts and comparison groups.⁷⁵

a. *Age.* In the bi-variate analysis, the age of the therapeutic court participant was not statistically significantly related to the chance that an offender would graduate or be discharged.⁷⁶

b. *Indigency.* Almost all of the participants in the therapeutic court programs were represented by public attorneys,⁷⁷ a characteristic that was

71. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 6. The slight apparent increase in offenders with no prior record may be due to the fact that some of the 1999 offenders were still incarcerated and others had not been released from serving their sentences for a full three years before data collection for this report took place.

72. *Id.*

73. For both the 1999 felony report and the current recidivism report, "criminal history" was categorized as: no prior convictions (felony or misdemeanor), one to three prior misdemeanor convictions, four or more prior misdemeanor convictions (but no felonies), one prior felony conviction, two prior felony convictions, and three or more prior felony convictions. See CARNES, COHN & DOSIK, *supra* note 4, at 61; see also CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 12 n.27.

74. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 25-26.

75. The multi-variate analysis is reported *infra*, Part II.E.

76. RECIDIVISM IN ALASKA'S FELONY THERAPEUTIC COURTS, *supra* note 12, at 7. As discussed in this Comment, *passim*, the offender's age was related to the likelihood that an offender would recidivate. *Id.* at 10.

77. See *id.* As the courts have evolved, private attorneys have become more involved. See *id.* at 7 n.24 ("Much of the early work in designing and setting up the therapeutic courts was done with the close cooperation of the Public Defender Agency. Its clients may have had a better chance of participation during the early days of the programs.").

used as a proxy to determine their indigency.⁷⁸ Ultimately, indigency was unrelated to the participants' recidivism.⁷⁹

A participant's indigency could have been related to prior criminal history. Most participants in the felony therapeutic courts had a prior record.⁸⁰ Earlier analysis showed that "defendants represented by a public attorney were somewhat more likely to have had a prior conviction than defendants represented by a private attorney."⁸¹ Thus, the fact that most participants in the felony therapeutic courts had a prior record significantly increased the likelihood that they would be represented by a public attorney.

c. Ethnicity. Both Native and Caucasian participants had similar chances of being re-arrested during the first year after participating in the programs.⁸² African-American and Other Ethnicity participants, combined, were more likely to be re-arrested and re-convicted during the first year after the programs. The data were not detailed enough to allow any hypotheses about the reasons for these findings.⁸³

d. Gender. The gender of the program participants was not significantly related to the chances of re-arrest or re-conviction.⁸⁴

e. Prior Criminal History. Therapeutic court participants' prior criminal histories were not significantly related to the chances of re-arrest or re-conviction.⁸⁵

78. *Id.* at 7.

79. *Id.* at 10 n.28.

80. EVALUATION OF THE OUTCOMES IN THREE THERAPEUTIC COURTS, *supra* note 2, at 22.

81. CARNS, COHN & DOSIK, *supra* note 4, at 70.

82. RECIDIVISM IN ALASKA'S FELONY THERAPEUTIC COURTS, *supra* note 12, at 10.

83. *Id.*

84. *Id.* at 10 n.28.

85. *Id.*

C. Types and Seriousness of New Convictions⁸⁶

Policymakers often wonder whether offenders' propensities for new offenses and remands to custody also mean that offenders are committing more serious offenses. They also wonder whether offenders repeat the same types of offenses or commit a variety of new offenses.⁸⁷ The Council's data in the baseline recidivism report show that the answers to both questions depended on the type and seriousness of the convicted 1999 offense.⁸⁸ For the therapeutic court participants, the recidivism analyses also demonstrate some relationships.⁸⁹ It should be noted that as a result of the nature of therapeutic courts, the variety of offenses for which offenders entered those programs was much more limited than the variety of offenses found in the baseline recidivism report.

1. Baseline Offenders

a. *Types of New Convictions.* Driving offenders were the most likely to commit the same type of offense again, with 28% of them convicted of a new driving offense during the three years after their release.⁹⁰ At only 3%, sex offenders were the least likely to be convicted of a new offense of the same type. Described differently, driving offenders were eight times more likely to be convicted of a new driving offense than sex offenders were likely to be convicted of a new sex offense.⁹¹ Taken as a group, the 1999 offenders were more likely to be convicted of a new driving offense than of any other type of offense.⁹²

b. *Seriousness of New Convictions.* Offenders tended to commit new offenses that were just as serious, or less serious, than their first offense.⁹³

86. In many sections of its reports, particularly when analyzing data for the therapeutic court offenders, the Council used re-arrest as its primary measure of recidivism. In the section of the report this section addresses, the Council focused on new convictions, believing it to be the most accurate reflection of subsequent types of behaviors.

87. See BJS REPORT, *supra* note 3, at 9.

88. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 8-9.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. Alaska offenses are divided into unclassified (the most serious level); felony classes A, B, and C; and misdemeanors A and B. ALASKA STAT. § 11.81.250(a) (2006). Violations are defined as: "characteristically involve[ing] conduct inappropriate to

Males and the youngest group of offenders (ages 17–24) were the most likely to commit more serious offenses.⁹⁴ Again, a correlation existed between the type of the 1999 offense and the likelihood that the offender would commit a more serious offense after release. No sexual offenders, and only 4% of drug offenders, were convicted of a more serious offense.⁹⁵ Other types of offenders were more similar in the likelihood that they would commit a more serious offense.⁹⁶

The Council also looked at the relationships between the chance of conviction on a more or less serious offense and demographic characteristics of baseline offenders. It found that mental health problems, prior criminal history, and type of attorney (as a proxy for indigency) did not influence the chances that an offender would commit a more serious offense.⁹⁷ Alcohol and drug problems, which were associated with a greater likelihood of recidivism generally,⁹⁸ were correlated with a lower chance that an offender would be convicted of a more serious offense.⁹⁹

2. Therapeutic Court Participants

a. *Types of New Convictions.* Thirty-three percent of the participants whose entry into a therapeutic court resulted from a property or driving offense had a subsequent conviction.¹⁰⁰ Twenty-two percent and 11% of the participants originally convicted of a violent offense¹⁰¹ or “other” offense,¹⁰²

an orderly society but which do not denote criminality in their commission.” ALASKA STAT. § 11.81.250(a)(6). The Council did not record convictions of violations as criminal convictions for purposes of this report.

94. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 9.

95. *Id.*

96. *Id.* at 8. Violent offenders (18%), driving offenders (16%), property offenders (15%), and other offenders (14%) had similar rates of being convicted of new offenses more serious than their 1999 offenses.

97. *Id.* at 9.

98. *Id.* at 12.

99. *Id.* at 9.

100. RECIDIVISM IN ALASKA’S FELONY THERAPEUTIC COURTS, *supra* note 12, at 11.

101. All of the offenders were in Bethel, which was the only court that worked with those convicted of violent offenses.

102. “Other” offenses included a wide range, such as weapons charges, perjury, obstruction of justice, escape, and public order offenses.

respectively, committed a subsequent offense.¹⁰³ None of those originally convicted of a drug offense were convicted of a subsequent offense.¹⁰⁴

b. Seriousness of New Convictions. Within the first year after their release from the program,¹⁰⁵ none of the program participants—neither graduates nor discharged—were convicted of an offense at a more serious level than the one for which they were admitted to a therapeutic court.¹⁰⁶ The therapeutic court offenders appeared to be less likely than others to commit more serious offenses during the first year after their discharge or graduation. In the therapeutic court analysis, 3% of the comparison offenders had a more serious offense during the first year after their release. In the baseline recidivism report, in contrast, about 15% of most types of offenders were convicted of a more serious offense after their release.

D. Timing of Recidivism

1. Baseline Offenders

National data showed that most recidivism occurred during the first year after release from incarceration.¹⁰⁷ The longer an offender was free without being re-arrested, the less likely that the offender would ever be re-arrested.¹⁰⁸ Alaska recidivism followed the same pattern. Within the first year after release, 38% of the 1999 convicted offenders had been re-arrested at least once.¹⁰⁹ This represented 65% of all of the re-arrests during the three years after release.¹¹⁰

103. RECIDIVISM IN ALASKA'S FELONY THERAPEUTIC COURTS, *supra* note 12, at 11.

104. *Id.* Note that the number of participants convicted during the first year after departure from the program was relatively low because of the short time, just twelve months, available for conviction.

105. *Id.* at 12 n.34. For graduates, release from the program was measured from their date of graduation. For participants who were discharged from the program or left voluntarily, release was measured from the date on which they were released from serving any sentence that was imposed.

106. *Id.* at 12 n.35. For the sake of completeness, it should be noted that a graduate of one of the therapeutic courts was convicted of a more serious crime *two years* after graduation from the therapeutic court.

107. BJS REPORT, *supra* note 3, at 3.

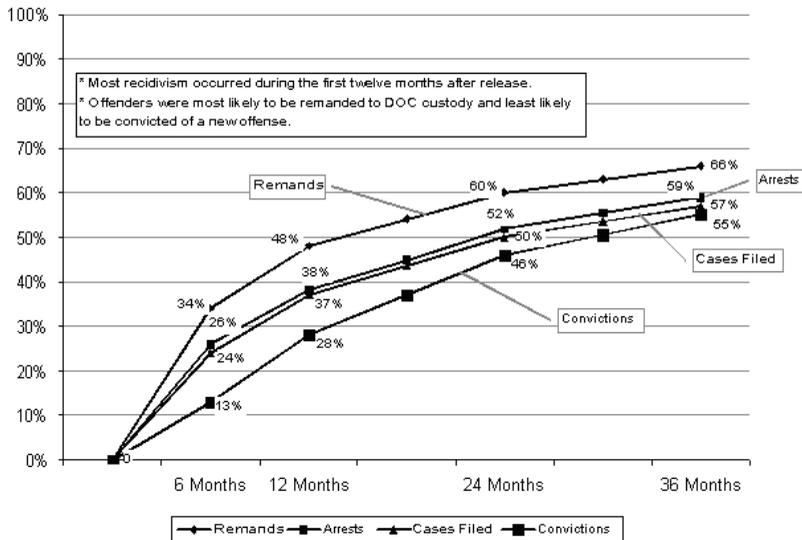
108. *Id.*

109. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 11.

110. *Id.*

The same timing-pattern of recidivism was found in all four of the recidivism measures. Within the first six months after release, 34% of the offenders were remanded to custody at least once. This meant that slightly more than half (52%) of the remands during the three years after release had already occurred by the end of six months after release.¹¹¹

Figure 1
Months to First Arrest, Filing, Conviction and Custody
Within First Three Years of Release



Alaska Judicial Council Recidivism Study: November 21, 2006

111. *Id.*

2. Therapeutic Court Participants

Here, it is best to display the data in tabular form. Table 1 shows the recidivism rates for the first six months and the first year after offenders graduated from therapeutic courts or from serving their sentences in the cases of the discharged participants, the comparison offenders, and the 1999 felony report offenders.¹¹²

Table 1

Recidivism rates for therapeutic court graduates, discharged, comparisons, and baseline offenders during the first six months and the first year after the end of the program ¹¹³				
	Graduated ¹¹⁴	Discharged ¹¹⁵	Comparison Offenders ¹¹⁶	1999 Felony Report Offenders (baseline) ¹¹⁷
Percent Arrested (1st Six Months)	8%	26%	18%	26%
Percent Arrested (1st Year)	13%	39%	32%	38%

112. RECIDIVISM IN ALASKA'S FELONY THERAPEUTIC COURTS, *supra* note 12, at 4. All of the offenders had been released for at least one year. When comparing the different groups, it is useful to remember that all of the participants in the therapeutic courts were there because they had serious alcohol or drug abuse problems. The comparison group offenders also had substance abuse issues. Of the 1999 felony offenders, 68% had alcohol problems and 48% had drug problems. *Id.*

113. *Id.* The analysis used 214 offenders who were released from incarceration or the program for at least one year.

114. *Id.* (category of offenders who completed a therapeutic court program).

115. *Id.* (category of offenders who were in a therapeutic program but opted out or were discharged).

116. *Id.* (category of offenders who had characteristics similar to the therapeutic court participants but did not participate in a therapeutic court program).

117. *Id.*; CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 10 (two-thirds sample of all Alaskan offenders charged with a felony in 1999 and convicted of an offense).

Percent Convicted (1st Six Months)	4%	10%	8%	13%
Percent Convicted (1st Year)	6%	26%	23%	28%

Alaska Judicial Council: February 2007

Table 1 demonstrates that graduates of the therapeutic court programs re-offended far less frequently than did any of the other groups measured.¹¹⁸ As is indicated, 13% of the graduates were re-arrested in the first year, one-third of the rate found among other groups, and only 6% of the graduates were convicted of a new offense in the first year, a percentage representing one-quarter of the rate found among other groups. Participants in the program who were discharged did about as well as offenders in the 1999 recidivism sample.¹¹⁹ However, graduates and discharged participants combined did not have statistically better outcomes than comparison offenders.

E. Factors Affecting the Likelihood of Recidivism

Many factors were related to the chances that an offender would commit new offenses or return to incarceration. Earlier parts of the recidivism analysis viewed each factor in isolation to show whether, by itself, it was tied to a greater or lesser likelihood of recidivism. However,

118. RECIDIVISM IN ALASKA'S FELONY THERAPEUTIC COURTS, *supra* note 12, at 5. Graduates had significantly fewer new arrests than the other two groups in the first six months and in the first year, as well as significantly fewer convictions in the first year. There were no significant differences between graduates and other groups for convictions during the first six months after release, probably because there were few convictions during this period. The differences between the discharged group and the comparison group were not statistically significant. The differences between the therapeutic court groups and the 1999 felony recidivism group could not be tested statistically in this report. *Id.*

119. *Id.* Comparison group results were slightly, but not significantly, better than the results for discharged participants. The combined group of graduates and discharged program participants had slightly lower recidivism rates than the comparison group (the differences were not statistically significant) and substantially lower recidivism rates than the 1999 offenders. Graduated and discharged combined rates were as follows: 16% were re-arrested in the first six months, 25% were re-arrested in the first year, 7% were re-convicted in the first six months, and 15% were re-convicted in the first year. *Id.*

the factors overlapped. For both the baseline recidivism analysis and the therapeutic court analysis, therefore, the Council relied on multi-variate statistical analyses to sort out the independent effects of different variables such as indigency.¹²⁰

1. Baseline Recidivism Factors

The Council found that younger offenders were more likely to be re-arrested.¹²¹ The younger the offender, the more likely he was to return to the justice system when compared to older offenders. For example, 18 year-olds were 81% more likely to recidivate than were 45 year-olds.¹²² The recidivism rate was also higher among indigent offenders.¹²³ Indigence was also associated with about a 50% greater chance of being remanded to custody, being re-arrested, having a new conviction, or having a new case filed.

The next most important factors were whether the offender had a mental health, alcohol, or drug problem; whether the offender had a criminal history prior to the 1999 offense;¹²⁴ and whether the offender was an Alaska Native. Each factor was related to a greater likelihood of recidivism, and all of these factors increased recidivism by about the same amount.¹²⁵

Other factors were associated with a lower likelihood of recidivism. Offenders whose 1999 convictions were more serious were less likely to return to the justice system.¹²⁶ Asian/Pacific Island offenders were less likely to have a re-arrest, a new case filed, or a new conviction.¹²⁷ Offenders whose 1999 felony charges resulted in conviction of a sexual offense were among the least likely to be re-arrested, have new cases filed, be re-convicted, or be returned to custody.¹²⁸ Finally, offenders convicted of a

120. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 21. The Council contracted with the Institute for Social and Economic Research ("ISER") at the University of Alaska Anchorage to conduct the multivariate analysis using survival analysis.

121. *Id.* at 12.

122. *Id.*

123. *Id.*

124. *Id.* at 12 n.27.

125. *Id.* at 25–26.

126. *Id.* Offenses were categorized, in descending order of seriousness, as Class A felonies, Class B felonies, Class C felonies, and misdemeanors. None of the offenders convicted of Unclassified Felonies had been released for as much as three years after serving their sentence for the 1999 offense.

127. *Id.*

128. *Id.* at 13.

drug offense in 1999 were less likely to have a new case filed or be remanded to custody, but they had about the same chance as other offenders of having a re-arrest or of being re-convicted.¹²⁹

2. Therapeutic Court Recidivism Factors in Multi-Variate Analysis

Older participants were significantly more likely to have low recidivism rates after they left the program than were younger participants, irrespective of whether they graduated or were discharged.¹³⁰ Additionally, Native and Caucasian participants had about the same chance of being re-arrested during the first year after their time in the programs.¹³¹ The report on baseline recidivism had shown that Natives in general were significantly more likely to be re-arrested after release than were Caucasians.¹³² The finding that Natives had about the same arrest rates as Caucasians, all other things being held equal, was particularly significant in the context of general relationships between ethnicity and recidivism.¹³³

Furthermore, participants in the Anchorage Felony Driving Under the Influence program had fewer re-arrests and new convictions during the first year after release than participants in the other two programs.¹³⁴ In fact, the longer an offender participated in a program, the less likely that participant was to be re-arrested.¹³⁵

III. USE OF RECIDIVISM DATA

Policymakers have found immediate uses for the data presented in the recidivism reports. For example, the Alaska legislature asked for additional analysis regarding Driving Under the Influence (“DUI”) recidivism to aid in the discussion of new legislation. Legislative auditors, reviewing the use

129. *Id.*

130. RECIDIVISM IN ALASKA’S FELONY THERAPEUTIC COURTS, *supra* note 12, at 7 n.22; see also *supra*, Part II.B.1.a.

131. RECIDIVISM IN ALASKA’S FELONY THERAPEUTIC COURTS, *supra* note 12, at 10.

132. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 5.

133. RECIDIVISM IN ALASKA’S FELONY THERAPEUTIC COURTS, *supra* note 12, at 10 n.30.

134. *Id.* at 10.

135. *Id.* at 10 n.29 (noting that “[t]here was not enough information about convictions to analyze the relationship between length of time in the program and convictions”).

of recidivism as a tool to measure performance, cited the Council's work.¹³⁶ Data from the therapeutic courts recidivism report has also been used by program staff, court administrators, funding agencies, and others to understand the nature and possibilities of the programs.

As has been the pattern throughout this Comment, the following will separately address recent uses of both baseline recidivism data and therapeutic court recidivism data.

A. Baseline Recidivism Data

As previously mentioned, there has been increased interest regarding recidivism rates for DUI offenders. One legislator specifically asked about the recidivism rates for the 179 DUI offenders in the report in order to

¹³⁶ The Division of Legislative Audit published three recidivism reports in June of 2007.

The first, *USE OF RECIDIVISM RATES BY STATE AGENCIES, OVERVIEW OF CURRENT PRACTICES*, discussed how recidivism rates were defined, calculated and interpreted, and how state rehabilitation programs could use them to evaluate the success of programs. Appendix B of the report summarized all of the uses of recidivism rates by state agencies published in reports issued between July 1996 and February 2007. A dozen reports, including the Council's two, were included. Most of them provided data about recidivism rates in various state treatment programs. *DIVISION OF LEGISLATIVE AUDIT, USE OF RECIDIVISM RATES BY STATE AGENCIES, OVERVIEW OF CURRENT PRACTICES (2007)*, available at <http://www.legaudit.state.ak.us/pages/audits/2007/pdf/30035arpt.pdf>.

The second and third reports focused on the use of recidivism rates by specific state programs. *USE OF RECIDIVISM RATES BY STATE AGENCIES, RECIDIVISM RATES FOR ALASKA SEX OFFENDERS* reported recidivism results based on data from the state Department of Corrections that was analyzed by The Urban Institute. *DIVISION OF LEGISLATIVE AUDIT, USE OF RECIDIVISM RATES BY STATE AGENCIES, RECIDIVISM RATES FOR ALASKA SEX OFFENDERS (2007)*, available at <http://www.legaudit.state.ak.us/pages/audits/2007/pdf/30035crpt.pdf>. The report concluded that "completion of sex offender treatment while on community supervision did not impact an offender's likelihood of being arrested or re-convicted," and "sex offenders were less likely to be re-convicted while on community supervision than after they were released from supervision." *Id.* at 18. The report also concluded that "re-convictions for sex crimes were rare events." *Id.* at 23.

USE OF RECIDIVISM RATES BY STATE AGENCIES: RECIDIVISM RATES FOR THE ALCOHOL SAFETY ACTION PROGRAM, the third report, reported recidivism results based on data from the Department of Health and Social Services' Alcohol Safety Action Program. *DIVISION OF LEGISLATIVE AUDIT, USE OF RECIDIVISM RATES BY STATE AGENCIES, RECIDIVISM RATES FOR THE ALCOHOL SAFETY ACTION PROGRAM (2007)*, available at <http://www.legaudit.state.ak.us/pages/audits/2007/pdf/30035brpt.pdf>. The report found that "[Alcohol Safety Action Program] ASAP clients that completed ASAP education were less likely to be rearrested than clients who were not assessed." *Id.* at 21. On the other hand, ASAP clients who completed treatment "were not less likely to be rearrested than clients who were not assessed." *Id.*

assist in drafting new DUI legislation. Since the Council had not previously reviewed the data at the level of specific offenses, it returned to the database and analyzed only the Driving offenders.¹³⁷ The analysis showed that the rates for re-arrest and re-conviction for the DUI/Refusal offenders were very similar to those for the larger baseline group of all offenders.¹³⁸ However, the DUI/Refusal group had a noticeably higher rate of remands to custody than did all offenders taken together.¹³⁹

The analysis also looked at the factors that were most closely related to the likelihood that a DUI/Refusal offender would recidivate.¹⁴⁰ That analysis found that the age of DUI offenders and prior criminal history were related to increased chances of both re-arrest and re-conviction.¹⁴¹ The indigency of DUI offenders was also related to re-conviction, but not to re-arrest. Remands to custody, which were higher for DUI/Refusal offenders than for other 1999 offenders, were associated with mental health problems and with being of a minority ethnic group. The DUI/Refusal offenders' ages, prior criminal histories, and indigency status also were associated with a greater chance that the offenders would be remanded to custody.

B. Therapeutic Court Recidivism Data

The therapeutic court recidivism analysis used a comparison group of offenders who were similar in many characteristics to the offenders that participated in the therapeutic court programs. The report also compared them to the larger group of offenders discussed in the recidivism report: "Therapeutic court graduates were . . . re-arrested far less frequently than a baseline sample of Alaskan offenders charged with felonies in 1999."¹⁴² In addition, the report found that "[p]articipants who were discharged from the programs or who left voluntarily had about the same rate of recidivism

137. Memorandum from Alaska Judicial Council to Representative Harry Crawford (Feb. 9, 2007) [hereinafter Alaska Judicial Council Memorandum] (on file with the Alaska Judicial Council).

138. The baseline group of all offenders included the DUI and Refusal offenders. See CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 10.

139. See Alaska Judicial Council Memorandum, *supra* note 137.

140. *Id.*

141. Chances of recidivism increased for younger defendants and for worse prior records. See E-mail from Alaska Judicial Council to Institute of Social and Economic Research (February 9, 2007) (on file with the Alaska Judicial Council).

142. RECIDIVISM IN ALASKA'S FELONY THERAPEUTIC COURTS, *supra* note 12, at Executive Summary.

as the offenders charged with felonies in 1999.”¹⁴³ However, graduates and discharged participants combined did not have statistically significant better outcomes than comparison offenders.

The findings for Alaska therapeutic courts, as measured by reduction in criminal re-arrests, echoed findings in reports from around the United States. For example, a recent decision by the Supreme Court of New Jersey cited research showing that “[w]ithin three years of finishing a drug court program, only fourteen percent of drug court graduates were arrested for new indictable crimes.”¹⁴⁴ The opinion compared this finding with the national data cited earlier¹⁴⁵ showing that 67.5% of offenders released in 1994 were re-arrested within three years of release.¹⁴⁶ The opinion also noted that the average cost for a defendant in the drug court program was \$17,266 for one year (which included six months of in-patient treatment), compared to one year in the New Jersey state prison, which cost \$34,218.¹⁴⁷

Alaska’s data also could be viewed in the context of other reports on the costs and effectiveness of therapeutic courts and other treatment programs. A recent report from 2006,¹⁴⁸ by researchers at the Washington State Institute for Public Policy, showed results for a wide range of

143. *Id.* See *supra*, Part II.B.2. (discussing how the characteristics of therapeutic court offenders would have pre-disposed them to higher rates of recidivism).

144. *State v. Meyer*, 930 A.3d 428, 429 (N.J. 2007). The Council’s evaluation of Alaska’s therapeutic courts set a stricter standard for re-arrests by using all re-arrests during the first year after completing the programs, whether for felonies (indictable offenses), misdemeanors, or a re-arrest for a probation or parole violation.

145. BJS REPORT, *supra* note 3.

146. *Meyer*, 930 A.3d at 429.

147. *Id.* at 430.

148. STEVE AOS ET AL., WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, EVIDENCE-BASED PUBLIC POLICY OPTIONS TO REDUCE FUTURE PRISON CONSTRUCTION, CRIMINAL JUSTICE COSTS, AND CRIME RATES, Exhibit 4, at 9 (2006) (examining a variety of treatment and monitoring programs, including therapeutic courts from around the country that have been shown to reduce recidivism). Costs and benefits of many of the programs are shown on the chart. Several kinds of adult treatment programs reduced recidivism by 5% or more. *Id.* These included intensive supervision programs: treatment-oriented programs (-16.7%), drug treatment in community (-9.3%), vocational education in prison (-9.0%), adult drug courts (-8.0%), general education in prison, basic education or post-secondary (-7.0%), cognitive-behavioral therapy in prison or community (-6.3%), correctional industries in prisons (-5.9%), and drug treatment in prison, therapeutic communities or outpatient (-5.7%). *Id.* Note that of the eight types of programs that reduced recidivism, four involved drug treatment. Two other programs were effective for targeted populations: Washington’s Dangerously Mentally Ill Offender program (-20.0%) and sex offender treatment in prison with aftercare (-7.0%). *Id.*

treatment programs. Alaska's results for participants compared favorably with the data from some of these programs.

IV. SUMMARY AND CONCLUSIONS

Policymakers need to decide how to best use the public's resources to maintain public safety. Typically, prison is the most expensive choice among sanctions for criminal acts. Recidivism data can help decide whether prison is the most effective choice or whether other options would reduce crime, cost less, and result in fewer offenses and victims.

A. Findings and Recommendations From the Baseline Recidivism Report

Overall, offenders were more likely to re-offend than before they entered the criminal justice system. Two-thirds of all offenders in the baseline recidivism sample returned to the custody of the Department of Corrections within three years of their release. Over half of all baseline offenders were re-arrested, had a new criminal case filed, or had a new conviction within three years. Very telling is the fact that these offenders were most likely to recidivate during the first year of release and even more so during the first six months. This final statistic indicates that using existing resources for "re-entry" programs may be a cost-effective way to reduce recidivism by helping offenders adjust to the expectations of employers, treatment providers, and others with whom they interact. These programs are helpful in that they can address treatment needs and help offenders find safe and sober housing.

Lower recidivism rates among some groups and higher rates among others point to some alternative conclusions. For example, lower recidivism rates for some type of offenders, such as older persons, drug offenders, and persons with no prior convictions, may suggest that these offenders could be safely incarcerated for shorter periods. In the alternative, they could serve the public through monitored community service. The higher recidivism rates found among offenders with alcohol, drug, or mental health problems may suggest that treatment or other alternatives to incarceration might be more effective long-term responses that would ultimately provide greater public safety. Moreover, higher recidivism rates among property offenders and indigent offenders may suggest that shifting resources for these offenders to community-based

institutions may be a more effective and less costly way to reduce recidivism among these groups.

B. Findings and Recommendations From the Therapeutic Courts Recidivism Report

National reports have shown that many therapeutic programs reduced recidivism and had benefits that exceeded costs by as much as ten-to-one ratios.¹⁴⁹ Graduates of the programs in Alaska were less than half as likely to be re-arrested as comparison offenders and about one-third as likely to be re-arrested as offenders in the baseline recidivism report. Over half (54%) of the participants in the therapeutic court programs graduated. Better outcomes were associated with length of time in the program, but discharged participants did not have statistically significant better outcomes than comparison offenders.

The Council's reports also presented some noteworthy information regarding recidivism rates among people of different ethnicities. For example, the Council's report found that Native and Caucasian participants fared about equally well in therapeutic courts. This was particularly important because the Council's baseline recidivism report found that Native ethnicity was associated with significantly higher recidivism rates.¹⁵⁰ Native groups have in fact urged state agencies to provide treatment programs that respond to differences between Native and Western cultures. Participants of other ethnicities (African-American, Asian-American, and Hispanic) were grouped together for analysis because of their small numbers. Participants in this combined group were re-arrested at higher rates than Native or Caucasian participants.

The Council recommended that agencies sponsoring therapeutic courts should do additional work to show the costs and benefits of this approach. Additionally, the Council recommended that the state explore the reasons for the good response to therapeutic courts among Native participants. The state also should explore the reasons for differences among other ethnic groups in therapeutic courts.

149. RECIDIVISM IN ALASKA'S FELONY THERAPEUTIC COURTS, *supra* note 12, at Executive Summary.

150. CRIMINAL RECIDIVISM IN ALASKA, *supra* note 1, at 25-26.