

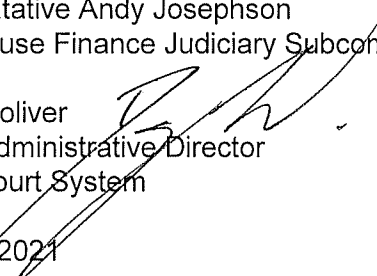
MEMORANDUM

ALASKA COURT SYSTEM

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TO: Representative Andy Josephson
Chair, House Finance Judiciary Subcommittee

FROM: Doug Wooliver 
Deputy Administrative Director
Alaska Court System

DATE: March 4, 2021

RE: Questions from March 1, 2021 Judiciary Subcommittee Hearing

During the court system's Finance Subcommittee meeting on March 1, 2021 I was asked several questions that I promised to answer after the hearing. The purpose of this memo is to answer those questions.

1. *The Southcentral courts of Palmer, Anchorage, and Kenai receive roughly 63% of all cases filed in the state, does that match the percentage of the state population?*

The Matanuska-Susitna Valley, Anchorage, and Kenai together comprise roughly 60% of the state's population.

2. *What criteria will judges use in determining which criminal cases first go to trial?*

Chief Justice Bolger outlines the criteria for holding jury trials in SCO 8242, which is attached.

3. *What is the typical time to disposition for felony and misdemeanor cases?*

The statewide median time to disposition (the time from filing to final disposition) for felonies is 173 days, and for misdemeanors it is 94 days.

4. *What will be the on-going licensing and maintenance agreement costs for the new technology the court has purchased using CARES Act funding?*

Although some costs may go down, our current projections are for about \$200,000 in annual costs. Some of those costs will be offset by other savings. For example, Zoom licenses cost money, but conducting Zoom meetings rather than in-person meetings eliminates travel costs.

5. *How does Alaska's backlog of cases compare to backlogs in other states?*

This question is difficult to answer because I have been unable to find data that is particularly helpful. I have, however, attached one document from the National

Center for State Courts that reviewed data submitted by 11 states (including Alaska), and found that the backlogs were not as bad as many feared. On the other hand, new reports have shed some light on what is happening in a handful of states. For example, Maine is reporting a jump from 2,600 criminal cases pending for more than six months last year to 9,200 pending this year, which is an increase of over 250%. Massachusetts shows a roughly 100% increase in their normal backlog, and Houston reports their felony backlog has increased from 35,000 to 50,000, an increase of 43%.

Our own numbers suggest that we may have a backlog of criminal cases that has grown from 15,000 to 21,000, which is an increase of 40%. And though few of those cases are likely to go to trial, we will almost certainly have a bubble of cases to work through the system.

6. *Have the number of protective orders filed in the state courts changed during the pandemic?*

Comparing the period from April 1st through December 31st of 2020 (the past three quarters) against the same period in 2019, there has been a 19% decrease in petitions for protective orders.

7. *How does Alaska compare with other states with respect to the number of judges per capita?*

As with other state-by-state comparisons, this is slightly tricky as many states have county and municipal courts as well as specialty courts (like water courts, and business courts) that make both counting judges and comparing them to our system difficult. But all states have a trial court of general jurisdiction like our superior court so I looked to those courts for comparison. And I further decided to look at other small population states, specifically those with a population of less than 1 million, in order to get an idea of how we compare.

- Alaska – 724,000 residents / 45 judges = 1 judge per 16,088 residents
- Delaware – 990,000 residents / 44 judges = 1 judge per 22,500 residents
- District of Columbia – 714,000 residents / 51 judges = 1 judge per 14,000 residents
- South Dakota – 900,000 residents / 42 judges = 1 judge per 21,428 residents
- Vermont – 623,000 residents / 51 judges = 1 judges per 12,215 residents
- Wyoming – 581,000 residents / 24 judges = 1 judge per 24,208 residents

8. *How does the court verify the identity of a person testifying over Zoom or teleconference?*

Alaska has been taking testimony and arguments via teleconference since statehood. People are sworn in and subject to perjury for lying, and in almost all cases the witnesses would be known to at least one side of the case, so substituting in someone else would be difficult. Having people appear over Zoom lessens the possibility of an imposter as they are visible. Additionally, although all remote appearances have at least some potential for foul play, this has never been an issue in any of our courts.

9. *How does the cost of the Alaska Court System compare to the cost of court systems in other states.*

As difficult as the other state-by-state comparisons, comparing court system costs by state is even more difficult. There are several reasons for this. One problem with cost comparisons is that many states have county courts and municipal courts that are partially or fully funded with county or municipal rather than state funds, and many lower level courts are fully or partially funded by fees collected from traffic offenses and other fee-generated activities. Another is that the responsibilities of the courts vary considerably from state to state. For example, in some states the work of the office of children's services is a court function, and in others probation is a part of the courts.

Looking at the Alaska court's budget shows how different allocations of costs and responsibilities between the court and the executive branch can impact a court's budget. As you know from this year's budget request, the executive branch is moving the maintenance and operations costs for court facilities owned by the state from the Department of Transportation and Public Facilities to the court system. And the executive branch is also looking to move the court visitor function from the Office of Public Advocacy to the court system. Similarly our budget went up by roughly \$5 million in FY 2011 when all costs associated with therapeutic courts were moved into the judiciary's budget. Our budget grows each time these transfers happen, even though the total cost to the state hasn't changed.

And of course costs of living vary between states, and the routine travel that our judges have historically done is almost unheard of in many other states.

For all of these reasons, I don't have a meaningful way to compare the cost of courts in Alaska to courts in other states.

IN THE SUPREME COURT OF THE STATE OF ALASKA
SPECIAL ORDER OF THE CHIEF JUSTICE
ORDER NO. 8242

Update regarding COVID-19 and Criminal Jury Trials

On February 8, 2021, Chief Justice Order No. 8235 allowed presiding judges to grant criminal jury trials upon request. Since that time, COVID-19 case counts have continued a moderate decline, and many more Alaskans have received vaccinations. Judges and court staff have developed procedures designed to reduce the risk of exposure for grand jury proceedings and other hearings. Misdemeanor trials again offer an opportunity to use the same procedures in cases that present the lowest risk of exposure. Therefore, under the authority of Supreme Court Order No. 1957,

IT IS ORDERED:

1. Misdemeanor jury trials may resume on April 19, 2021 under the direction of the presiding judge. The presiding judge may limit or suspend misdemeanor jury trials for any district or location when required for public health or to comply with local health mandates. The presiding judge should consider a suspension when the average daily case rate over 14 days as reported by the Alaska Department of Health and Social Services rises above 20-30 cases per 100,000 population or the local risk level is otherwise seriously elevated.
2. Felony jury trials remain generally suspended until at least June 1, 2021. The continuation of this suspension will be reviewed on or shortly after April 2, 2021. For all criminal cases, the period of delay from March 16, 2020 through June 30, 2021 is excluded in computing the time for trial under Alaska Criminal Rule 45(d). After June 30, the time for trial will continue to be tolled for the time necessary to permit an orderly transition and scheduling.

3. The presiding judge may allow a jury trial during a period of general suspension upon request consistent with public health. A party may request such an order by making a motion to the trial court. The assigned trial court judge shall make findings on all relevant factors and submit a recommendation to the presiding judge for decision.
4. The presiding judge should consider the following factors to determine whether to grant a jury trial during a period of suspension:
 - a. The requests of the parties and victim(s);
 - b. The age of the case;
 - c. Whether the defendant is in custody;
 - d. The classification of any charged offense(s);
 - e. The number of other required participants, including victims, custodial officers, interpreters, investigators, or other lawyers;
 - f. The facilities available for the trial or proceeding;
 - g. The prejudice suffered by any party;
 - h. The defendant's access to counsel;
 - i. Any special transportation requirements;
 - j. Any local quarantine requirements or other health mandates;
 - k. The COVID-19 case counts and risk levels for the area or location; and
 - l. Any special health considerations for the trial participants.


The presiding judge and the assigned trial judge may use these same factors to determine the priority of felony and misdemeanor cases scheduled for trial.

5. Jury trials shall be conducted in accordance with the guidance set out in the Alaska Court System Conducting Criminal and Civil Jury Trials, and Grand Jury During the COVID-19 Pandemic (<https://public.courts.alaska.gov/web/covid19/docs/conducting-trials-gj-pandemic.pdf>).
6. Some presumptive district court trial sites do not have a courtroom large enough to accommodate a misdemeanor jury trial with appropriate social distancing. Jury trials assigned to the following trial sites will be temporarily relocated unless court

administration can obtain an alternate local facility large enough to accommodate a misdemeanor jury trial:

- a. Angoon trials will be held in Sitka;
 - b. Hoonah and Yakutat trials will be held in Juneau;
 - c. Kake trials will be held in Petersburg;
 - d. Unalakleet trials will be held in Nome;
 - e. St. Paul and Sand Point trials will be held in Anchorage;
 - f. Naknek trials will be held in Dillingham;
 - g. Fort Yukon trials will be held in Fairbanks.
7. The locations listed in Administrative Bulletin 27 will not be available as additional trial sites for six-person juries (Kake and Point Hope).
8. The trial judge may expand the selection area to provide a representative cross-section of the appropriate community as provided in Administrative Rule 15(h)(3).

DATED: March 1, 2021

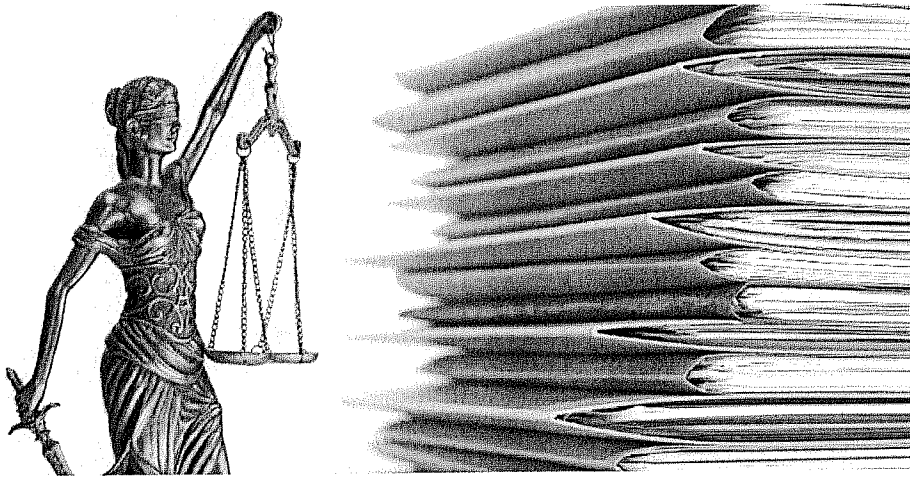


Joel H. Bolger
Chief Justice

Distribution:

Supreme Court Justices
Presiding Judges
Area Court Administrators
Administrative Director
Clerk of the Appellate Courts

New data shed light on pandemic-related backlogs



New data shed light on pandemic-related backlogs

When the coronavirus pandemic forced courts to suspend in-person hearings this year, case filings plummeted, and court leaders predicted that a flood of new filings later this year would cause backlogs that would bog down court dockets for months, if not years.

To be sure, backlogs are an issue for state courts to address, but data from 11 states – the first substantial batch that has been analyzed since the pandemic began – show that the problem this year may not be as bad as initially thought, at least not in those states.

The number of cases filed in those states were notably low in traffic, juvenile and criminal courts. Case filings have returned to normal in probate courts and are not expected to spike next year. Courts may experience formidable backlogs in domestic relations and dependency cases next year, as well as in civil cases next year and beyond.

NCSC asked all 50 states for data and received it from 11, including states with large populations (Texas, Ohio and Pennsylvania) and small (Idaho and Alaska), but the sample size is not large enough to make conclusions about the nation as a whole, said NCSC researcher Diane Robinson, who analyzed the data.

Robinson made other observations and predictions:

"Civil cases are likely to rise. To take foreclosures as an example, there are a lot of people who aren't going to get on the right side of their mortgages."

Improved economies often mean estranged, married couples can afford to separate. When the economy improves, as it may next year, expect to see a surge in divorce cases in domestic relations courts.

Individual courts in one of those 11 states may experience something different than other courts. That means some courts may experience severe backlogs in, say, juvenile courts, despite what the data show when combined across states.

The biggest surprise from the data? "Courts are seeing backlogs, but they're not huge."

Although there is positive news in this data, Robinson urges court officials to keep a close eye on their filings and dispositions so they can prepare for potential backlogs that may not seem apparent now.

Tutorial helps judges in ability-to-pay hearings