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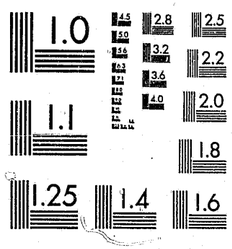

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A SPECIAL REPORT ON THE ALASKA CRIMINAL JUSTICE SYSTEM WITH EMPHASIS ON THE DEPARTMENT OF LAW'S CRIMINAL DIVISION

February 15, 1983

Audit Control Number

04-4135-83-S

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STATE OF ALASKA

DIVISION OF LEGISLATIVE AUDIT

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THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

February 15, 1983

Members of the
Legislative Budget and Audit Committee:

In accordance with a Legislative Budget and Audit Committee special request and Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A SPECIAL REPORT ON THE
ALASKA CRIMINAL JUSTICE SYSTEM
WITH EMPHASIS ON THE DEPARTMENT OF LAW'S
CRIMINAL DIVISION

February 15, 1983

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

U.S. Department of Justice
National Institute of Justice

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PURPOSE AND SCOPE OF THE REPORT

In accordance with a Legislative Budget and Audit Committee special request and Title 24 of the Alaska Statutes, we conducted an examination on the Alaska Criminal Justice System (CJS) with specific emphasis on an evaluation of the prosecutor's role in the system. Our scope included four areas:

1. Defining possible legislative action which would help to improve the system.
2. A review and evaluation of management controls.
3. An evaluation of the prosecutor's interaction with other segments of the Criminal Justice System.
4. Other legal issues which may need additional attention.

Identifying areas of concern for possible legislative action and review was accomplished through personal contact with participants within CJS including administrators, police, judges, prosecutors, and public defenders. This survey was supplemented by questionnaires which solicited opinions and concerns.

Management controls are the basis for the establishment of efficient and effective performance, and as such, was an important phase of our audit work. Our evaluation included the following areas:

1. Program planning and objectives
2. Program organization and function
3. Performance standards established by management
4. Monitoring of performance through management reporting systems and oversight reviews.

The smooth functioning of the Criminal Justice System depends upon good working relationships between the various segments involved. We evaluated segment interaction through the use of surveys and questionnaires and observation techniques for the following agencies:

1. police
2. courts
3. public defenders
4. prosecutors

SCOPE CONSTRAINTS

The performance evaluation of any management system requires that management have established policies, goals, performance standards, and management information systems that allow quantification and verification of actual performance.

Although, data is available on a case-by-case basis, management information systems which would have allowed a quantitative evaluation of actual performance, and comparable performance between offices, regions or agencies did not exist. As a result, our audit analysis was limited to such data as existed, and our actual review of case files and interviews with system personnel.

The Department of Health and Social Services, Division of Adult Corrections was not included in our evaluation, but a special audit of this Division will be released under a separate audit cover. The Juvenile Justice System is a separate system and was not included in our evaluation.

In addition, we did not examine the "practice of law" from a professional or peer review point of view. However, recommendations concerning the management of the Criminal Division may have legal effects not considered in our evaluation.

The policy and audit approach utilized by the Division of Legislative Audit for Performance Review can best be described as "audit by exception".

This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made and little time is devoted to reviewing well run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

ORGANIZATION AND FUNCTION

The Criminal Justice System (CJS) is comprised of a series of agencies that have responsibility to see that the laws of Alaska are enforced. These agencies are the police, judiciary, prosecutors, defense, corrections, probation and parole agencies. Although it is referred to as a "system", it actually functions as a "non-system", as there are many designed conflicts between the components. The conflicts are rooted in the differing roles that agencies play; roles that often set one part of the system against another. For example, the objective of the police is to deter and investigate crime, while most corrections agencies now focus on rehabilitation. Corrections then, may feel that community work services offer the best chance for rehabilitation, while the police would argue that this reduces the deterrent effect of the system.

In comparison with other states, Alaska's CJS is unified and centralized. Almost all prosecution functions are within the Department of Law, headed by an appointed Attorney General. However, municipal prosecutors are playing an increasing role. Most public defense functions are within the State Public Defender Agency. The exception is attorneys appointed by the court when the Public Defender Agency has a conflict of interest. These attorneys are under contract with the Alaska Court System. All judicial activities are within a unified and centralized State court system, headed by the Chief Justice with an appointed Court Administrator. The correctional facilities are almost all within the Division of Corrections, headed by an appointed director. State law enforcement functions are within the Department of Public Safety, headed by an appointed Commissioner. The local police agencies make up the autonomous parts within Alaska's CJS and are also playing an increasing role. Most other states have numerous elected autonomous officials and agencies in their CJS.

Police

The basic purposes of the police are public safety and the control of conduct which has been legislatively defined to be crime. The major objective, in the criminal aspect, is the deterrence of crime and the investigation of reported crimes. When carrying out this role the police are prohibited from engaging in practices which would violate a person's constitutional guarantees. However, the public safety role takes up most of their time and involves traffic monitoring, search and rescue, and administrative tasks. In Alaska, the law enforcement section of the Criminal Justice System is comprised of the State's police agency, the Alaska State Troopers and local police agencies.

The police are probably the most visible arm of the CJS. They are usually the first and sometimes the only contact an individual has with the CJS.

Prosecutors

Prosecutors are charged with a dual responsibility of not only convicting, but also seeing that justice is served. This means that while prosecuting those who violated the law, they are also required to protect our constitutional rights. Our system provides that an individual is innocent until proven guilty and that he must be proven guilty by the prosecution, "beyond a reasonable doubt". Because of these provisions, a prosecutor must weigh the evidence, and determine if he believes he can prove an individual guilty "beyond a reasonable doubt" before charging someone with a crime. If he does not believe he can, professional standards provide that he should not put an individual through the trauma of the criminal justice process.

Alaska's prosecution function is centered in the Department of Law. While few municipalities have their own prosecutors, State attorneys do the majority of prosecution in the State. The Attorney General heads the Department and appoints a Chief Prosecutor who is responsible for supervising eleven regional district attorney offices and the Office of Special Prosecution and Appeals (OSPA). The regional offices are responsible for the prosecution of both felony and misdemeanor cases and also have jurisdiction in the juvenile and non-support matters, mental commitments and alcohol commitments. OSPA coordinates criminal appeals and has primary responsibility for the prosecution of economic crimes and public corruption offenses.

Public Defenders

The Public Defender Agency (PDA) was established to ensure an accused person who could not afford to hire an attorney would receive legal representation equivalent to those who could. The U.S. Supreme Court has established that an indigent person charged with a serious crime has an absolute right to legal counsel in court. This includes misdemeanors, if the penalty for such includes a possibility of incarceration. The indigent has the right to representation at many stages in the criminal justice process. These stages include police questionings, pre-indictment line-ups, preliminary hearings, trial, first appeal, and parole and probation revocation hearings. The PDA has offices in nine regions. They have responsibility for the entire state, and in regions where there are no offices, an attorney travels from a regional office to handle cases. When the Public Defender has a conflict of interest, (they are precluded from representing two or more clients with opposing interests) the court appoints a private attorney.

Judiciary

The role of the judiciary in the CJS lies in providing a system of integrity and competency in settling criminal and civil disputes. The court must have a lasting and real concern in preserving the freedoms Americans constitutionally have and must provide deliberative thoughtfulness in settling all matters before them, no matter how small they may seem to be.

The Court System in Alaska is composed of several judicial levels. The Supreme Court consists of five justices and has final appellate jurisdiction in all actions and proceedings. The Court of Appeals is made up of three judges and has appellate jurisdiction in criminal actions and proceedings commenced in the Superior Court. The Superior Court is divided into four districts. It has general original jurisdiction over criminal and civil matters. Felony criminal cases are tried in Superior Court. Each of the four districts in Alaska has a District Court for which District Court judges and magistrates are provided. District Court has limited original jurisdiction for criminal and civil matters, including misdemeanors and violations (including municipal violations).

Corrections

The function of corrections programs is the confinement, treatment, care, rehabilitation and reformation of prisoners. Included in this function is the classification of prisoners for placement and treatment needs and the provision of safety, subsistence, and discipline.

The corrections system in Alaska consists of eleven facilities statewide, which provide halfway houses to medium security accommodations. Funding has recently been proposed for a maximum security prison in Alaska.

Probation/Parole Agencies

Probation and parole function to release an individual convicted of a crime into the community, under the supervision of probation service or the parole board. Probation is a sentence involving no prison time if conditions of release are met. Parole is release following a period of incarceration. Probation and parole are usually accompanied by conditions of release, which, if violated, may serve as a reason to take the individual back into custody. Probation and parole are a part of the corrections system, but are separated from the incarceration function. Alaska has functioning probation and parole systems, including a Parole Board.

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SUMMARY AND AUDITOR'S COMMENTS

Former Governor Jay Hammond in introducing the Criminal Justice Planning Agency's comprehensive criminal justice plan in June of 1977 stated, "A decade ago professionals in the field of criminal justice were just beginning to use the term criminal justice system. The growing complexity of the administration of justice in this country made it increasingly evident that the various components of this justice "non-system" must begin to work together to manage the burgeoning problems of formal social control. The Criminal Justice Plan emphasizes the need for all elements of the criminal justice system to plan and work together as a system and to plan and work together with the social service delivery system . . . to develop and coordinate the implementation of a comprehensive plan to reduce crime and improve the criminal justice system in Alaska."

The past director of the Criminal Justice Planning Agency, in the final days of the agency's existence, related that he believed the agency had not been able to entirely fulfill their mission because it was not possible to get the agencies to act together as a system. Individual personalities and opinions prevented them from developing unified policies and direction.

In our opinion, the difference between the agencies is much more than personality. The system was designed to be in a state of conflict, and a consensus among the participants will be the exception rather than the rule. This is not to say improvement and changes have not been made. Based upon reports of prior problems, the agencies are now working much closer. However, we believe the senior managers should continue to provide leadership in improving the interagency relationship, and have so recommended (See Recommendation No. 1).

In recent years there has been increased public interest and concern with CJS's performance. This audit, in part, is a result of that concern. The Legislature has re-written the criminal law, which in many cases increased the penalties, and broadened the definition of offenses. Presently the Legislature is considering changes which would create a death penalty, allow the use of evidence tainted by illegal search and seizure, if the officer acted in good faith, and limiting the defendant's right to perempt a judge without cause. However, it will be years before the effect and cost of these changes on CJS will be understood.

The CJS has been responding to public and legislative concerns, although their response is difficult to evaluate due to a lack of quantifiable, comparable, and verifiable data

on the actual performance of the agencies. However, from the data available it is obvious the agencies are increasing the number of criminals processed through the system. The crime rate in Alaska has not significantly increased, nor have the resources appropriated to most agencies. However, the number of criminals being committed is increasing, up 140%, as are the number of trials up, 250% in Anchorage in three years (See Appendixes C and D). Accurate data on CJS is needed by both the Executive and Legislative branches for planning and evaluating the performance of CJS. We have recommended compatible management systems be developed to provide internal and external statistics (See Recommendation No. 2).

The increasing number of criminals being charged and tried is also causing concern. The State's prisons are presently overcrowded (See Appendix B), and the Public Defender Agency and Courts may not be able to respond to further increases at their current levels. In addition, prosecutors, especially municipal prosecutors, may be prosecuting weak cases. Even when a person is found innocent of a crime, the charging of that crime can cause a severe adverse impact, both socially and financially, to an individual.

We have made recommendations for basic management improvements. However, these recommendations are not new, and the problems noted are not just "Alaska" problems. Senior managers in the CJS tend to be specialists in law, or law enforcement first, and managers second. As a result, management's emphasis is more on specific problems, and they usually do not approach management from a system perspective. Most of the problems identified in this report have been reported on in the past by the Alaska Criminal Justice Planning Agency, the Alaska Judicial Council and the National District Attorneys' Association. We believe legislative consideration should be given to increasing resources in two areas, the number of Public Defender attorneys and investigative staff for the prosecution. This should enhance effectiveness throughout the system (See Recommendations 4 and 6).

Another area that is difficult to address are the general expectations of CJS personnel compared to their actual performance and responsibilities. We found the majority of individuals responding to our questionnaire believed the public's perception of the CJS performance was poor while only a very few believed the public's perception of the CJS was excellent. However, our examination of cases did not find a large number of criminal cases being rejected when the prosecutors believed there was sufficient information and resources available to seek a conviction. We did find that exceptional cases tended to be brought before the public by the news media.. Also we found the professionals to

be very self-critical, and that they held very diverse and strong opinions on how the system should function. Given these conditions, we found that most of the problems and concerns raised were based upon differences in professional opinion, and criticism of established policy rather than complaints of poor performance or non-performance of the agencies and individuals in the system. Therefore, we have concluded that the CJS's actual performance is much better than generally perceived.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

Improved coordination and joint planning by senior managers in the Criminal Justice System (CJS) is needed.

Many of the individuals interviewed expressed concern that: (1) there was insufficient coordinated criminal justice planning,(2) one agency through its policies could adversely affect another agency, and (3) there was inadequate coordination in the development of data in management systems. Problems resulting from these concerns ranged from understaffing of field offices to the prioritization of caseloads.

Although we found merit with some concerns, many problems could not be evaluated due to differences in professional judgement or misunderstandings between agencies. However, we do believe improvements would result from periodic meetings and joint planning by the agencies involved. Some of the problems noted were:

A. Managers need accurate verifiable data on the performance and activities of the system. The existing management systems do not agree, are not verifiable and access to the data is often not available in a useable format (See Recommendation No. 2).

B. Although each agency within the system has separate responsibilities and objectives, each agency acting on its own has the power to adversely impact other agencies in the system by creating an imbalance through funding, policies, or procedures. This is especially true at the local level. We have been informed of a number of situations where this has occurred: 1) The Wrangell-Petersburg area has a new Superior Court Judge, but has neither a local public defender nor a prosecutor; 2) Sitka and Palmer have both a judge and a prosecutor, but do not have a full-time public defender; and 3) Court officials in the Anchorage area feel the number of cases is rising beyond what they can effectively handle, especially in the misdemeanor area. However, the Municipality of Anchorage just expanded its police force by thirty officers. Additionally, many individuals feel the Public Defender Agency does not have enough attorneys to handle its caseload and thereby slows down the entire process.

With the exception of the Public Defender Agency, we have not examined the imbalances noted, but without unlimited resources it is obvious agencies must maintain some balance to allow all agencies to accomplish their responsibilities. We believe joint planning could help prevent an imbalance at both the State and local level.

C. Improved communications would also result. The very nature of CJS precludes unified policies on a system-wide basis. But a forum to discuss problems, and agency policies would be beneficial in setting a spirit of cooperation. Individuals within the system hold strong, and frequently differing opinions on how CJS should operate. Based upon reports of prior problems with inter-agency communication we believe there has been considerable improvement. However, it should continue to be emphasized.

Recommendation No. 2

The agencies within Alaska's Criminal Justice System should coordinate in the implementation of an integrated criminal justice data system.

In 1970, the State accepted funding from the Law Enforcement Assistance Administration (LEAA) to create a five year master plan for the development of an automated, state-wide criminal justice information system. The plan that resulted envisioned phases to develop subsystems to meet the operational and management needs of the various criminal justice agencies. The plan was to culminate in the development of a statistical subsystem through the manipulation of information entered into the system by the various components. Only the police implemented a part of the plan in the form of what is now the Alaska Justice Information System (AJIS).

There currently exists a troublesome problem between the data produced by the various agencies. The court system has the responsibility for collecting and disseminating data concerning the court activity and the utilization of judges and court resources. However, data on the same subject compiled by the police and by prosecutors is often different and non-comparable. Police count arrests while prosecutors count charges and the courts count cases. Additionally, data within an agency often cannot be verified and is compiled inconsistently from region to region.

The lack of hard, statistical data, or management systems precludes effective management control, planning for future needs, or evaluation of actual performance. Not only does each individual agency require such data for its own operational and managerial needs, but, inter-agency data is needed as well. If data is compatible between agencies it will allow for the combining of data for the purpose of preparing system-wide statistics. This should allow agencies to update

and verify their own data, and the ability to analyze the effectiveness of the system from arrest to release in quantifiable terms.

Statistics concerning the total CJS are needed by senior level management within the system and by peripheral programs. Senior level management needs such data to analyze and evaluate system-wide trends. Planning could better be accomplished with such information in mind and resources allocated to specific, proven needs. Peripheral programs which deal with individuals involved with the Criminal Justice System, such as the battered women programs, violence counseling and drug and alcohol programs, also are in need of data concerning the total system.

The Department of Public Safety (DOPS) is presently in the process of modernizing and improving AJIS. This system provides information concerning each individual's arrests, disposition, and traffic record.

Presently, the Criminal Division of the Department of Law is in the process of implementing the Alaska Prosecutor's Management Information System (PROMIS). PROMIS has been installed in Juneau, Anchorage and Fairbanks. The Division is planning to install on-line terminals in Kenai and Ketchikan by FY'84. Other offices state-wide send all their information to one of the on-line offices for entry into the system. Those offices that are not on-line will still have their data on the system and will receive periodic reports for operating and management use. Because of the stage of implementation, we have not been able to fully evaluate the system. However, from our evaluation of system documentation, PROMIS should produce the data needed for the effective management of the Division. PROMIS should also provide information that would accurately depict the Division-wide levels, including statistics by crime type, prosecuting attorney, charge and defendant.

Neither the Alaska Court System nor the Division of Corrections have a management information system functioning which provides current useful, verifiable data concerning their agency's operations or performance. Both are in the process of developing a system plan which will allow them to track cases and compile needed management information. The Court System was frequently criticized for not having a management system that provides effective management of their caseload and scheduling of cases (calendaring). Presently, research data and management data has to be extracted manually, and is not current. Because of the volume and complexity of the Courts' management needs, we believe a study should be made to determine if a savings would occur with the automation of their management system.

As discussed in Recommendation No. 1, there are situations where the CJS would benefit from the planning, coordination

and cooperation of the senior management personnel of the various criminal justice agencies. We believe this to be such a case. Without accurate, verifiable data, the effective monitoring and evaluation of operations by management cannot be accomplished. The compatibility of data between systems would be the first step toward an integrated criminal justice system which would be of great benefit to the entire criminal justice community.

Recommendation No. 3

The Attorney General should formalize administrative and professional operating policies, procedures and performance standards for the Criminal Division.

There have been plans by the Department of Law to formalize written standards and policies for the Criminal Division for several years. In June 1980, "Standards Applicable to Case Screening and Plea Negotiations" were issued. More recently, the Division has been in the process of installing and implementing a computerized case management system, Prosecutor's Management Information System, (PROMIS) and has developed a "Case Management System" notebook which standardizes procedures for processing case files. This notebook has been distributed to all regional offices and the new system should be functioning in FY'83. However, the Department of Law should formalize policies and procedures for professional office operations.

A. The Division should develop and maintain an office manual.

Presently, there is no vehicle for consolidating established policies and procedures. A recurring comment by both administrative and professional staff was an unawareness of established policies and standards. The most useful tool for consolidating office policy and procedure is the office manual. The manual also serves as the most effective method of disseminating that information to staff members and maintaining a record of it.

The Division has been in the process of developing a comprehensive office manual. However, its development has not been a high priority and other matters have taken precedence.

B. The Division should monitor and evaluate actual performance for compliance with stated policies and procedures.

The establishment of policies, procedures and performance standards alone will not provide assurance that policies are implemented. Effective management control

can only be gained through the monitoring and evaluation of performance to ensure compliance with those policies and procedures.

There has been considerable concern by individuals in CJS, that there is a lack of uniformity by prosecutors in the application of established screening, charging, plea bargaining and diversion policies. The majority of prosecutors and other CJS personnel, in response to questions addressing the issue, stated that application of policies and procedures varied by region and sometimes by individual attorney. This is not to say that differences should not exist between offices, size alone requires this, but management should be aware of and approve such variances. Due to the great discretionary power held by the prosecutor and the impact of his decisions on the entire criminal justice system, it is especially important that there is an active oversight function by management.

For each office, by program, a formal review process should be implemented starting with the supervising attorney who should monitor and review the performance of subordinate personnel. In addition, the Chief Prosecutor should perform a field review of each office and should evaluate offices as circumstances change, that is, if numerous complaints are received, or non-compliance with policy is observed. This review should also include an evaluation of the administration of the reporting system, PROMIS, to determine that the resulting data is both verifiable and accurate.

Recommendation No. 4

An investigative support unit is needed in the Criminal Division.

Based upon discussions with CJS personnel and cases provided by the prosecution, we believe in-house investigative support for prosecutors is needed for the following reasons:

A. The Chief Prosecutor and many of his assistants believe their efficiency and effectiveness can be increased through the use of investigative personnel. Police reports, at times, are not adequate for the prosecution to pursue a case, and additional information is needed. We were shown cases that were dismissed, delayed, or where charges were brought against an individual which would not have been, had the prosecutor had additional facts. Follow-up investigations by police officers are sometimes difficult to obtain because the police officers have time and resource constraints and the specific needs of the prosecutors, at times, are not fully understood. An

investigative staff would provide a needed link between the prosecutor and the police officer. This is especially true of the municipal police officers who usually have a higher turnover, and less training than the Alaska State Troopers.

B. The prosecutors also believe they need investigative personnel with expertise not generally within the scope and experience of most police officers. An in-house investigative unit would allow the Criminal Division to hire investigative personnel with expertise in banking, insurance, or finance, if needed.

C. The Criminal Division would be better able to respond to request for assistance and investigations. We were informed by Alaska State Troopers, municipal police officers, municipal prosecutors, State agencies, and State prosecutors that the Division has not always been able to provide investigative assistance when requested. Although most investigations should be the responsibility of the police officer, we were informed by CJS personnel that there are times when it is appropriate for the prosecutor to become involved in the investigation rather than just providing advice and requesting additional information from the police officer. Areas noted were:

1. Assistance to the municipal police departments for internal investigation of public complaints of wrongful acts. The Department of Public Safety (DOPS) has an internal investigative process and they do not believe they would need this service.

2. Investigation of corruption or wrongful acts on the part of police officers or public officials.

3. Special investigation involving organized crime, or complex fraud schemes which often take extensive time and resources.

Although the need for prosecutors to have increased support to develop cases has been recognized and was frequently mentioned by police officers and prosecutors, differences in opinion have existed between the DOPS and the Department of Law as to whether the investigative support should be provided by DOPS or whether Law should have their own investigative staff. We also noted in our discussion that prior joint efforts have not worked well because of conflicts over supervisory and budgetary responsibilities.

We, therefore, believe the investigators should be within the Department of Law. However, we are not recommending a duplicating or paralleling police force. Investigators recommended herein should work closely with police officers and help form a link between the police and the prosecutor,

but their primary responsibility should be to assist the prosecutors to more effectively and efficiently fulfill their role. To accomplish this we make the following suggestions:

A. Prosecutors or investigators should not initiate investigations on their own unless specific prior approval is obtained from the Chief Prosecutor.

B. Professional and training standards should be established to ensure that the investigators are qualified, and that they carry out their duties in a professional manner.

C. To allow the maximum flexibility in hiring the investigators from a variety of specialties, we believe the investigators should be exempt positions.

Recommendation No. 5

Improved communications and procedures are needed to ensure follow-up investigations are effectively handled.

After an arrest or investigation, a police officer prepares a report and turns the case over to the prosecutor. Usually the information provided is adequate, however, at times a prosecutor will believe that additional investigation is needed and will refer the case back to the arresting officer. Some of these follow-up investigations are not timely or at times do not occur.

The Department of Public Safety and municipal departments should establish procedures to ensure that an officer's responsibility for a case does not stop when the case is turned over to the prosecutor. Based upon concerns raised by prosecutors we requested that they provide cases for our review for which they had experienced problems with follow-up investigation. We discussed the area of follow-up investigation with police officers and make the following suggestions:

A. Where possible, requests for the follow-up investigation should be tracked for status and a formal response should be required of the officer if the follow-up investigation cannot be conducted. This would enable management to know when, and why problems with follow-up investigations are occurring.

B. Police officers should directly contact the prosecutor responsible for a request for follow-up investigation if the prosecutors needs or concerns have not been made clear. A complaint was that prosecutors asked for information that was not available or that the officer did not understand what information was needed. Even simple criminal cases can entail complex legal issues. For the system to work effectively, open communication must exist.

C. Police officers need to be informed of the status and disposition of cases turned over to the prosecutor. This feedback serves two purposes: 1) it provides increased understanding on the part of the police and allows them to take corrective action on future cases if problems develop over police procedures, and 2) it provides for improved morale, and a sense of accomplishment when the case is successfully concluded.

To respond to these needs, procedures have been established based upon District Attorney Form 03-102 (Case Intake and Disposition Form), through which the prosecutor will inform the investigating officer of action taken or any additional investigation needed. Although the system is too new to completely evaluate, the concept seems sound. However, its success or failure will depend upon the willingness of the prosecution and the police to work together.

Recommendation No. 6

Legislative and Executive consideration should be given to increasing resources for the Public Defender Agency.

Several CJS personnel interviewed believed an inadequate number of public defenders was having an adverse impact on the ability of courts and prosecutors to adequately do their jobs. The effects noted were: 1) improper dismissal of cases because a public defender was not available, 2) delays in the system, because of conflicts in scheduling public defenders before judges, and 3) the public defenders do not always have time to provide the quality of representation expected. Palmer and Sitka have judges and prosecutors but no public defender. Anchorage, Fairbanks, Juneau, and Ketchikan were also viewed as having a shortage.

The Public Defender under AS 18.85.100 is responsible for representing indigents charged with a serious crime, or who are entitled to representation under the Supreme Court Rules of Children's Procedures, or for whom commitment proceeding for mental illness have been initiated. The Public Defender is to provide such representation to the same extent a person having his own private attorney would have, and is to provide such services as necessary to investigate and prepare a case.

Whether or not a person is indigent is determined by the court. The responsibility of investigating fraudulent claims of indigency and collection of fees levied by the court is the responsibility of the Attorney General. The Public Defender does not have the ability to control the caseload, or qualifications of the persons assigned.

Although the funding level of the Public Defender Agency has not significantly changed over the past three years, the agency has experienced a substancial increase in workload.

In discussions with CJS personnel the following were identified as contributing factors:

A. Poor economic conditions and an influx of people seeking jobs have increased the number of people without the resources to hire a private attorney.

B. The Attorney General has made policy changes limiting the use of plea bargaining, and statute changes by the Legislature requiring presumptive sentences for some crimes have increased the attorney time required to defend a case, resulting in higher fees per case, and thereby increasing the number of people who do not have the resources to hire a private attorney.

C. For the same factors as discussed in "B" the Public Defender is required to take more cases to trial, increasing the amount of time it takes to provide adequate representation.

The Public Defender's Anchorage trial caseload was up 450% and trial time was up 500% in the first six months of FY'83 compared to FY'81. This is in excess of the general trend in trials which were up 274%, while the general trend in crime has not significantly increased. To bring the Public Defender's agency into line with the caseload per attorney established by the Law Enforcement Assistance Agency (LEAA), there would need to be an increase of 11.5 attorneys (See Appendixes D and E).

There are alternatives to directly funding more public defender positions out of the general fund suggested by CJS personnel:

A. Re-define the indigency standards limiting the number of people eligible for a public defender attorney.

B. Have the Attorney General and the Anchorage Municipal Prosecutor tighten screening policies for minor crimes, thereby reducing the caseload in CJS and ultimately the Public Defender caseload.

C. Require the municipal governments to pay the costs of providing legal representation for municipal offenses. Presently, the municipalities provide prosecutors for most misdemeanor charges brought by municipal police. This suggestion would also have them provide funds to the public defender for violations prosecuted by the municipalities, or arrests by municipal police.

We believe this suggestion has merit. The municipal cases made up about 23% in FY'82 of the public defender caseload, and is expected to increase. The municipalities are increasing the number of police officers and prosecutors but do not have to bear the increased cost of the Courts, Public Defender Agency, or the prosecutor for felony cases.

D. Establishing a collection agency within the Department of Law to collect public defender costs from those who have resources to pay for a public defender. Presently, although statutorily authorized, the Department of Law does not pressure indigents assigned to the Public Defender.

Due to the low recovery rate of costs from indigents we would recommend a cost benefit analysis prior to implementing a program of this nature.

CRIMINAL JUSTICE SYSTEM PERSONNEL'S IDENTIFICATION OF AREAS FOR LEGISLATIVE CONSIDERATION

As part of our audit we were directed to identify areas of concern which personnel within CJS believe need Legislative consideration, either from a change in policy, law or budget perspective.

Several areas have been brought to our attention for inclusion in this report. We have briefly summarized those concerns, and in areas where we are aware of controversy, a brief explanation for and against has been provided. However, many of these areas are complex in nature and we have attempted to present a general consensus and simplify these areas. We did not try to duplicate the legislative process and hold public hearings on these issues. We, therefore, recommend an in-depth review by the Legislature prior to any actions, to bring out all sides of the issues.

PLANNING FOR THE CRIMINAL JUSTICE SYSTEM

The need for all agencies within CJS to plan and work together was viewed by almost all of the individuals we talked to as needing improvement.

Prior to 1982 the Criminal Justice Planning Agency collected data and identified goals and objectives for the CJS. This agency is not viewed as having been highly successful. This resulted in shifting their main emphasis to grant administration. The re-creation of this agency or a similar agency, is not considered to be the solution.

There are two areas of planning and coordination needed. The first area are those items which need to be addressed jointly by the senior managers of the CJS, that would require rule changes, budgetary coordination, and statute changes. The second is the need to improve the working relationship at the local level. Due to the inter-relationships, a shift in policy or resources at the local level in one agency can have a severe impact on another agency.

Legislative Audit's Comments

Although the criminal process is not designed to encourage a cooperative relationship between the agencies, we concur improvements can occur through joint planning, and a forum to discuss problems would at least allow a sharing of different opinions (See Recommendation No. 1).

NEED FOR A REGIONAL CRIME LAB

An area identified as needing legislative consideration is the establishment of a crime lab with forensic and arson capabilities. Presently the State uses FBI facilities and services. However, due to federal budget cuts and lengthy delays this service has become unsatisfactory and the Department of Public Safety's personnel believe the FBI may be shifting away from continuing to provide assistance to local police agencies. The development of a State-operated lab is viewed as an essential improvement to ensure that police agencies in the State have the ability to analyze crime evidence.

Legislative Audit's Comments

The concerns raised by the CJS personnel are valid, however, we have not seen an economic analysis on the development of a crime lab compared to alternatives. As the crime lab is expected to cost in excess of six million dollars to set up, and would require a high annual operating budget, we believe an economic evaluation of alternatives to a State-owned and operated facility be considered prior to its development.

For example, suggestions have been made that it may be less expensive to contract with a west coast lab and fly the evidence and personnel back and forth.

NEED FOR PRISON FACILITIES

A major concern of many Alaskans now is the overcrowding of our prisons. Based on daily counts by the Division of Adult Corrections, Alaska prisons were over normal capacity of 913 by 246 persons, and over emergency capacity by 165, on an average. Results of this overcrowding include:

1. Some prisoners have to sleep on the gym floor in Fairbanks.

2. Mixing of defendants awaiting trial with sentenced felons.

3. Use of space reserved for rehabilitative programs for housing prisoners.

4. Cells designed for disciplinary purposes being used at times for housing, reducing the Division's ability to discipline inmates.

Most persons agree that additional incarceration facilities are needed, however, there are differing opinions as to what type of facilities are needed. Alternatives include:

a) maximum security prison.
b) minimum (soft bed) security facilities (this would include halfway houses).
c) pre-trial facilities, (for bookings, housing those defendants who are awaiting trial).
d) Expanding the pre-trial diversion programs to include more types of defendants.

Legislative Audit's Comments

The Governor has recently taken several steps to help resolve the current overcrowding conditions in the State prisons. In Executive Order No. 54, he has proposed to reorganize penal corrections functions by creating a Department of Corrections from the Division of Adult Corrections now located in the Department of Health and Social Services. He has also submitted Senate Bill 106 to enact a prison overcrowding emergency act. The act would empower the Commissioner of the Department of Health and Social Services to release non-violent prisoners close to release into supervised probation if the average daily prison population exceeds the emergency capacity of the State prison system for a thirty day period.

At this time we do not have any comments but the Division of Legislative Audit is presently involved in a performance audit of the Division of Adult Corrections. Concerns and recommendations will be contained in that report.

JUVENILE JUSTICE SYSTEM

The Juvenile Justice System was viewed as an area needing Executive, Legislative and Court review because of administrative problems within the system. The following areas were identified as needing attention:

A. The juvenile defendant is not being consistently dealt with by the State. The management of the system varies by region, with the Court System, Department of Law, and Department of Health and Social Services having at times conflicting or duplicating functions. For example, intake, the process of deciding whether a juvenile should enter the system, is decided by the Division of Family and Youth Services in Southeast, Western and Northwest Alaska and by the Court System in Southcentral Alaska and the interior. Individuals making decisions on juveniles often do not have legal training, and the disposition of cases are not consistent by region.

B. The number of incarceration facilities is not sufficient to handle all juveniles who should be incarcerated, and incarceration practices vary by region.

C. There are not sufficient community alternatives for juveniles. Many believe juvenile accountability should be established in the community through community work programs and counseling. For example, a community work program established in Juneau was considered desirable because it required offenders to personally contribute to the community. However, there are insufficient resources to provide similar programs statewide.

D. Juveniles committing an unclassified or class A felony should be waived to the Adult Court. This class of juveniles make up a small portion of the population, and the Juvenile Justice System is not well equipped to handle them.

ADEQUACY OF THE PUBLIC DEFENDER'S RESOURCES

The Public Defender Agency was seen by many as the cause of delay in the CJS because they do not have adequate resources to keep up with their workload. Concerns were also expressed over whether they had time available to represent all defendants adequately. The need for additional public defense attorneys is seen as most critical where court and prosecutors have full-time staff, but where the Public Defender must periodically send an attorney.

Some of the individuals believed that reducing the Public Defenders caseload, by shifting it to the private sector, was a better solution. Some individuals felt the Public Defender attorneys had used delay tactics such as perempting judges, jurors, and requests for continuances.

Legislative Audit's Comments

We examined the statutory responsibilities and caseload of the Public Defender and concur additional resources are needed to ensure the rest of the agencies in CJS can continue to operate effectively (See Recommendation No. 6).

The Alaska Court System noted the use of private attorneys is significantly more expensive per case than the public defender, and is considering establishing a state agency to handle conflict of interest cases, presently contracted with private attorneys.

INDIGENCY

Under AS 18.85, those persons found to be indigent have the right to a publicly afforded defense. There has been concern by individuals in CJS that because no standards exist for determining indigency, individuals are being assigned to the Public Defender who are not truly indigent.

Position For More Stringent Indigency Standards

Alaska Statutes presently do not set dollar levels for determining indigency. The Statute states in AS 18.85.120:

> "In determining whether a person is indigent and in determining the extent of his inability to pay, the court shall consider such factors as income, property owned, outstanding obligations, and the number and ages of his dependents. Release on bail does not preclude a finding that a person is indigent. In each case, the person, subject to the penalties for perjury, shall certify under oath, and in writing or by other record, material factors relative to his ability to pay which the court prescribes."

To ensure uniformity in the application of this statute, monetary guidelines need to be established to aid the courts in determining exactly what "indigent" is. There are not many people who can "afford" to hire a private attorney at the cost of legal expertise today.

Position Against More Stringent Indigency Standards

The right to legal representation is a United States constitutional right, as well as an Alaska constitutional right. If a person cannot afford an attorney one must be provided by the State. More stringent indigency standards would be meaningless, because an individual who could not hire a private attorney, even if not meeting indigency standards, would be eligible for an attorney provided by the State. The Statute already provides the Department of Law may investigate persons who have claimed indigency but actually had resources. In addition, the court frequently requires payment of a public defender defense, but the Department of Law has not established a formalized collection process.

Additionally, the court should have wide discretion in assigning defendants to the Public Defender Agency. The economic differences in our state would make any "recipe" for assignment unfair.

PLEA BARGAINING

"Plea bargaining" or "plea negotiations" or "charge bargaining" refers to a process where the prosecution and the defendant or his attorney, discuss the case and arrive at an agreement under which the defendant agrees to waive his right to trial and enter a plea of guilty to one or more charges in exchange for either a reduced charge, reduced number of charges, or specific sentence recommendation or agreement not to oppose a sentence recommendation made by the defense. It is the policy of the Criminal Division of the Department of Law not to engage in plea bargaining, except within limited situations, and then only after specific approval by the Attorney General or the Chief Prosecutor.

Most states still practice plea bargaining. When Alaska imposed its ban, the U.S. Justice Department studied its effects on the system. Their conclusion was that many problems that were expected to occur did not and perhaps more states should re-examine their beliefs about plea bargaining.

Position For the Renewal of Plea Bargaining Practices

Those who advocate renewing plea bargaining practices believe it is a viable and efficient means of disposing of cases on a case-by-case basis. These individuals feel plea bargaining is a necessary device to decrease costs, speed process and increase justice on an individual case basis. They believe prosecution and defense attorneys are specialists, highly trained and able to work together for the best interests of justice. In addition, they point out that more cases can be handled with less trials and lower cost through the plea bargaining process.

Opponents of the present policy complain it is not being carried out consistently state-wide. They state that application varies by region and sometimes by individual attorney.

These individuals point out plea bargaining still exists in a camouflaged form. Prosecutors are over-charging and reducing and dismissing multi-counts for a guilty plea to one count quite often. They point out this is necessary and in some cases it is virtually impossible not to do so if the system is to operate.

Position Against the Renewal of Plea Bargaining Practices

Supporters of the present plea bargaining policy feel it has forced the system to improve. They believe that the use of plea bargaining practice allows CJS personnel to be lax about their job. Inadequate police work and poor case preparation could be covered up and judges would not have to do any research. Advocates argue the ban has caused personnel to become more professional and proficient in their jobs. Screening practices by State prosecutors are believed to have improved tremendously.

PRESUMPTIVE SENTENCING

The presumptive sentencing statutes sets out presumed minimum sentences and maximum sentences that may be imposed for felony convictions. Presumptive sentencing terms are set out in AS 12.55.125. Factors in aggravation and mitigation relating to presumptive sentencing are delineated in 12.55.155.

The existence of aggravation and/or mitigating factors in a case allow some variance in sentencing. The statute provides for increasing presumptive terms if the individual is a repeat felony offender.

Eligibility for parole and release is different for those sentenced presumptively. Offenders with non-presumptive sentences are eligible for parole consideration after serving one-third of their sentence. These offenders are released from prison when the days they have earned for good behavior added to the time they have served is equal the sentence imposed. They are only under supervision if they have over 180 days left to serve. Presumptive offenders do not receive unsupervised release. Those convicted of murder in the first or second degree or kidnapping must serve at least the minimum term of imprisonment before they are eligible for parole consideration. Others sentenced presumptively may earn good behavior release days, but instead of being released are paroled under supervised conditions.

Position For Abolishment of Presumptive Sentencing

Those opposing presumptive sentencing feel it is causing a number of problems in CJS. They feel presumptive sentencing, especially in combination with the ban on plea bargaining is causing the number of cases going to trial to increase dramatically. Statistics compiled from data on Anchorage trials show trial caseload has increased 172% from FY'81 to FY'82. Data on the first six months of FY'83 estimates an additional 102% increase, resulting in a total increase in trials of 274% for that eighteen month period.

Opponents feel that because of the plea bargaining ban and presumptive sentencing, accused persons are pleading "not guilty" much more. The accused persons feel there is no "reason" to plead guilty since a reduced charge or sentence in exchange for the plea is not possible. They have nothing to lose and have a chance to "get off" if they plead not guilty. The amount of time and resources spent on a trial is much greater than that spent on a case with a guilty plea. This affects courts, prosecution, defense, and investigative personnel. For example, between FY'81 and the first half of FY'83, the Public Defender Agency saw a 450% increase in their trial caseload. This is believed to have been caused primarily by the conditions imposed by presumptive sentencing and plea bargaining.

When a person is found guilty of an offense falling under the presumptive sentencing statute, additional resources are necessarily used by Corrections. As discussed earlier, supervised parole requirements necessitate a use of increased resources. Because of the increased workload, concern has been raised that CJS may not be able to function with the resources that are presently available.

Opposition also argues that it does not allow sufficient latitude for justice by removing much of the judges' discretion in sentencing. This group states there are cases where sentencing the offender to the minimum prescribed sentence is unjust.

Position Against Abolishment of Presumptive Sentencing

Proponents in CJS felt that the presumptive sentencing statute is a substantial step toward more uniform sentencing. They believe much of the nonuniform felony sentencing patterns that existed in the State have been eliminated largely because of presumptive sentencing. Presumptive sentencing ensures punishment when a person is found guilty of a felony crime.

Further, proponents argue that presumptive sentencing also has deterrent value. When punishment is certain, in type and length, individuals will not be as apt to commit the crime. Additionally, this statute does much to take the habitual criminal off the street. Because the presumptive sentencing statute deals primarily with presumed terms for repeat felony offenders, it puts those inclined toward recidivism into prison for longer, definite periods of time. Studies indicate there is a small percentage of habitual criminals who commit the vast majority of crime. By "locking up" these repeat offenders, proponents hope to reduce crime.

PRELIMINARY HEARING/GRAND JURY

The question is whether or not a defendant should have a right to have both a preliminary hearing and an indictment by a Grand Jury. This duplication usually occurs when a defendant is in custody and a Grand Jury cannot be convened within 10 days, the length of time the courts allow a defendant to remain in custody without a hearing.

Position For Elimination

This issue was raised by individuals who believe that it is a duplication of effort and a waste of resources to allow both a preliminary hearing and a Grand Jury indictment. The solution suggested was to allow the prosecutors to decide whether or not to go before a Grand Jury.

Position Against Elimination

The right to a Grand Jury is a constitutional right to curb the abuse of power on the part of the prosecutor. In addition, court administrators believe requiring all defendants to have a preliminary hearing would place an increased workload on the courts.

Legislative Audit's Comments

We did not consider this a significant issue, as the duplication is estimated to occur only in about 10% of the cases, and unless the Grand Jury, or preliminary hearings were eliminated altogether no significant savings would occur. In addition, we do not believe the elimination of the Grand Jury is desirable because: 1) the Grand Jury provides citizens participation and contact with the Criminal Justice System, and 2) the Grand Jury is a built-in safeguard that helps ensure charges filed against an individual are justified.

PEREMPTORY CHALLENGES - JURORS

Peremptory challenges take place after the initial jury investigation (voir dire) has been completed and challenges for cause taken. They are designed to allow jurors to be rejected for real or imagined prejudices that are not easily demonstrated.

Criminal Rule 24(d) allows for peremptory challenges in Alaska. In felony cases, it grants 6 challenges to the prosecution and 10 to the defense. There were a number of individuals in the system who felt that this distribution of challenges is not fair and can produce a jury that is unfairly weighted toward the defense.

Position For Perempt Rule

Those who support giving ten perempts to the defense and six to the prosecution believe that most prospective jurors feel the defendant is probably guilty. Although they understand intellectually the theory of "innocent until proven guilty", many believe, maybe subconsciously, that the person probably "did something wrong" or he would not be in trial. Because of this, supporters feel that the additional perempts given to the defense are justified, and are necessary in order to reach a fair jury.

Position Against Perempt Rule

The Supreme Court of the United States in Hayes vs. Missouri stated that our jury selection system is designed to produce "not only freedom from any bias against the accused, but also from any prejudice against the prosecution". No matter how many perempts are allowed the defense, the prosecution should be afforded an equal number. Unless this is so, the defense has an unjustifiable opportunity to select a jury that is biased in his own behalf.

In addition, having a large number of peremptions increases the possibility that the jury will not be representative of the community even though the court goes to great lengths to provide that representation.

PEREMPTORY CHALLENGES - JUDGES

Alaska Rule of Criminal Procedure 25(d) allows for the peremption of a judge. This means that both parties, as a matter of right, are entitled to one change of judge and need not show cause to disqualify. Within five days after a judge is assigned a case for the first time, a party may exercise his right for a change of judge.

Position For Perempting Judges as a Matter of Right

Those who support perempts as a matter of right feel that it is essential in providing a fair and impartial judge. If a defendant feels that he cannot receive a fair trial, he should be allowed to a change of judge; even if the feeling has no solid ground. This is important in order to preserve society's perception of a fair and impartial judiciary. This is especially true in small communities where a judge may have personal conflicts with neighbors.

Individuals who support this position point out that much of the delay caused by perempting judges, especially in multiple judge locations, could be alleviated by prompt and early assignment of a judge. In addition, they disclaim the accusation that the right to a perempt is used as a delay tactic or to "judge shop". Those who support peremptions say the majority of the judges who are perempted lack demonstrable expertise in the law covering a case or have shown bias toward a type of offender. It is the duty of the defender to perempt the judge if he believes this to be true. If a judge has stated or shown his sentencing patterns to be in great variance to sentencing norms, the defense attorney feels he must try to get his client a judge who is a "fair sentencer". In addition, many of the judges who are now perempted would be challenged for cause, creating a greater burden on the courts as the challenge was litigated through the court.

Position Against Perempting Judges as a Matter of Right

Individuals who advocate eliminating the right to perempt a judge without showing cause point out several problems which they believe are rooted in this right:

1. In a one-judge location, a judge from another location must be flown in to replace him. This occurs quite frequently in Alaska because of our geographical disposition. The result is additional court costs and delays.

2. In one-judge locations, a judge can be rendered ineffective because one party does not like his sentencing practices and continuously perempts him.

3. If judges are not assigned to cases early on in the process, problems occur and scheduling is taken out of the hands of the court and put into the attorney's when they perempt a judge. Delays can occur, especially in District Court, because of problems involving scheduling in districts with heavy caseloads.

4. Attorneys are allowed to "judge shop" with perempts when they do not use the right only when they feel they cannot get a fair trial.

Individuals who advocate eliminating the right to perempt feel there should be a corresponding widening in the rule allowing for challenges for cause. They believe the widening of cause challenges would accommodate those who truly feel they could not get an impartial trial and would discourage those who were using the right as a "tactic" from doing so.

WIRETAPPING STATUTE

Federal law provides for the interception of wire or oral communications by law enforcement officials if the interception will provide evidence of several named crimes, including bribery, murder and conspiracy. The law provides that the chief prosecuting attorney of a state may apply to a judge for the authorization of such an interception if the state has a statute that authorizes such action. Alaska does not have such a statute.

Position For a Wiretap Statute

Those who feel Alaska needs a wiretap statute believe it is especially invaluable in gathering evidence against persons involved in certain types of crimes. Such a statute would give the courts power to authorize the interception of wire or oral communications by investigative or law enforcement officers, if the interception would provide evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery of a public official, extortion, dealing in drugs, or organized crime.

Position Against a Wiretap Statute

Those who oppose a wiretap statute in Alaska feel that the statute is one with great potential for abuse of civil liberties. Currently, federal law allows for the issuance of a wiretap warrant upon proof of probable cause. Presently, the Alaska law enforcement officer or prosecutor need only apply to a federal magistrate. Opponents feel this law suffices, as it covers any offense governed by federal law, which includes all the offenses listed above. If a wiretap statute were to be enacted, opponents feel it should require the same proof of probable cause the federal law requires.

CONSPIRACY STATUTE

A conspiracy, in general terms, is a combination between two or more persons to accomplish a criminal or unlawful act, or to do a lawful act by criminal or unlawful means. Brought to its simplest terms, a conspiracy statute would hold all parties to a conspiracy liable as soon as any one of them performs an "overt act", which is an act in furtherance of the crime. Presently, Alaska does not have a conspiracy statute. Title XI, Chapter 31, of the Alaska Statutes deals with attempts and solicitation and comes closest to addressing conspiracy. Chapter 31 allows a person who asks someone else to help commit a crime to be found guilty, but does not provide for the conviction of the person who has agreed to help commit the crime.

Position For a Conspiracy Statute

Conspiracy statutes are designed to stop a crime before it is committed. Crimes the conspiracy statutes are primarily aimed at are organized crime and corrupt acts by public officials. Conspiracy statutes are normally used in conjunction with statutes allowing for eavesdropping to gather evidence (such as wiretapping, interception of mail). Those advocating a conspiracy statute in Alaska point to the growth of organized crime in the State and recent public corruption cases as evidence that a conspiracy statute is now needed. Such a statute would allow those who organize and arrange a criminal plan to be held liable, even if they took no part in the actual physical carrying out of the plan.

Position Against a Conspiracy Statute

Those who oppose a conspiracy statute point to the great potential for abuse it holds. Because such a statute would hold people liable if they were associated with the planning of a crime, but did not take part in it. Opponents are afraid it will take away a person's right to change his mind about committing the crime, because he can be held liable if any one person performs on overt act, even if he knows nothing about it.

Opponents point out the statutes addressing accomplice liability, attempts and solicitation sufficiently cover the area of conspiracy, without the great danger for abuse.

RIGHT TO A JURY TRIAL

Presently, Alaska statutes and rules promulgated by the U.S. and Alaska Supreme Court guarantee full procedural rights to individuals accused of "serious crimes". Full procedural rights include the right to counsel (publicly afforded if the accused is indigent) and the right to a trial by jury. A "serious crime" has been interpreted by the Alaska Supreme Court to mean any offense which would result in incarceration in a jail or penal institution, loss of a valuable license or a fine so heavy as to indicate criminality. The controversy arises over whether misdemeanors should be afforded the right to a jury trial.

The U.S. Constitution, as interpreted by the U.S. Supreme Court, is less restrictive as it guarantees the right to counsel to anyone who is accused of a crime which carries a potential penalty including incarceration of any length of time, and a jury trial be available to any person who is accused of a crime with a potential for incarceration for over six months.

Position For the Right to a Jury Trial for Minor Criminal Matters

Those who support the right to a jury trial for any offense which has a potential penalty including any incarceration believe such offenses should not be considered "minor" or "petty". If an offense is such that a conviction would render an individual a "criminal" in the eyes of society, he should have a right to be judged by a panel from that society.

A charge of even a "minor" crime can effect how an individual is seen by society, and should, therefore, be afforded full procedural rights by society.

Position Against the Right to a Jury Trial for Minor Criminal Matters

Some individuals believe the granting of the right to a jury trial for minor criminal matters is costing the criminal justice system a great deal of time and money. Presently, nearly every crime, felony, and misdemeanor falls within the Alaska Supreme Court's definition of "serious crime". AS 11.81.250 (a)(5) defines class B misdemeanors as offenses which characteristically involve a minor risk of physical injury to a person and minor offenses against property interests, public administration or order, or public health and decency. However, penalties for a class B misdemeanor as outlined in AS 12. 55.035(a)(4) and AS 12.55.135(b) (a maximum $1,000 fine and/or 90 days in jail) would place the offense under the Alaska Supreme Court's definition of a "serious crime". Opponents point out inconsistencies here.

Offenses as defined involving "minor" criminal conduct are simultaneously defined as "serious crimes". These individuals believe this area should be reviewed by the Legislature and a consistent definition of "serious crime" be established. An Alaska constitutional amendment would likely be needed.

REVISION OF FISH AND GAME STATUTES AND REGULATIONS

CJS personnel cited Fish and Wildlife statutes and regulations most often as an area that needs Legislative attention. Comments were that statutes need to be more specific, less confusing. Specific concerns were:

A. Most minor Fish and Wildlife offenses should be made infractions, and a specific bail schedule set similar to that used for traffic violations. This would save both the officers and courts' time.

B. Sentences for Fish and Wildlife offenses are nonuniform and vary from case-to-case without regard to facts. Sentences for commercial fishing violations were cited most frequently as penalties that commonly do not provide an economic deterrent. A preliminary study by the Alaska Judicial Council confirms these concerns, and the counsel has undertaken a study on what improvements are needed.

C. Complicating the concerns raised in "B" a recent court case State vs. Reynolds requires the State to show that a defendant should know or reasonably be expected to have known he was committing a crime before a finding of guilt can be justified. Because of the nature of many Fish and Wildlife laws, requiring the defendant to have specific knowledge may prohibit enforcement of many of these laws.

Legislative Audit's Comments

Based upon our understanding of the possible impact of the Reynolds case on Fish and Game statutes, and the problems in implementing the present statutes, we believe a legislative study and revision may very well be needed. The Alaska Judicial Council study will soon be released and should better identify problem areas and changes needed.

EXCLUSIONARY RULE - ALASKA RULE OF EVIDENCE 412

The exclusionary rule commands that where evidence has been obtained in violation of the privilege guaranteed by the United States Constitution the evidence must be excluded from the trial. The rule was designed to deter unlawful police conduct and violations of a citizen's right to privacy by preventing the police from using illegally obtained evidence. The controversy surrounding this rule arises because opponents feel that it has gone beyond its original scope, which was to protect the "sanctity of man's home and the privacies of life".

Position For Abolishment of the Exclusionary Rule

Those who feel the exclusionary rule should be abolished feel it is not meeting its goals and is hampering the criminal justice process. They believe this law has resulted in allowing the guilty to escape prosecution and punishment because police have committed errors. They argue that many of these errors are technical in nature and were made in good faith. Opponents believe good faith errors should not preclude using the evidence in trial.

In addition to allowing the guilty to go free, those for abolishment feel that the rule is not effectively deterring actual police lawlessness. They believe the rule should be replaced by a mechanism charging police officers with criminal sanctions when involved in a violation of a person's rights. They also believe there should be some vehicle for providing remedy to victims of police lawlessness, which the exclusionary rule does not provide.

Position Against Abolishment of the Exclusionary Rule

The United States Supreme Court recently stated that "The Fourth Amendment is designed to prevent, not simply redress, unlawful police conduct".

The exclusionary rule is a preventative measure which provides motivation for the police to follow the Constitution. Police departments in Alaska have instituted strong training programs for officers regarding the law on search warrants. If a "good faith" exception to the exclusionary were adopted, the police might be encouraged to remain ignorant of the law.

In 1979 the General Accounting Office, in a nationwide study on the impact of the exclusionary rule on the criminal justice system, indicated that of 2804 cases studied, only 1.3% had evidence suppressed by a court. This is despite the fact that motions to suppress occurred in over one-third of the cases studied. Less than 1% of the cases had to be dismissed due to evidence which was suppressed.

Given the fact that to this date the United States Supreme Court has not yet decided the issue of whether a good faith exception to the exclusionary rule should exist, needless and costly litigation of this issue to the appellate courts and a delay in trials would result if this rule was changed.

DISCLOSURE/DISCOVERY

The purpose of discovery rules are to expedite trial by minimizing surprises. This is done through disclosure by both sides, of information regarding the case. Last minute case preparation brought on by surprise tactics results in inefficient trial proceedings and harms the essence of justice that both parties in the case ought to be striving for.

Alaska Criminal Rule of Procedure 16 outlines items to be disclosed by both parties. Rule 16 stipulates that the defense must notify the prosecution if it intends to use an alibi or insanity defense and must provide the prosecution with copies of reports or statements of expert testimony to be used in trial. The defendant may also be compelled to allow non-testimonial identification procedures to be performed, such as photographic line-ups, handwriting samples, and blood or urine samples. The prosecution must disclose to the defense all information pertaining to the case, excluding his own notes and theories regarding it.

Position For Reciprocal Discovery

Those who advocate full reciprocal disclosure and discovery feel that because the duty and obligation of the judicial system (prosecution and defense a part of it) is to equate justice, not merely to convict, or not convict, both parties should disclose to each other freely. This would require disclosure, by the defense of additional information such as names of witnesses to be called in trial, reports of all expert examination, not just those used in trial, and any tangible evidence that the defense intends to use in trial.

Position Against Reciprocal Discovery

Individuals who support limited discovery point out several constitutional problems with extensive disclosure by the defense.

Individuals are guaranteed the right against self-incrimination. This means the defendant does not have to give any information which would tend to incriminate him to the police or prosecution. Additionally, because of attorney/client privilege, a defense attorney would be ethically precluded from disclosing information the defendant had told him in confidence.

In criminal investigations, police are to be "truth finders". As such the defense feels they are entitled to the facts disclosed in police reports. In addition, they point out that the prosecution has more resources for discovering facts than the defense. Discovery is often the only method by which the defense attorney can uncover the facts of a case.

Discovery is designed to minimize delays. If the prosecution produces evidence or a witness that should have been disclosed, the defense is entitled to a continuance in order to prepare a defense to it.

NEED FOR ALCOHOL RELATED PROGRAMS

Many individuals in the criminal justice system feel that alcohol programs, as they are now, are not effectively addressing the alcohol/crime problem. They noted a high percentage of recidivism in alcohol related offenders and lack of "treatment" oriented programs in the jails. Individuals estimated that as high as 60-70% of all crimes in Alaska are alcohol related, with as high as 90% in the bush.

Presently, if an individual is diverted through the Department of Law's Pretrial Diversion Program, or receives a suspended imposition of sentence (SIS) from the court in an alcohol related case, he is put through alcohol screening. If he seems to have an alcohol problem, one of the conditions he must satisfy as a part of his program is the completion of an alcohol counseling program. Additionally, after a person has been found guilty of an alcohol related offense the court will often order the individual to go through screening for classification. Any recommended counseling or treatment then becomes a part of the judgement.

There are some alcohol programs within the jails. A common criticism of the programs, however, is that they are purely educational and offer no constructive treatment for the inmate. While most incarceration facilities have chapters of Alcoholics Anonymous, it is voluntary and not effective for all alcoholics.

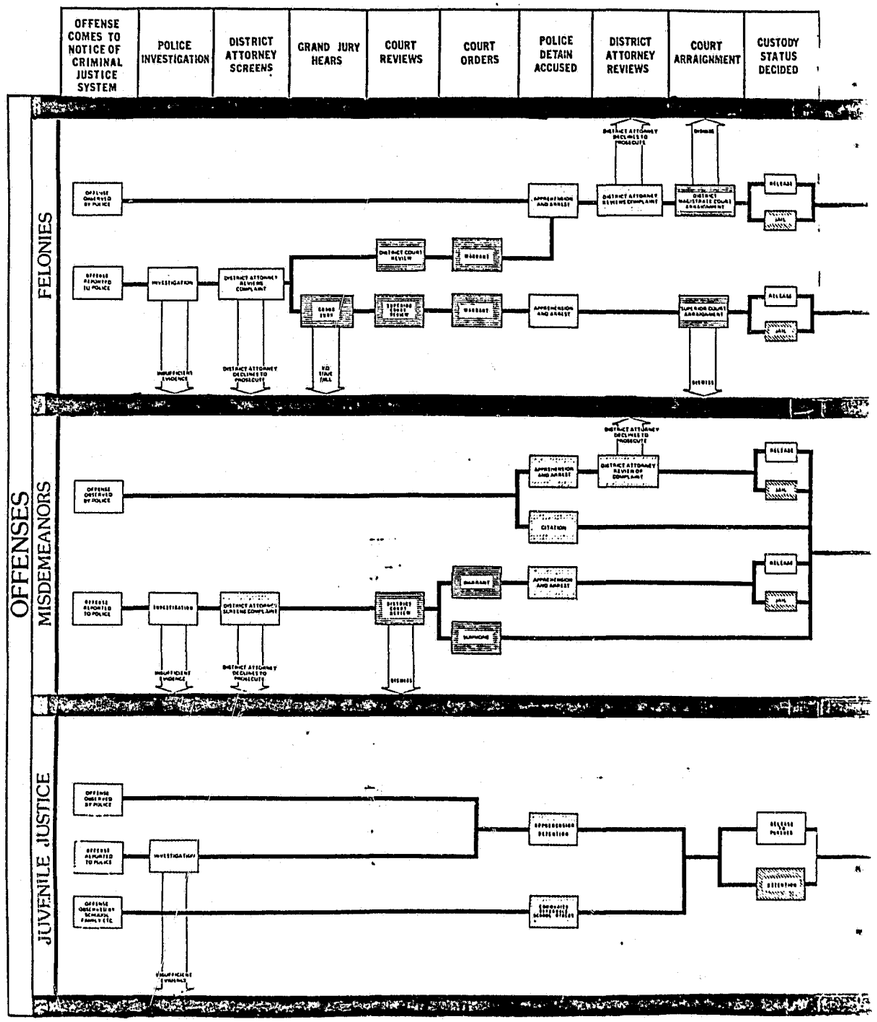
Legislative Audit's Comments

The Division of Legislative Audit has conducted a special performance report on the State Office of Alcoholism and Drug Abuse (SOADA). This agency has been the focus of an increased financial commitment made by the Legislature to the problems of substance abuse in the State. The report describes and evaluates various SOADA efforts in mitigating substance abuse problems in the State. As efforts are presently constructed, the performance of SOADA is critical since 60-70% of all clients served by the agency's grantees were referred through the criminal justice system.

Legislative Audit's conclusion and comments are contained in "A Special Performance Report on the Department of Health and Social Services, State Office of Alcohol and Drug Abuse".

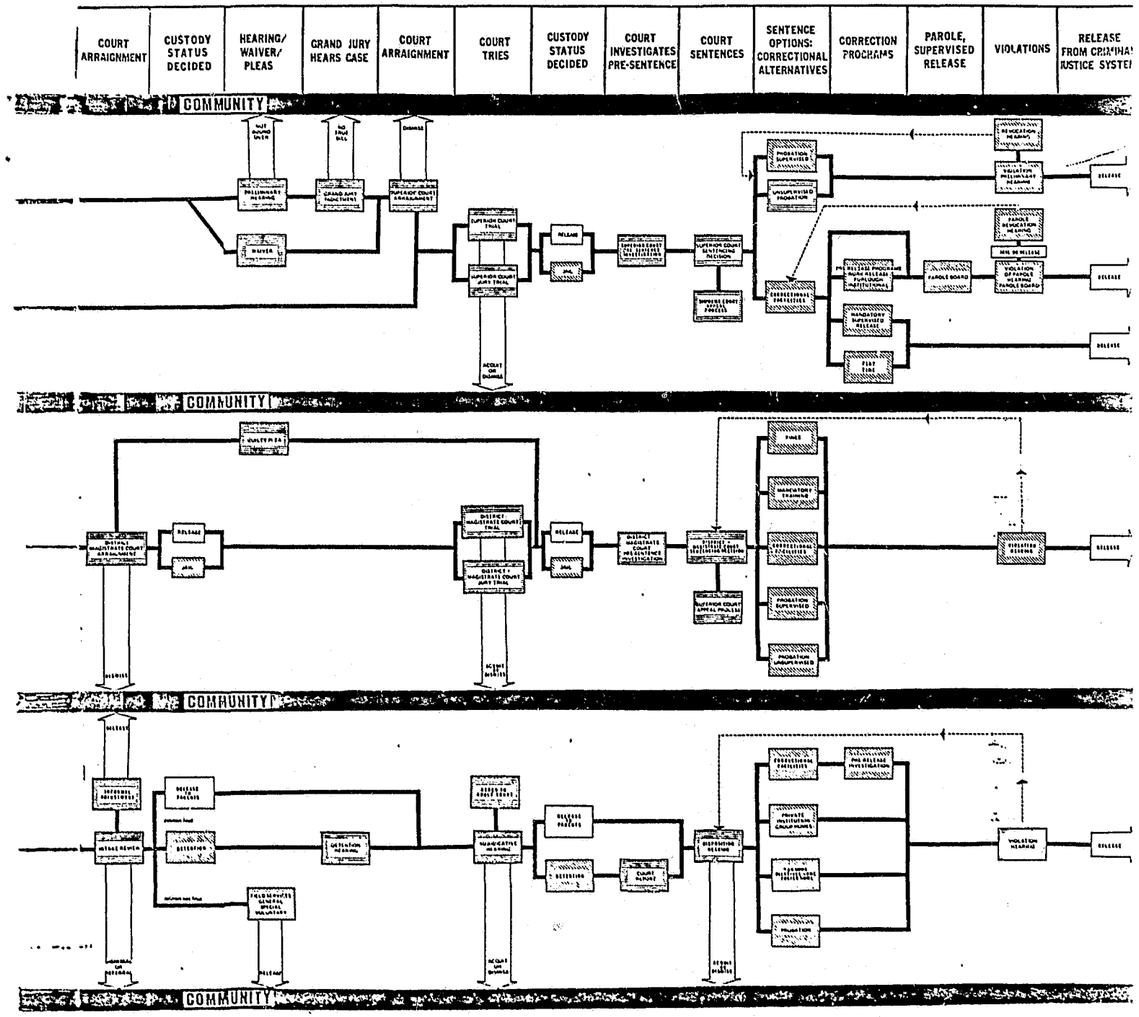
ALASKA'S CRIMINAL

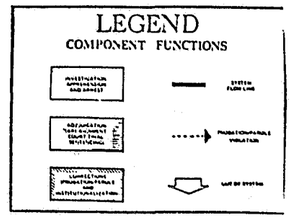
Prepared by: Alaska Criminal



JUSTICE PROCESS

Justice Planning Agency





APPENDIX A

ALASKA CRIMINAL JUSTICE PROCESS AND SUMMARY

Offense Comes to the Notice of the Criminal Justice System.

Offenses usually come to the notice of the Criminal Justice System through arrest by the police. Many times the police will observe the offense being committed and sometimes the offense will be reported to them. There are instances, however, when an offense is reported to the District Attorney's office, or to other agencies, such as social services.

Police Investigation

Police investigations vary in length and depth depending on the crime. Sometimes the investigation is completed at the scene of the crime and other times the investigation involves undercover operations, wiretaps etc. An investigation almost always involves:

1. Obtaining basic information about the suspect; height, weight, birthdate, race, social security number.

2. Interviewing the suspect and any victims or witnesses.

3. Checking the police information system for criminal history on the suspect.

District Attorney Screens

The police bring the evidence they have obtained on a case to the District Attorney or his assistants for screening. "Screening" is the process of reviewing all the facts and circumstances surrounding a case and deciding whether or not to accept the case for prosecution. The basic question the attorneys have to ask themselves of the case is "is there sufficient, legally admissible evidence on its face, to warrant a trier of the facts to conclude that the defendant is guilty, beyond a reasonable doubt?" If he believes there is enough evidence, the case is accepted for prosecution. If not, prosecution is declined. Some of the factors which the attorneys must consider when making their decision are:

1. doubt as to the accused guilt
2. excessive cost of prosecution in relation to the seriousness of the offense
3. possible deterrent value of prosecution
4. the expressed wish of the victim not to prosecute

5. the age of the case
6. insufficiency of admissible evidence to support the case
7. attitude and mental state of the defendant
8. possible improper motive of victim or witness
9. the availability of suitable diversion programs
10. any mitigating circumstances, and
11. any provisions for restitution.

Sometimes after accepting a case, the District Attorney (DA) will need follow-up or additional investigation on the case. In most states, the DA has staff investigators to do this investigation. Alaska does not have staff investigators for its prosecutors. They rely on the police to do follow-up investigations for them.

After acceptance, if the case meets certain conditions, the prosecutor may decide to divert it. The Department of Law's Pre-Trial Diversion program is aimed primarily at first-time non-violent type offenders. If the defendant meets the conditions set by the Chief Prosecutor and is accepted by the program, prosecution is deferred for a given period. If the defendant successfully completes conditions set by the program, the charges against him are dismissed at the end of the time period.

Grand Jury Hears Court Reviews/Court Orders

Both the Grand Jury and preliminary hearings are designed to provide a review of the prosecutions screening decision and are purposed to protect the public from errors in prosecutorial judgement or over-zealousness.

The Alaska Constitution provides in Article I, Section 8, "no person shall be held to answer for a capital or otherwise infamous crime unless on . . . indictment by the Grand Jury" where "infamous crime" is synonymous with "felony". A Grand Jury consists of a panel of citizens chosen to sit for periods of several months. Grand Jury sessions are closed to the public. The jurists hear prosecuting attorneys present evidence, documents or testimony from major witnesses only, they do not hear or see the defendant or his attorney. Unless he is called as a witness, the defendant does not set foot in the Grand Jury room and is not permitted to offer a defense. The reason for this is because the Grand Jury does not "try" the case; their job is to determine if there is enough evidence to warrant a trial. If the answer is yes, the Grand Jury votes a "true bill"; an indictment which lays out the charges. If the answer is no, a "no true bill" is voted and no charges are brought against the defendant. If a true bill is voted the court will review the indictment and a warrant will be issued for the arrest of the defendant, if he had not been apprehended beforehand.

Criminal Rule 5.1 provides that a defendant should have a

preliminary hearing within ten days of the arrest if he is in custody and twenty days if not. A preliminary hearing is conducted in lower court by a judge. The defendant may be present and both the prosecution and the defense may present evidence and cross-examine the witness. This hearing is held to determine if there is "probable cause" to believe that the crime has been committed. The results of a preliminary hearing can be:

1. dismissal of charges
2. reduction of charge to a misdemeanor
3. held to answer - the judge found probable cause to believe the original felony charge was committed, or
4. discharge - no formal complaint filed.

Although it is possible that a defendant would go through both a Grand Jury and a preliminary hearing, in Alaska he usually goes through just one. If he "waives" (gives up) his right to a Grand Jury he goes through a preliminary hearing, otherwise, his case goes to the Grand Jury.

Court Arraignment

District Court

When a person is arrested for committing an offense he must be arraigned within twenty-four hours. Both misdemeanor and felony crimes are arraigned in District Court. The following occur at this arraignment:

1. The defendant is advised of the charges against him
2. The defendant is advised of his rights
3. Custody status is decided (bail hearing) and;
4. The defendant is advised of his rights to an attorney and assigned a public defender if he is found indigent.

At this point, if the defendant is charged with a misdemeanor, he can plead to the charges against him. If he pleads guilty or "nolo contendre" (no contest) he is sentenced. If he pleads not guilty to the charges, he has the choice of a court or jury trial and dates are set for the trial.

If the defendant is charged with a felony he cannot plead at District Court arraignment.

There are cases which do not go through District Court arraignment. These are the "secret investigation" cases that go directly to Grand Jury for indictment before an arrest is made. In these cases the defendant is first arraigned in Superior Court.

By this time, most defendants will have a lawyer. This is a

right guaranteed to everyone charged with a crime. Some hire a private defense attorney, but the majority, three-fourths nationwide, cannot afford to hire their own attorney and rely on publicly afforded defenders.

Court Arraignment

Superior Court

Felony charges have a second arraignment in Superior Court. Here the defendant is again advised of his rights and of the charges against him. The defendant is then asked to plead to the charges. If the defendant pleads guilty or "nolo contendre" a presentence hearing or sentencing is set on. If the defendant pleads not guilty, the case is scheduled for further hearings.

Custody Status Decided

After District Court arraignment the custody status of the defendant must be decided. The judge must weigh evidence and testimony presented by both prosecution and defense concerning the matter. There are two questions to be answered. The first is: should the individual, who has been arrested and is alleged to have committed a crime, be released back into the community or kept in custody up to and through trial? The second question is: if he is released, what is the best method?

Not releasing an individual will accomplish two things: one, that he will appear for trial, and two; that he will not commit any crimes in the interim. It is realized, however, some persons cannot be trusted either to not commit crimes or to appear for trial, and they must be detained.

The problem with deciding whether or not to keep an individual in custody is that in doing so one imprisons the person for an unproven, anticipated crime rather than actual criminal conduct. This violates the presumption of innocence and convicts on the basis of "substantial probability" rather than "beyond a reasonable doubt".

Once the decision has been made whether or not to release the defendant, a method must be chosen. The defendant can be released without bail on his own recognizance subject to supervision by the court, or he can be released on bail. When money bail is used the posting of 10% by the defendant usually allows his release.

Pleas

Pleas can only be entered after the defendant has been fully advised of his rights and the court has determined that the accused understands those rights and is making the plea voluntarily.

A defendant may enter one of three pleas: guilty; not guilty or nolo contendre. A plea of nolo contendre has a similar legal effect of pleading guilty. The main difference between a plea of guilty and a plea of nolo contendre is the latter cannot be used against the defendant in a civil action based on the same acts.

A defendant may plead nolo contendre only with the consent of the court. Such a plea is accepted only after consideration of the views of the parties and the interests of the public in the effective administration of justice.

Hearings

Hearing (Uncontested)

An uncontested hearing is an in-court proceeding, the purpose of which is the placing of undisputed factual or legal matters on the record. This may be required by rule or as a prerequisite to an entry of judgement. Examples include waivers of a speedy trial, and taking of a guilty plea other than at arraignment (as a result of a plea agreement).

Hearing (Contested)

A contested hearing is an in-court proceeding other than a trial, which requires a judicial decision of one or more contested factual or legal matters. Examples include hearings on motions to dismiss, motions for a new trial, motions to compel discovery or motions to suppress evidence. Contested hearings are considered to be part of the trial if they are heard immediately preceding, during or immediately following the trial.

Omnibus Hearing

An Omnibus Hearing is an in-court proceeding, which in this state is used as a vehicle for discovery and disclosure by the two parties. This hearing is scheduled after Superior Court arraignment in a felony case if the defendant pleads not guilty. By holding this hearing in court the judge can make certain each side has disclosed the information it is obliged to by law.

Court Trials

Built into the Criminal Justice System are legal protections. From roots grounded in the U.S. Constitution and English Common law, these safeguards have been interpreted, reinterpreted, and amended over the years by the Courts, Congress and State Legislatures. They are granted to all individuals including those accused of crimes; "not because we sympathize with their actions but because in upholding their rights we protect our own" - Judge Damon Keith of the U.S. Court of Appeals for the 6th Circuit.

Below are some of the protections and rights a defendant is afforded.

Presumption of Innocence

Our system adopted the presumption of innocence from English Common Law. This means that accused persons are assumed to be innocent until they plead guilty or are tried and convicted. Traditionally, unless there were grounds to believe they would flee, they were permitted to be released until trial.

Unfortunately, many criminals commit crimes while they are on bail. As a result, the trend in the United States has been to give judges the right to deny bail if they believe the accused to be dangerous to the community. There are some individuals who believe this practice violates the accused rights to presumption of innocence.

No Unreasonable Search or Seizures

Since 1961, the U.S. Supreme Court has ruled a number of times that evidence obtained by the police in violation of the Fourth Amendment is not admissible in the Court. The Fourth Amendment is purposed to protect people against "unreasonable searches and seizures". In order to protect us thus, the Constitution requires that police obtain a warrant from a judge before they invade a person's privacy in search of evidence.

As an extention, the "exclusionary rule" prohibits the admission of evidence obtained by illegal search and seizures in court. The only evidence admissible that has been seized without warrant is that which was in plain view or in connection with an arrest.

Right Against Self-Incrimination

The Fifth Amendment to the U.S. Constitution provides that a person cannot be compelled "to witness against himself". In 1966, the U.S. Supreme Court made a decision in Miranda vs. Arizona which greatly affected the criminal justice system, especially the police. The

"Miranda" rule, as it is known, states that before the police question their suspects they must first tell them of their rights to remain silent and to have a lawyer present. Statements obtained from the accused without informing them of their rights are declared inadmissible, and some convictions have been overturned on this basis. This "ban" against self-incrimination also bars the disclosing of a defendant's criminal record to jurors unless he chooses to testify in his own defense.

Trial by an Impartial Jury

Defendants are afforded the right to a trial "by an impartial jury" by the Constitution's Sixth Amendment. While this right is widely accepted, some procedures which are designed to help form an impartial jury are sometimes questioned.

Double Jeopardy Prohibited

The Fifth Amendment prohibits double jeopardy. This means that a person cannot be tried more than once for crimes arising out of the same set of circumstances.

Hearsay

Under the adversary system of justice, a witness is only allowed to testify on firsthand knowledge. Hearsay (secondhand information) is generally inadmissible because the source cannot be confronted and cross-examined by the other side.

Under our Criminal Justice System, an accused has the choice of trial by judge or jury. The trial procedures are much the same after judge or jury is in place, but selection procedures are different.

Trial by Judge - Selection

Early in the criminal process a judge is assigned to a case. If the defendant has cause to believe that he cannot receive a fair and impartial trial with this judge, he may file a motion to challenge for cause. This motion is reviewed by the presiding judge, and if it is found to have merit, the judge is dismissed and another is assigned to the case. A defendant may continue to challenge for cause as long as he believes he cannot receive a fair and impartial trial. This must be done within certain time constraints.

If the defendant is unable to show cause why he cannot receive a fair and impartial trial from this judge, but wishes not to be tried in front of that judge, he has five days from assignment in which to perempt the judge. A defendant

is allowed only one perempt, and if not exercised within the time limit, is lost to him. A perempt gives the right to remove a judge from a case without showing cause.

Trial by Jury - Selection

When the trial date arrives, the first order of affairs is the empaneling of the jury. The makeup of the jury is vital, for when the crime is serious a unanimous vote of the twelve jurors is needed to reach a verdict. The process of selecting the jury can be very time-consuming and take many hours or even days as the lawyers question potential jurors on their background and beliefs.

The selection process begins when the potential jurors enter the courtroom. The group of potential jurors are called the jury venire. The judge questions the jury venire as a group to determine that all persons are statutorily qualified and the members are sworn to answer truthfully. Twelve members are then randomly chosen from the jury venire. The judge reads the complaint to the jurors and questions them to determine if they are qualified under the rules. Once it has been determined that the members are qualified, the attorneys take over questioning.

Prosecution and defense attorneys take turns questioning potential jurors. They try to determine if the person has any prejudices or beliefs which would cause him to judge unfairly. After they finish questioning the twelve, they may challenge or pass for a cause. If they challenge for cause, the judge determines whether the cause is justified and if so, the member is dismissed. At this point, another member of the jury venire is randomly chosen to take the place of the dismissed member. The new member is then questioned and challenged or passed for cause. When the attorneys have completed their challenges for cause, the rounds of peremptory challenges begin.

Peremptory challenges are used to dismiss potential jury members without cause. They are used by attorneys to dismiss a potential juror whom they "feel" will be against them. In a felony trial in Alaska, the defense is allowed ten perempts and the prosecution gets six. Again, if a member is dismissed another is randomly chosen from the jury venire and the process continues until the attorneys are satisfied, or have exhausted their peremptory challenges.

At this time, many judges give preliminary jury instructions. They may give all instructions before or after the trial, but many choose to give introductory instructions proceeding it. The judge explains the responsibility of the jurors in

evaluating the evidence. He explains that the evidence must prove "beyond a reasonable doubt" that the defendant is guilty of the crime, in order to convict him. He adds that "beyond a reasonable doubt" does not mean "beyond any doubt at all", but, beyond what a reasonable man would doubt. He continues by explaining generally how the trial will proceed, and that he will give them detailed, case specific instructions at the conclusion of the trial. The trial now begins.

Trial

Trial begins with opening statements. The prosecutor starts by generally describing the charge and what the case is against the accused. The defense may or may not choose to make opening statements. If he chooses to, he may make them directly after the prosecution opens, or after the prosecution rests its case. In his opening statements the defense tells the jury what line of defense will be offered. After opening statements have been made, the building of the cases begins by the calling of witnesses and presenting of evidence.

The prosecution calls its witnesses first and the defense follows. The defense is not obliged to call witnesses. It may rely entirely on challenging the prosecution's evidence. Each witness goes through the following sequence of questioning:

1. direct examination (by the attorney who called them)
2. cross-examination (by opposing attorney)
3. re-direct examination
4. re-cross examination
5. rebuttal (by calling attorney)

During direct examinations no leading questions may be asked by the attorneys, however, leading questions may be asked of witnesses during cross-examination. Cross-examination is usually used by the opposing attorney to attack the witnesses' credibility. Each side has an opportunity to examine the witnesses' truthfulness, to probe possible biases and to test what the witnesses actually know.

Both prosecution and defense attorneys prepare case specific jury instructions. At a time before final arguments, when the jury is not present, the judge asks each attorney if they object to any of the instructions prepared by the other. The jury then re-enters the courtroom and final arguments are given.

Final arguments are given first by the prosecution, followed by the defense. The prosecution is then given time for a short rebuttal. In their final arguments the attorneys summarize their case, stating what they feel they have proved.

They bring out the strong points in their case and point out the weaknesses in their opponent's case. They may talk to the jury about their jury instructions. Finally, they ask the jury to return the verdict they argued for.

The judge now gives the jury case specific instructions. He will instruct them on how to apply the law to the facts. He will point out what elements must be shown to exist, in order to show the defendant committed the crime. For example, he may tell the jury that to find a defendant guilty of first degree murder the evidence must show intent to kill and premeditation. In contrast, to find someone guilty of manslaughter the evidence need only show negligence. The judge will again emphasize that the jurors must decide whether the evidence demonstrated guilt beyond "a reasonable doubt".

Nearly three-fourths of trials nationwide end in guilty verdicts. Virtually all such verdicts are now appealed.

Custody Status Decided

After a defendant has been found guilty, the court must decide if the person should be detained pending sentencing. Sentencing cannot be done until a pre-sentence report has been prepared and the attorneys and judge have had time to read it. This process usually takes at least two months. Usually those defendants held in custody before their trial began, remain in custody pending sentencing. They remain incarcerated if they appeal while the appeal is pending. Some of those who were free before trial remain free pending sentencing and many remain free until their appeals are exhausted.

Pre-Sentence Report

As prescribed by Alaska Rules of Court, anyone convicted of a felony must have a pre-sentence report prepared by probation. The court prepares an order for pre-sentence report and probation has six weeks in which to complete it. The probation officer copies some information from the case file in the District Attorney's office. These items include police reports, any medical or psychiatric exams, correspondence and FBI rap sheet (arrest record). The probation officer uses these items as a starting point for his investigation. The investigation process includes an intake interview with the defendant, which takes about six hours, interviews with family members, employers, school teachers, any victims, and victims' relatives. The report will include the results of these interviews along with any restitution information or psychological evaluations. All this information is tied together in an evaluation of the defendant and a recommendation on sentencing.

When the report is complete, the judge, and both attorneys receive a copy. After sufficient time is allowed for all parties to read it, the sentencing hearing is held.

In cases involving presumptive sentencing, if the prosecution or defense feel there are aggravating or mitigating factors they must file a document stating this a stated number of weeks before sentencing. A hearing must then be held where the parties must prove, through evidence, that the factors do indeed exist. The court rules yes or no at this hearing, to the existence of the factors. This process does not affect the pre-sentence report, but any existing factors are weighed by the judge in determining the sentence.

Court Sentences (Sentence Hearing)

At the sentence hearing, the defendant and his attorney, the prosecutor, judge and probation officer who prepared the pre-sentence report are all present. Having read the report, the judge asks if anyone wishes to contest any fact in the report. If they do, that party must put on evidence to prove their point, and the judge decides. After that, the judge asks for arguments, whereupon each side tries to convince the judge to sentence the defendant along the lines of their recommendation. When arguments have concluded, the judge hands down his sentence.

If the conviction is for a crime falling under presumptive sentencing, and no aggravating or mitigating factors are filed, the defendant is simply sentenced according to the guidelines provided in the statute. If aggravating or mitigating factors were filed, the judge has some discretion in determining the sentence. If one or more aggravating factors exist, the judge must add some time to the minimum penalty for the crime. If one or more mitigating factors exist, the judge may reduce the sentence to zero, however, he does not have to reduce it at all. If both aggravating and mitigating factors exist, the judge tries to balance the sentence.

When he hands down his sentence, the judge may specify the amount of time the convicted should serve, but may not specify facility or type of treatment required. The judge may, and usually does, make a recommendation regarding such, and Corrections considers these, but is not bound by them.

Sentence Options - Correctional Alternatives

When the judge sentences an individual, he can specify probation or jail time. For youthful, first-time offenders of non-violent crimes the judge may give an SIS (Suspended Imposition of Sentence). By doing this, the judge delays sentencing for a given amount of time, during which the convicted must satisfy a number of conditions. If he successfully completes the requirements, at the end of the time period, his record is expunged and shows no sign of the conviction. If he violates conditions, however, the judge may impose a sentence up to the maximum allowed. Probation is much like an SIS, except that it is a sentence and a conviction shows. The person is usually supervised and must complete a number of conditions.

If an individual is sentenced to spend time in a correctional facility, he is turned over to Corrections. He is then evaluated and classified as a minimum, medium or maximum security risk and housed accordingly. In addition, the evaluation helps determine what type of counseling or treatment the individual may need.

Correction Programs

Correction programs include inside and outside programs. Inside programs include general educational programs to help inmates get their General Equivalency Diploma, and sex-offender programs offering group therapy to the sexually deviant person.

Outside programs: 1) New-Start Centers help ex-offenders find jobs and any social services they may need, 2) A prisoner may spend the last six months of their sentence in a halfway house. This allows them to find work, an apartment, etc., before they are released, thereby lessening the financial and emotional shock which accompanies release from prison for some inmates, 3) Corrections also help prisoners find out-patient counseling in a number of areas, including marital, financial and emotional and refers individuals to vocational training programs.

Parole, Supervised Release

After a prisoner has served one-third of his sentence, he is eligible to apply for parole. The prisoner makes application to the Parole Board, who reviews his file and makes a determination whether or not to grant parole. In considering the prisoner, the Board considers the pre-sentence report, recommendations by the sentencing court and the prosecuting attorney, the report from corrections officers at the institution where the prisoner is incarcerated, the prisoner's record and any other pertinent information.

Persons serving time are entitled to deduct one day from their sentence for every three days of "good time" served. When a prisoner has served sufficient time that, when time-served added to good-time earned equal the sentence time

imposed, he is released.

A person who is convicted of murder in the first degree, murder in the second degree or kidnapping may not be released on parole until he has served at least the minimum term of imprisonment, even then, he must remain on supervised parole until he has completed his sentence.

A person who is convicted of any other crime which falls under the presumptive sentencing statute, may be released on "good time" but must be on parole, subject to rules and conditions for the period of time.

Violations

When an individual violates his probation or parole conditions, the probation/parole officer will file a Petition to Revoke the probation or parole. This document states what rule or condition was violated and how it was violated. A summons may be sent requesting the person appear in court, or a warrant may be issued for his arrest.

A hearing is held before the Court (probation) or the Parole Board (parole) and evidence is presented by the probation/parole officer and/or prosecution to prove that the violation occurred. Unlike trial, which requires proof beyond a reasonable doubt, here only a "preponderance of evidence" or 51% proof must be shown.

The Court or Parole Board decides if they believe a breach has occurred. They may decide to give the violator a warning, or they may revoke probation or parole and place the individual in prison for up to the term of his sentence.

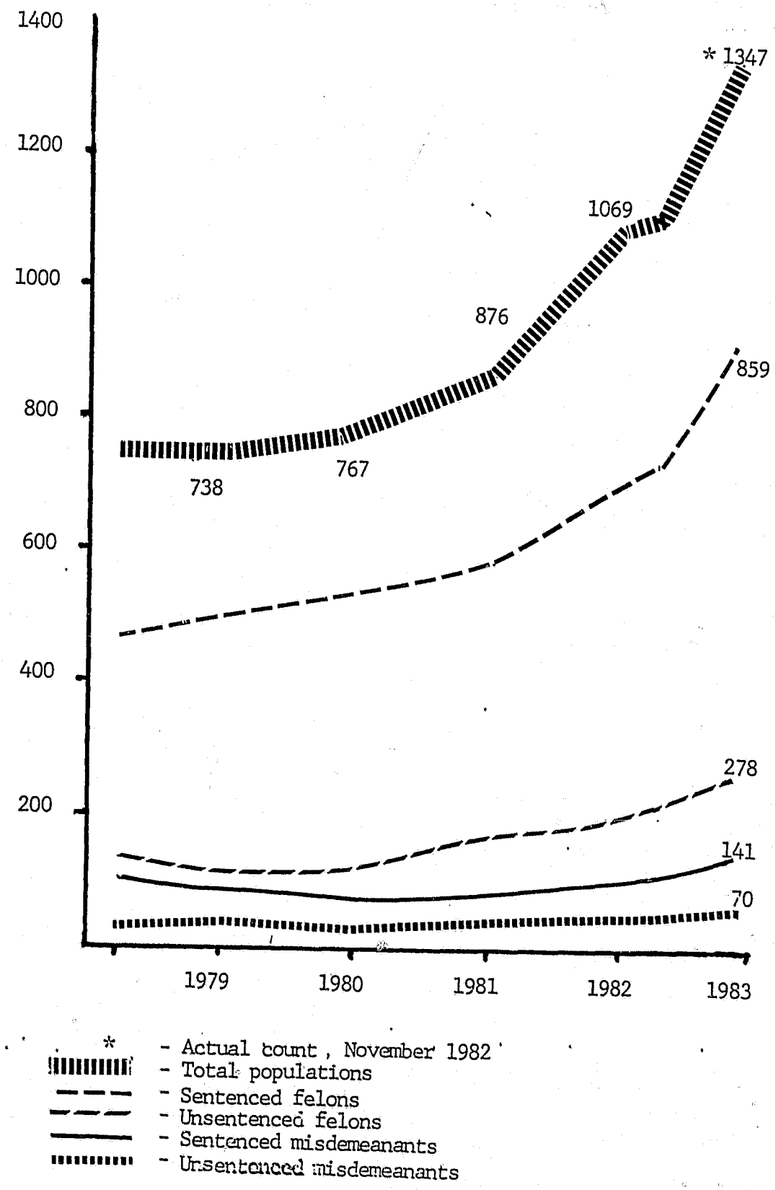
Release from the Criminal Justice System

A person is released from the Criminal Justice System after he has served his sentence. This may occur after the individual has served "flat time" (time without parole), or after he has successfully completed a term of probation or parole.

An individual who is released from prison, especially after serving a long term, usually experiences emotional and financial shock. Many times they feel rejection from family, friends and the employment market. Studies have shown that many of the individuals who have committed a crime and served time, return to criminal activity after release. Others, however, struggle to make it in society.

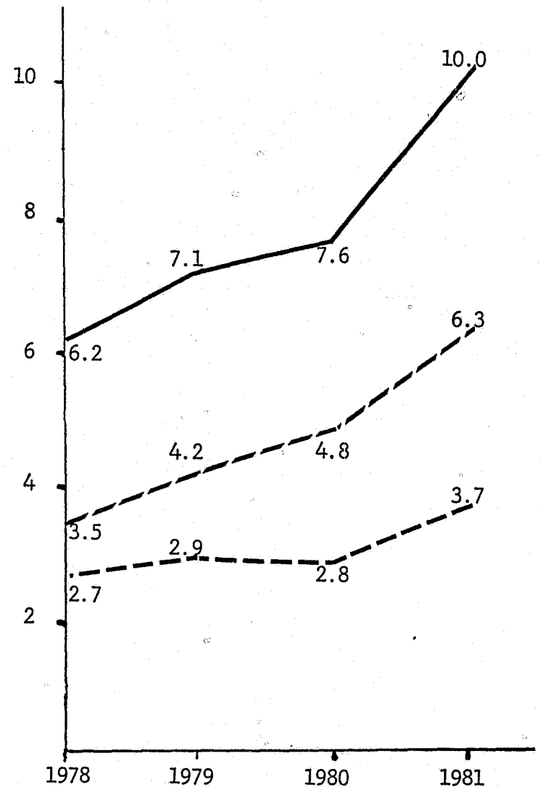
APPENDIX B

TREND IN INMATE POPULATION
DIVISION OF ADULT CORRECTIONS



APPENDIX C

NEW COMMITMENTS TO THE DIVISION OF ADULT CORRECTION FACILITIES PER 1,000 POPULATION



Total new incarceration commitments

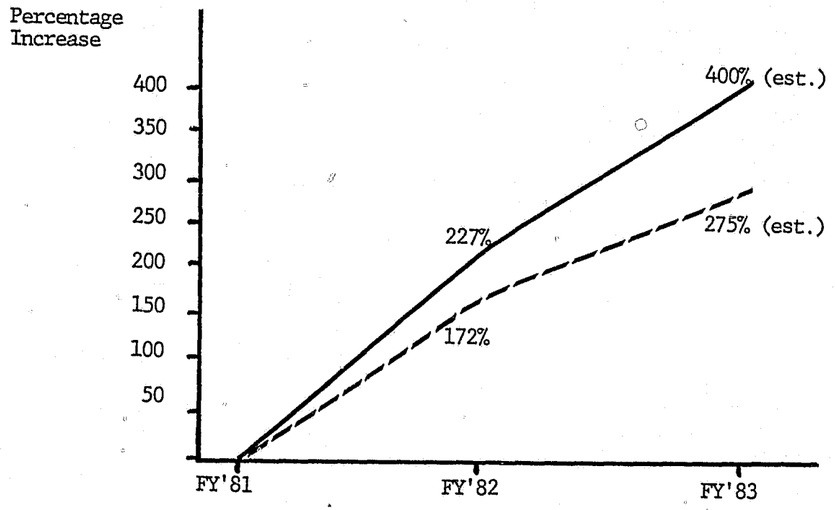
New Felonies

New Misdemeanors

Populations data was provided by the Department of Labor, New incarceration data was provided by the Division of Adult Corrections. A committed individual is a person who's sentence includes a period of incarceration.

APPENDIX D

INCREASE IN NUMBER OF ANCHORAGE TRIALS FOR THE COURT, AND PUBLIC DEFENDER AGENCY



Percentage increase in Public Defender's Anchorage trial cases

Percentage increase in the Court's trial caseload

Note: Data was collected by the agencies, and the court data approximates the actual change. The Public Defender's increase was actually 450% for the same period in FY'81.

APPENDIX E

ANALYSIS OF THE PUBLIC DEFENDER'S STAFF COMPARED TO NATIONAL STANDARDS

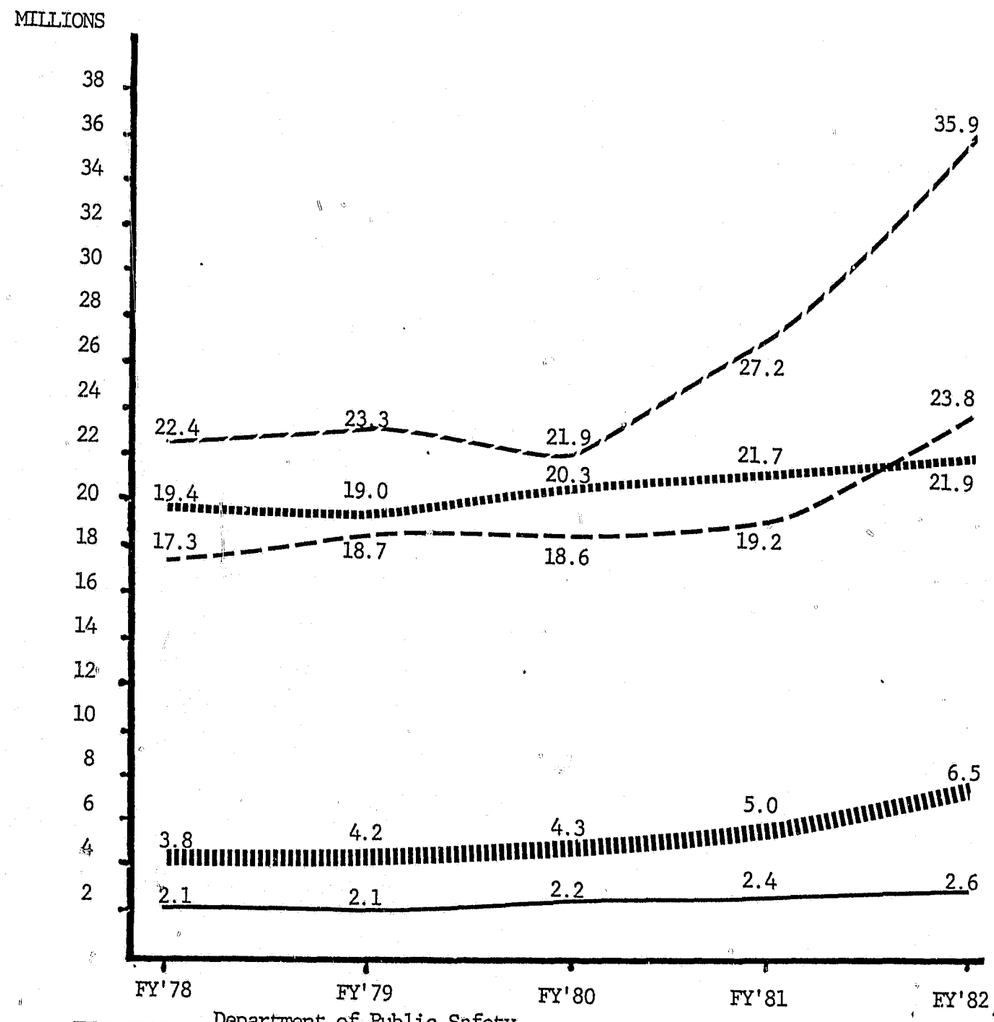
Attorneys authorized in FY'82	34
Contract attorneys (Kodiak and Dillingham)	2
Present staff	36
LEAA minumum number of attorneys for the FY'82, 10,244 caseload	47.5
Additional attorneys needed to meet standards	11.5

Minumum additional positions the Public Defender believes are needed to meet the increased workload.

	Attorneys	Secretaries
Sitka	1	1
Anchorage	2	1
Fairbanks	1	1
Bethel	1	½
Palmer	1	1
Nome/Kotzebue	1	0
Total	7	4½

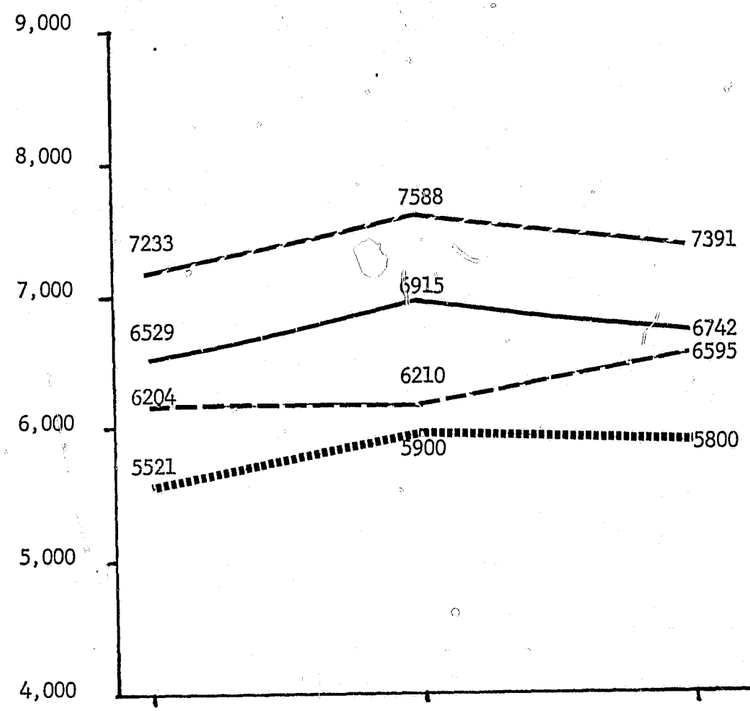
APPENDIX F

CRIMINAL JUSTICE SYSTEM AGENCY'S OPERATING COSTS IN CONSTANT 1978 DOLLARS



APPENDIX G

CRIME INDEX COMPARISON
CRIMES PER 100,000 INHABITANTS



Source: Crime in the United States. U.S. Department of Justice, Federal Bureau of Investigation.
1980 1981
Sept. 10, 1981/Aug. 26, 1982

Pacific States include Alaska, Washington, Oregon, California and Hawaii.

Note: This graph is presented to show Alaska's rate of crime as compared to other parts of the country. However, there are limitations in the method of index comparisons.

1) Alaska's population is small, and as a result changes in criminal activity impact our index more dramatically.

2) The crime index's have been criticized as inaccurate because data used is sometimes an estimate (populations) and because police agencies sometimes differ in method of counting crime.

APPENDIX H

SUMMARY OF QUESTIONNAIRE SCOPE

As a part of our audit we were directed to request from the CJS personnel areas for possible legislative action and other legal issues which may need additional attention. We solicited opinions from criminal justice personnel through the use of questionnaires. We sent questionnaires to professionals in the system as shown below.

PERSONNEL	SENT	RECEIVED	% RESPONDING
State Prosecutors	60	38	63.3
Anchorage Municipal Prosecutors	6	6	100.0
Public Defenders	40	36	90.0
Senior Managers of Alaska State Troopers	15	11	73.3
Alaska Court Judges	47	22	46.8
Alaska Court Magistrates	52	22	42.3

While compiling questionnaire responses, we attempted to present all comments in unabridged form. Numbers representing responses in Appendix I are stated in terms of percentages unless otherwise noted. The percentages are based on questionnaires received.

APPENDIX I

QUESTIONNAIRE FOR THE CRIMINAL JUSTICE SYSTEM

1. Please answer these questions based on your experience.

QUESTIONS	PERCENTAGE OF RESPONSES FROM STATE PROSECUTORS			ANCHORAGE MUNICIPAL PROSECUTORS			PUBLIC DEFENDERS			SENIOR MANAGERS OF STATE TROOPERS			ALASKA COURT JUDGES			ALASKA COURT MAGISTRATES		
	YES	NO	NO OPINION	YES	NO	NO OPINION	YES	NO	NO OPINION	YES	NO	NO OPINION	YES	NO	NO OPINION	YES	NO	NO OPIN
A) The quality of case investigation is adequate.	42	58	0	33	67	0	28	61	11	82	18	0	73	14	13	50	27	23
B) The prosecutions system of managing and tracking cases is adequate.	84	13	3	67	33	0	64	28	8	27	73	0	59	23	18	41	41	18
C) Alaska is adequately providing for the analysis of criminal evidence, i.e. forensics, balistics, document analysis etc.	37	58	5	17	66	17	56	25	19	0	100	0	55	27	18	50	41	9
D) Alaska has incarceration facilities that are adequate, both in terms of number and type.	0	95	5	33	67	0	0	97	3	0	100	0	0	100	0	14	86	0
E) Non-incarceration programs in the State are adequate.	32	60	8	17	83	0	0	97	3	36	64	0	4	77	9	13	64	23
F) The pre-trial intervention/diversion program is functioning adequately.	66	21	13	100	0	0	39	47	14	36	46	18	68	18	14	50	14	36
G) The State's juvenile justice system is functioning adequately.	18	53	29	0	50	50	36	31	33	18	82	0	41	41	18	41	36	23
H) The number of judical positions is adequate.	71	26	3	33	67	0	61	28	11	36	55	9	45	46	9	41	32	27

COMMENTS FROM STATE PROSECUTORS

The old management system is inadequate, the new one sounds good.

Case investigation by Alaska State Troopers is adequate, investigation by municipal police is not.

Incarceration outside the State is unfair to defendants and counterproductive to rehabilitation.

The State needs a state-wide computer system to serve as a data base for gathering information about a defendant.

There are too few State Troopers/police to handle an investigative caseload.

The State needs more judges; frequently running up on 120 day rule because of crowded calendars.

Alcohol counseling is inadequate within the State's CJS.

There is not adequate provision for waiving serious offenders to adult court.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

Witnesses names are often not obtained during investigation.

More alternative work programs (community work service) needs to be available.

COMMENTS FROM PUBLIC DEFENDERS

Inadequate number of public defense investigators leads to injustice because we are unable to develop legitimate defenses.

Not adequate, referring to investigation available to the Public Defender Agency.

Investigation available to our agency is not adequate.

Inadequate as to Public Defense investigative resources, not enough manpower; police have enough investigative resources.

The District Court is swamped at all levels.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

Adequate job of investigation done on most serious crimes but investigatory and prosecutorial resources are too limited.

Emphasis of non-incarceration programs should be on community services.

More placement alternatives are needed in the juvenile justice system.

Problem with prosecution management is screening. Inadequate jail system. No consistent policy on non-incarceration programs. Pre-trial intervention or diversion programs. Lack of diversified regional facilities in juvenile justice system.

There is a lack of facilities for the mentally disturbed.

COMMENTS FROM ALASKA COURT MAGISTRATES

Case investigation is nonexistent in rural areas. DA's overloaded with urban cases, have little preparation time. They arrive the day of trial and negotiate change of plea or dismissal. They interview witnesses only minutes before trial begins.

Constant problems with DA's office getting police reports, paperwork, etc.

All lab work should be done in Alaska.

Nonexistent in rural areas. Department of Corrections provides no service to the bush.

Resources

2. Given limited resources, in what one or two areas do you believe the addition of resources would be of the most benefit? If you believe resources are needed in more than one area, please prioritize your selections.

	PERCENTAGE OF RESPONSES FROM					
	STATE PROSECUTORS PRIORITY	ANCHORAGE MUNICIPAL PROSECUTORS PRIORITY	PUBLIC DEFENDERS PRIORITY	SENIOR MANAGERS OF STATE TROOPERS PRIORITY	ALASKA COURT JUDGES PRIORITY	ALASKA COURT MAGISTRATES PRIORITY
A) Additional investigative personnel.	3	4	5	3	9	8
B) Further development of the management information system to control and track cases.	8	0	9	5	8	9
C) Development of a full-scale regional crime lab including forensics, document analysis, balistics and chemical analysis.	2	1	8	1	7	6
D) Increased incarceration facilities.	1	2	4	2	1	1
E) Increased probation and non-incarceration programs.	4	3	2	6	3	4
F) Expansion of the pre-trial intervention/diversion program.	9	5	3	7	5	5
G) An increase in the number of judges.	6	1	7	4	6	7
H) Further development of the juvenile justice system.	5	0	6	4	4	3
I) An increase in the number of Public Defenders.	7	0	1	0	2	2

COMMENTS FROM STATE PROSECUTORS

Better, not more, investigative personnel, especially on the municipal level needed.

Dramatic improvements in personnel efficiency could be made with well thought out management systems.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTOR

None.

COMMENTS FROM PUBLIC DEFENDERS

More investigative personnel needed for the public defense, not the State.

Not necessarily more attorneys, support staff is a greater need.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

An increase in the number of prosecutors.

COMMENTS FROM ALASKA COURT JUDGES

Increase the number of prosecutors. Devote less time to the investigation and prosecution of petty drug transactions.

Facilities for the mentally ill are needed.

COMMENTS FROM ALASKA COURT MAGISTRATES

Increase the number of DA's available to the bush.

More DA's, social workers, juvenile intake officers, and probation officers.

Defendants should be more accountable for legal costs.

Personnel.

3. Based on your experience, rate the professional personnel in the following agencies, overall, for professional and technical abilities.

RESPONSE FROM STATE PROSECUTORS

Agency	Unacceptable (Explain Below)	Acceptable or Average	Excellent	No Opinion
Judiciary				
Supreme Court/Court of Appeals	5	74	21	0
Superior Court	8	74	18	0
District Court	16	76	0	8
Magistrates	16	79	5	0
Prosecuting Attorneys	0	47	45	8
Public Defenders	0	71	21	8
Public Defense Investigators	16	53	0	32
Alaska State Troopers				
Patrolmen	13	69	13	5
Criminal Investigation Bureau	5	53	37	5
Fish and Wildlife Officers	0	79	16	5
Municipal Police	21	73	3	3
Adult Probation/Parole Officers	13	74	13	0
Corrections Officers	5	71	3	21
Juvenile Probation Officers	8	58	5	29

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTOR

Agency	Unacceptable (Explain Below)	Acceptable or Average	Excellent	No Opinion
Judiciary				
Supreme Court/Court of Appeals	0	66	17	17
Superior Court	0	66	17	17
District Court	17	83	0	0
Magistrates	33	67	0	0
Prosecuting Attorneys	0	67	33	0
Public Defenders	17	66	17	0
Public Defense Investigators	17	33	0	50
Alaska State Troopers				
Patrolmen	0	66	17	17
Criminal Investigation Bureau	0	50	17	33
Fish and Wildlife Officers	0	50	0	50
Municipal Police	0	83	17	0
Adult Probation/Parole Officers	0	83	17	0
Corrections Officers	0	83	0	17
Juvenile Probation Officers	0	33	0	67

COMMENTS FROM PUBLIC DEFENDERS

Agency	Unacceptable (Explain Below)	Acceptable or Average	Excellent	No Opinion
Judiciary				
Supreme Court/Court of Appeals	3	66	28	3
Superior Court	3	72	19	6
District Court	14	83	0	3
Magistrates	8	83	6	3
Prosecuting Attorneys	5	78	14	3
Public Defenders	6	39	44	11
Public Defense Investigators	6	47	30	17
Alaska State Troopers				
Patrolmen	6	78	5	11
Criminal Investigation Bureau	0	58	20	22
Fish and Wildlife Officers	8	61	6	25
Municipal Police	25	56	5	14
Adult Probation/Parole Officers	17	61	5	17
Corrections Officers	8	72	3	17
Juvenile Probation Officers	11	53	8	28

RESPONSE FROM ALASKA COURT JUDGES

Agency	Unacceptable (Explain Below)	Acceptable or Average	Excellent	No Opinion
Judiciary				
Supreme Court/Court of Appeals	0	41	50	9
Superior Court	0	36	55	9
District Court	9	41	41	9
Magistrates	0	59	32	9
Prosecuting Attorneys	9	41	41	9
Public Defenders	0	41	45	14
Public Defense Investigators	0	32	27	41
Alaska State Troopers				
Patrolmen	0	32	50	18
Criminal Investigation Bureau	0	18	50	32
Fish and Wildlife Officers	5	45	36	14
Municipal Police	0	64	23	13
Adult Probation/Parole Officers	0	45	32	23
Corrections Officers	0	46	18	36
Juvenile Probation Officers	0	36	41	23

RESPONSE FROM SENIOR MANAGERS OF STATE TROOPERS

Agency	Unacceptable (Explain Below)	Acceptable or Average	Excellent	No Opinion
Judiciary				
Supreme Court/Court of Appeals	0	55	45	0
Superior Court	0	73	27	0
District Court	9	73	18	0
Magistrates	9	73	9	9
Prosecuting Attorneys	9	82	9	0
Public Defenders	9	73	9	9
Public Defense Investigators	27	64	0	9
Alaska State Troopers				
Patrolmen	0	64	27	9
Criminal Investigation Bureau	0	55	36	9
Fish and Wildlife Officers	0	64	36	0
Municipal Police	0	91	0	9
Adult Probation/Parole Officers	9	82	0	9
Corrections Officers	45	45	0	10
Juvenile Probation Officers	0	82	0	18

RESPONSE FROM ALASKA COURT MAGISTRATES

Agency	Unacceptable (Explain Below)	Acceptable or Average	Excellent	No Opinion
Judiciary				
Supreme Court/Court of Appeals	0	9	57	32
Superior Court	0	9	64	27
District Court	0	18	59	23
Magistrates	0	23	45	32
Prosecuting Attorneys	9	32	32	27
Public Defenders	5	45	32	18
Public Defense Investigators	5	23	13	59
Alaska State Troopers				
Patrolmen	0	41	41	18
Criminal Investigation Bureau	5	32	27	36
Fish and Wildlife Officers	5	64	13	18
Municipal Police	0	55	18	27
Adult Probation/Parole Officers	9	27	23	41
Corrections Officers	0	50	18	32
Juvenile Probation Officers	14	27	27	32

4. If you have found that there are professionals whose performance is unacceptable, please identify them by name and describe what problems you have and what improvements are needed.

COMMENTS FROM STATE PROSECUTORS

Supreme Court/Court of Appeals

The Court of Appeals is overworked.

Both Appellate Courts are very activist, whereas the public (to which they for all practical purposes are answerable to) is predominately to the contrary.

Superior Court Judges

Some Superior Court judges are unwilling to put in the time it takes to move court business along.

District Court Judges

Some District Court judges do not have adequate knowledge of rules of evidence.

District Court judges in the bush let local politics run their decisions.

Some District Court judges show obvious prejudices against non-caucasian defendants.

Magistrates

Some Magistrates are not adequately trained for the role they perform.

Many village magistrates do not understand their work and do not keep up with paperwork.

Public Defense Investigators

Some Public Defense investigators are untrustworthy, non-professional and unethical.

Some past investigators engaged in unethical and sometimes illegal conduct.

Public Defense investigators interview witnesses who cooperate because they think they are talking to the DA or police (investigators say they are from PD or "work for the state").

Alaska State Troopers - Patrolmen

Some areas are understaffed, resulting in inadequate police protection outside city limits unless a life or death situation occurs.

Some troopers who investigate vehicle homicides are not adequately trained or supervised. Only "assigned" troopers do follow-ups, no one will do the follow-up if it is the "assigned" trooper's day off.

Criminal Investigation Bureau (CIB)

Bureau has too few officers with not enough emphasis on state-wide coverage.

Union problems at the CIB are the cause of serious failure in morale.

Municipal Police

Many municipal policemen are inadequately trained and do not provide adequate investigative support.

Some municipal police do not take sufficient interest in building good cases.

Some municipal police have no pride in their work, regarding it as "just a job".

Bush police are lacking in basic investigative common sense. They sometimes do not get eyewitnesse's statements and reporting is lousy. Reports rarely even contain the required elements of a crime.

Adult Probation/Parole Officers

Adult probation officers sometimes think of themselves as police rather than a rehabilitative resource.

Probation/parole officers seem to be either overbearing and zealous or lazy. Their reports are not helpful and sentence recommendations are inconsistent.

Corrections Officers

Many corrections officers are untrained in psychology counseling or any other skill which would render them helpful to problems in prison life. They are inadequately supervised.

The Division of Corrections has inadequate officers in terms of intelligence and attitude problems.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

Magistrates

Some magistrates are unsympathetic towards police officers and are more interested in the civil liberties of defendants than protection of the police. They have released many individuals on bail who were thought to be dangerous or had no ties to the community.

Public Defenders

Too many attorneys hired without any prior experience at all, and for high wages.

Public Defense Investigators

Some investigators have lied to witnesses they interviewed and have given testimony of dubious veracity.

Police Officers (in general)

Need to be more thorough in filling out police reports. Information on ALL witnesses should be obtained.

COMMENTS FROM PUBLIC DEFENDERS

Court of Appeals

The Court of Appeals is overworked, therefore the quality of their decisions suffer. Their role vis-a-vis the Supreme Court is still unclear and affects their decisions.

Some decisions by the Court of Appeals judges are singularly incomprehensible.

It is unfortunate that our States Court of Appeals, despite its technical proficiency, often fails to deal with issues in an appropriate fashion. Their opinions frequently lack depth.

Superior Court

Some judges are unscholarly in analysis and decide matters per sympathies (prosecution oriented) per law.

Some judges are frequently biased in criminal cases, making it impossible to obtain fair trial or sentencing.

District Court

Some District Court judges are racists, patronizing natives, denying them bail and oversentencing them.

Some District Court judges are not qualified for their positions.

District Court judges should not make statements to the press regarding their sentencing practices. This shows that they are not interested in uniform sentencing.

District Court judges rate below acceptable because they are overworked and because individual judges do not know the law, are arbitrary, high-handed and lack organization.

It is unacceptable that there are some District Court judges who are routinely challenged by most of the attorneys in their area, wasting the State's money by drawing pay for minimal work and disrupting the schedules of other judges who must be brought in to "cover for them".

Magistrates

Rural magistrates are undertrained.

Magistrates in some communities do not effectively screen police requests for warrants.

One magistrate calls witnesses over both parties objections. Will call witnesses and hold "mini trials" at arraignment without counsel for either the State or the defense. This individual discusses the police report with the police without State or defense attorneys present.

Prosecuting Attorneys

There are some prosecuting attorneys that are unreasonably rude to opposing counsel and the bench. Unprofessional conduct includes screaming obscenities, temper tantrums and vulgar public outbursts. Totally inappropriate actions.

Prosecutors are primarily interested in conviction rates and trial statistics rather than any broader concept of justice.

Public Defenders

Public Defenders do an excellent job given the quantity of cases they handle.

Caseload is too high for public defenders to consistently do a good job. Attorneys are very professional, but overworked.

Public Defense Investigators

Woefully understaffed, overworked and thus too often ineffective. They are so overworked they can not do an adequate job.

Alaska State Troopers - Patrolmen

Some troopers' truthfulness is questionable.

Investigation by Village Public Safety Officers (VPSO) is a joke. Nothing can be obtained from their reports. Train them right and hold them to meaningful standards of performance.

Fish and Wildlife Officers'

F & W officers don't seem to have enough training.

Municipal Police

Some police investigators get too emotionally involved in cases and become vindictive.

Some officers overreact to situations.

Some officers are too rough physically and treatment of minorities is suspect.

Polygraph operator is unreliable; not honest in test procedures.

Some officers use excess force, to the point of being violent.

Municipal police tend to be undertrained and non-professional.

Adult Probation/Parole Officers

Too many supervisory personnel are idle. There is not enough supportive work. Presentence reports are sloppy and inadequate.

Pre-sentence report investigation is deficient. Probation/parole supervision is inadequate.

Officers are more interested in power and penalizing people than in rehabilitation and re-entry into the community.

Juvenile Probation Officers

Too many supervisors, not enough probation officers.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

District Court Judges

Fail to follow law as written; personal opinions interjected.

Magistrates

Some rural magistrates do not give an opportunity for a fair and impartial trial.

Prosecuting Attorneys

Vary in interest and ability. Some think they own their corner of the world.

Public Defense Investigators

Public Defense investigators lack ethical standards. Some public defense investigators will go to any lengths to protect the accused, sometimes to the point of criminal interference.

Corrections Officers

Need training and proper leadership, most managers are inept.

Corrections officers are poorly selected, trained and supervised. They see themselves as social workers rather than corrections officers/jail guards.

COMMENTS FROM ALASKA COURT JUDGES

District Court Judges

Unacceptable - "just read their decisions"

Prosecuting Attorneys

Some of the supervisory personnel in the Criminal Division are having an adverse affect on criminal affairs. Possible misuse of affirmative action in hiring.

Some DAs are a big problem because they run an office where no one is allowed to think for themselves. Overall quality of attorneys has been going down hill. Assistants pass the buck.

Municipal Prosecuting Attorneys

Municipal prosecutors fail to adequately screen cases. They have a lack of perspective.

Public Defenders

Public Defender Agency is undermanned.

The actions of public defenders in cases in which they have been appointed to represent juveniles tend to bog down the system through the delays they cause. This results in the complete destruction of the purpose of children's court, destroys parents' faith in the court system and impresses children of their ability to manipulate the court.

Probation/Parole Officers

Both adult and juvenile probation/parole offices are undermanned.

General

System is staffed with excellent, qualified people.

Prefer not to mention names in this fashion.

COMMENTS FROM ALASKA COURT MAGISTRATES

Prosecuting Attorneys

Prosecutors are frequently too busy or unwilling to come out to the bush to prosecute. They prepare their cases at the last minute - frequently resulting in dismissals or diversions AFTER jurors have already traveled to court from other villages. This is a big cost to court ($2000 per jury).

Performance by DA's is adequate, but inadequate coverage of outlying areas cause backlogs which force dismissals and/or reductions.

Public Defenders and Investigators

Both attorneys and public defense investigators do adequate work, but there is not enough of them to consistently do a good job - causes system backlogs.

Need more public defense attorneys and investigators.

Probation Officers

There are no probation officers in some bush areas. Reporting is done by letter once a month. Need to pay responsible local volunteers, i.e., clergy, council leader, etc. to act as local officer to juveniles.

A Department of Corrections, with probation officers under the Department would be a great improvement.

Peremptting Judges

5. Based on your experience, do you feel that the practice of perempting judges:

QUESTION	PERCENTAGE OF RESPONSES FROM STATE PROSECUTORS	ANCHORAGE MUNICIPAL PROSECUTORS	PUBLIC DEFENDERS	SENIOR MANAGERS OF STATE TROOPERS	ALASKA COURT JUDGES	ALASKA COURT MAGISTRA
A) Causes undue delay in the system?	47	50	0	73	64	54
B) Has little effect on the system?	45	50	94	27	27	32
C) No response.	8	0	6	0	9	14

COMMENTS FROM STATE PROSECUTORS

Causes extra financial costs.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

Major urban areas have different situations than areas where only one judge is available.

Periodically it caused undue delay.

COMMENTS FROM PUBLIC DEFENDERS

Perempting judges is good for the system.

Actually it does affect the system, but delay is not the affect.

It is vital to the system.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

Causes delays and is disruptive; Federal system is better.

Perempting judges has an effect and causes delays, but the delay is not undue.

Changes in the law regarding perempting judges is needed.

COMMENTS FROM ALASKA COURT MAGISTRATES

Causes undue delay in courts with less than three resident judges.

Related to this (perempting judges) is the practice of consent to trial by Magistrate. This is a common delaying practice because refusal necessitates the traveling of a District Court judge to the bush. If consent was not required the perempt statute would still protect the defendant.

6. Do you feel that a majority of delay caused by perempting judges could be alleviated by the prompt assignment of a judge to a case?

	PERCENTAGE OF RESPONSES FROM														
	STATE PROSECUTORS			ANCHORAGE MUNICIPAL PROSECUTORS			PUBLIC DEFENDERS			SENIOR MANAGERS OF STATE TROOPERS			ALASKA COURT JUDGES			ALASKA COURT MAGISTRATES		
	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE
	79	16	5	50	33	17	72	19	8	73	27	0	36	59	5	59	27	14

COMMENTS FROM STATE PROSECUTORS

Travel required in single judge locations is the main problem.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

None.

COMMENTS FROM PUBLIC DEFENDERS

There is no significant delay, the court system deals effectively with peremptory challenges.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

Peremptory challenges allow lawyers who practice in single judge locations to control judge instead of allowing independence.

In single judge locations, delay will occur in any event.

In order to avoid delay, the judge assigned must be available. In single judge locations this is sometimes a hardship and is very costly.

Judges are promptly assigned.

COMMENTS FROM ALASKA COURT MAGISTRATES

Many times there simply is no back-up judge readily available.

7. Based on your experience, do you believe that the statute allowing for peremptory of a judge for no cause is:

	PERCENTAGE OF RESPONSES FROM					
QUESTION	STATE PROSECUTORS	ANCHORAGE MUNICIPAL PROSECUTORS	PUBLIC DEFENDERS	SENIOR MANAGERS OF STATE TROOPERS	ALASKA COURT JUDGES	ALASKA COURT MAGISTRATES
A) Not necessary to receive a fair and impartial judge?	50	50	0	91	59	59
B) Necessary to receive a fair and impartial judge?	47	50	100	9	36	27
C) No response.	3	0	0	0	5	14

COMMENTS FROM STATE PROSECUTORS

Perempts are not necessary because Superior Court judges are of such high quality.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

None.

COMMENTS FROM THE PUBLIC DEFENDERS

None.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

Appearance of fairness to general public is important.

Allowing for perempt is necessary in order to preserve the appearance of a fair system.

COMMENTS FROM ALASKA COURT MAGISTRATES

None.

8. Do you feel that the practice of perempting judges is:

QUESTION	PERCENTAGE OF RESPONSES FROM: STATE PROSECUTORS	ANCHORAGE MUNICIPAL PROSECUTORS	PUBLIC DEFENDERS	SENIOR MANAGERS OF STATE TROOPERS	ALASKA COURT JUDGES	ALASKA COURT MAGISTRATI
A) Mainly used as a delay tactic by the defense?	32	17	0	73	41	41
B) Mainly used for good reason?	60	50	100	18	45	36
C) No response.	8	33	0	9	14	23

COMMENTS FROM STATE PROSECUTORS

Perempting is also used to get a judge who sentences more leniently.

B) Except in bush cases where peremptions sometimes cause overlapping of judges traveling to the bush causing a shortage of judges in Anchorage.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

Neither; used for "judge shopping" and defense is not the only one who uses it.

Practice is used for both A) and B).

CONTINUED

1 OF 2

COMMENTS FROM PUBLIC DEFENDERS

B), and requested by the client; it is his or her choice.

There is no significant delay caused by this pracitce.

In smaller communities, certain judicial decisions, sometimes involving a repeat offender, are so etched into his mind that they will never have the perception that the initial judge can be fair. It is important to give these people a choice to perserve the whole society's perception of a fair and impartial judiciary.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

Used as a delay tactic to obtain a more favorable lenient sentencing judge; rarely used because of bias.

Perempts are mainly used to judge shop.

Delay tactic is nonsense - perempts are used because an attorney believes he will not be fairly treated by a judge.

Peremption of judges should be done away with. When it is not used to delay it is used to judge shop.

Perempts are costly and damaging in one judge locations.

COMMENTS FROM ALASKA COURT MAGISTRATES

It is used to avoid sentencing patterns unfavorable to the attorney's client.

I agree with the practice, but feel that it is often misused.

Jury Selection

9. Please indicate the answer which best represents your opinion. The jury selection system in Alaska at present provides:

	PERCENTAGE OF RESPONSES FROM					
	STATE PROSECUTORS	ANCHORAGE MUNICIPAL PROSECUTORS	PUBLIC DEFENDERS	SENIOR MANAGERS OF STATE TROOPERS	ALASKA COURT JUDGES	ALASKA COURT MAGISTRATI
A) An excellent cross section of citizens.	16	17	3	9	36	27
B) Adequate representation of the community.	71	83	50	91	50	68
C) An inadequate selection (please note why).	13	0	41	0	9	0
D) Other (please specify).	0	0	3	0	0	0
E) No response.	0	0	3	0	5	5

COMMENTS FROM STATE PROSECUTORS

There is an inadequate number of Alaskan natives.

Having jurors serve only one trial per year results in many naive and gullible jurors on the panel.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

Adequate, but few blacks and other minorities appear in the jury. I don't know why.

COMMENTS FROM PUBLIC DEFENDERS

C) Too few minority people, including natives, blacks, unemployed and the poor.

Not enough native representation.

The jury pool is taken from several lists, and these lists do not represent an adequate cross-section of the community.

For some reason younger people do not appear on juries.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

The jury selection process is adequate - if the jury is adequate depends on their knowledge of law, evidence and enforcement procedures.

COMMENTS FROM ALASKA COURT JUDGES

Uses too small a group on each call, random selection overlooks some people every year. Should elect people not in pool in past.

COMMENTS FROM ALASKA COURT MAGISTRATES

Jury lists are out of date.

The collection of names is poor; 20% or more are either gone, dead or underage.

10. Do you believe that the new juror statute which limits excusal from jury duty:

	PERCENTAGE OF RESPONSES FROM					
	STATE PROSECUTORS	ANCHORAGE MUNICIPAL PROSECUTORS	PUBLIC DEFENDERS	SENIOR MANAGERS OF STATE TROOPERS	ALASKA COURT JUDGES	ALASKA COURT MAGISTRATI
A) Limits excusals too severely?	18	0	11	55	23	5
B) Correctly limits excusals?	61	100	64	45	77	82
C) Still excuses too many individuals?	13	0	0	0	0	9
D) No response.	8	0	25	0	0	5

COMMENTS FROM STATE PROSECUTORS

None.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

None.

COMMENTS FROM PUBLIC DEFENDERS

The process is highly subjective and varies from judge to judge.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

None.

COMMENTS FROM ALASKA COURT MAGISTRATES

None.

11. Based on your experience, do you believe that the practice of using peremptory challenges when choosing a jury:

	PERCENTAGE OF RESPONSES FROM					
	STATE PROSECUTORS	ANCHORAGE MUNICIPAL PROSECUTORS	PUBLIC DEFENDERS	SENIOR MANAGERS OF STATE TROOPERS	ALASKA COURT JUDGES	ALASKA COURT MAGISTRAT
A) Causes undue delay in the trial process?	8	33	0	18	41	36
B) Helps the process to run more smoothly?	34	17	33	27	32	9
C) Has little effect on time a trial process takes?	47	50	56	55	23	41
D) No response.	11	0	11	0	4	14

COMMENTS FROM STATE PROSECUTORS

Not necessarily undue, but there is delay.

Voir dire is abused by both sides.

No undue delay, but no reason for defense to get 30% more perempts than the prosecution.

Takes time, but is vital to the integrity of the system.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

None.

COMMENTS FROM PUBLIC DEFENDERS

Peremptory challenges are necessary to receive a fair trial.

Perempts obviously cause delay, but this is probably the most critical process to ensure fairness.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

Undue delay, but still necessary.

Without peremptory challenges, more effort would be devoted to challenge for cause which would be more time consuming.

Takes some time, but results in better juries if run correctly.

COMMENTS FROM ALASKA COURT MAGISTRATES

None.

12. Do you feel that the number of peremptory challenges allowed (6 for prosecution, 10 for the defense):

	PERCENTAGE OF RESPONSES FROM					
QUESTION	STATE PROSECUTORS	ANCHORAGE MUNICIPAL PROSECUTORS	PUBLIC DEFENDERS	SENIOR MANAGERS OF STATE TROOPERS	ALASKA COURT JUDGES	ALASKA COURT MAGISTRATI
A) Should be increased on both sides?	0	0	0	0	0	0
B) Should be equal on both sides?	76	100	3	91	9	27
C) Should be decreased on both sides?	5	0	0	9	55	23
D) Should stay the same?	16	0	86	0	27	32
* E) If A, B, or C, please specify the number that should be allowed below.	*	*	*	*	*	*
F) No response.	3	0	11	0	9	18

COMMENTS FROM STATE PROSECUTORS

* E) number of perempts that should be allowed:

Prosecution	Defense
6	6
3	3
3	5
5	5
7	7
8	8
10	10

Only need equal perempts when the judge monkeys with the order in which they are exercised.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

* E) number of perempts that should be allowed:

Prosecution	Defense
6	6
5	5
3	3

Equal, but less than now (no number specified).

COMMENTS FROM PUBLIC DEFENDERS

* E) number of perempts that should be allowed:

Prosecution	Defense
6	12
10	10

D) Stay the same, subject to more liberal rules on granting of additional peremptory challenges in unusual cases.

D) Stay the same, in cases where the defendant has received extensive pretrial publicity, usually adverse, the judge should grant additional peremptory challenges

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

* E) number of perempts that should be allowed:

Prosecution	Defense
3	3
6	6

COMMENTS FROM ALASKA COURT JUDGES

* E) number of perempts that should be allowed:

Prosecution	Defense
6	6
3	6
3	5
3	3
5	5
4	6
2	4

Peremptory challenges in felony trial is unnecessary.

Challenges allowed should be equal and judge should have the discretion to set numbers in felony cases.

COMMENTS FROM ALASKA COURT MAGISTRATES

* E) number of perempts that should be allowed:

Prosecution	Defense
6	6
3	3
5	5
3	5
4	6

13. Do you believe that the combination of excusals, challenging jurors for cause, and peremptive challenges result in a jury that is:

	PERCENTAGE OF RESPONSES FROM					
	STATE PROSECUTORS	ANCHORAGE MUNICIPAL PROSECUTORS	PUBLIC DEFENDERS	SENIOR MANAGERS OF STATE TROOPERS	ALASKA COURT JUDGES	ALASKA COURT MAGISTRAT
A) Competent, fair and impartial.	47	83	80	36	64	50
B) Competent, but "weighted" for one side.	16	0	8	9	14	23
C) Made up of non-decision makers who frequently cannot adequately evaluate the facts.	18	17	0	55	4	5
D) Other (please specify).	16	0	6	0	14	9
E) No response.	3	0	6	0	4	13

COMMENTS FROM STATE PROSECUTORS

Usually competent, but sometimes weighted.

Adequate

Generally fair, but additional peremptory challenges allowed the defense, sometimes result in one or two eccentric or odd jurors.

Competent, assuming equally matched attorneys.

Competence depends on the pool to begin with. The biggest fault in the system is rotation to lighten duty, which results in inexperienced jurors.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

Most jurors that are picked are fair and competent, but the process is long and results in delays because most judges do not control their courrooms.

COMMENTS FROM PUBLIC DEFENDERS

A) But in criminal cases they nearly always start on the side of the State.

A) The jury will be competent, fair and impartial if the jury panel is representative.

B) Juries do not expect guilt to be proven beyond a reasonable doubt.

Best process to create a fair jury.

None of these choices really fit.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

Juries are usually competent, fair and impartial.

D) All of the above; juries vary greatly.

Experienced counsel will seek a jury made up of non-decision makers with leader "weighted" for their side.

COMMENTS FROM ALASKA COURT MAGISTRATES

We run out of jurors in rural areas.

Juries are usually a combination of B) & C) competent weighted jurors and non-decision makers.

Screening/Case Management

14. Based on your experience, do you believe the prosecutors are:

	PERCENTAGE OF RESPONSES FROM					
QUESTION	STATE PROSECUTORS	ANCHORAGE MUNICIPAL PROSECUTORS	PUBLIC DEFENDERS	SENIOR MANAGERS OF STATE TROOPERS	ALASKA COURT JUDGES	ALASKA COURT MAGISTRAT
A) Accepting too many "weak" cases?	10	0	58	0	23	27
B) Doing a good job of screening?	82	33	36	27	68	55
C) Declining cases that should have been charged?	5	33	0	64	5	18
D) No response.	3	34	6	9	4	0

If possible, please specify by type, any problems with charging practice.

COMMENTS FROM STATE PROSECUTORS

No plea bargaining policy necessitates the rejection of marginal cases.

Inadequately investigated cases causes rejection of marginal cases.

Many cases come in overcharged, screening eliminates problems.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

The DA's office declines too many cases involving eyewitness identification problems.

COMMENTS FROM PUBLIC DEFENDERS

Prosecutors pile on the charges and exchange for guilty please. Too many minor cases and victimless crimes go to trial.

Doing a good job except for violent crimes and sexual assault cases, they accept too many weak cases of this type.

Overcharge as a leverage tool for a guilty plea.

Whether or not the victim wants to prosecute is not considered strongly enough.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

Screening is a pretext used to eliminate cases which would require the prosecutor to work hard.

DA's screen out cases to avoid a negative statistic "dismissal" because 120 days rule runs out.

Prosecutors decline too many commercial fish cases.

Misdemeanors and minor felonies are not prosecuted due to large caseload.

Won't accept a case unless it can be easily won.

COMMENTS FROM ALASKA COURT JUDGES

Prosecutors overcharge to err on side of caution, it gives them a bargaining chip to obtain a guilty plea.

The "no plea" bargaining policy may force over screening.

State prosecutors do a good job of screening, municipal prosecutors do not.

COMMENTS FROM ALASKA COURT MAGISTRATES

C) Because the bush is too far from the prosecutor's office.

C) Declining too many negligent homicides, i.e., drunk drivers with fatal accidents.

15. Based on your experience, do you find that prosecutors are:

QUESTION	PERCENTAGE OF RESPONSES FROM STATE PROSECUTORS	ANCHORAGE MUNICIPAL PROSECUTORS	PUBLIC DEFENDERS	SENIOR MANAGERS OF STATE TROOPERS	ALASKA COURT JUDGES	ALASKA COURT MAGISTRATE
A) Overcharging a defendant, then reducing the charge in exchange for a guilty plea?	3	0	75	9	27	23
B) Charging a defendant with the appropriate crime(s)?	94	83	17	64	59	45
C) Under charging?	3	0	0	27	0	18
D) No response.	0	17	8	0	14	14

COMMENTS FROM STATE PROSECUTORS

Charging with the appropriate crime and still sometimes reducing them.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

None.

COMMENTS FROM PUBLIC DEFENDERS

Prosecutors are overcharging and NOT reducing, causing needless jury trials.

The ban on plea bargaining, effectively, does not exist.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

Prosecutors tend to charge higher degree thereby reducing percentage of pleas without some form of bargaining.

Overcharging and reducing is inherent and impossible to avoid.

Prosecutors charge every possible crime, then bargain.

COMMENTS FROM ALASKA COURT MAGISTRATES

In rural areas the DA is rarely involved with charging. It is normally done by Alaska State Troopers or a village officer.

16. The charging of defendants by prosecutors is:

	PERCENTAGE OF RESPONSES FROM					
	STATE PROSECUTORS	ANCHORAGE MUNICIPAL PROSECUTORS	PUBLIC DEFENDERS	SENIOR MANAGERS OF STATE TROOPERS	ALASKA COURT JUDGES	ALASKA COURT MAGISTRATE
A) Fair and consistent based on the facts of the case.	82	67	19	36	59	55
B) Not as consistent as it should be; management review is needed to improve consistency.	18	0	56	46	32	27
C) Inconsistent charging is a serious problem that warrants immediate attention.	0	0	19	18	5	5
D) No response.	0	33	6	0	4	13

COMMENTS FROM STATE PROSECUTORS

None.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

None.

COMMENTS FROM PUBLIC DEFENDERS

C) especially under the new assault statutes.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

Always not as consistent as it could be.

COMMENTS FROM ALASKA COURT MAGISTRATES

None.

17. Do you believe that more uniform, state-wide policies, procedures, and standards should be established by the Attorney General and/or the Chief Prosecutor?

PERCENTAGE OF RESPONSES FROM																	
STATE PROSECUTORS			ANCHORAGE MUNICIPAL PROSECUTORS			PUBLIC DEFENDERS			SENIOR MANAGERS OF STATE TROOPERS			ALASKA COURT JUDGES			ALASKA COURT MAGISTRATES		
YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE
16	76	8	33	50	17	17	72	11	64	27	9	23	68	9	50	18	32

COMMENTS FROM STATE PROSECUTORS

No more are needed, although some should exist.

Uniform policies exist, whether uniformly enforced is in question.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

None.

COMMENTS FROM PUBLIC DEFENDERS

Hard to speak about state-wide consistency, however, I see gross inconsistencies and unfairness in my own judicial district.

No, the DA's should just follow already established policies, e.g. diversion.

It is an attempt at uniformity that creates injustice when local inequities cannot be considered. Prosecutors should be able to exercise disretion in their districts.

To attempt to make rural areas the same urban areas denies the needs of different communities.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

No hard evidence, but 30-50% of felonies in 1st Judicial District are disposed of by reduction in charge or dismissal of counts prior to trial. Poor case screening is the cause. There is too much centralization in the Department of Law.

COMMENTS FROM ALASKA COURT MAGISTRATES

None.

18. Do you feel that the plea bargaining and charging procedures and policies established by the Attorney General are:

	PERCENTAGE OF RESPONSES FROM					
QUESTION	STATE PROSECUTORS	ANCHORAGE MUNICIPAL PROSECUTORS	PUBLIC DEFENDERS	SENIOR MANAGERS OF STATE TROOPERS	ALASKA COURT JUDGES	ALASKA COURT MAGISTRATE
A) Carried out on a consistent basis state-wide?	29	0	11	0	19	18
B) Vary in application by region?	53	17	53	64	50	27
C) Vary in application by attorney?	24	50	58	55	9	27
D) No response.	11	33	3	0	32	41

COMMENTS FROM STATE PROSECUTORS

Note - 17% over 100 results from respondents checking both B and C; that application varies by region and attorney.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

Disapprove of policy not to use plea bargaining as a tool for prosecution. It allows more cases to be dismissed or not enough to be accepted.

COMMENTS FROM PUBLIC DEFENDERS

Note: 25% over 100 results from respondents checking both B and C; that application varies by region and attorney.

Charging involves discretion, which necessarily means variances will occur.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

Note: 19% over 100 results from respondents checking both B and C; that application varies by region and attorney.

None.

COMMENTS FROM ALASKA COURT JUDGES

Note -10% over 100 results from respondents checking both B and C; that application varies by region and attorney.

COMMENTS FROM ALASKA COURT MAGISTRATES

Note - 13% over 100 results from respondents checking both B and C; that application varies by region and attorney.

DA's still plea bargain - especially newer DAs. Many change of pleas are definitely plea bargains or sentence deals.

19. Once a case has been accepted for prosecution do you find that:

QUESTIONS	PERCENTAGE OF RESPONSES FROM STATE PROSECUTORS			ANCHORAGE MUNICIPAL PROSECUTORS			PUBLIC DEFENDERS			SENIOR MANAGERS OF STATE TROOPERS			ALASKA COURT JUDGES			ALASKA COURT MAGISTRATES		
	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPO
A) Most cases that are dismissed by the District Attorney (DA) are dismissed because it is unlikely a conviction could be obtained based upon the facts of the case.	76	21	3	50	17	33	64	17	19	36	55	9	72	14	14	64	23	13
B) Most cases that are dismissed by the DA are dismissed because they do not have time to handle all cases.	8	76	16	34	33	33	0	75	25	55	36	9	5	54	41	41	32	27
C) Most cases with multiple charges are resolved when the DA accepts a plea to a single charge.	34	42	24	67	0	33	31	50	19	73	9	18	59	14	27	54	14	32
D) Most charges reduced against a defendant are in exchange for a guilty plea to a lesser offense.	26	58	16	67	0	33	58	25	17	82	9	9	37	27	36	50	18	32
E) Fewer cases would be dismissed if the prosecution had a better case management system.	5	69	26	0	67	33	6	72	22	45	46	9	14	45	41	32	27	41

COMMENTS FROM ALASKA COURT JUDGES

DA's offices work fairly well; they have a good case management system.

Statute Changes

Please add any additional comments you may have or recommendations for changes in Alaska Statutes. For example suggestions have been made that Alaska needs a conspiracy statute, a wiretap statute, and that our fish and wildlife statutes need to be revised. If you have suggestions, note what they are and why they are needed.

COMMENTS FROM STATE PROSECUTORS

None.

No Suggestions - 63%

Suggestions

Discovery (Criminal Rule 16)

Rule 16 should be reformed to provide reciprocal discovery.

Rule 16 should be reviewed by the Legislature and changed by a two-thirds vote.

Discovery should be more limited by prosecution and more open by the defense.

Defense should give discovery if defendant wants to.

Discovery rule is unfairly weighted because prosecution must disclose entire investigatory file while defense need not. Receipt of reports by defense should be made conditional on reciprocal disclosure by defense.

Exclusionary Rule (Alaska Rule of Evidence 412)

Exclusionary rule should be abolished.

Note - 23% of those responding suggested this.

Sexual Abuse Statutes

Need for review of child molesting statutes.

Sexual Abuse of a minor should be worded to include juvenile sex offenders (suggests a 3 year age difference).

Presumptive 8 year term for Sexual Assault I includes many incest situations, including finger penetration by step-father. This runs counter to what is now currently the theory on dealing with in-family abuse. Some way to exempt this should be attempted.

Comprehensive Review and Reform of Rules

Need for comprehensive reform of the Criminal Rules of Court.

The Legislature should be actively reviewing Supreme Court promulgated "Rules" and explicitly changing some by two-thirds vote!

Criminal Rules and Rules of Evidence need Legislative review and reform.

Wiretap Statute

There is a need for a wiretap statute in the State.

Note - 15% of respondents suggested this.

Fish and Wildlife Statutes

Fish and Wildlife penalties should be reviewed:

1st offense - maximum a fine
2nd offense - jail time

These offenses are usually resolved by fine, but because jail time is a possiblility, the offender has a right to counsel and a jury trial. This is very costl

The "Reynolds" decision which establishes a negligence standard for commercial fish violations renders the statutes unenforceable.

Need a statute stating that the mental state required in Fish and Game cases is strict liability.

Sentence Appeals

Abolish sentence appeals or show a difference between flat presumptive time and first offender sentences.

Abolish or at least amend AS 12.55.120, Sentence Appeals, (Federal courts and most states do not allow appeals on excessiveness of sentence).

Other Suggestions

Extend Alaska Rule of Criminal Procedure 8 from 10 days to 20/30 days.

Eliminate joinder Rule 45(c)(1).

Statutes on Scheme to Defraud need to be reviewed.

Child Truancy statutes written in 1948 have not been revised since.

AS 28.35.181 - license suspension still has not been integrated into reckless driving statute.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

No Suggestions - 67%

Suggestions

Revise statute concerning carrying a concealed weapon to include weapons concealed in an automobile. It is outrageous that some Legislators would sacrifice the safety of police officers for their own personal concerns.

Restrictions on the exclusionary rule should be made Too many times good evidence had been suppressed because of a judges interpretation, leaving the officer o the street bewildered at what he is to do.

An implied consent statute for drawing blood (only by a qualified person) for a person arrested for DWI is needed. Then a direct measurement of blood alcoh and a lot of time, money and effort will not be wasted on disputing the accuracy of the breathalyzer at each trial.

COMMENTS FROM PUBLIC DEFENDERS

No Suggestions - 72%

Presumptive Sentencing

Presumptive sentencing should be eliminated or amended.

Additional mitigating factors should be added to the presumptive sentencing statutes, including but not limited to:

1) youth of offender;
2) utter lack of juvenile record;
3) utter lack of misdemeanor record;
4) show of consideration for victim;
5) turning oneself into the police or appropriate authority.

Presumptive sentencing is too rigid a system. Destroys judges flexibility and causes more trials because clients facing presumptive time have little incentive plead guilty.

Conspiracy Statute

A conspiracy statute is unnecessary. Accomplice liability, attempts and solicitation statutes accomplish the same thing without the great danger of abuse.

Conspiracy statutes work the greatest injustices of any potential criminal prohibition.

Conspiracy statutes are a disaster and lead to the abuse of civil liberties.

Fish and Wildlife Statutes

Fish and Wildlife statutes need revision. They are too complex and diverse. "Mens rea" needs to be resolved.

Raise maximum fines possible in fish and wildlife cases.

Other Areas

Stop amending the criminal code, give it time to work.

Drug sentence are excessive and doomed to failure. Illegal popular drugs only lead to disrespect for the law and increased crime by those who traffic in expe drugs.

The assault code is idiotic. The same conduct could be punished under any of the four classes. This is because of the definitions of serious physical injury the same coupled with the definition of dangerous instrument.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

No Suggestions - 64%

Suggestions

Conspiracy Statute

A conspiracy statute is needed.

Fish and Wildlife Statute

Fish and Wildlife violation in commercial fish should result in stiffer sentences.

Fish and Wildlife penalty provision in Title XVI needs to be clarified and updated.

Wiretap Statute

A wiretap statute is needed.

Comments

I believe a reduction in the number of hearings, better case management and better attorney preparation would help the system.

COMMENTS FROM ALASKA COURT JUDGES

No Suggestions - 68%

Suggestions

Fish and Wildlife Statute

Eliminate "mens rea" of negligence that the Court of Appeals engrafted on commercial fish violations in State vs. Reynolds.

Fish and Game statutes are adequate.

Fish and Game statutes are badly in need of revision.

A boarding law statute is needed to allow Fish and Wildlife Officers to board vessels for ordinary permit and license checks.

Conspiracy and Wiretapping

Conspiracy and wiretapping statutes are needed in Alaska.

Alaska does not need either a wiretap or conspiracy statute.

Peremptory Challenge of Judges

Abolish peremptory statute and only allow challenge of judge for good reason.

Other

Eliminate warrant requirement for surveillance monitoring by Supreme Court in State vs. Glass.

Clarify or disallow use of self defense without significant showing by defendant that claim is valid. May be improperly claimed presently.

Need for a statute calling for earlier state-wide closing hour of bars and liquor stores. Perhaps make licensee liable for liquor offenses.

My only recommendation is that any change be carefully reviewed and it's full impact be assessed (i.e. need more DA's, judges, public defender, jails) rather than its political appeal.

COMMENTS FROM ALASKA COURT MAGISTRATES

No suggestions - 67%

Suggestions

Fish and Wildlife Statute

Fish and game statutes need to be revised, providing an infraction level for such items as licensing for sports fishing and other minor violations., A mail in bail schedule should be set up similar to the traffic bail schedule ordered by the Supreme Court. It would elimiate a tremendous amount of wasted time for defendants and the courts, and still serve as a deterrent for most violaters, at least to the degree the present system does.

Most fish and wildlife offenses should be made violations.

Both the statutes and especially the regulations need to be simplified. They are difficult for even the highly educated layman to figure out.

The fish and game 36 inch - 3 brow tine moose cases are confusing. Would rather see shorter, every other year, or no season at all.

A complete revision of fish and wildlife statues is needed.

Fish and wildlife statutes should be more specific on each violation and its corresponding penalty.

Other

Consent to trial by Magistrate - a real hardship in prosecuting cases in the bush because refusal of trial by magistrate, even for simple misdemeanors requires taking a District Court judge out of court to travel to the bush. Solution would be to strike this statute and replace it with stipulation that perempting the magistrate would mean the assigning of a District Court judge.

Eliminate the peremption of judges without cause.

A conspiracy statute would be good.

Prisons

20. Rank the following alternatives for relieving prison over-crowding in order of priority (1-highest, 4-lowest); Priority

	PERCENTAGE OF RESPONSES FROM					
	STATE PROSECUTORS	ANCHORAGE MUNICIPAL PROSECUTORS	PUBLIC DEFENDERS	SENIOR MANAGERS OF STATE TROOPERS	ALASKA COURT JUDGES	ALASKA COURT MAGISTRATI
A) More prisons.	1	1	2	1	1	1
B) Additional central office personnel in the Division of Corrections and a prisoner management system so as to more effeciently use available prison bed space.	3	2	4	2	3	4
C) A full-time professional parole board.	4	3	3	3	4	3
D) More halfway houses and community release alternatives.	2	2	1	4	2	2
E) Other (please specify).						

COMMENTS FROM STATE PROSECUTORS

E) Other; More professional people (psychologists).

More State jail facilities in rural areas.

C) Parole Board;

Abolish Parole Board - merit system to increase time added to good time.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

B) Rather than additional personnel, better utilization of existing personnel and space. I do not believe the prison system in Alaska is as bad as some people argue.

COMMENTS FROM PUBLIC DEFENDERS

E) other;

Eliminate presumptive sentencing (mentioned by 23% of respondents).

More pre-trial diversion.

Lighter sentences for drug offenders.

More native/cultural and alcohol/drug programs.

Review plea bargaining policy.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

A better claissification system is needed to adequately process minimum, medium and maximum security prisioners.

Reduce the number of persons going to jail. A suggestion is to cause those convicted of OMVI to forfeit vehicle instead of serving jail time.

Decentralize facilities. Build minimum security holding facilities for DWI and such. Those with 6 months or less to serve should be in or near community in modular facilities.

COMMENTS FROM ALASKA COURT JUDGES

A) Need more prison space designed for diversified facilities. As long as presumptive sentencing is in effect, we will need more jails.

D) Judges should be given more discretion on presumptive sentences, especially C felonies.

Other

More rural prisions are needed, separate facilities for youth.

Need minimum security prisons and cells as opposed to dorms for dangerous prisoners.

More probation/parole officers are needed.

Allow judges to tailor sentence to fit defendant vs. presumptive long sentences.

More diversion programs with staff needed.

Behavior modification treatment is needed. e.g. alcohol treatment programs and education in the problems of living, like, "how to keep a job".

COMMENTS FROM ALASKA COURT MAGISTRATES

The State should build its own prisons and not send anyone outside. This would cut transportation costs, give better control, put prisioners closer to family and help them fit back into society better.

More local jails should be used for sentences of thirty days or less. Note; A first DWI conviction in the bush frequently means a free trip to the city for shopping and fun with free shelter.

The State should establish work camps for mostly outdoor work such as forestry, stream enhancement, public park improvement and highway and trail improvement.

21. Juvenile Justice

How do you believe that the juvenile justice system works in Alaska?

PERCENTAGE OF RESPONSES FROM

STATE PROSECUTORS				ANCHORAGE MUNICIPAL PROSECUTORS				PUBLIC DEFENDERS				SENIOR MANAGERS OF STATE TROOPERS				ALASKA COURT JUDGES				ALASKA COURT MAGISTRATES			
NOT ADEQUATE	ADEQUATE	EXCELLENT	NO RESPONSE	NOT ADEQUATE	ADEQUATE	EXCELLENT	NO RESPONSE	NOT ADEQUATE	ADEQUATE	EXCELLENT	NO RESPONSE	NOT ADEQUATE	ADEQUATE	EXCELLENT	NO RESPONSE	NOT ADEQUATE	ADEQUATE	EXCELLENT	NO RESPONSE	NOT ADEQUATE	ADEQUATE	EXCELLENT	NO RESPONSE
42	37	0	21	17	33	0	50	19	47	6	28	82	18	0	0	32	45	14	9	32	64	4	0

COMMENTS FROM STATE PROSECUTORS

Relatively inexperienced personnel with little support.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

None.

COMMENTS FROM PUBLIC DEFENDERS

Inadequate in the bush.

System is overcrowded, it teaches children how to be criminals by placing them with criminals.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

Excellent, in comparison to other states.

COMMENTS FROM ALASKA COURT MAGISTRATES

Needs improvement.

There is no supervision in the bush.

More facilities are needed for rural areas. McLaughlin Youth Center is not the answer. We need more programs like Turning Point Ranch.

22. Please rate the areas you believe need additional consideration using 1 as your first priority.

SELECTION	PERCENTAGE OF RESPONSES FROM STATE PROSECUTORS PRIORITY	ANCHORAGE MUNICIPAL PROSECUTORS PRIORITYY	PUBLIC DEFENDERS PRIORITY	SENIOR MANAGERS OF STATE TROOPERS PRIORITY	ALASKA COURT JUDGES PRIORITY	ALASKA COURT MAGISTRATES PRIORITY
A) Juvenile intake and case initiation.	3	4	6	6	7	8
B) Waiver of juveniles to adult jurisdiction.	2	3	8	4	8	6
C) Procedural delays and other inadequacies in the process of adjudication and disposition.	7	8	7	7	6	7
D) Developing more dispositional alternatives for juveniles in Alaska.	2	5	3	5	2	5
E) Developing more community-based resources to provide constructive activities for juveniles.	4	7	1	3	1	2
F) Developing more employment oppurtunities for juveniles.	6	6	2	7	3	4
G) Holding juveniles more accountable for their own behavior.	1	1	5	1	5	1
H) Holding parents more accountable for the behavior of their children.	5	2	4	2	4	3
I) Other (please specify).						

COMMENTS FROM STATE PROSECUTORS

I) Other;

Additional police investigators with emphasis on juvenile offenders.

Additional Comments

Prosecutor under Department of Law should screen and intake all juvenile cases and probation revocation proceedings.

Recidivist young adults rely on parents to pay fines unless sentenced to inprisonment. They should be required to contribute restitution from own labor the first time they get in trouble.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

None.

COMMENTS FROM PUBLIC DEFENDERS

Juvenile court should be reserved for serious crimes and not petty violations (shoplifting, drinking, etc,).

The juvenile justice system it should be noted, suffers from a lack of space in existing juvenile dispositional placement. Waiting lists at McLaughlin Youth Center, etc., increases the duration of state care, to the detriment of offenders and the public.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

I) Other

Train police officers to counsel minors on street/scene.

More juvenile probation supervisors.

COMMENTS FROM ALASKA COURT MAGISTRATES

I) Other

A probation officer in each bush area which would be combined with another part-time State position.

Lower age for juvenile system, i.e. treat 15/16 year olds as adults.

Community awareness of juvenile behavior and what the causes for bad behavior might be.

Criminal Justice Planning Capability

23. Do you believe that many problems within the criminal justice system could be better addressed through careful planning and research?

	PERCENTAGE OF RESPONSES FROM																	
	STATE PROSECUTORS			ANCHORAGE MUNICIPAL PROSECUTORS			PUBLIC DEFENDERS			SENIOR MANAGERS OF STATE TROOPERS			ALASKA COURT JUDGES			ALASKA COURT MAGISTRATES		
	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE
	50	29	21	67	0	33	69	17	14	100	0	0	64	18	18	73	5	23

COMMENTS FROM STATE PROSECUTORS

Society will always experience deviant behavior with no cure but research shows correlation with poverty, overcrowding.

Few could be solved.

COMMENTS FROM THE ANCHORAGE MUNICIPAL PROSECUTORS

Yes, this is always a possibility, but a "yes" response does not indicate a demand for a massive Criminal Justice Planning Agency, either in the Legislative or Executive branch.

COMMENTS FROM PUBLIC DEFENDERS

Planning is now adversely affected by politically motivated publicity when extra ordinary cases occur.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

None.

COMMENTS FROM ALASKA COURT MAGISTRATES

People make the system go - not studies.

24. How do you believe the public in general views the performance of the criminal justice system?

Poor - the system is not working
Adequate - the system works most of the time
Excellent - the system is working as expected
No response

PERCENTAGE OF RESPONSES FROM

STATE PROSECUTORS				ANCHORAGE MUNICIPAL PROSECUTORS				PUBLIC DEFENDERS				SENIOR MANAGERS OF STATE TROOPERS				ALASKA COURT JUDGES				ALASKA COURT MAGISTRATES			
POOR	ADEQUATE	EXCELLENT	NO RESPONSE	POOR	ADEQUATE	EXCELLENT	NO RESPONSE	POOR	ADEQUATE	EXCELLENT	NO RESPONSE	POOR	ADEQUATE	EXCELLENT	NO RESPONSE	POOR	ADEQUATE	EXCELLENT	NO RESPONSE	POOR	ADEQUATE	EXCELLENT	NO RESPONSE
45	52	0	3	83	17	0	0	36	61	0	3	91	9	0	0	59	41	0	0	50	45	5	0

COMMENTS FROM STATE PROSECUTORS

None.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

None.

COMMENTS FROM PUBLIC DEFENDERS

None.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

None.

COMMENTS FROM ALASKA COURT MAGISTRATES

The system is working well. The public only gets a few bad cases that make good press. One hand of the public wants more people thrown in jail, on the other ha (results of bond election) they vote down funding of new jails.

25. How could planning and research best be conducted?

	PERCENTAGE OF RESPONSES FROM					
	STATE PROSECUTORS	ANCHORAGE MUNICIPAL PROSECUTORS	PUBLIC DEFENDERS	SENIOR MANAGERS OF STATE TROOPERS	ALASKA COURT JUDGES	ALASKA COURT MAGISTRAT
A) Through guidance from an interagency group, such as the Governor's Commission on the Administration of Justice.	7	17	22	27	23	5
B) Through policies and guidance established by an interagency group comprised of senior managers from the Executive, Legislative, and Judicial Branch. This group would be responsible for interagency research and planning.	18	0	8	64	23	27
C) Through direct legislative appropriations to individual agencies for planning and research.	7	0	11	9	5	9
D) Through a research and planning agency that would receive directions from many agencies.	5	17	11	0	4	14
E) Through an agency in the Department of Law that would be responsible for interagency research and planning.	34	17	0	0	4	18
F) Other (please specify).	8	16	11	0	9	9
G) No response.	18	33	37	0	32	18

COMMENTS FROM STATE PROSECUTORS

Research - University of Alaska
Planning - Each agency
Coordination - Governor's Commission

Too much money spent on planning.

Agency should identify problems, group coordinate planning, and money should be available without political pressure.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

Get a panel of patrol officers, police sargents, prosecutors, court personnel, judges, defense attorneys and others who run jails and provide alternate sentecing programs together and let them make suggestions based upon their experience to an impartial non-affiliated citizens group (appointed by the Governor).

COMMENTS FROM PUBLIC DEFENDERS

F) Other;

Blue Ribbon Commission appointed by the Governor.

An independent body.

Committee of judiciary, defense, prosecution, public safety and corrections people.

Through an agency that is as independent as possible; with representation from the community and the defense bar, as well as prosecutors.

We need outside Alaska criminal justice professional input, especially that which doesn't respond to short term public sentiment.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

None.

COMMENTS FROM ALASKA COURT JUDGES

Planning and research should be done by the University Criminal Justice Center because of independence.

More planning is not fruitful, we need more prison space, judges and constructive response to public criticism.

We don't need more planning and research.

The Judicial Council does the best studies.

Senior managers do not honestly portray the problems in their agency, even if they are aware of them. They respond to political winds and personal advancement potential. A separate control agency would be best.

Coordination of responsible agencies in non-urban areas is needed so that different agencies have compatible budgets (travel, ect.) and have to work and plan together.

COMMENTS FROM ALASKA COURT MAGISTRATES

Through an interagency group made up of lower level practicing staff, i.e., Magistrates, District and Superior Court judges, Clerks of Court, intake officers, DA and public defenders. These people are usually more intimately aware of the problems and possible solutions that twice removed members of commissions.

Planning and research are not necessary. Specialists are better if recommendations are followed - someone to observe and advise each problem area.

Through policies of guidance established by an interagency group of senior managers from different districts and minority programs that have to do with local governing bodies, except must interact with the Executive, Legislative and Judicial guidelines. This group would be responsible for interagency research and planning for each district.

Planning and research should be done by the Department of Corrections (new), but a professional organization should prepare it.

Criminal Procedure

26. Do you believe that the rules and practices of Alaska criminal procedures adequately respond to the need of a modern criminal justice system? If not, how can th be improved? Please specify.

PERCENTAGE OF RESPONSES FROM																	
STATE PROSECUTORS			ANCHORAGE MUNICIPAL PROSECUTORS			PUBLIC DEFENDERS			SENIOR MANAGERS OF STATE TROOPERS			ALASKA COURT JUDGES			ALASKA COURT MAGISTRATES		
YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE	YES	NO	NO RESPONSE
42	32	26	50	33	17	75	11	14	45	55	0	64	23	13	68	14	18

COMMENTS FROM STATE PROSECUTORS

Review and revision of Rules of Criminal Procedure.

Criminal discovery needs to be revised.

Restriction of post-conviction relief, limit on appeals.

Suggest relaxing hearsay rule.

Need earlier assignment of judges to a case.

Equalize peremptory challenges.

Discovery rules foster perjury.

Question is too broad - see Question No. 19.

Works to a limited extent - see Question No. 27.

Procedure rules need complete updating by Department of Law recommendation.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

Rules could improve somewhat, but are adequate for the most part. Procedures are only as good as the judge who sits and interprets them.

Rules do not adequately restrict the ability of a defendant to file motions of all sorts. Time restrictions of Rule 12(e) and Rule 40 seem to be adequate, but they are seldom enforced in District Court. Perhaps Rule 53 should be eliminated or restricted.

COMMENTS FROM PUBLIC DEFENDERS

Maintain the exclusionary rule.

Maintain peremptory challenges to judges.

Need more discovery.

There should be a means to challenge the courts finding at preliminary hearings in addition to Grand Jury indictments, i.e. the defendant can test the standard o proof in a Grand Jury but not in a preliminary hearing.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

Criminal procedure is too slanted toward criminal's rights instead of citizen's rights.

Exclusionary Rule

Too many people getting off on technicalities.

Exclusionary rule should not be a hinderance to the finding of truth where the enforcement personnel acted in good faith.

There should be fewer jury trials, and when there are jury trials, the jury should be selected by the judge. Jurors are confused by attorney rhetoric.

COMMENTS FROM ALASKA COURT JUDGES

Procedures are good overall but should be explicit to time limits within which the defendant must raise issue or be held to waive them.

Eliminate "Notice of Change of Judge" - need challenge for cause only.

Rules of children's procedures are lousy.

Abolish exclusionary rule on Supreme Court level and in Alaska.

Eliminate perempting of judges and exclusionary rule.

COMMENTS FROM ALASKA COURT MAGISTRATES

Criminal procedure is too complex. It takes four to six months to reach a verdict or plea. It should take one month maximum.

The greatest problem is the practice of procedural delay by attorneys. Judges allow lawyers to control calendaring. District judges are weak, superior are better. Delays could be eliminated by sanctions against ill prepared attorneys and frivolous motions.

27. Do you believe that the rules and practices in the following areas deserve careful consideration for possible improvements? If so, please prioritize with 1 being highest priority.

	PERCENTAGE OF RESPONSES FROM																	
	STATE PROSECUTORS			ANCHORAGE MUNICIPAL PROSECUTORS			PUBLIC DEFENDERS			SENIOR MANAGERS OF STATE TROOPERS			ALASKA COURT JUDGES			ALASKA COURT MAGISTRATES		
QUESTIONS	YES	NO	PRIORITY	YES	NO	PRIORITY	YES	NO	PRIORITY	YES	NO	PRIORITY	YES	NO	PRIORITY	YES	NO	PRIORI
A) The Grand Jury/preliminary hearing system.	45	55	6	17	83	12	57	43	4	27	73	12	53	47	3	31	69	6
B) Warrants/summons/subpoenas.	15	85	15	33	67	12	23	77	11	9	91	16	12	88	14	15	85	17
C) Search warrants.	18	82	16	17	83	13	30	67	13	36	64	9	12	88	13	15	85	13
D) Joinder/severance.	24	76	13	33	67	8	17	83	14	0	100	17	6	94	0	8	92	16
E) Pre-trial motion practice.	36	64	5	83	17	1	23	77	18	45	55	11	35	65	6	54	46	5

27. (Cont'd.)

QUESTIONS	PERCENTAGE OF RESPONSES FROM STATE PROSECUTORS			ANCHORAGE MUNICIPAL PROSECUTORS			PUBLIC DEFENDERS			SENIOR MANAGERS OF STATE TROOPERS			ALASKA COURT JUDGES			ALASKA COURT MAGISTRATES		
	YES	NO	PRIORITY	YES	NO	PRIORITY	YES	NO	PRIORITY	YES	NO	PRIORITY	YES	NO	PRIORITY	YES	NO	PRIORI
F) Discovery.	58	42	2	50	50	2	23	77	10	73	27	3	12	88	12	23	77	10
G) Venue.	9	91	20	0	100	0	17	83	19	9	91	15	0	100	0	15	85	15
H) Trial practice.	24	76	19	33	67	9	17	83	16	36	64	14	35	65	8	39	61	12
I) Post-conviction relief (sentence appeals).	49	51	4	50	50	5	30	70	8	45	55	13	24	76	9	31	69	13
J) Appointment of counsel.	30	70	7	67	33	4	40	60	7	55	45	4	41	59	4	23	77	9
K) Speedy trial.	21	79	11	67	33	6	13	87	15	55	45	10	18	82	11	39	61	11
L) Bail.	33	67	10	33	67	10	47	53	6	64	36	6	12	88	15	15	85	14
M) Court calendaring (See Note 1).	61	39	1	50	50	7	37	63	9	55	45	5	59	41	1	46	54	7
N) Granting of continuances.	61	39	3	67	33	6	20	80	17	82	18	2	29	71	5	39	61	6
O) Full procedural rights for minor criminal matters.	30	70	8	50	50	6	27	73	12	55	45	4	35	65	7	46	54	1
P) The overall complexity and delay in criminal procedures.	30	70	9	67	33	3	7	93	20	100	0	1	53	47	2	69	31	2
Q) Un-uniform sentencing.	12	88	17	33	67	11	33	67	5	55	45	7	24	76	10	23	77	14
R) Plea bargaining/charge bargaining.	18	82	14	17	83	0	70	30	1	55	45	8	24	76	8	46	54	8
S) Screening and charging procedures by the prosecutors.	18	82	18	17	83	0	70	30	2	73	27	2	24	76	11	54	46	4
T) Charging practices by police officers.	27	73	12	33	67	7	67	33	3	36	64	12	29	71	13	69	31	3

COMMENTS FROM STATE PROSECUTORS

33 responded
5 no response

Note 1

Areas mentioned with court calendaring problems:

1. Anchorage
2. Fairbanks

Mentioned once each:

3. 1st District
4. Bethel, Kuskokwim
5. Felony Trials
6. Quadruple Scheduling

Presumptive sentencing will alleviate un-uniform sentencing in the long run.

Hearsay should be allowed at Grand Jury. Rules of Evidence should not apply. Alaska Grand Juries should be just like federal system with regard to hearsay.

Need a rule regarding pre-trial motions specifying deadlines and contents of pleadings.

Rules on bail should say that motion rules apply to bail motions except can be heard with 48 hours notice to State and only one hearing allowed - no repeat motions.

Discovery should be reciprocal.

Jury voir dire is too long - judge should do most of it.

Rules concerning post-conviction relief should permit only one sentence modification motion.

COMMENTS FROM ANCHORAGE MUNICIPAL PROSECUTORS

6 responded
0 no response

Note 1

Areas mentioned with court calendaring problems:

1. Anchorage District Court
2. Scheduling of judges time

COMMENTS FROM PUBLIC DEFENDERS

30 responded
6 no response

Note 1

Areas mentioned with court calendaring problems:

1. Anchorage
2. 1st District (Juneau)
3. providing counsel with adequate notice
4. District Courts, triple setting public defenders
5. Trailing felonies

One of the problems with the public's view of the system is the large number of marginal cases that go to trial. Allowing plea bargaining would cutback on the trial caseload for jurors, judges, prosecutors and defense counsel, and would yield a fairer disposition of cases.

The system needs more public defenders. The turnover rate at the Public Defender Agency is much higher than at the DA's office. The caseload is proportionately higher and burnout comes sooner.

More trial practice courses should be given by the Bar Association.

Thought should be given to giving defendants a constitutional right to a preliminary hearing.

Un-uniform sentencing. The problem is not with lack of uniformity, but with uniformity which fails to address the differences between offenders. To the extent that this constitutes a "yes", I would rank this as our number one concern.

Absolutely the most necessary device to decrease cost, speed court processes and increase justice on a per case basis is to re-establish plea bargaining.

Problems with un-uniform sentencing seen with magistrates from outlying areas who are unfamiliar with sentencing norms and impose huge sentences for misdemeanors

Plea bargaining is not a fraud on the public, but a viable and efficient means of disposing of cases on an individual basis.

T) VPSO's (Village Public Safety Officers) frequently charge conduct which is misdemeanor criminal activity as a felony.

COMMENTS FROM SENIOR MANAGERS OF STATE TROOPERS

11 responded
4 no response

Note 1

Areas mentioned with court calendaring problems:

1. Anchorage/Palmer
2. Fairbanks
3. Delays

COMMENTS FROM ALASKA COURT JUDGES

15 responded
5 no response

Note 1

Areas mentioned with court calendaring problems:

1. Anchorage
2. Fairbanks District Court
3. 1st District - Juneau
4. Trial Courts
5. Criminal and Civil Courts

Rules need to be made less vague. It is uncertainty which consumes so much debate, time, and energy.

Remove the perempt problem and you will do much to smooth the running of the courts, not only in fundamental fairness, but in terms of costs and time savings.

Improvements can always be made, but nothing drastic is required.

The fees paid to conflict of interest defense attorneys should be raised. Another conflicts contract should be awarded to lessen impact of Administrative Rule 12 on the private bar.

I just do not understand why we need both a preliminary hearing and a Grand Jury, one or the other ought to be enough.

The screening and charging practices of both policy and prosecutors ought to be the product of standardized criteria that is subject to public scrutiny.

Procedures need to be established that address procedures for electronically monitoring conversations - State v. Glass, Jones V. State, State V. Gallager.

The presumptive sentencing scheme was a big change and the effects of the change should be constantly monitored so we know where we are going. This is NOT a criticism of the new criminal code.

COMMENTS FROM ALASKA COURT MAGISTRATES

13 responded
9 no response

Note 1

Areas mentioned with court calendaring problems:

1. Fairbanks
2. 1st District
3. Seward

Note: More clerical help is needed.

I would like to see more misdemeanor charges with rights similar to infraction charges.

1) No right to jury trial - Court trial only.
2) No right to Public Defender Agency, private counsel only if desired.

I feel that the system is being over loaded by defendants ability to postpone, delay, etc., resulting in backlogs that force dismissal, etc. The system prioriti: less serious charges in order to practically prosecute "more serious matters".

In regard to modifying procedural rights in some criminal matters; I believe it is possible to protect the defendant's rights and eliminate all the delay built into our CJS.

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH N
JUNEAU, ALASKA 99811
PHONE:

March 29, 1983 465-4322

RECEIVED
MAR 31 1983
LEGISLATIVE AUDIT

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

RE: A Special Report on the Alaska Criminal Justice System with Special Emphasis on the Department of Law's Criminal Division February 13, 1983

In response to this report, my comments are grouped by recommendation.

Recommendation No. 1:

Improved coordination and joint planning by senior managers in the Criminal Justice System (CJS) is needed.

Agree. My intent, as Commissioner, is to improve upon the spirit of teamwork which already exists within the Department of Public Safety and among the several Criminal Justice Agencies. The best way to improve coordination is to talk about topics at hand with the people in affected agencies. The best way to improve planning is to look at the budget requests of the several Criminal Justice Agencies within the context of the Governor's Commission on the Administration of Justice (AS 44.19.110-.122). Leadership, in the past, depended upon the Attorney General who chaired the Commission. Several needed functions could be performed by the Commission even without the full-time staff of the now defunct Criminal Justice Planning Agency. The key is top level commitment by the various agencies; staff in each agency will be responsive to their respective Chief Executives.

The Commission could have a practical coordination role before, during and after budget approval. Since the budget is the most basic policy tool, without budget coordination, interdependency doesn't receive adequate attention from the Governor, the Courts or the Legislature in funding decisions. However, there are both institutional and practical obstacles to successful coordination.

Municipalities can still break away from the Commission's policies and act independently because of their own interests. The Court System is similarly autonomous from Executive Branch agencies.

12-L2LH

It is also possible for the Commission to get preoccupied with theoretical concepts instead of dealing expeditiously with practical issues requiring coordination. The interdisciplinary nature of the Commission means this risk will always be present.

If the Commission cannot function without Federal money to entice agency involvement, the Commission should be abolished. However, the Criminal Justice process would still require a continuing high level of commitment and coordination. In an effort to promote this, appointing a task-force consisting of top managers from each affected agency would have substantial merits.

Recommendation No. 2:

The agencies within Alaska's Criminal Justice System should coordinate in the implementation of an integrated Criminal Justice data system.

Agree. Two major issues may conflict. First and foremost, each Criminal Justice Agency should have timely, accurate information to manage its internal resources and make decisions. That need is more important than a coordinated inter-agency data system. There may be substantial differences between needs for daily management and needs concerned with relatively sophisticated, longer-term aspects of the criminal justice process. Trying to satisfy both short and long-term needs may result in satisfaction of neither via an undesirable compromise.

To the extent possible, hardware and software compatibility has already been coordinated. However, further efforts are needed.

While I am firmly committed to the value of a truly coordinated, inter-agency information system, we are in the process of developing a usable system to permit internal management decisions based upon timely, accurate information of activity relevant to Public Safety. This development of a Public Safety Management Information System includes a look at each aspect of the system which has an impact on other Criminal Justice Agencies.

Recommendation No. 3:

The Attorney General should formalize administration and professional operating policies, common procedures and performance standards for the Criminal Division.

No comment.

Recommendation No. 4:

An investigative support unit is needed in the Criminal Division.

Disagree.

Decentralization of investigative personnel would be less cost-effective than it would be for District Attorneys and police to cooperate and take appropriate joint action. The nature of this situation must be viewed in perspective.

The majority of major felony cases handled by State Troopers were successfully prosecuted if accepted through the screening process. It is Trooper policy that the District Attorney requests will be handled on a priority basis. Unfortunately, some District Attorneys differ in their opinion of viable investigative techniques much as Troopers have different opinions about the prosecutability of certain cases. According to most D.A.'s, major problems seem to occur with recruit Troopers and some city police agencies. Regardless of the formal training these officers receive, it is imperative they have field experience. They can learn a great deal from critique and suggestions from the District Attorney's office. This aids in the officer's development and provides better service to the public. It is true that not all cases can be followed up to the satisfaction of District Attorneys just as it is true that not all cases can be prosecuted to the satisfaction of the police or Alaskan citizens. However, if the 1,000 police officers in the State are not able to provide the follow-up or investigative services desired by District Attorneys, it is doubtful that a handful of investigators assigned to the Department of Law could accomplish those tasks.

It is suggested that any D.A. who is not receiving satisfactory investigative or follow-up police work contact that agencies' chief executive officer.

Recommendation No. 5:

Improved procedures are needed to ensure follow-up investigations are effectively handled.

Agree. The Department is in agreement with correcting this inherent weakness in the prosecution/law enforcement relationship. The main needs are open communications, cooperation and coordination.

Efforts are underway to implement this recommendation. We first assigned an officer to the District Attorney's Office for follow-up in 1968. We have had officers assigned to both Anchorage and Fairbanks. The system will not work if D.A.'s contact the individual officer for follow-up. The request for additional follow-up should be made to the officer's supervisor to ensure that the request can be tracked. The attached D.A. Form 03-102 will prove valuable when fully implemented.

To summarize, unless there is genuine cooperation at the highest level among Criminal Justice Agencies, senior management personnel will not be able to function effectively in any coordinating role. Your insights are appreciated.

Sincerely,

Robert J. Sundberg
Commissioner

Attachment

Defendant ____ of ____
D.A. File Number

STATE OF ALASKA
DEPARTMENT OF LAW
Criminal Division

CRIMINAL CASE INTAKE AND DISPOSITION

Page ____ of ____
Court Number

Defendant's Name | Date of Birth | a/k/a | Record Attached ☐ Yes ☐ No

Defendant Note | Rule 45 Date

Reporting Officer's Name | Agency | Report Number(s) | Date Case Submitted

Date of Offense | Place of Offense | Victim's Name | Victim's Phone

CHARGES RECEIVED FOR PROSECUTION	STATUTE	CLASS	PRIOR	FELONY	MISD.
Count 1					
Count 2					
Count 3					

Decisions to prosecute are often subject to dispute and investigating officers sometimes feel that inadequate weight has been given to a particular aspect of a case. If you feel that the decision made in this case was improper, please notify the screening prosecutor to discuss why a different result should occur.

Additional Investigation Necessary

- ☐ Witness Interview
- ☐ Statement of Defendant Needed
- ☐ Corroboration Needed
- ☐ Identification Needed
- ☐ Evidence of Intent
- ☐ Evidence of Other Essential Element
- ☐ Proof of Value
- ☐ Evidence of Alibi
- ☐ Evidence of Affirmative Defense
- ☐ Scene Investigation
- ☐ Evidence/Search and Seizure
- ☐ Evidence/Chain of Custody
- ☐ Evidence/Expert Examination
- ☐ Service of Process
- ☐ Other

Instructions and Comments:

Please notify the screening prosecutor of the progress of any further investigation by:

CHARGES APPROVED FOR PROSECUTION	STATUTE	CLASS	PRIOR	FELONY	MISD.
Count 1					
Count 2					
Count 3					

Case Note

Case Received By | Date Case Received | Case Screened By | Date Case Screened

CHARGES DISPOSED OF	CONVICTION	DISMISSAL	FELONY	MISD.
Count 1	/	/		
Count 2	/	/		
Count 3	/	/		

Did the defendant have a felony record? ☐ Yes ☐ No Were aggravating factors found? ☐ Yes ☐ No | Sentencing Judge

Was the defendant presumptively sentenced? ☐ Yes ☐ No Were mitigating factors found? ☐ Yes ☐ No

If you discovered problems with a statute, make note of its number: | Assigned Prosecutor's Signature | Date

(Intentionally left blank)

Alaska Court System
State of Alaska
303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

RECEIVED
APR 04 1983
LEGISLATIVE
AUDIT

March 30, 1983

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

I am responding to the preliminary audit report on the Alaska criminal justice system.

Two of the auditors' recommendations directly impact administration of the court system.

Recommendation No. 2

The auditors recommend that the agencies within the criminal justice system coordinate in the implementation of an integrated criminal justice date systm. The auditor states:

> "Neither the Alaska Court System nor the Division of Corrections have a management information system functioning which provides current useful, verifiable data concerning their agency's operations or performance. Both are in the process of developing a system plan which will allow them to track cases and compile needed management information. The court system was frequently criticized for not having a management system that provides effective management of their caseload and scheduling of cases (calendaring). Presently, research data and management data has to be extracted manually, and is not current. Because of the volume and complexity of the court's management needs, we believe a study should be made to determine if a savings would occur with the automation of their management system."

It is true that the court system is developing a system to track cases and compile management information. However, this information alone will not guarantee efficient case management. According to Dick Delaplain, most of the courts (with the exception of Anchorage) process cases fairly efficiently, even without the benefits of automation. Automated systems can assist with access to information, but administrators must know how to interpret the information and apply it. Automation should not be equated with improved caseflow management.

Additionally, this recommendation appears to point toward a revamped AJIS system. I am concerned that the recommended data system will require the court system to compile a great deal of information primarily for the benefit of other agencies, but with limited value for the court.

Recommendation No. 6

This recommendation relates to the need for increased public defender resources. The method used to increase defender resources is of direct interest to court administration, because efficient calendaring of cases is impeded when public defenders are not readily available.

The auditor lists tightened standards for determining indigency, in conjunction with collection by the attorney general of amounts the court orders defendants to repay, as a means of addressing this problem.

In my estimation, court-ordered repayment with stepped-up collection by the attorney general may promote other worthwhile goals, but it is not a solution to the public defender problem, particularly since the defendants' payments revert to the general fund and not to the public defender agency.

Fish and Game Bail Schedule

Development of a fish and game bail schedule is not included as one of the auditor's separate recommendations, but instead is identified as a topic for legislative consideration. As you know, the court system is supporting a bill introduced this year to provide legislative authority for a bail forfeiture schedule. As the report notes, this procedure would save time for the courts.

Jury Selection

The auditor does not make a recommendation in the area of jury selection. However, several respondents to the questionnaire criticized the lack of minority representation on juries.

Jury composition is in part a function of the locality at which a grand jury is convened as well as the place of trial. Current statutory requirements which relate venue in criminal

cases to senate election districts may impact the representational cross-section of juries, particularly in non-urban areas of the state.

There is no evidence that the court system is systematically excluding certain types of jurors. In fact, the supreme court recently revised criminal rule 6 to increase the number of locations at which presiding judges can convene grand juries. This revision demonstrates the ongoing effort by the court system to ensure selection of representative juries.

If you have questions regarding any of my comments, please contact me.

Sincerely,

Arthur H. Snowden, II
Administrative Director

AHS,II:smh

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STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

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April 5, 1983

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, AK 99811

Re: Preliminary Audit Report on the Alaska Criminal Justice System

Dear Mr. Wilkerson:

This letter is in response to your request for a written reply to the preliminary report you sent to us concerning the audit currently being undertaken of the criminal justice system with emphasis on the criminal division of the Department of Law. In the report you made the following recommendations:

(1) Improved coordination and joint planning by senior managers in the Criminal Justice System is needed.

(2) The agencies within the Criminal Justice System should coordinate in the implementation of an integrated criminal justice data system.

(3) The Attorney General should formalize administrative and professional operating policies, procedures and performance standards for the Criminal Division.

(4) An investigative support unit is needed in the Criminal Division.

(5) Improved communications and procedures are needed to ensure follow-up investigations are effectively handled.

(6) Legislative and executive consideration should be given to increasing resources for the Public Defender Agency.

At the outset, I should emphasize that we generally found the report to reflect valid concerns about the criminal justice system and legitimate points which need to be

addressed. One general observation that I would make, however, is that your report does not specifically address the extent to which considerable additional resources would be required and the feasibility of their being obtained at the present time. In any event, we basically agree with the recommendations directed toward the need for systemwide management coordination and planning and the need for prosecutorial investigative resources. While we also agree with some of the areas pertaining to prosecution policies, follow-up investigations and the Public Defender Agency, there are portions of these recommendations with which we disagree.

Recommendation No. 1

There is most definitely a need for improved coordination among individuals with policy level responsibility within the criminal justice system. It is not surprising that you have focused on this need at the outset of your report since the subject of improved coordination and communication is something most, if not all, criminal justice managers have been talking about for years. I should point out that considerable improvement has been made in this area over the last ten years. That is not to say that a lot more cannot be done, because it can. To this end we are in the process of formulating a working group that will meet on a regular basis to review and attempt to resolve criminal justice problems. The group will consist of those of us responsible for the day-to-day administration of the system and I am hopeful that it will provide additional improvement in the coordination of policies and programs. Additionally, I am hopeful that we will be able to duplicate this approach at the local level throughout the state.

However, I should also point out that it is very easy to oversimplify the potential impact which such efforts can have. As long as discretion, responsibility and resources are as widely spread as they are, there will always be a continuing need in this area. Moreover, some of the situations cited in paragraph 1B are not particularly good instances of how improved communication through a multi-agency planning committee will eliminate perceived "imbalances" in the system. For example, the system in the Wrangell/Petersburg area is not imbalanced because that area does not have a full-time public defender and prosecutor. To the extent it is imbalanced it is because the district court position in Wrangell was upgraded to a superior court in spite of the fact that there is not anything approaching a full-time caseload in the area. Conversely, because of the volume of cases in Anchorage, felony trials are now being scheduled for trial as late as 115 days into the 120 day period allowed under Criminal Rule 45.

Recommendation No. 2

From a management perspective, we agree in general terms with the need for a consistent and reliable data base throughout the criminal justice system. The discussion of this issue, however, does not examine any of the reasons why the original AJIS concept never worked or what it would require in order to ensure compatibility between the data systems of individual components of the criminal justice system. There also exists a range of privacy concerns that have been raised over the years in the face of proposals and efforts to create a single, compatible data system. We have come to the conclusion that probably the best way to eventually develop the level of compatibility you describe is to first insure that each component has implemented a data system that works, is verifiable and produces meaningful management information.

There is no doubt that there is a need for better communication between the various agencies within the criminal justice system. There is also no doubt that automated management systems are useful management tools. We question, however, whether a unified computerized system is needed or is desirable at this time in Alaska.

As noted in your report, the attempt several years ago to get all criminal justice agencies together into a single computer system failed. Your report correctly observes that the individual components of the system are frequently at odds because of the many designed conflicts which exist. They are in some instances adversaries and, in almost all instances, individual decisions made by one component can adversely affect the resources and capabilities of others. For this reason alone, there is bound to be continued resistance to any large single computer system.

The need for "compatible" data that is addressed in your report is one example of how difficult it is to get agencies with, at times, adversarial responsibilities to work together. The police keep track of "incidents," which may involve more than one defendant and more than one charge, but only a single court "case." The courts have, in the past, alternately kept track of cases and charges, and more recently have focused on individual defendants. The criminal division has historically kept track of charges, although PROMIS will now keep track of cases, defendants and charges. The prison system primarily tracks individuals. A unified system will not work if an agency is forced to collect data that has no application to its own functions.

There are simply too many variables to consider if the criminal justice system is viewed as a whole for purposes of trying to develop a compatible data base. Comparison of

police data, for example, with prison data tends to result only in speculation about how the system is performing. Additionally, there is a reoccurring tendency for individual components of the system to assign responsibility for any perceived failure to another agency. We, therefore, feel that the best approach is to allow each agency to collect its own data, even if it is not directly comparable to that collected by another agency, as long as the data is adequate to measure the performance of the agency which collects it.

We concur with the portion of this recommendation pertaining to the continued development and implementation of PROMIS. In order to take maximum advantage of the benefits to be derived from the system from both a management and operational perspective, we think it vitally important that eventually each criminal division office in the state be included in an on-line capacity. In order to fully implement the system, however, some additional funding will be required because of the costs associated with necessary data entry personnel and the costs of including outlying areas.

Recommendation No. 3

Our principle concern with Recommendation No. 3 is that it is restricted to only a management analysis of the need for uniform policies, procedures and performance standards. This focus tends to overlook a number of critical factors that should be taken into consideration. The report, for example, notes at the outset that your recommendations "set out basic management concepts and do not consider any legal effect." By definition, however, the prosecution of criminal cases is controlled from beginning to end by a complex set of substantive and procedural legal requirements.

Prosecution agencies cannot be exclusively viewed as merely another type of government service that can be improved or made more efficient by ordinary management techniques. Prosecutors have a legal responsibility to represent the public as a whole and not any particular individual in making decisions about criminal cases. In determining which cases are to be prosecuted, and which charges to file, a prosecutor is limited by the Code of Professional Responsibility which imposes a higher responsibility on prosecutors than on other lawyers who represent individual clients. The authority to charge a person with a criminal offense involves a tremendous amount of power, discretion and responsibility and, as you note at the beginning of your report, prosecuting attorneys are under an individual obligation "to seek justice, not merely to convict." As explained in our Standards Applicable to Case Screening and Plea Negotiations, which are referred to in the report, charges should not be instituted or pursued unless in

the judgment of a screening prosecutor the defendant can and will be convicted.

Unquestionably, there are certain procedures and policies which require uniformity throughout the state such as those pertaining to case screening, plea bargaining and pretrial diversion. As you know, we have standard policies in each of these areas that apply to decisions made in individual cases throughout the state. Interestingly enough a number of police agencies have criticized the present diversion policy, for example, on the basis that while it may well make sense in Anchorage or Fairbanks, it should not be applied in other areas because of peculiar local circumstances and attitudes. These same agencies have also complained at other times that there is a lack of uniformity between District Attorney's Offices. This complaint is particularly made in the context of how much follow-up investigation and information a particular prosecutor asks for in making a charging decision. It is necessary to keep in mind, however, that our primary responsibility involves an application of individual judgment and discretion. Decisions, of necessity, are based upon individual legal conclusions, a perception of community standards, experience in prior cases with prior juries and a personal sense of ethics.

While the preliminary report indicates that concern has been expressed by individuals in the criminal justice system, "that there is a lack of uniformity by prosecutors in the application of established screening, charging, plea bargaining and diversion policies," we think that it is also important to mention the fact that, on the other hand, a number of people feel that prosecutorial discretion in the individual offices throughout the state is too tightly controlled and overly restrictive. The truth of the matter is that neither is the case. The policies the department has implemented seek to strike a balance between appropriate uniformity throughout the state and a recognition that each community in Alaska has its own set of peculiarly local problems as well as a recognition that individual prosecuting attorneys are not computers but professionals who have an individual set of experiences against which decisions have to be made.

It is simply not appropriate to impose upon the system a rigid framework that has been dictated from Juneau. Each community in Alaska varies significantly in terms of some of the factors that must be taken into consideration in making screening decisions. For example, there are some communities where juries consistently refuse to convict for certain offenses where in other communities the conviction rate is quite high. Additionally, in terms of making decisions about how limited resources should be applied a particular type of crime may represent a serious problem in one community while not in others or may be of particular concern to one community

while another type of crime is of concern in others. The point here is not that we should always be declining cases in these circumstances but rather, that there are uniquely local factors which have to be taken into consideration along with other more standard criteria before subjecting a person to prosecution and expending limited public resources.

None of this is intended to suggest that we disagree with the basic proposition that we should have more clearly delineated and organized policy directives or that we believe that prosecutorial discretion should be completely unfettered. The existence of many of the policies that we do have -- which are considerably more specific than corresponding national standards -- shows that this is not the case. It is one thing to fashion some fairly broad policy directives in the areas of case screening, plea bargaining and pretrial diversion. It is quite another matter, however, to: (1) specify the quantum of evidence that is required before prosecution should be initiated for specific types of crimes; (2) specify the types of crimes that will or will not be vigorously enforced; or (3) specify acceptable "performance standards" in terms of conviction rates, dismissal rates or other similar criteria.

The need for a comprehensive office manual is, as you suggested, something that the criminal division has recognized for sometime. As noted in the report, a number of standard policies and guidelines have been developed that pertain to the prosecution function and we will make the completion of a comprehensive manual pulling all of these materials into a single place a priority project between now and the end of this fiscal year. The manual should, of course, contain all of the administrative and procedural directives that presently pertain to the work of the criminal division. It will also include department policies, materials pertaining to trial practice and basic legal materials for new assistants.

With respect to recommendation 3B, we also agree that a periodic review of each office in the nature of a performance audit is a good idea. Within the last year precisely such a review of each criminal division office has been conducted at least once and in many instances twice.

In the final analysis, it may very well be that we both envision the same thing in discussing "professional ... policies, procedures and performance standards." However, these terms can be interpreted in a wide variety of ways and much of the discussion that pertains to Recommendation No. 3 seems to infer that there is a need for very specific standards and a present absence of active oversight by management. If Recommendation No. 3 is not intended to convey this impression then it should be a bit less ambiguous. If it is, then it is very important to take into consideration the broader range of

factors that affect and define the prosecution function such as legal impediments, the ethical obligations of individual prosecutors, available resources in relation to caseloads and the practical realities of differences between communities throughout the state.

Recommendation No. 4

We fully agree with your recommendation concerning the need for and the benefits to be derived from the establishment of an investigative support unit in the criminal division. Additionally, we found the analysis contained under this recommendation to be thorough and carefully developed.

Recommendation No. 5

Recommendation No. 5 is, we feel, a particularly important one. It is apparent that your staff has carefully examined this problem and the suggestions included are excellent ones. The last paragraph under Recommendation No. 5 seems to suggest that the procedures we have developed for providing law enforcement agencies with information concerning cases is a new one. These procedures were first implemented in 1977 and have always involved a version of the form referred to in the report. The new forms represent a refinement of these procedures and provide some additional information at an earlier point in the process. The basic procedures, however, have been in place for some time. What each agency does with the form is controlled by their own internal procedures. Frequently, they are reviewed by supervising law enforcement personnel who will then pass them along to individual officers if the particular agency believes that is appropriate. To the extent that the notices do not find their way into the hands of individual officers, it is because of either an internal determination made within a particular law enforcement agency not to do so or because of a breakdown in the flow of paperwork in a particular agency.

Recommendation No. 6

We agree that the resources of the Public Defender Agency are inadequate and should be increased. We also agree that this situation has developed to a point where it adversely impacts other components of the system, including our district attorney's offices. However, we disagree with some of the observations which have been used to reach this conclusion. In particular, we disagree that one of the effects of an inadequate number of public defenders has been that cases are being dismissed. While that has not been the case, it is true that inappropriate delay in the processing of cases is caused by

this situation which at times can directly affect the prosecutability of a case.

The issue of increased Public Defender resources is one that should be carefully considered in light of both staffing requirements and some of the practices that have developed which we believe contribute to problems that exist in the system. Not all Public Defender offices throughout the state are understaffed. The Anchorage office clearly is and desperately requires additional resources if it is to continue having responsibility for defense services in municipal prosecutions. While certain locations in the state clearly require additional resources for the system to function properly, others do not. Any evaluation of the need for additional positions should examine present staffing levels both professional and secretarial on a statewide basis in comparison with staffing patterns in the criminal division of this department.

The need for more public defenders should also be examined in light of the percentage of cases in a given location which involve private attorneys. A growing segment of the private bar now does defense work, either paid by the defendant or by some form of group prepaid legal services. The percentage of criminal cases which involve private representation also varies greatly from one area of the state to another, as does the percentage of cases which result in the appointment of other counsel because of a conflict of interest for the Public Defender Agency.

In closing, I should reiterate that overall we found that the recommendations and accompanying discussion set out in the preliminary report reflect a comprehensive examination of a number of valid concerns. There are some areas of ambiguity, however, as we have tried to point out, which we feel merit further refinement. Additionally, it would help to put some of these issues in a clearer perspective if some examination was included of the extent to which additional resources are required in order to pursue the recommendations made. In any event, we very much appreciate the opportunity to review and respond to your preliminary findings and recommendations.

Very truly yours,

Norman C. Gorsuch
Attorney General

NCG:DWH:lb-101

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APR 25 1983
LEGISLATIVE AUDIT

MEMORANDUM State of Alaska

TO: Gerald L. Wilkerson, C.P.A.
Legislative Auditor
Division of Legislative Audit

DATE: April 25, 1983
FILE NO:
TELEPHONE NO:

FROM: Lisa Rudd, Commissioner
Department of Administration

SUBJECT: SPECIAL REPORT ON THE ALASKAN CRIMINAL JUSTICE SYSTEM WITH EMPHASIS ON THE DEPARTMENT OF LAW'S CRIMINAL DIVISION.

My staff and I have reviewed the Legislative Audit of the Criminal Justice System. We believe your report examines the systemic problems in a comprehensive manner as well as identifies specific means of improving interagency communication and individual agency performance. I find that recommendations No. 1 and 6 are most germane to the operation of the Public Defender Agency over which I have administrative oversight responsibility. Therefore I will restrict my comments to those recommendations.

Recommendation No. 1.

Improved coordination and joint planning by senior managers in the criminal Justice System (CJS) is needed.

The creation of management information systems designed to provide the same types of information for different segments of the Criminal Justice System would be beneficial. Based on common, verifiable information agency communication and planning efforts could be improved. Annual meetings prior to the legislative session could be utilized to discuss common problems and proposed resolutions. For example, if a city is requesting State monies to increase its enforcement efforts, prosecutor, defender and correctional agencies would be aware of the impact on their operations and could plan accordingly.

Data processing capability in the Public Defender agency is minimal at this time, but we would welcome the opportunity to design systems that would be compatible with those systems already existing in the Criminal Justice System.

Recommendation No. 6.

Legislative and Executive consideration should be given to increasing resources for the Public Defender Agency.

I agree with this recommendation. Delays in the system caused by insufficient resources within the Agency have grown to a critical proportion. This is especially true where a prosecutor and judge are

located in a particular community where no public defender is present. If the legislature recommends an increase in funding to augment present services, there would need to be an increase also in monies for space and other support services.

I found your report to be a thorough objective examination of the complex problems facing the State's Criminal Justice System. My staff and I appreciate the opportunity to comment.

EA/gmw

END