



# ALASKA JUSTICE FORUM

A Publication of the  
Justice Center

Alaska Justice  
Statistical Analysis Unit

Summer 1996

UNIVERSITY OF ALASKA ANCHORAGE

Vol. 13, No. 2

## Indigent Legal Services in Alaska

Two agencies in Alaska constitute the primary sources of legal services for individuals of low income: the Alaska Public Defender Agency and Alaska Legal Services. The Public Defender Agency, which provides criminal representation, is a state agency with a statutory basis. Alaska Legal Services, which handles civil law matters, is a private, non-profit corporation with funding from federal, state and private sources. While not the only channels for legal assistance for those of limited economic means, these two entities provide the major portion of such aid in the state.

### Criminal Defense Services

The Alaska Public Defender Agency was established by the state legislature in 1969, under Alaska Statute 18.85.010, to provide indigent parties with legal representation in criminal proceedings and in some civil matters. The agency provides representation for indigent individuals in felony and misdemeanor cases; appeals; probation and parole revocations; extradition cases; post-conviction relief matters; child support prosecutions; mental health commitments; contempt proceedings; juvenile delinquency cases; and parents in child-in-need-of-aid matters.

Under the statute an indigent party is entitled to be represented by an attorney to the same extent as a person having his or her own attorney and to be provided with services and facilities necessary for repre-

sentation, including investigation, access to expert witnesses, and other support.

In fiscal year 1996 the Public Defender Agency opened 17,623 new cases statewide. (See Table 1 for types of cases. The total FY96 number is over 40 per cent higher than

the number of cases opened in FY88.) The agency's current staff comprises 65 attorneys, 13 investigators, 2 paralegals, 22 legal secretaries and 7 administrative

*Please see Indigent, page 6*

Figure 1. Alaska Court Locations

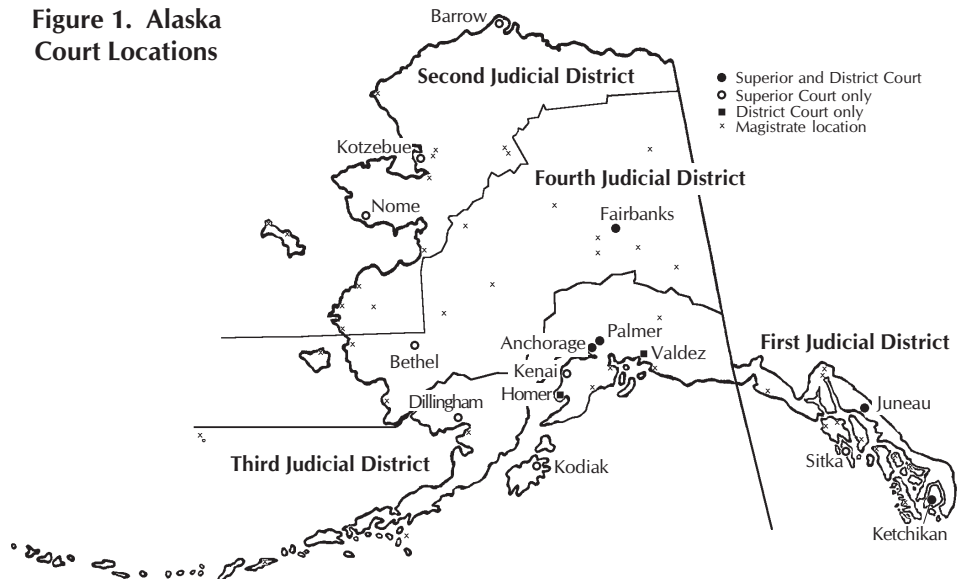
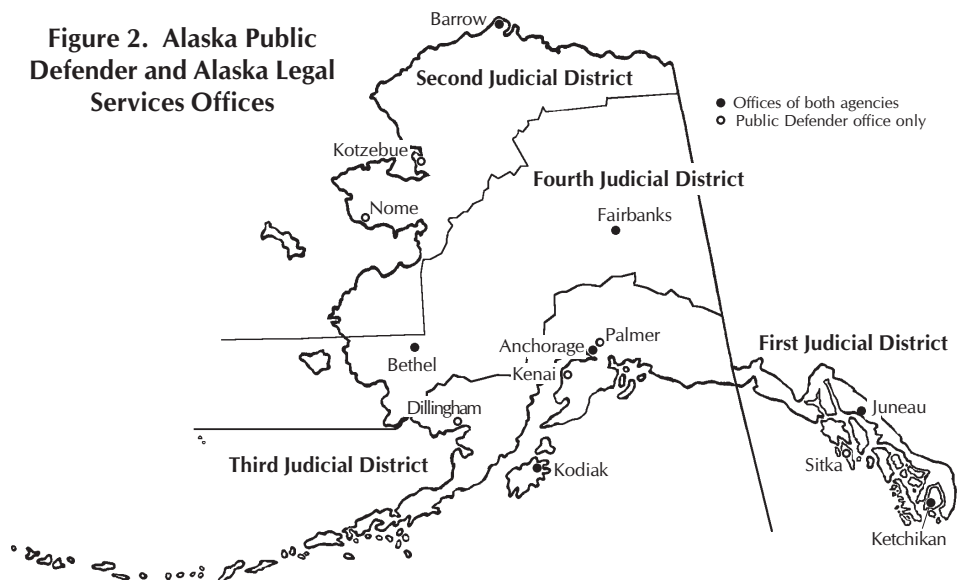


Figure 2. Alaska Public Defender and Alaska Legal Services Offices



### HIGHLIGHTS INSIDE THIS ISSUE

- The Bureau of Justice Statistics reports on indigent defense nationally (page 2).
- A report on recidivism among participants in the Sex Offender Treatment Program at Hiland Mountain Correctional Center (page 4).
- An examination of tort reform and its impact on access to the courts (page 5).

A BJS Report

# Indigent Criminal Defense: A National Perspective

Court-appointed legal representation for indigent criminal defendants plays a critical role in the nation's criminal justice system. In 1991 about three-quarters of state prison inmates and half of federal prison inmates reported that they had a court-appointed lawyer to represent them for the offense for which they were serving time. In 1989, nearly 80 per cent of local jail inmates indicated that they were assigned an attorney to represent them for the charges on which they were being held. This report presents selected findings drawn from Bureau of Justice Statistics (BJS) surveys containing information related to indigent defense for criminal defendants.

The sixth amendment to the U.S. Constitution establishes the right to counsel in federal criminal prosecution. Through a series of cases, the U.S. Supreme Court has extended the right to counsel for indigent defendants to state criminal prosecution. A landmark decision was made in 1963 when

**Table 1. Indigent Defense Delivery Systems Used by Local Jurisdictions, 1992**

Per cent of prosecutors' offices indicating the type of counsel provided by their jurisdiction.

Public defender program only	28%
Assigned counsel system only	23
Assigned counsel and public defender	23
Contract attorney system only	8
Public defender and contract	8
Assigned counsel, public defender, and contract	6
Assigned counsel and contract	3
Other	1
<b>Number of offices</b>	<b>2,352</b>

Note: Data on type of counsel provided were reported by 98.2% of the prosecutors' offices.

Source: Bureau of Justice Statistics

the Court held in *Gideon v. Wainwright* (372 U.S. 335 [1963]) that a defendant charged with a felony, including state crimes, had the right to counsel. Almost ten years later, *Argersinger v. Hamlin* (407 U.S. 25 [1972]) extended an indigent's right to counsel to all criminal prosecutions, felony or misdemeanor, which carry a sentence of imprisonment.

### Types of State Delivery Systems

Although the U.S. Supreme Court has mandated that the states must provide counsel for indigents accused of crime, how each state provides such services has not been specified. The states have devised various

systems, rules for organizing, and funding mechanisms for providing counsel for poor defendants. In general, three systems have emerged throughout the country as the primary means to provide defense services for indigent defendants.

*Public defender programs* are public or private nonprofit organizations with full- or part-time salaried staff. In 28 states a public defender system is the primary method used to provide indigent counsel for criminal defendants.

*Assigned counsel systems* involve the appointment by the courts of private attorneys as needed from a list of available attorneys.

*Contract attorney systems* involve gov-

## Recent BJS Reports

In addition to the report summarized in the accompanying article, the following recent studies and reports from the Bureau of Justice Statistics are available from the Alaska Justice Statistical Analysis Unit or on the World Wide Web at <http://www.ncjrs.org/>:

"*Prison and Jail Inmates, 1995*," the annual examination of incarcerated populations throughout the country, NCJ-161132.

"*Noncitizens in the Federal Criminal Justice System, 1984-94*," an examination of data on aliens processed for federal crimes, NCJ-160934.

"*Federal Criminal Case Processing, 1982-93*," statistical information on prosecution, adjudication and sentencing, NCJ-160088.

"*Firearm Injury from Crime*," data from several national surveys on victims and types of criminal firearms injuries, NCJ-160093.

**Table 2. State and Local Expenditures for Public Defense,\* 1979-1990**

	1979	1985	1988	1990
<b>State</b>	\$127,892,000	\$297,555,000	\$427,788,000	\$603,674,000
<b>Local</b>	239,159,000	433,068,000	617,910,000	788,437,000
Counties	196,296,000	350,603,000	480,515,000	605,708,000
Municipalities	44,638,000	85,782,000	142,946,000	189,362,000
<b>Total</b>	<b>\$357,030,000</b>	<b>\$711,243,000</b>	<b>\$1,012,831,000</b>	<b>\$1,336,266,000</b>

Note: Expenditures presented are not adjusted for inflation.

\* Public defense includes legal counsel and representation in either criminal or civil proceedings as provided by public defenders and other government programs. Detail may not add to total because of rounding.

Source: Bureau of Justice Statistics

**Table 3. Type of Counsel Representing Inmates in Federal and State Correctional Facilities, 1991**

	State inmates			Federal inmates		
	White	Black	All*	White	Black	All*
Hired counsel	25%	19%	22%	49%	33%	43%
Assigned counsel	73	79	76	48	64	54
Both hired and assigned counsel	2	2	2	3	3	3
<b>Number of inmates</b>	<b>336,492</b>	<b>319,324</b>	<b>679,590</b>	<b>33,299</b>	<b>16,578</b>	<b>52,645</b>

Note: Data on type of legal representation available for 99.8% of state prison inmates and 99.7% for federal inmates. Totals do not include 3.1% of state prison inmates and 1.2% of federal inmates who did not have legal representation.

\* Includes all races.

Source: Bureau of Justice Statistics

ernmental units that reach agreements with private attorneys, bar associations, or private law firms to provide indigent services for a specified dollar amount and for a specified time period.

The federal justice system provides indigent defense to eligible defendants through the Federal Defender Services, community defender organizations, and private attorneys as established by the Criminal Justice Act of 1964 with its amendments.

Traditionally, assigned counsel systems and public defenders have been the primary means to provide legal representation to the poor. In 1992, 64 per cent of state court prosecutors' offices nationwide reported a public defender program in their jurisdiction and 58 per cent indicated an assigned counsel system, while 25 per cent of prosecutors' offices indicated that their district contracted with law firms, private attorneys, or local bar associations to provide services to indigent offenders.

**State and Local Expenditures for Public Defense**

In 1979, state and local governments spent more than \$350 million to provide legal counsel to indigent defendants. This included expenditures for civil litigation. In 1990, state and local governments spent an estimated \$1.3 billion for these services. In constant 1990 dollars, the state and local expenditures doubled for public defense from 1979 to 1990. In 1979, state-level expenditures represented about 36 per cent of

**Table 4. State and Federal Inmates with Court-Assigned Counsel, by Race and Type of Offense, 1991**

Most serious offense	State inmates			Federal inmates		
	White	Black	All*	White	Black	All*
<b>Violent offenses</b>	<b>71%</b>	<b>77%</b>	<b>74%</b>	<b>67%</b>	<b>75%</b>	<b>72%</b>
Murder	65	67	<b>66</b>	66	70	<b>74</b>
Nonnegligent manslaughter	59	67	<b>64</b>	—	—	—
Rape	67	80	<b>73</b>	—	—	—
Robbery	80	82	<b>81</b>	83	81	<b>82</b>
Assault	73	82	<b>78</b>	—	—	<b>63</b>
<b>Property offenses</b>	<b>83%</b>	<b>88%</b>	<b>85%</b>	<b>44%</b>	<b>70%</b>	<b>53%</b>
Burglary	84	89	<b>86</b>	—	—	<b>80</b>
Larceny	82	88	<b>85</b>	—	—	<b>62</b>
Motor vehicle theft	87	93	<b>89</b>	—	—	—
<b>Drug offenses</b>	<b>65%</b>	<b>74%</b>	<b>70%</b>	<b>43%</b>	<b>60%</b>	<b>48%</b>
Drug possession	71	75	<b>73</b>	47	53	<b>49</b>
Drug trafficking	62	73	<b>68</b>	42	61	<b>49</b>
Other drug offense	52	83	<b>73</b>	36	59	<b>45</b>
<b>Public order offenses</b>	<b>72%</b>	<b>78%</b>	<b>75%</b>	<b>50%</b>	<b>63%</b>	<b>55%</b>
Weapons offense	65	78	<b>72</b>	53	65	<b>60</b>
Other offense	74	79	<b>75</b>	47	57	<b>49</b>
<b>Other offenses</b>	<b>81%</b>	<b>84%</b>	<b>83%</b>	<b>39%</b>	—	<b>45%</b>
<b>Number of inmates</b>	<b>334,165</b>	<b>317,889</b>	<b>675,659</b>	<b>33,228</b>	<b>16,508</b>	<b>52,485</b>

*Note:* Current offense data were available for 99.4% of state prison inmates and 99.7% of federal prison inmates who had legal representation. Table does not include 2% of state and 3% of federal inmates with counsel who used a combination of assigned and private counsel, as well as those inmates who said they did not have counsel. Table does not present all individual offense categories.

\* Includes all races.

— Sample size was too small to yield statistically reliable results.

*Source:* Bureau of Justice Statistics

the overall spending for public defense. In 1990, state contributions accounted for 45 per cent of the state and local total.

The preceding article was derived from Bureau of Justice Statistics report "Indigent

Defense," NCJ-158909. Copies of the entire report may be obtained from the Alaska Justice Statistical Analysis Unit or on the World Wide Web from the National Criminal Justice Reference Service (NCJRS) at <http://www.ncjrs.org/>.

**Table 5. Type of Counsel Representing Inmates in Local Jails, 1989**

	Local jail inmates with counsel		
	White	Black	All*
Hired counsel	25%	19%	<b>22%</b>
Assigned counsel	75	81	<b>78</b>
<b>Number of inmates</b>	<b>169,219</b>	<b>130,341</b>	<b>308,976</b>

*Note:* Data on type of counsel were reported for 99.9% of inmates who had some type of legal representation.

\* Includes all races.

*Source:* Bureau of Justice Statistics

**Table 6. When Local Jail Inmates First Talked with a Lawyer, by Type of Counsel, 1989**

First met with lawyer	Hired counsel	Assigned counsel
Before admission	28%	13%
During first week after admission	41	34
During second week after admission	10	15
More than two weeks after admission	19	34
Don't know	3	4
<b>Number of inmates</b>	<b>68,409</b>	<b>230,599</b>

*Note:* Data were available for 98.9% of those with hired counsel and 96.3% of those with assigned counsel. Detail may not add to 100% because of rounding.

*Source:* Bureau of Justice Statistics

**Table 7. Local Jail Inmates with Court-Assigned Counsel, by Race and Offense, 1989**

Most serious offense	White	Black	All*
<b>Violent offenses</b>	<b>76%</b>	<b>78%</b>	<b>77%</b>
Murder	74	68	<b>70</b>
Nonnegligent manslaughter	54	—	<b>52</b>
Rape	87	—	<b>86</b>
Robbery	84	81	<b>82</b>
Assault	77	77	<b>77</b>
<b>Property offenses</b>	<b>83%</b>	<b>87%</b>	<b>85%</b>
Burglary	84	88	<b>86</b>
Larceny	84	88	<b>86</b>
Motor vehicle theft	84	93	<b>88</b>
<b>Drug offenses</b>	<b>70%</b>	<b>78%</b>	<b>74%</b>
Drug possession	72	76	<b>74</b>
Drug trafficking	69	79	<b>74</b>
Other drug offense	75	89	<b>79</b>
<b>Public order offenses</b>	<b>68%</b>	<b>78%</b>	<b>71%</b>
Weapons offense	55	78	<b>64</b>
Other offense	59	78	<b>71</b>
<b>Other offenses</b>	<b>82%</b>	<b>73%</b>	<b>77%</b>
<b>Number of inmates</b>	<b>168,812</b>	<b>130,258</b>	<b>308,486</b>

*Note:* Current offense data were available for 99.8% of local jail inmates who had legal representation. Table does not present all individual offense categories.

\* Includes all races.

— Sample size was too small to yield statistically reliable results.

*Source:* Bureau of Justice Statistics

## Sex Offender Treatment Program

The Alaska Department of Corrections and the Statistical Analysis Unit in the Justice Center recently completed a beginning study of sex offenders in the treatment program at Hiland Mountain Correctional Center during the period of January 1987 to August 1995. Rose Munafo of the Department of Corrections and Dr. Allan Barnes of the Justice Center headed the project. The study included analysis of descriptive characteristics of the participants; treatment variables such as length of time in program, reason for discharge and treatment stage at discharge; and reoffense data. The analysis led to the following observations:

- Treated sex offenders lasted longer in the community before they were rearrested than offenders in any of the comparison groups. Regardless of the definition of reoffense applied, the treatment group lasted longer without rearrest.

- Those who were in treatment longer tended to live longer in the community without a rearrest. Those who completed all stages of treatment had a zero rearrest rate for sexual reoffenses. This observation also seems to be true of sexual assault offenders (rapists), who generally reoffend more quickly and at a higher frequency.

- Sexual assault offenders (rapists) seem to do as well as sexual abuse of a minor offenders, both in terms of how long they stay in treatment and how far they advance through the program. This is a positive outcome that has not usually been reported by other programs.

- Alaska Native offenders do not progress as well in the program as non-Native offenders. This is the first study which has addressed the demographic characteristics of Alaska Native sex offenders. The findings were somewhat different from what had been expected. It was anticipated that Alaska Natives who left the program early would be young, less educated and have a history of both alcohol and drug abuse. In fact, the study demonstrated that older, more educated Alaska Natives left the program earlier.

Two-thirds of all offenders in the treatment group had a history of substance abuse, with an even higher incidence among Alaska Native offenders. Those who had no history of substance abuse tended to advance further in the program; those with a history of both alcohol and drug abuse tended to leave in the earlier phases of the program.

The study was limited in scope: only sex offenders in the Hiland Mountain program were included. It did not address sex offenders who received treatment for other presenting problems, such as alcoholism or mental illness, exclusive of sex offender

treatment. The Hiland Mountain program is currently the only multi-phase institutional treatment program for sex offenders in Alaska.

The program includes four stages:

1. *Pretreatment*: The purpose of this stage is to provide assessment, orientation, education, challenge of offense denial, and clinical management.

2. *Beginning Treatment*: This stage prepares offenders to give and receive feedback, to use self-regulation and social skills, and to assume responsibility for the current offense and its impact upon victims. It focuses on the most immediate precursors to the sexual offense, with the creation of external management strategies.

3. *Intermediate Treatment*: This stage addresses the earliest precursors to the offense and develops the skills for more self-management of all risk factors. The focus is on the internalization of skills learned in the preceding phase.

4. *Advanced Treatment*: This stage emphasizes the application and generalization of skills to new situations.

With the exclusion of pretreatment, each stage requires a minimum of six months and may take 12 months or more. Duration in treatment depends upon the offender's individual resources, problem areas, skills, motivation and length of sentence. The program is not designed with the expectation that every sex offender will complete all stages of treatment. Some offenders may leave the program without completing all stages. These offenders may lack the ability or the sentence length to go further in the program, but will have still gained some benefit from treatment when they leave the program.

The data from treated offenders in the present study were compared with data from sex offenders and non-sex offenders in several comparison groups. This allowed some conclusions to be drawn regarding whether the results are likely to be due to treatment efforts or to random and unknown factors.

Several measures of recidivism were used in the study, including:

- *First Arrest–Any Offense*: This variable is a measure of both sexual and non-sexual reoffenses. The time it took for an offender to be arrested for any offense is reflected in this figure.

- *Most Serious Offense–Any Offense*: This variable is also a measure of both sexual and non-sexual reoffenses but specifically determines the most serious of all reoffenses committed by an offender. This was determined by looking at NCIC offense codes and applying an algorithm to identify

seriousness. The algorithm used was developed by the Federal Bureau of Justice Statistics in the mid-1970s in an attempt to arrange the NCIC codes according to level of seriousness.

- *First Arrest–Non-Sexual Offenses*: This variable is a measure of reoffense for any non-sexual crime.

- *Most Serious–Non-Sexual Offenses*: This variable is a measure of the most serious of the non-sexual reoffenses, which is assessed using the algorithm described above.

- *First Arrest–Sexual Offenses*: This variable separates sexual offenses from other offenses so that we can study the effects of treatment on sexual reoffending specifically.

- *Most Serious Sexual Offense*: This variable examines the most serious of the sexual reoffenses using the same algorithm as described above.

These definitions reflect a range of criminal behavior. Measures which reflect criminal behavior of any type tend to be the most sensitive since they pick up criminal thinking of any kind. Sexual reoffenses are the least sensitive measure since they are typically under-reported. Non-sexual offenses, however, are related to sexual offenses because sexual offenses are often at the end of a chain of events which includes non-sexual precursors. It is this chain of events which the relapse prevention plan addresses.

The research demonstrates that treatment works by reducing the incidence of sexual reoffense or by prolonging the time until reoffense. Either of these results reduces the number of victims in the community.

Offenders who are amenable to treatment learn to recognize precursors to relapsing and to self-manage their high risk behavior. Those who are not amenable or not willing to participate in treatment must be controlled by external measures. It is important to recognize that offenders differ along a continuum of risk. Identifying the extent of the risk and the conditions under which an offender is likely to relapse allows the offender and others to manage the risk more effectively.

The study was funded by the Department of Corrections. In addition to Rose Munafo and Allan Barnes, the project team included Dr. Anthony Mander and Dr. Martin Atrops of the Department of Corrections; Tracie Howard, a student in the Justice Center academic program; and other Justice Center students.

*Copies of the complete report Sex Offender Treatment Program: Initial Recidivism Study are available from the Alaska Department of Corrections, Offender Programs.*

## Tort Reform and Access to the Courts

*Lisa Rieger*

Like indigent criminal defendants and low income individuals with family law or housing problems, potential plaintiffs in civil tort actions can suffer from their inability to pay for attorneys and their lack of familiarity with the court system. The goal of the tort system is to provide remedy for harm. Historically, the formal right to such legal redress for injury did not ensure the practical right to access to the courts for those without the funds to pay for legal services, but in the last half of the twentieth century, U.S. courts have placed a higher priority on guaranteeing real access and greater equality between parties in tort cases.

Now, however, tort reform efforts nationwide may result in individuals' decreased access to the courts for redress of grievances because of limits on recovery and allocation of legal costs. Tort reform proponents have three major goals: (1) to limit juries' ability to determine compensation for injured persons; (2) to limit punitive damage awards; and (3) to restrict the attorney contingency fee system that ensures citizens without money access to the courts. These goals rest on the perception that a "litigation explosion" of frivolous and unfounded claims is increasing business and insurance costs while providing windfalls for individual plaintiffs. It is assumed that lowering levels for possible recovery and increasing legal costs for plaintiffs will counteract this "litigation explosion".

However, the measures proposed for tort reform exacerbate the inequalities present in the reality of litigation, in which individual citizens are often fighting large, wealthy corporations with extensive litigation budgets. Those who already have less

access to the legal system, such as women and others of lower incomes, will suffer the most, particularly from limits on non-economic damages. According to Samuel R. Gross and Kent D. Syverud ("Getting to No: A Study of Settlement Negotiations and the Selection of Cases for Trial," 90 Mich. L. Rev. 319 [1991]), a California study of settlements under the current rules demonstrated unequal bargaining power between plaintiffs and defendants in which risk-averse plaintiffs settled cases for much less than their value.

One of the arguments in favor of tort reform is that litigation results in higher insurance premiums, and, most particularly, medical costs. However, medical malpractice is, in fact, one area of tort where access to the courts is already extremely limited. A 1990 public health study, *Harvard Medical Practice Study*, estimated that only one in fifteen actual cases of medical malpractice resulting in serious injury or death in New York state was litigated. Thus, payment on malpractice insurance claims is minimal at best. According to Deborah R. Hensler ("Reading the Tax Litigation Tea Leaves: What's Going On in the Civil Liability System?" in *The Justice System Journal* 16(2), 1993), only 10 per cent of those injured in medical malpractice or products cases attempt to assert legal claims, while 50 per cent make claims in automobile injuries. In addition, because Alaska does not require medical malpractice insurance, the possibility of recovering for malpractice is already limited in this state.

Alaska HB 158, which was passed in the last legislative session but vetoed by Governor Knowles, would narrow the private citizen's ability to redress grievances, mak-

ing the average individual even less powerful on the uneven playing field of the courts. In particular, Section 13, by instituting a more stringent form of the English rule, under which the loser pays the attorney fees of the winner, would restrict the ability to sue to those able to take the risk of bearing attorney costs. Alaska already has a modified form of the English rule under which the loser pays attorney fees, but the amount of fees is set by the court. (If the recovery after trial is less than the last offer, the prevailing party is also liable for attorney fees.) Other provisions in the proposed measure would have restricted children from suing tortfeasors after two years, regardless of their age at the time of harm. Currently the law allows suit until two years after the age of majority.

Recognizing the need for a review of the civil justice system in the wake of HB 158, the Governor created the Task Force on Civil Justice Reform. The task force includes representatives of the legal and business communities and members of the public. Attorneys on the panel represent a cross-section of interest including plaintiffs, industry, consumers and insurers. The commission, which will begin work in September, will review the volume and type of civil cases filed in Alaska courts, including damages awarded. It will look at tort reform measures elsewhere in the nation, analyze the recent Alaska proposals as well as the existing laws and examine possibilities for improvement. Recommendations, including any proposed statutes, will be submitted by December 16, 1996.

*Lisa Rieger is an assistant professor with the Justice Center.*

### 1996-97 Judicial Fellows Program

The Judicial Fellows Commission has opened its application process for the 1997-98 Judicial Fellows Program. The Program, established in 1973 and patterned after the White House and Congressional Fellowships, seeks individuals from a variety of disciplinary backgrounds who are interested in the administration of justice and who show promise of making a contribution to the judiciary.

Up to four Fellows will be chosen to spend a year, beginning in late August or early September 1997, in Washington, D.C. at the Supreme Court of the United States, the Federal Judicial Center, the Administrative Office of the United States Courts, or the United States Sentencing Commission. Candidates must be familiar with the federal judicial system and have at least one postgraduate degree and two or more years of successful

professional experience. Fellowship stipends are based on salaries for comparable government work and on individual salary histories, but will not exceed the GS 15, step 3 level, presently \$76,316.

Information about the program is available from:

**Vanessa M. Yarnell**  
**Administrative Director**  
**Judicial Fellows Program**  
**Supreme Court of the United States**  
**Room 5**  
**Washington, DC 20543**  
**(202) 479-3415**

The application deadline is November 15, 1996.

## Indigency Criteria

At present the Alaska Court System has no uniform, articulated criteria for determining indigency when assigning public counsel. In late spring 1996, Chief Justice Allen Compton appointed a committee to study the present situation and to make recommendations for standards.

Alaska Statute 18.85.170 defines an indigent person as one "who, at the time need is determined, does not have sufficient assets, credit or the means to provide for payment of an attorney and all other necessary expenses of representation without depriving the party or party's dependents of food, clothing or shelter and who has not disposed of any assets since the commission of the offense with the intent or for the purpose of establishing assistance under this chapter...." The statute (18.85.120) requires the court to consider such factors as income, property, debts and the status of dependents. It also allows the court upon the defendant's conviction to enter a judgment against the defendant for the costs of representation.

While the statute and Criminal Rule 39 set the basis for decisions concerning the inability to retain counsel, the actual processes of assigning public counsel vary from place to place throughout the state. In Anchorage the Pretrial Services office evaluates the financial status of defendants who wish to be assigned public counsel and makes recommendation to the judge handling the case; in Fairbanks the office itself makes the appointment. Pretrial Services personnel use a financial statement form and other information on the defendant derived from an interview and submission of documentation such as pay stubs to arrive at their recommendation. In other areas of the state, the judge makes the decision alone, using information derived from a financial statement or from questioning the defendant. Some judges refer informally to the federal indigency criteria employed by Alaska Legal Services (\$11,500 for an individual, with an increment of \$3,875 for each additional family member).

The Alaska courts are able to enter judgment for the recovery of the costs of appointed counsel upon conviction and are responsible for forwarding the judgment to the Department of Law Collections Unit or to a municipal collections unit.

The Alaska Court System committee studying the situation with regard to the

appointment of public counsel is assembling information from judges and attorneys throughout the state in order to devise more precise state guidelines. The group, which is chaired by District Court Judge Peter Ashman (Third Judicial District, Palmer), is examining the issue not just to determine what constitutes indigency but also to ascertain more clearly what is required to retain private counsel and the other services necessary for an adequate criminal defense. An inability to retain counsel can also involve considerations other than basic financial need, including, particularly in Alaska, geographical constraints. A confidential questionnaire addressed to members of the Alaska Bar is requesting information on such issues as the following: What are your fees for a criminal defense on a particular charge? How much do you require as a retainer? Where do you normally practice? Do you accept cases elsewhere? What extra charges are incurred on a case you handle outside your normal area?

The committee is also using information derived from two earlier studies: a 1991 report on public counsel in Alaska prepared by the National Center for State Courts and a 1995 audit report done by the Alaska Division of Legislative Audit.

The 1991 study by the National Center for State Courts, *Study of the Appointment of Indigent Defense Counsel in the State of Alaska*, recommended that the state adopt standards which would clearly delineate the circumstances in which the appointment of public counsel is appropriate. The report, which was undertaken at the request of the Alaska Court System, presented formula for determining indigency and partial indigency, a status under which a defendant would be responsible for paying part of the costs of representation. These formula were devised after research within the Alaska system and examination of the practices of other states. (At the time of the report, only twenty states had uniform guidelines for the appointment of indigent defense counsel.)

The legislative audit (Audit Control Number: 02-4507-95) also examined the processes involving the appointment of public counsel within the court system, the Office of the Public Defender and the Office of Public Advocacy. The audit recommended the development of eligibility standards which can be uniformly and consistently applied.

**Table 1. New Cases Filed, Alaska Public Defender Agency, FY96**

<b>Felony</b>	<b>2,921</b>
<b>Misdemeanor</b>	<b>8,494</b>
City	28
State	8,466
<b>Probation revocation</b>	<b>3,403</b>
Felony	1,032
Misdemeanor	2,241
Juvenile	130
<b>Juvenile</b>	<b>521</b>
<b>Child in Need of Aid</b>	<b>611</b>
<b>Sanity</b>	<b>843</b>
<b>Sentence appeal</b>	<b>72</b>
Felony	54
Misdemeanor	18
<b>Merit appeal</b>	<b>155</b>
Felony	93
Misdemeanor	39
Other	23
<b>Post conviction relief</b>	<b>472</b>
<b>Parole Board</b>	<b>110</b>
<b>Special appointment</b>	<b>21</b>
<b>TOTAL</b>	<b>17,623</b>

Source of data: Alaska Public Defender Agency

## Indigent (continued from page 1)

personnel. Estimated expenditures for fiscal year 1996 were \$8,510,100. This figure includes salaries, travel, contractual expenses, commodities and equipment. (The estimated FY96 expenditures for the criminal division of the Department of Law were \$11,780,000.)

Alaska is one of the twenty-eight states in the country in which indigent defense is handled completely by the Public Defender Agency, with no use of outside attorneys under contract as in some other states. (If a case presents a conflict of interest for the agency, it is handled by the Office of Public Advocacy.) The contractual budget provides primarily for the services of expert witnesses—forensic, medical, psychological—and for interpreters, who must assist non-English speaking individuals involved in the state justice process. (Interpreters are

**Table 2. Caseload Summary, Alaska Public Defender Agency, FY88-FY96**

	Number of cases	Expenditures	Number of attorneys
FY 1988	12,524	\$6,138,100	53
FY 1989	13,272	\$6,317,600	54
FY 1990	14,901	\$6,696,400	53
FY 1991	15,030	\$7,170,100	55
FY 1992	17,094	\$7,759,100	55
FY 1993	16,137	\$7,486,500	55
FY 1994	17,582	\$7,845,900	56
FY 1995	17,393	\$8,065,100	63
FY 1996*	17,623	\$8,510,100	65

\* Expenditures for FY 1996 are estimated.

Source of data: Alaska Public Defender Agency

Table 3. Alaska Incomes, 1989

	Median income		Per capita income	Income below poverty level			
	Households	Families		Per cent of persons for whom poverty level is determined			
				All ages	Related children under 18	65 years and over	Per cent of families
<b>Entire state</b>	<b>\$41,408</b>	<b>\$46,581</b>	<b>\$17,610</b>	<b>9.0%</b>	<b>10.9%</b>	<b>7.6%</b>	<b>6.8%</b>
<b>Urban area</b>	<b>\$42,344</b>	<b>\$48,083</b>	<b>\$18,594</b>	<b>7.4%</b>	<b>8.8%</b>	<b>5.3%</b>	<b>5.6%</b>
Inside urbanized area	43,564	49,798	19,500	7.2	9.0	5.0	5.5
Outside urbanized area	40,623	45,578	17,247	7.7	8.5	5.6	5.7
Place of 10,000 or more	39,303	45,651	17,090	8.5	10.3	6.1	6.4
Place of 2,500 to 9,999	41,637	45,512	17,373	7.1	7.2	5.3	5.2
<b>Rural area</b>	<b>\$39,332</b>	<b>\$43,322</b>	<b>\$15,572</b>	<b>12.3%</b>	<b>14.6%</b>	<b>12.1%</b>	<b>9.5%</b>
Place of 1,000 to 2,499	39,299	42,627	16,376	6.8	6.9	6.7	4.9
Place of less than 1,000	29,010	31,990	11,785	21.4	26.1	15.8	17.8
Other rural	46,662	51,157	18,380	6.5	6.5	9.5	5.0
Rural farm	48,295	52,624	17,693	5.9	0.3	—	1.3
<b>Borough and census area</b>							
Aleutians East Borough	\$42,384	\$47,188	\$17,242	11.9%	9.5%	14.6%	7.6%
Aleutians West Census Area	35,187	34,020	15,035	9.0	5.6	5.6	2.8
Anchorage Borough	43,946	50,098	19,620	7.1	8.9	4.9	5.4
Bethel Census Area	25,402	25,570	8,833	30.0	33.4	26.4	26.2
Bristol Bay Borough	51,112	57,100	19,123	5.1	3.8	17.1	3.9
Dillingham Census Area	\$28,779	\$30,365	\$12,782	24.6%	29.3%	24.9%	21.6%
Fairbanks North Star Borough	37,468	41,729	15,914	7.6	8.4	9.0	5.8
Haines Borough	36,048	44,141	16,204	9.2	11.9	7.7	7.4
Juneau Borough	47,924	54,088	19,920	5.6	6.9	3.9	3.7
Kenai Peninsula Borough	42,403	48,339	18,173	7.7	9.2	6.6	6.2
Ketchikan Gateway Borough	\$45,172	\$51,716	\$18,789	4.2%	3.3%	4.3%	2.4%
Kodiak Island Borough	44,815	47,600	19,979	5.5	5.1	11.8	3.7
Lake and Peninsula Borough	25,231	26,630	11,560	20.0	21.0	15.4	16.8
Matanuska-Susitna Borough	40,745	45,252	15,898	9.4	10.0	6.9	7.5
Nome Census Area	30,144	29,795	10,701	22.4	24.4	15.5	19.0
North Slope Borough	\$50,473	\$53,167	\$18,231	8.7%	9.7%	14.1%	8.2%
Northwest Arctic Borough	33,313	33,318	10,040	18.5	21.4	16.6	17.1
Prince of Wales-Outer Ketchikan Census Area	39,495	42,857	15,510	9.1	11.0	11.5	8.0
Sitka Borough	43,337	49,327	16,962	4.8	4.3	—	2.8
Skagway-Yakutat-Angoon Census Area	38,583	43,693	15,463	8.9	10.8	7.2	6.3
Southeast Fairbanks Census Area	\$30,222	\$32,121	\$12,505	14.2%	15.7%	9.8%	10.6%
Valdez-Cordova Census Area	47,500	52,929	22,772	8.9	9.4	6.5	6.7
Wade Hampton Census Area	20,586	22,215	6,519	31.0	35.5	18.2	28.6
Wrangell-Petersburg Census Area	42,020	49,083	19,012	5.7	8.3	2.5	4.2
Yukon-Koyukuk Census Area	23,945	27,432	11,554	26.0	30.2	21.4	22.0

**Note:** For census purposes, the average poverty threshold for a family of four in 1989 was \$12,674. This level was applied nationally and not adjusted for state or regional variations in cost of living.

**Source:** 1990 Census of Population, U.S. Bureau of the Census

necessary for a wide variety of languages: Alaska Native languages; Korean; Southeast Asian languages; Spanish; Russian and others.)

The agency operates thirteen offices in communities throughout the state (see Figures 1 and 2), which provide services to that town and surrounding smaller communities. For most individuals in Alaska's smaller communities—particularly the rural villages—and even in such places as Barrow and Dutch Harbor, the agency is the main, or sole, source for criminal defense services. Not only do Alaska residents often lack the economic resources to pay for their own representation in criminal or other legal matters, but also in many communities there are few, or no, lawyers handling criminal defense cases.

### Civil Representation

The Alaska Legal Services Corporation is a private, nonprofit corporation established in 1966 to provide civil legal assistance to low income individuals. It is administered by a board of directors and an executive director and funded by grants from the Federal Legal Services Corporation, state and local governments and other agencies. In the past, Alaska Legal Services has handled family law cases, housing issues, public benefits cases, and cases for the elderly as well as undertaking a number of class action suits which have had far-reaching effects in the state.

Recent budget reductions from both state and federal funding sources have cut the areas in which the agency can now provide

civil legal aid to individuals with low incomes, with priority currently being given to family cases which involve custody of children. Moreover, federal legislation now also prohibits the agency from undertaking class action cases or assisting the incarcerated.

In calendar year 1995 Alaska Legal Services closed a total 4,227 cases throughout the state. (This includes 1,193 cases handled by the pro bono program. See below.) Of the 708 open cases being handled by Alaska Legal Services at the end of January 1996, family law cases constituted 29.3 per cent; Native allotments formed 21.9 per cent; public entitlements, 16.9 per cent; limited entry, 11.3 per cent; housing, 6.6 per cent;

Please see *Indigent*, page 8

## **Indigent** (continued from page 7)

wills and probate matters, 5.1 per cent; subsistence, 1.8 per cent; Native law issues, 1.6 per cent; consumer issues, 1.3 per cent; individual rights, 0.7 per cent; property and land cases, 0.7 per cent; and other, 2.8 per cent.

As criteria for accepting clients, Alaska Legal Services uses the federal poverty guidelines: an individual's income cannot exceed 125 per cent of the poverty level; that is, at present it cannot exceed \$11,500 for one person, with an increment of \$3,875 allowable for each family member.

The current budget for Alaska Legal Services is approximately \$2.2 million. It has diminished from over \$3 million two years ago, as a result of cuts in both federal and state funding. Recent federal legislation prevents state Legal Services Corporations from collecting attorney's fees in successful cases. In Alaska, under Court Rule 82, this practice had been a significant source of agency income.

The agency now operates offices with staff attorneys in Anchorage, Juneau, Fairbanks, Bethel and Barrow, with another office staffed by a part-time paralegal in

Ketchikan. Within the last four years the agency has closed offices in Dillingham, Kodiak, Nome and Kotzebue. Legal Services staff attorneys now number fifteen, while the mid-1980s the agency employed almost fifty attorneys.

Alaska Legal Services also administers the Alaska Pro Bono Program, a volunteer program for attorneys and other professionals, which was created in 1983 to assist in meeting the legal needs of low income individuals. Over 900 attorneys throughout the state are registered to participate in the program. In calendar year 1995, Alaska Legal Services referred 394 cases to private attorneys under the pro bono program.

Table 3, derived from the 1990 national census, presents information on incomes throughout the state, including figures for individuals and families below the federal poverty threshold. These figures provide some indication of the number of Alaska residents possibly unable to afford private legal counsel whether in civil or criminal matters. In some census areas, such as the Bethel area and the Wade Hampton area, the numbers of families with incomes below the federal poverty level is well over 20 per cent. It should also be noted that these figures provide low estimates of the number of resi-

dents and families who must depend on indigent legal services because the federal poverty level is applied nationally and not adjusted for regional variations in the cost of living. In reality, because of the high cost of living in Alaska, even more individuals than these figures indicate would be dependent on indigent legal services.



## **Alaska Justice Forum**

Editor: Antonia Moras

Editorial Board: John Angell, Cassie Atwell, Allan Barnes, Robert Congdon, Richard Curtis, Lisa Rieger, John Riley, Nancy Schafer, Lawrence Trostle, Darryl Wood

Typesetting and Layout: Melissa S. Green

Justice Center, John Angell, Director

Alaska Justice Statistical Analysis Unit, Allan Barnes, Director

Published quarterly by the Justice Center and the Alaska Justice Statistical Analysis Unit at the University of Alaska Anchorage, 3211 Providence Drive, Anchorage, AK 99508; (907) 786-1810; fax 786-7777; Internet address [ajjust@orion.alaska.edu](mailto:ajjust@orion.alaska.edu); World Wide Web <http://www.uaa.alaska.edu/just/1justice.html>

© 1996 Justice Center,  
University of Alaska Anchorage  
ISSN 0893-8903

The Bureau of Justice Statistics, U.S. Department of Justice, provides approximately thirty-five per cent of the funding for this publication.

The opinions expressed are those of individual authors and may not be those of the Justice Center or the Bureau of Justice Statistics.

The University of Alaska provides equal education and employment opportunities for all, regardless of race, color, religion, national origin, sex, age, disability, or status as a Vietnam-era or disabled veteran.

## **Act Amended**

HB 370, enacted by the Alaska legislature during the 1995-96 session and signed by the governor, amends the Public Defender Act (18.85.010) by restricting the agency to accepting only those clients first determined by the court to meet the criteria for indigent legal assistance. Heretofore, the agency has been able to exercise its own discretion in accepting as clients individuals who contact it in search of legal assistance or advice without, or before, having been formally charged or detained. Hence, the amendment more narrowly limits access to legal services for those not able to afford a private attorney. Only when indigent individuals have formally entered the system of arrest, detention and judicial procedure will they be assigned attorneys, while those with sufficient personal economic resources can obtain the protection afforded by an attorney before they are charged, arrested or appear in court. The new legislation goes into effect in September 1996.

**Alaska Justice Forum**  
Justice Center  
University of Alaska Anchorage  
3211 Providence Drive  
Anchorage, AK 99508

Address correction requested.

**Non-Profit Organization**  
U.S. Postage  
PAID  
Anchorage, Alaska  
Permit No. 107