

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

May 16, 2022

2:22 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Liz Snyder, Vice Chair
Representative David Eastman

MEMBERS ABSENT

Representative Harriet Drummond
Representative Jonathan Kreiss-Tomkins
Representative Christopher Kurka
Representative Sarah Vance

COMMITTEE CALENDAR

PRESENTATION: CRIMINAL JURY TRIALS IN 2022

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

NANCY MEADE, General Counsel
Office of the Administrative Director
Alaska Court System
Juneau, Alaska

POSITION STATEMENT: Presented a spreadsheet on criminal jury trials for 2022.

JOHN SKIDMORE, Deputy Attorney General
Criminal Division (Anchorage)
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion on criminal jury trials.

ACTION NARRATIVE

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CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 2:22 p.m. Representatives Claman, Eastman, and Snyder (via teleconference) were present at the call to order.

Presentation: Criminal Jury Trials in 2022

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CHAIR CLAMAN announced that the only order of business would be a presentation on the criminal jury trials in 2022.

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NANCY MEADE, General Counsel, Office of the Administrative Director, Alaska Court System, presented the spreadsheet, titled "Comprehensive Jury Trial Data for CY 2022" [included in the committee packet]. The spreadsheet listed all the criminal jury trials conducted from January 1 through April 30, [2022], and it listed how each case was disposed of. She noted that the data had not been audited.

CHAIR CLAMAN relayed that his office had revised the document by redacting the case numbers and categorizing the dispositions.

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REPRESENTATIVE EASTMAN asked how many jury trials are currently ongoing.

MS. MEADE reported that only a handful of jury trials began in December [2021] and continued into January [2022]. She expressed uncertainty concerning the number of ongoing criminal jury trials. She added that the Alaska Court System is proceeding quickly with previous years.

REPRESENTATIVE EASTMAN asked whether the sample of cases on the spreadsheet were atypical for any reason, or whether the next period of cases would look similar.

MS. MEADE declined to offer a speculative response. She deferred to the Department of Law.

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CHAIR CLAMAN reminded the committee that the spreadsheet conveyed raw data that had not been audited.

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REPRESENTATIVE EASTMAN asked whether the number of cases is expected to change in the future.

MS. MEADE responded that cases are being scheduled and heard on a typical basis. She predicted that the current pace would remain going forward, reiterating that it is on track with "what it used to be."

REPRESENTATIVE EASTMAN questioned the meaning of "what it used to be" and whether that phrase referred to the backlog.

MS. MEADE expressed the opinion that the four-month data from 2022 would be in the same "ballpark" as other random four-month samples from 2016, 2018, or 2019, in terms of the number of jury trials.

CHAIR CLAMAN invited Mr. Skidmore to present a high-level overview of the data and offer insight into the level of acquittals, which he deemed higher than normal.

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JOHN SKIDMORE, Deputy Attorney General, Criminal Division, Department of Law (DOL), informed the committee that, regarding the disposition of criminal jury trials in 2022, he found inconsistencies between the data produced by the Alaska Court System and data pulled by DOL. He reasoned that DOL may have captured cases where the sentencing had yet to occur; thus, these cases had not gone to final disposition.

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CHAIR CLAMAN offered further context. He explained that sentencing for a misdemeanor case occurred immediately after the verdict, whereas sentencing for a felony case may not be imposed instantaneously.

MR. SKIDMORE confirmed that Chair Claman's summary was accurate. He explained that criminal rules required a pre-sentencing report to be prepared for felony cases, which takes approximately 90 days to occur. Another aspect of the discrepancies, he said, was that the reports were run on

different dates. Additionally, DOL's case management system only analyzes state cases, whereas the court system's report may have captured cases prosecuted by the municipal attorney in Anchorage or Juneau. He reported that there was an increase in the number of cases resulting in a "not guilty" or a dismissal for several reasons. Firstly, the pandemic resulted in a higher number of pending cases, which increased the difficulty of case-load management for judges, prosecutors, and defense attorneys, making it harder to master the facts and applicable law for each case. He suspected that the backlog was further compounded by issues of recruitment and retention. Secondly, the pandemic resulted in a delay in jury trials, which created challenges for keeping practitioners sharp in their ability to walk through evidentiary objections and move through the trial efficiently. He added this is also in light that 50 percent of the department is new. He discussed further challenges with recruitment and retention, such as learning trial skills and mentoring new staff on the procedural aspects. He stated that the new variables implemented for the COVID-19 pandemic also created challenges.

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MR. SKIDMORE touched on further delays caused by participants contracting COVID-19 during trials. He concluded by discussing public participation and explaining that, in response to the pandemic, jury trials were made available online to the public. He noted that the online broadcasts created unanticipated challenges, and he provided several examples. He agreed with Representative Claman that the number of acquittals was higher; however, he expressed the belief that the number would decrease with time, as the recruitment and retention issues are addressed by the department.

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CHAIR CLAMAN asked whether the acquittal rate was substantially higher than normal.

MR. SKIDMORE responded that the rate was substantially higher.

CHAIR CLAMAN presumed that over time, the pandemic's impact on acquittals would diminish, leaving recruitment and retention as the primary issues.

MR. SKIDMORE agreed.

CHAIR CLAMAN recalled that an Anchorage prosecutor had testified in a prior hearing to having 9 vacancies out of 38 positions. He sought to confirm that the time for mentorship was substantially undermined by the vacancies.

MR. SKIDMORE agreed and emphasized the high rate of turnover. He added that the new hires are almost all inexperienced.

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REPRESENTATIVE EASTMAN questioned the reason for the high number of cases in the timeframe from January to March.

MR. SKIDMORE responded that it is difficult to comment on these statistics. He agreed with Ms. Meade that in January the court system was just getting back jury trials; however, he disagreed with Ms. Meade as to the numbers being the same as pre-pandemic levels. Nonetheless, he expected the numbers to increase substantially in the future.

REPRESENTATIVE EASTMAN questioned the fewer cases in April.

MR. SKIDMORE expressed uncertainty. He speculated that jury trials without final dispositions could have been excluded from the data.

REPRESENTATIVE EASTMAN questioned the extent that recruitment and retention was a contributing factor.

MR. SKIDMORE expressed difficulty in providing an accurate assessment percentagewise.

REPRESENTATIVE EASTMAN asked how many vacancies were created by retirees.

MR. SKIDMORE reported that the majority of people who left the department were not retiring but chose to take employment elsewhere.

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CHAIR CLAMAN questioned the impact of the high acquittal rate on plea bargains.

MR. SKIDMORE shared his personal experience. He anecdotally reported that after losing three cases in a row, it was more difficult to persuade the defense counsel to accept an extended

offer in plea negotiations. The opposite was true after he won six or twelve trials in a row, he observed. He said it is a generally accepted notion that the more successful an attorney, the easier it is to resolve cases.

CHAIR CLAMAN concurred. He commented on the general awareness in the statewide legal communities of how cases were "rolling out" in trial.

MR. SKIDMORE pointed out that the majority of prosecutors are housed in DOL; consequently, the office chiefs communicated on a monthly basis. Similarly, the majority of the defense community worked for either the Public Defender Agency or the Office of Public Advocacy.

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CHAIR CLAMAN asked whether there had been efforts to assist with the plea-bargaining process in connection with the pandemic.

MR. SKIDMORE explained the concept of "settlement conferences" in civil cases. In Alaska, however, case law dictates that the Alaska Court System is not supposed to engage in settlement conferences for criminal cases. Nevertheless, in an effort to resolve more cases during the pandemic, both the defense and the prosecution engaged in a series of settlement conferences, which were found to be very helpful.

CHAIR CLAMAN asked whether the acquittal rate would factor into the effectiveness of settlement conferences in criminal matters.

MR. SKIDMORE expressed uncertainty. He expounded on the general procedure of a settlement conference.

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CHAIR CLAMAN reiterated his concern about the vacancy rate, and its direct impact on public safety. He asked Ms. Meade to share her perspective on the settlement conferences.

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MS. MEADE confirmed that the program is ongoing in Anchorage. She explained that the conferences were allowed for criminal cases in this instance because all parties agreed that the effort would be appropriate and helpful. She added that in addition to settling cases, the purpose was to provide

additional training, guidance, and experience for newer attorneys.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:01 p.m.