

OVERVIEW

ALASKA

PUBLIC

DEFEND:

1/10/01

May 15, 1998

Members of the Legislative Budget and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
CASE MANAGEMENT TIME STUDY
AND PERFORMANCE REVIEW

May 15, 1998

Audit Control Number

02-4530-00

The objectives of this audit were to determine: (1) if the Alaska Public Defender Agency (PDA) funding and related expenditures allow for efficient and effective operations in accordance with laws, regulations, and administrative policies and procedures; and (2) if PDA management and operations are efficient and effective in providing for adequate representation of clients in accordance with applicable laws, regulations, and court rules. The latter objective included an attorney time study to determine the adequacy and reasonableness of the attorney staffing level.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report. Further, audit results are in the Report Conclusions, Findings and Recommendations, and Prior Audit Recommendations sections of this report.

Pat Davidson, CPA
Legislative Auditor

ORGANIZATION AND FUNCTION

Created in 1969 by AS 18.85, the Public Defender Agency (PDA) was initially organized under the Office of the Governor. In 1980 the governor transferred PDA to the Department of Administration.[10] The governor appoints the public defender to head the agency from nominations made by the Alaska Judicial Council. The appointment is subject to confirmation by the legislature. The public defender serves a four-year term and may serve additional terms with reappointment by the governor and legislative confirmation.

By statute[11] the Alaska Court System (ACS) is responsible for determining eligibility for public defense services. After eligibility criteria have been met, an attorney is appointed either from PDA or, for some cases, from the Office of Public Advocacy (OPA).[12] Since ACS determines eligibility,[13] neither PDA nor OPA have control over the number of individuals each agency will be appointed to defend.

PDA has 13 offices statewide: Juneau, Ketchikan, Sitka, Barrow, Kotzebue, Nome, Anchorage, Dillingham, Kenai, Kodiak, Palmer, Bethel and Fairbanks. The number and classification of authorized positions for FY 97 are shown in Exhibit 4. It should be noted however, that given the vacancy and turnover factor typically assessed against each agency's operating budget, the full-time equivalent attorney positions available to PDA in FY 97 was 61.5 rather than the 66 authorized.

In FY 97, PDA was appointed 18,463 new cases, while OPA was appointed 2,544 cases. State expenditures for these public defense services totaled \$13,161,000: \$8,891,000 for PDA and \$4,270,000 for OPA representation.

State public defense costs are partially reimbursed by convicted defendants.[14] ACS is responsible for including, as part of the sentencing of a convicted defendant, the entry of a judgment and forwarding it to the Department of Law (DOLaw) for collection. Since FY 94, DOLaw has processed 31,563 judgements totaling \$7.8 million, of which \$2.5 million had been collected. Exhibit 5 shows the allocation of those collections.

¹⁰ See Executive Order No. 42.

¹¹ See AS 18.85.120.

¹² In some instances, there may be conflict of interest between the individual needing representation and PDA. For example, two individuals may be involved and charged with the same crime. It may be in the interests of the "less culpable" one to testify against his collaborator. In such instances, the courts may appoint a defense attorney from the Office of Public Advocacy for one of the individuals and a PDA attorney for the other.

¹³ ACS only has the authority to limit appointments to those defendants found under Criminal Rule 39 to be indigent.

¹⁴ See AS 18.85.120 and *Alaska Rules of Court*, Criminal Rule 39.

Exhibit 1

**Public Defender Agency
Open Caseload Inventory as of November 1, 1996**

Case Classifications	Totals	% of Cases
Felonies	1124	18.8%
Misdemeanors	2340	39.1%
Probation Revocations:		
Felonies	379	6.3%
Misdemeanors	571	9.6%
Sentence Appeals:		
Felonies	15	.2%
Misdemeanors	1	.0%
Post-Conviction Relief	47	1.0%
Involuntary Commitments	19	.3%
Parole Hearings	40	.7%
Fugitives	2	.0%
Merit Appeals:		
Felonies	121	2.0%
Misdemeanors	26	.4%
Other	<u>2</u>	<u>.0%</u>
Subtotal: Adult Proceedings	<u>4687</u>	<u>78.4%</u>
Juvenile Delinquencies	287	4.8%
JD Probation Revocations	78	1.3%
Merit Appeals:		
Juvenile Delinquencies	1	.0%
Child-In-Need of Aid (CINA)	4	.1%
Child-In-Need of Aid	<u>921</u>	<u>15.4%</u>
Subtotal: Children Proceedings	<u>1291</u>	<u>21.6%</u>
Total All Cases	<u>5978</u>	<u>100.0%</u>

Exhibit 3
Final Case Time Estimates

Case Classifications/Types	Average Hours
Homicides	176.12
Felonies	
Felony Drug	49.00
Felony Sexual Abuse	44.60
Felony Sexual Assault	67.56
Felony Violent	78.71
Felony DWI	29.09
Felony Property	34.73
Felony Other	37.49
Weighted Average of Felonies	48.92
Felony Post-Conviction Relief Proceedings	48.04
Felony PTR	15.79
Misdemeanors:	
Misdemeanor Drug	8.06
Misdemeanor Sexual Assault	31.61
Misdemeanor Violent	9.93
Misdemeanor DWI	9.94
Misdemeanor Property	4.39
Misdemeanor Other	8.96
Weighted Average of Misdemeanors	8.98
Misdemeanor PTR	2.36
Felony Sentence Appeal	25.39
Misdemeanor Sentence Appeal	10.23
Felony Merit Appeal	114.34
Misdemeanor Merit Appeal	29.98
Other Merit Appeals:	
Post-Conviction Merit Appeal	188.85
Juvenile Delinquency Merit Appeal	120.59
Child-in-Need of Aid Merit Appeal	163.79
Weighted Average Other Merit Appeals	160.77
Juvenile Delinquency	21.30
Juvenile Delinquency PTR	26.14
Child-In-Need of Aid	38.28
Parole Hearing	6.29
Involuntary Mental Health Commitments	2.86

Exhibit 7
Legislation Passed Affecting PDA Caseload
For the Years 1992 through 1997

- Expansion and elimination of statute of limitations for certain crimes
- Mandatory 99-year sentences for certain crimes
- Expansion of State's right to appeal in criminal cases
- Stalking law
- Sex offender registration law
- Conspiracy criminal law
- Mandatory waiver of certain juveniles into adult court
- Felony driving while intoxicated
- Limitations on suspended imposition of sentencing
- Domestic violence legislation (including mandatory arrests)
- Increased penalties for an assault on a police officer
- Conversion of joyriding from misdemeanor to felony auto theft
- "Three Strikes" felony sentencing provisions
- Knowingly interfering with a report of domestic violence
- Discharging firearms at or towards a building or dwelling felony crime
- Expansion of automatic waiver of juveniles into adult court
- Truth in Sentencing Act of 1997
- Mandatory minimum jail sentences for domestic violence crime
- Governor's Omnibus Child Protection Bill
- Dual sentencing for serious juvenile offenders
- Fleeing or evading a police officer misdemeanor

changed to a felony

- Changes in sex offender registration law

Exhibit 8

Additional Positions Needed to Handle Caseload

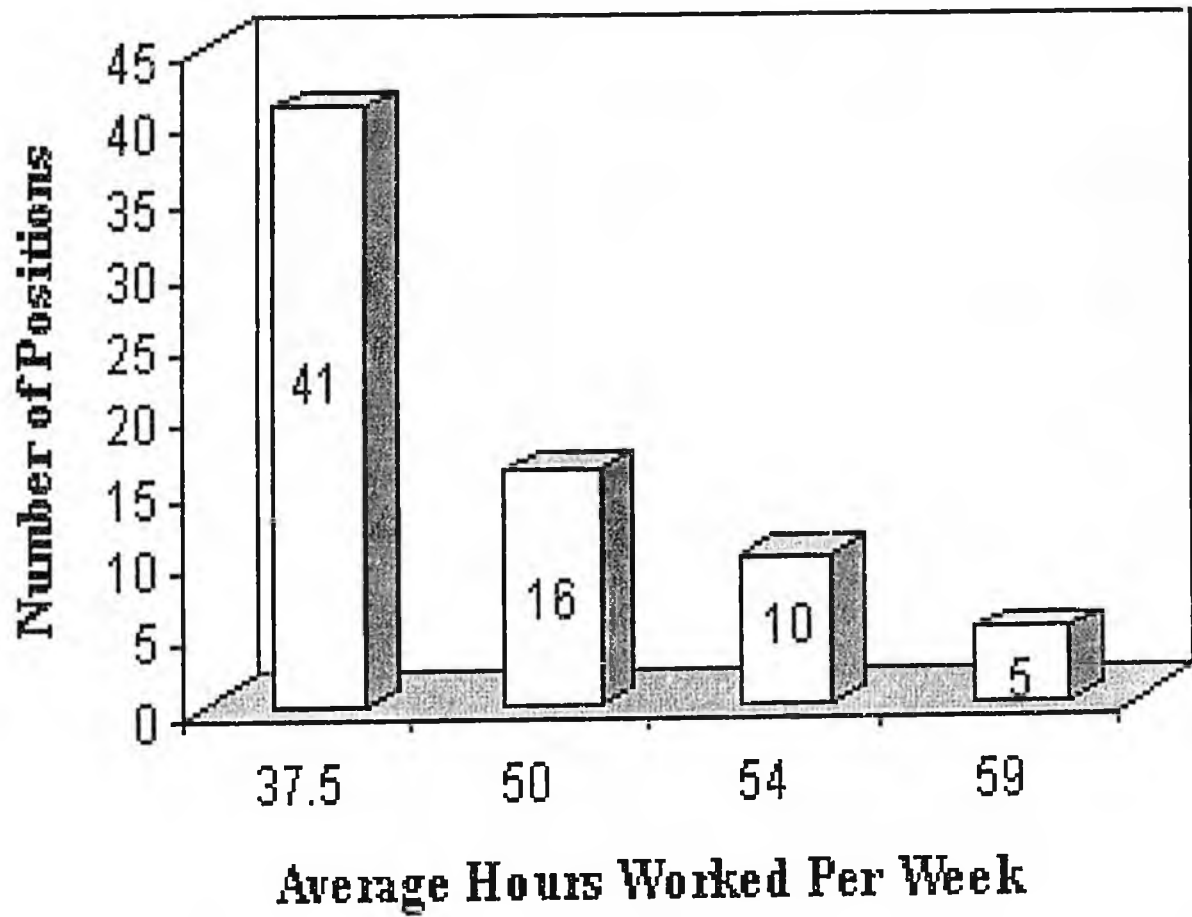
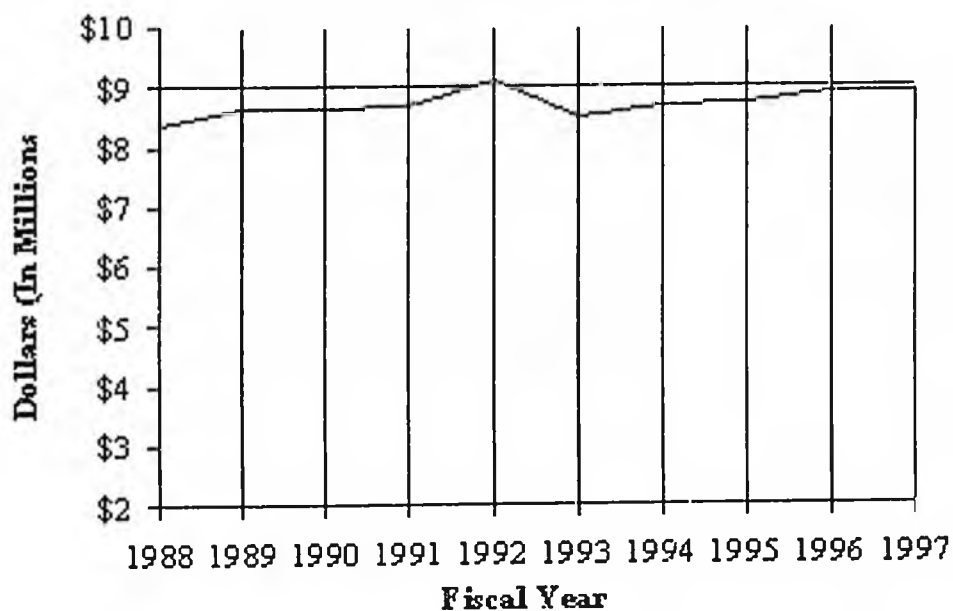


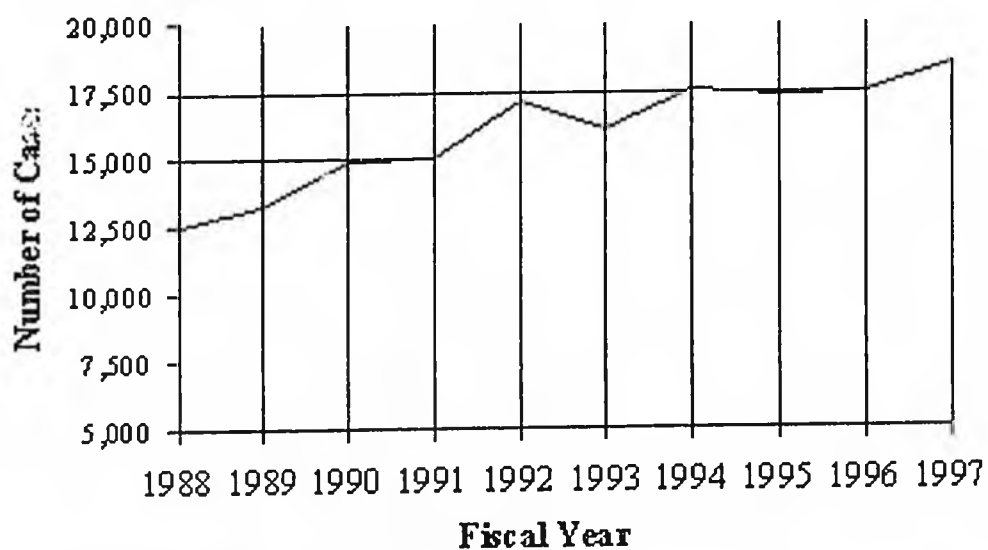
Exhibit 12
Summary Byrne Grant Recipients
FY 94 through FY 98

Recipient/Agency	Amount	Percent
Local Law Enforcement	\$1,170,214	11.5%
Alaska Court System	395,088	3.9%
Department of Corrections	616,406	6.0%
Department of Law	1,783,248	17.5%
Department of Public Safety	<u>6,218,912</u>	<u>61.1%</u>
Total Byrne Grant Funding	<u>\$10,183,868</u>	<u>100.0%</u>

Exhibit 6
PDA Expenditures Increase 6.6%
(Stated in FY 99 Dollars)



PDA Caseload Increases 47%



PUBLIC DEFENDER AGENCY CASELOAD CHANGE
 FY 88 - 00

OFFICE	FY 88	FY00	CHANGE IN CASELOAD
Anchorage	2858	5242	45%
Barrow	278	439	37%
Bethel	1190	1699	30%
Dillingham	279	427	35%
Fairbanks	2301	2944	22%
Juneau	785	1280	39%
Kenai	1198	1346	11%
Ketchikan	696	993	30%
Kodiak	597	454	-31%
Kotzebue	552	587	6%
Nome	474	1004	53%
Palmer	935	2488	62%
Sitka	381	383	1%

ALASKA PUBLIC DEFENDER AGENCY

FY 00 NEW CASES FILED

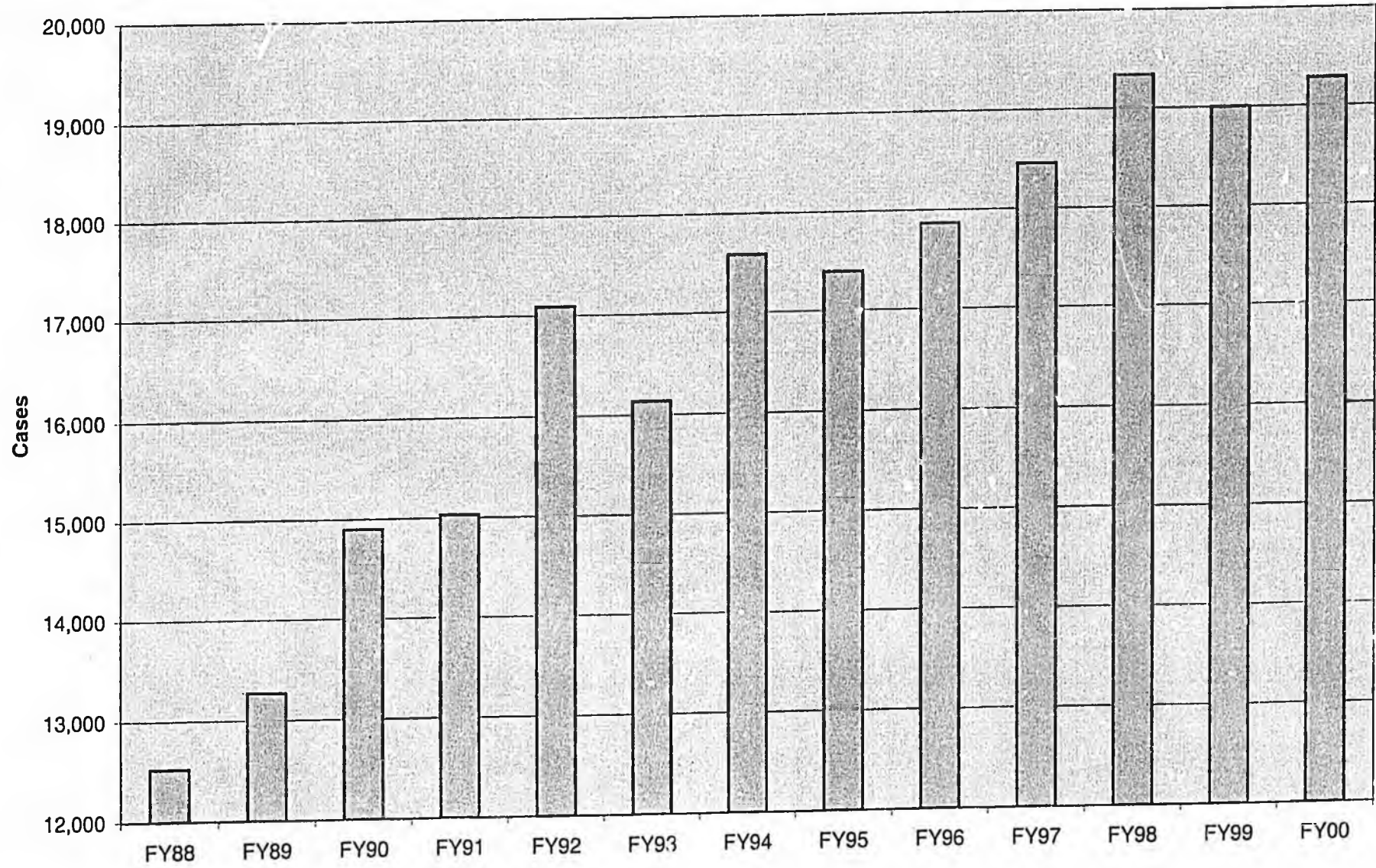
LOCATION	FELONY	MISDEMEANOR		PROBATION REVOCATION			JUVENILE	CINA	SANITY	SENTENCE APPEAL		MERIT APPEAL			PCR'S	PAROLE BOARD	SPECIAL APPT.	TOTAL
		City	State	Fel	Mis	Juv				Fel	Mis	Fel	Mis	Other				
Anchorage	1347		967	624	257	96	267	575	682	13		54	5	5	65	255	30	5242
Barrow	47		278	49	9	2	6	34	10	2	1			1				439
Bethel	313		982	105	163	5	62	57			3			3	6			1699
Dillingham	43		291	38	23	6	7	16						3				427
Fairbanks	335		1434	324	456	20	61	63	140	3	3	11	4	4	48	32	6	2944
Juneau	136		568	96	289		57	48	55	5		3	5		2	16		1280
Kenai	180		862	62	131	2	45	50		1		4	4		1	4		1346
Ketchikan	156		466	53	115	11	62	18	61	1		1	1		33	11	1	993
Kodiak	68		219	32	84	10	21	8	7	1			2		1	1		454
Kotzebue	99		417	30	23	1	8	8										587
Nome	108		518	53	193	16	23	16	9	1	7	1	1		55	3		1004
Palmer	313		1049	110	695	27	49	51		2		5	1		182	2	2	2488
Sitka	43	7	196	23	53	2	10	9	30	1		2	2		3		2	383
TOTAL	3191	7	8247	1599	2491	198	678	953	994	31	14	81	25	10	396	330	41	19286

ALASKA PUBLIC DEFENDER AGENCY

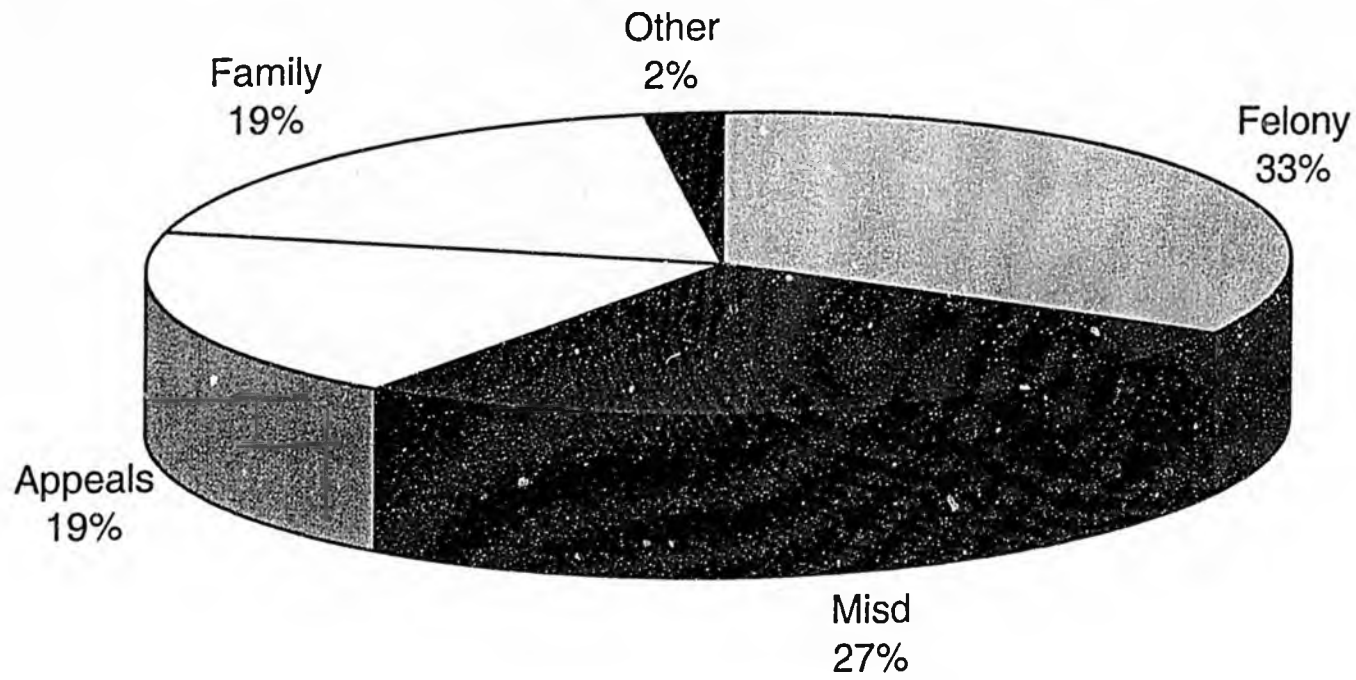
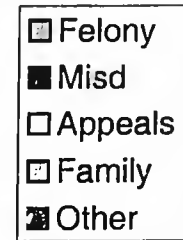
FY 88 NEW CASES FILED

LOCATION	FELONY	MISDEMEANOR		PROBATION REVOCATION			JUVENILE	CINA	SANITY	APPEALS		MERIT APPEAL			PCR'S	PAROLE BOARD	SPECIAL APPT.	TOTAL
		City	State	Fel	Mis	Juv				Fel	Mis	Fel	Mis	Other				
Anchorage	669		946	272	96		139	183	278	82	6				82	31	74	2858
Barrow	34	2	151	15	8		8	24	4	2	5				20		5	278
Bethel	150		661	88	73		31	103	1	12	17				31	3	20	1190
Dillingham	19		197		63													279
Fairbanks	267		1318	116	284		60	65	72	25	32				49	7	6	2301
Juneau	126		441	41	4		43	57	31	7	1				22		12	785
Kenai	93		891	39	71		37	20	5	15	13				13		1	1198
Ketchikan	74	35	461	12	22		20	40	18	5					6		3	696
Kodiak	50		389	28	29		9	2	12	1					9		68	597
Kotzebue	71		433	9	13		10	12		1					3			552
Nome	91		261	17	17		18	22	18	5	2				22		1	474
Palmer	130		653	22	45		24	30		7	5				19			935
Sitka	47	13	204	13	54		16	7	9	9	1				8			381
																		0
																		0
																		0
TOTAL	1821	50	7006	672	779	0	415	565	448	171	82	0	0	0	284	41	190	12524

Public Defender Agency Caseload

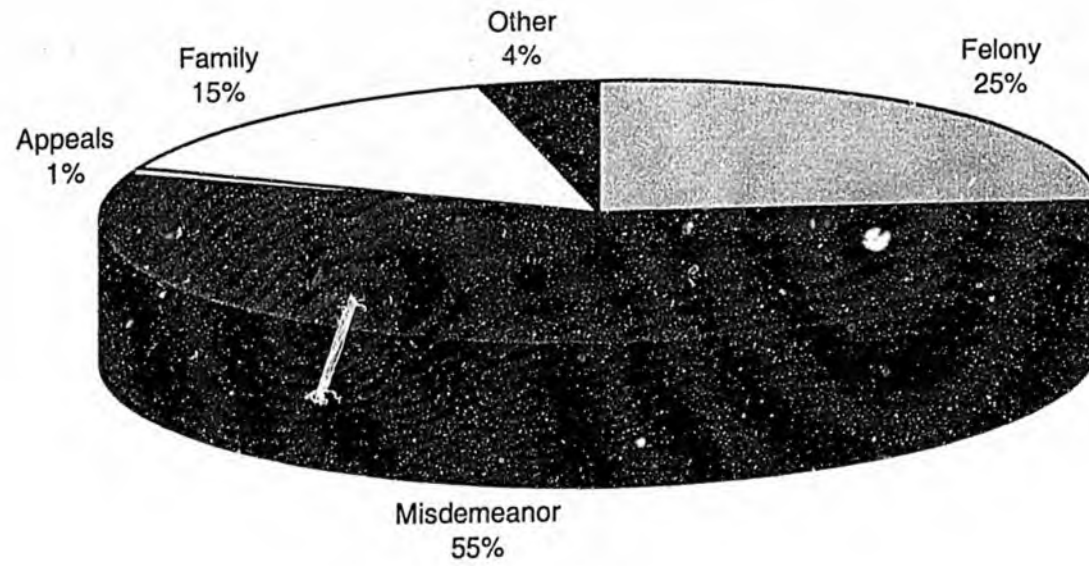


FY 00 Public Defender Workload by Case Type



FY 00 Public Defender Caseload by Type

- Felony
- Misdemeanor
- Appeals
- Family
- Other



The Alaska Public Defender Agency



BARROW
Kristy Smith, Stacy Hoagland

KOTZEBUE
Shannon Ewing, Jennifer Fiess



NOME
Chelle Hall, Kirsten Bey,
Grace Cross, Drew Stave



FAIRBANKS
Rob Lowrey, Traev Shikles, Carolyn Kelly,
Marcia Hollar, Jeff Wildridge, Paul
Canarsky, Bill ...rs, Michelle McComb,
Beth Spalding, Jim Cannon



BETHEL
Adam Gurewitz, Kent Mitchell, Bobbi Fuller,
Marv Hamilton, Gary Soberay, John Cashion



ANCHORAGE
Lee Jones, Julia Moudy, Linda Wilson, Mike
Dieni, Dan Lowery, Doug & Erin Moody,
Quin Steiner, Dave Reineke, Craig Howard,
Kathy Murphy, Ben Summit, Nancy Groszck,
Cynthia Rabe, Jeanne Lavonne, Barb Brink,
Paul Malin, Scott Purden, Kristy Gibbs,
Jeff Mahlen, John Parrish, Marjorie Allard,
Judy Scherger, Blair McCune, Teresa Cobb,
Lisa Wilson, Glenda Kerry, Margi Mock,
Sharon Barr, Liz Brennan, Maria Bahr,
Guy Kemer, Linda Beecher



DILLINGHAM
Steve Wells, Terry Rogers



PALMER
Greg Heath, Bruce Johnson, George Davenport,
Danna White, Carmen Spiropolous,
Rachel Leavitt and Lev, Laurel Bennett



KENAI
Sam McQuerry, Margaret Moran, Diane Foster,
Joe Montague, Darin Goff, Abigail Sheldon



JUNEAU
Kirsten Swanson, David Seid, Susan Phillips
Rob Meachum, Monte Brice



SITKA
Galen Paine

KODIAK
Jake Ketscher, Allan Thielen



KETCHIKAN
Barb Kissner, Sue Crocker,
Ana Guevara, Sharon Zink



ALASKA PUBLIC DEFENDER AGENCY

Sharing in our clients' successes

Elizabeth Plummer. Elizabeth Plummer was born and raised in Ekwok. She went to school in Mount Edgecumbe, where she had her first drink and liked it. She moved back to the village and continued drinking. In 1987, she was charged with murder in the first degree.

Elizabeth's story: We moved to Anchorage. My thinking was, you know, Anchorage is a big city. Nobody will know I was drinking. It was easy access to alcohol. That's when I started drinking on a daily basis. I met my husband, moved in with him, moved back to the village and continued drinking. It was a really, really abusive relationship. My husband was very abusive. January of '87, I woke up after a night of drinking. My husband was dead. I was charged with first-degree murder. I don't really remember what happened. I know I fought to leave the house but he wouldn't let me go. At trial I was convicted of second-degree murder and sentenced to twenty years. I spent two years at the Sixth Avenue Jail and then went to Hiland Mountain Correctional Center. That's where I really started my program. They offered a lot of things and I joined everything I can. I joined the Inside-Out program. I was going out on passes to talk to schools about my alcoholism and what kids could do to not drink. I told them how I started drinking and how alcohol made me feel. I told them about my crime and that jail is not a place to be, but I'm there. I attended AA meetings and told them how I was changed, even though I was incarcerated. I continued doing my sentence but I was still real hopeful. My public defender came to see me and said, 'We're gonna take it before the judge for a sentence modification.' So I went in there and I wrote a letter to the judge and I read that and I was real surprised when I got my sentence modification with twenty years, ten suspended, five years probation, released immediately. I was shocked. I found a place in Anchorage, got a job right away working at the Holiday Inn for a while, I was paying my bills, got my driver's license, starting to feel like a normal person. I met a real nice guy, you know, we started dating. This is a picture of my husband Greg and myself. We opened



Elizabeth Plummer



Elizabeth and Greg

up a Mr. Electric franchise in 1997, I believe. I worked in the office. My husband worked in the Mr. Electric van. Now, today we got three vans. I attend AA meetings. I was in jail seven or eight years. I've been sober since 1989 and you know, it's gonna be for the rest of my life. If I didn't have a public defender I'd still be incarcerated, probably going up for parole. I had a wonderful person working for me and they didn't give up hope - I didn't give up hope. My frame of mind was changing even while I was locked up. I knew one day I'd walk out of the doors and I did. I thank my lawyer very, very much, and the judge for giving me a second chance. It's a wonderful chance.

10 years in jail: \$408,398

5 years in jail: \$204,199

A second chance at life: priceless

Brian Petrilla. At seventeen years of age, Brian Petrilla was charged with robbery in the first degree. He was raised in a classic nuclear family, but had a teenager's rebellious spirit. He had been trying to live on his own since the age of sixteen. He found he could not really support himself working minimum wage jobs with no education. He started hanging out with the wrong crowd and decided to rob a bank and get a lot of money to change his life. He also suspected it could end his life. One way or the other it was going to be different. Not surprisingly, he was immediately arrested. Because Brian was seventeen at the time, the state wanted to treat him as an adult, and send him to adult court and adult jail.

Brian's story: I was assigned a public defender who really took an interest in my case. She researched it, looked into my history, my school records, my family, the kind of friends I had before the kind of friends I had at the time, and she tried to convince the court that I didn't have a history of crime or incidents with the law and that I could be rehabilitated in the juvenile system instead of waived to adult court and go off to adult prison. My parents wouldn't have had the funds or even wanted to hire a lawyer for me at that point. I definitely didn't have the money for a lawyer, so it was a good thing for me. If I didn't have a public defender, I'm pretty sure I'd still be in adult jail or just about to get out of adult jail. It was a pretty serious crime and had a lot of years attached to it. At McLaughlin Youth Facility, where I was sent instead, they really make you focus on yourself and try and teach you some things about yourself, along with school and education. So it was two years of answering a lot of questions and looking myself in the face every day and questioning my behaviors instead of just riding out a sentence. It was a very big learning experience.



Brian Petrilla



Brian and family

The judge decided to give me a chance. He said, 'While no system, juvenile or adult, can infuse intestinal fortitude or backbone into those participating in the program, time and the best efforts of the Department of Health and Social Services will in all likelihood result in the rehabilitation of Brian Dean Petrilla by June 19, 1996.' He was right. I've turned my life around. I got my degree from UAA. I'm married and have a child. I'm really close to my wife's family and my family. My daughter Mercedes, she's two years old, she goes to the same day care as my public defender's child. I'm working for the state in public assistance. I'm working part time for a youth center for delinquent girls, Booth Memorial Home, and I also volunteer time for McLaughlin Youth Center for the kids that are transitioning into the community through Big Brothers and Big Sisters. Right now I'm just paying off my student loans. My life is moving in exactly the right direction.

Incarceration in adult jail for 7 years: \$285,878

Incarceration at MYC for 2 years: \$113,150

Getting your family back: priceless

ALASKA PUBLIC DEFENDER AGENCY

Sharing in our clients' successes

Mike Johnson. Mike was well known to the public as a University of Alaska, Anchorage, star basketball player. He was an all-American and had recently had his jersey retired. Mike came into the public eye for another reason, however. He was charged with sexual assault in the first degree, a crime that could have gotten him thirty years in jail.



Mike's story: I was in a custody battle for over two years before I was accused of sexual assault by the kids' mother. Throughout our custody issue, even though it was bad at times, me and the kids' mother were still involved sexually. On the day I received custody of the children, I called her and told her I had received custody and she didn't believe me. She was very upset. She said, 'I'm gonna tell 'em you raped me.' First of all I thought she was joking. I mean, I just didn't take it seriously. I didn't think she was capable of that. The police were called and I went to jail. I was afraid, you know? I mean, I was afraid. It was like something you never expected. You just knew you were headed somewhere bad. It was humiliating. The law says innocent until proven guilty. That's what our society lives by when it comes to the law, innocent until proven guilty. I don't believe that any more, you know? At the time I did believe it, but now I just don't believe it any more. I just think it's the other way around, guilty until proven innocent. Before I was charged with sexual assault, I lied under oath about having sex with my kids' mother. I was afraid at the time that my wife would find out. It

was selfish. I was afraid she was gonna leave me. I went back and told my custody lawyer. He sent a motion to the judge to straighten that out, but I felt no one was going to believe me now. I think at a certain point maybe my public defender didn't believe me right away, but as the case took off, I think she really started to believe me. I knew, and I believed that she believed I was telling the truth and that right there alone made the difference. She got all the facts together. This lady was working non stop on my case. What the Public Defender Agency did was that they investigated the case. The police just charged me with it. I don't feel like it was thoroughly investigated by them. You know, they told me they wanted a statement from me, they wanted to hear both sides, but I didn't feel like they wanted to hear both sides. I felt like they were after me. They arrested me and that was that. The public defender investigator got out, did some street work for me, got some names, witnesses who were very important, people that were tied to the case. They found people to come forward on my behalf to support me. It took the case almost a year. For all that time it was like a pie with all these missing pieces. I never thought we would get all the pieces together and have a whole pie and that's where the Agency came together. They brought all those pieces together and made the whole pie. I just felt like they were there with me. We were a team. We were in this to the end. That's how I felt about the people that were working with me at the Public Defender Agency. Without the proper representation for people like me, it's like feeding fish to an alligator. We just don't have a chance. Finally, the state dropped the sexual assault charges. I told my lawyer if perjury was offered to me, I was gonna plead to it. I got a suspended sentence so in two years, if I do my 250 hours of community service, it could be off my record. The punishment I got is for something I did and I can accept that. I see now how people can be convicted of crimes they didn't do. I had three jobs at the time I was arrested. I was working at FedEx as a handler, at UAA as an adjunct faculty and I was a part-time instructor there, and I was working at the Laurel Street Shelter as a counselor there. I am currently working at the Anchorage Daily News. I like my job but I'd like something a bit more challenging. I hate to say this brought us closer together as a family, but it did. We were close but this brought us together.

8 years in jail: \$326,718
2 years on probation: \$9,435
A fair result: priceless

Dorothy Kawaglia. Between 1993 and 1998, Dorothy was charged with misdemeanor assaults, disorderly conduct, criminal mischief, and DWI.

Dorothy's story: I drank from the time I got up til the time I went to bed. I mean, I was a full-blown alcoholic. But, I didn't think so because I thought that was normal for me. I thought that was the normal thing to do. You know, my kids were taken away from me for a while. It got to the point where I wanted to go to jail because I didn't drink. I felt safe in there. And you know, the assault charges, I don't even remember them. We had gone to court and were sitting there and, you know, at that point I didn't care. But my public defender said something, you know, and I still remember it word for word. She told the judge that 'I don't see Ms. Kawaglia as a criminal. I see that she has an alcohol problem.' And that just blew me away. And so, because of what she said, the judge ordered me to do two months in-patient treatment. You know, I don't know, she just wanted me to get better I guess. For the very first time here was somebody telling me that I had an alcohol problem. You know, at first I was like, how dare she? But then it's like, you know, that really sunk in, and how very true it was. My public defender has always been so sweet to me, you know, even though I'd call her and I'd say, well, I'm back in jail, you know, or I'd call her on the phone and I'd be drunk. She wouldn't get on me. I mean, she treated me like I was a human, you know? She was very caring. I've got three years sobriety now and ever since my first anniversary I always call her and tell her.



Because if it wasn't for her for saying that and defending me the way that she did in the courthouse, I don't know where I'd be. After I completed residential treatment at Nugen's Ranch, they hired me as a counselor trainee. I've been there almost a year. I get to work with clients who are, you know, like I was, and I love it. I remember feeling that hopelessness. My kids are doing really well now and I've got a great relationship with them. I talk to them. They know about drugs and alcohol, I mean, they see me. I stay sober because I love them. I don't know, I just love it. I love my life.

One day in jail: \$111
60 days in jail: \$6713
A sober life: priceless