

**ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672**

**10270 HOUSE JUDICIARY**

### On Criminal Justice Information Systems:

- Support improvement of criminal justice information systems through funding for training, quality assurance, system maintenance and future system improvements.

These recommendations, many of which already were being discussed in committee and full Commission meetings, form the basis of a number of the Commission's final recommendations set forth at the conclusion of this report.

### D. CJAC and Committee Accomplishments

One of the primary purposes of the Criminal Justice Assessment Commission was to provide a collaborative forum within which members could work to resolve immediate problems, cooperate in long-term planning, and work together on projects that would benefit the interests of all of the agencies and constituents involved. Since its inception in the summer of 1997, the Commission has:

- 1) Cooperated with the NIC to create a preliminary assessment of Alaska's criminal justice system that contains current data about prison populations, probation and parole revocations, pretrial issues and criminal justice information systems. The report serves as a source of information for the state, local jurisdictions and the public about issues in the criminal justice system, and proposed improvements;<sup>15</sup>
- 2) Created long-range recommendations for criminal justice system interaction and cooperation (*see* Chapter IV); and
- 3) Resolved a series of inter-agency issues by providing an opportunity for criminal justice professionals and others to meet regularly, discuss problems and solutions, and make changes in the operations and policies of criminal justice agencies throughout the state.

Specific accomplishments include:

- **Statewide Standardization of Probation Revocation Procedures** - The Probation and Parole Committee suggested that agencies agree to standardize probation revocation filing procedures statewide. The Commission approved the project at the September 1998 conference, and DOC and other agencies implemented it on a six-month trial basis in the spring of 1999. Based on DOC reports that the project has

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<sup>15</sup> *Id.*

been successful in reducing workloads for probation officers, prosecutors and other agencies, the Commission has recommended that DOC permanently adopt these standardized procedures. See Recommendation E-1.

- **Probation Revocation Hearings** - Sentencing Committee members identified another area in which the practices for petitions to revoke probation varied statewide. Many probationers are arrested for probation violations in a court location different from the one in which they were originally sentenced. Often, these probationers agree to have the probation revocation proceeding conducted where the violation or arrest occurred. Some probationers, however, insist that the entire probation revocation hearing be held in front of the original sentencing judge. Practitioners do not interpret the existing statutes and case law uniformly, resulting in confusion about the proper hearing location. As a result of committee discussions, a number of judges and practitioners agreed to a uniform practice for establishing the proper hearing location. In Recommendation F-4, the Commission has proposed that the legislature clarify this issue through a statutory amendment.
- **Electronic monitoring** - Electronic monitoring, used by the Division of Family and Youth Services to monitor juvenile offenders, was studied by both the Pretrial Practices and Procedures Committee and the Sentencing Committee as a means to free up prison beds. Based on the committees' joint recommendation, the Commission supported the use of electronic monitoring for certain eligible prisoners. In 1997, the legislature passed HB 272 permitting the Department of Corrections to use electronic monitoring for sentenced offenders. The committees continued to study the use of electronic monitoring as a pre-sentencing release tool and, in Recommendation D-2, the Commission has recommended legislation to authorize electronic monitoring for pretrial defendants.
- **The Coordinated Resources Project** - Due largely to the efforts of the Decriminalizing the Mentally Ill Committee, the Anchorage District Court initiated the Court Coordinated Resources Project (CRP) in July 1998. This specialty mental health court, which is described in greater detail in Recommendation C-1, conducts bail reviews, changes of pleas, and sentencings in cases involving mentally disabled offenders. In FY99, approximately 165 individuals were sentenced through the CRP mental health court.
- **Jail Alternative Services - Pilot Diversion Program** - The Jail Alternatives Services Project (JAS), an Anchorage-based pilot project funded by the Mental

Health Trust Authority, provides specialized sentencing, diversion, and monitoring for up to 40 eligible mentally disabled misdemeanants at any given time. Data from the JAS FY99 report to the Mental Health Trust Authority showed that JAS participation significantly reduced time spent in custody and it reduced the average length of API stays by about one-half. This project is explained in greater detail in Recommendation C-2.

- **The Decriminalizing Mentally Ill Committee's Partnering Efforts** - The DMI Committee brought together experts and professionals representing most organizations affected by and interested in mental health issues. These groups worked cooperatively to respond to the special needs of the mentally disabled entering the criminal justice system. Committee members expect to continue working in the partnerships forged through this committee process into the future. In addition to creating partnerships within Alaska, the DMI Committee also has built relationships on a national level where its work has been recognized by leading scholars and practitioners in this emerging area of law.
- **Mentally Ill Offender Housing Project** - The most critical need identified by the DMI Committee was the need for transitional housing for mentally disabled offenders upon release from a correctional facility. In its efforts to address this need, the DMI Committee worked closely with a Task Force, convened by the Alaska Mental Health Board, to create a pilot housing project for people with multiple disorders, including mental illness, brain injury, and substance abuse. The project focuses on the most disabled frequent users of correctional and psychiatric institutions. Due in large measure to the combined efforts of Committee and Task Force members, the Alaska Mental Health Trust Authority has committed \$405,000 in Trust funding to bridge start-up costs for this project. These funds will cover the hiring of service and maintenance personnel, rent, food and services for the first few months until client benefits begin. Additionally, AHFC has agreed to provide grant funds that will be matched with tax credits to finance construction of the project.
- **Development of Alternative Disposition Models** - Several committees discussed the need to develop a continuum of alternative sanctions for violations of pretrial release conditions, for sentencing, and for probation and parole violations. The Sentencing Committee considered the "Sentencing Circle" model and the Community Dispute Resolution Center "victim-offender mediation" model. The Commission endorsed both proposals at the September 1998 conference. Judges and magistrates have since received training on circle sentencing and several have

conducted circle sentencings. Additionally, the Municipality of Anchorage developed a pilot project for adult victim-offender mediation, a process that until recently was used only with juvenile offenders. Through a pre-arraignment screening process, intake staff identifies cases that are appropriate for alternative disposition. Typical cases include property offenses and minor assaults. Some are referred to the Community Dispute Resolution Center for victim/offender mediation; others are identified as appropriate for civil compromise. Both alternative dispositions embody principles of restorative justice that include victim involvement and repair of harm to the community. (Additionally, the Municipality screens for cases that are appropriate for its Pretrial Diversion Program described in Recommendation D-1.) Although the Municipality is still gathering data, the program appears successful.

### III. Backdrop of Issues Facing the Commission

#### A. Introduction

Although the Commission examined a broad spectrum of criminal justice issues, an important consideration in much of its work was the fact that during the last twenty years, Alaska's prison population grew at a much faster rate than its institutional capacity. At the time the Commission was formed and for a number of years before that, many of Alaska's jails and prisons were operating well beyond the capacity for which they were designed, in violation of a consent decree entered by the superior court in *Cleary v. State*.<sup>16</sup> In accordance with the *Cleary* final settlement order of 1990, the State of Alaska was required to reduce the inmate population at each institution to its designated maximum capacity. When the Criminal Justice Assessment Commission was established in 1997, the state had not yet brought each institution's population down to or below the maximum numbers set in the settlement order. This continuous overcrowding not only resulted in significant fines being assessed against the state, but it also created several dangers to the public. With overcrowding came an increased potential for violence in the facilities and an increased possibility of prisoner escapes. Overcrowding also inhibited the ability of the state to provide rehabilitation programs for prisoners, without which there is an increased likelihood of recidivism. Overcrowding also can result in the inappropriate use of parole, good time and early release simply to relieve the overcrowding. All of these public safety threats concerned Commission members.

In analyzing approaches to relieve prison overcrowding, the Commission was constrained by a political climate of mounting budget concerns. Faced with the fiscal reality of declining oil revenues and a budget shortfall, the Commission was challenged with finding innovative but cost-effective ideas and approaches to meeting Alaska's sentencing goals.<sup>17</sup> While agreeing on the need for some

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<sup>16</sup> *Cleary* was a 1982 class-action filed against the state by a group of prisoners alleging, among other things, inhumane prison conditions as a result of severe prison overcrowding. *Cleary v. State*, 3AN-81-5274 Civil (1982).

<sup>17</sup> Under the Alaska Constitution, the primary goals of penal administration are protection of the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and reformation of the offender. Alaska Const. Art. I, 12. AS 12.55.005 also requires sentencing courts to consider certain criteria:

- (1) the seriousness of the defendant's present offense in relation to other offenses;
- (2) the prior criminal history of the defendant and the likelihood of rehabilitation;
- (3) the need to confine the defendant to prevent further harm to the public;
- (4) the circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety or order;
- (5) the effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct; and

amount of prison growth,<sup>18</sup> Commission members recognized that building new prisons or expanding existing facilities could not be the only or the primary solution for accommodating the growing numbers of prisoners within the state. Cost was not the Commission's only concern. Members also expressed concern that incarceration alone does not adequately address the full range of sentencing goals such as rehabilitation of the offender, nor does it adequately involve the community or the victim in the criminal justice process.

While all Commission members perceived incarceration as necessary to protect the public from violent offenders and serious recidivists, many Commission members found it appropriate to consider a continuum of non-prison options that incorporate rehabilitation opportunities and restorative justice principles for less serious offenders. These would allow the state to use limited resources more efficiently, protect the public, and still provide appropriate sanctions. Further, research suggests that these approaches reduce recidivism for many offenders, leading to lower criminal justice system costs in the long term.

The Commission's emphasis on rehabilitation options also stemmed from new information about inmates in Alaska prisons. Alaska, like many other states, has experienced a steady shift in the profiles of its prison inmates. Offenders today typically enter prison with more serious substance abuse and mental health problems than offenders ten years ago.<sup>19</sup> Most offenders leave prison in need of more treatment than DOC is currently able to provide. They return to communities where there are not sufficient substance abuse and mental health resources to meet demand. Where programs exist, offenders are frequently disqualified for services because of a prior criminal history. In nearly all cases, programs have long waiting lists for participation. A lack of transitional housing creates added problems. Without transitional support, many offenders find themselves in a cycle of recidivism. Each time these offenders again filter through the criminal justice system, they require more resources from all the criminal justice agencies - corrections, courts, law enforcement, defense,

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(6) the effect of the sentence to be imposed as a community condemnation of the criminal act and as a reaffirmation of societal norms.

<sup>18</sup> At the time the Commission was developing its recommendations, two plans to increase the Department's institutional capacity were underway. HB 53, which was enacted in 1998, provided funding for a new 388-bed replacement jail in Anchorage. This facility is designed to increase capacity by over 250 beds with the capability of expansion by an additional 200 beds. Total projected costs for the initial construction are estimated at \$56 million. In addition, the state has been moving forward on a plan to convert Fort Greely to an 800 bed medium security prison. Even with these two capital projects, based on prison population projections, additional prison construction will still be needed within the next four years if the Department is to keep the state's facilities within maximum capacities during the coming years. *Department of Corrections Long-term Plan*, pp. 9-12 (June 1999), filed in Clery v. State, 3AN-81-5274 Civil (1982).

<sup>19</sup> See Chapter III D and E.

probation and parole and treatment agencies. Identifying ways to break this costly cycle of recidivism, while protecting the public, became an important Commission objective.

The next section of this report begins with a review of some of the reasons for Alaska's prison population increase, and follows with background information relevant to the Commission's recommendations. Points discussed include current DOC population management practices; an overview of the issues presented by the types of offenders that are increasingly filling Alaska's jails, those being offenders with substance abuse problems and offenders suffering from mental disabilities; a discussion of the developing shift in criminal justice philosophy towards increased use of restorative justice principles; and a discussion of the principles of monitoring and its benefits.

## B. Prison Population Growth

Between 1982 and 1998, the state's prison population quadrupled. In raw numbers, prisoners increased from 1,069 in 1982 to 4,268 in June of 1999. This increase greatly exceeded the state's ability to house prisoners. In June 1999, the Department of Corrections' maximum institutional capacity was 2,619 inmates.<sup>20</sup>

Several factors contributed to this growth in prison population. General population growth in the 1980's and 1990's brought with it more offenders. However, the rate of growth of Alaska's prison population has far exceeded the rate of general population growth, suggesting that the rapid rise resulted from other influences. Between 1971 and 1980, the ratio of inmates to the general population grew from 15 to 18 inmates per 10,000 population. In comparison, between 1980 and 1989, the ratio jumped from 18 to 50 inmates per 10,000 population.<sup>21</sup> Although the rate of growth stabilized somewhat in the 1990's, the impact of this earlier rapid rate of growth continued to be felt through the 1990's. Events in the 1980's provide some explanation for this disproportionate rate of growth.

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<sup>20</sup> Technically, the Department has an "emergency" capacity of 2,703 inmates. This represents its maximum capacity plus its segregation and medical beds. The theory is that, when an inmate is in segregation or an emergency bed, the general population bed is vacant and can be used in an emergency by another inmate.

<sup>21</sup> Memorandum from Gordon S. Harrison, Legislative Research Agency, *Growth in the Alaska Corrections Budget: FY79 - FY93*, Table 6 (February 1994).

## 1. The 1980 Criminal Code Revision

Evidence suggests that the criminal code revision was a major factor in the rate of prison population growth. In 1978, the Legislature enacted a new criminal code, effective January 1, 1980.<sup>22</sup> The new code embodied a completely new system of defining and classifying crimes. Under the new code, crimes in the most serious category, such as murder, were labeled "unclassified felonies." Other felony crimes were ranked in order of seriousness as Class A, B, or C felonies. Less serious misdemeanor crimes were ranked as Class A or B misdemeanors. The new code also changed intent provisions, describing culpable mental states including "intentionally," "knowingly," "recklessly," and "criminal negligence."

The 1980 code revision also implemented an entirely new sentencing structure, assigning a sentence range to each class of offense. The code set mandatory minimum sentences for offenses such as murder and kidnaping<sup>23</sup> and presumptive sentences for many other offenses. The change in sentencing structure, together with subsequent statutory revisions and new case law, increased prison populations by: 1) increasing the percentage of offenders required to serve time in jail; 2) increasing the sentence lengths for many offenders; and 3) implementing changes that tended to increase the amount of time an offender actually served.<sup>24</sup>

## 2. Presumptive Sentencing

Under the 1980 presumptive sentencing scheme, persons convicted of certain offenses are presumptively subject to statutorily predetermined sentences. The new code permits deviation from the presumptive sentence only if the sentencing judge finds the presence of one or more statutorily identified aggravators or mitigators or if the sentencing judge determines manifest injustice would result from imposition of the term required by the sentencing statute. If the sentencing judge finds that manifest injustice would result from imposition of the presumptive term, the case is to be referred to a three-judge sentencing panel to decide the result. In effect, the revised sentencing structure removes much of the discretion that sentencing judges traditionally exercised. According to a 1987 Alaska Judicial Council study, one apparent effect of presumptive sentencing has been a

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<sup>22</sup> Prior to the criminal code revision, Alaska relied on a criminal code adopted in early Territorial days. This earlier code - which had not changed substantially since its adoption - was based on old Oregon statutes with few revisions. In 1973, Oregon revised its criminal code. Alaska relied heavily on Oregon's work as a model in developing its revised criminal code in 1978. Alaska's Code Revision Commission also referred to New York, Arizona, Michigan and Missouri codes, among others.

<sup>23</sup> Offenders subject to mandatory sentencing cannot be sentenced to less than the minimum term prescribed in the code. They can, however, be sentenced to a term as high as the maximum allowed by statute.

<sup>24</sup> ALASKA JUDICIAL COUNCIL, ALASKA FELONY SENTENCES:1984 68 (1987).

general increase in the length of the sentence for both first felony offenders and repeat offenders subject to presumptive sentencing.<sup>25</sup> Additionally, the revised sentencing scheme has affected prison populations by restricting discretionary parole eligibility and thereby increasing the amount of time an offender actually serves.<sup>26</sup>

### 3. 1982 and 1983 Amendments

Subsequent amendments to the criminal code in the early 1980's have generally resulted in more prisoners serving more time. The three most important changes made by the Legislature in those years were the expansion of presumptive sentencing to all first felony offenders convicted of Class A felonies (effective January 1, 1983); the revision of the drug laws (effective January 1, 1983); and the revision of the sexual offense laws (effective October 17, 1983). These three changes greatly expanded both the number and the types of offenders subject to presumptive sentencing.<sup>27</sup> They also resulted in an increased mean sentence length for offenders convicted of crimes falling within these classifications. Sexual and violent offense mean sentences increased by nearly 30 percent. Drug offense mean sentences increased by nearly 40 percent.<sup>28</sup>

### 4. Other Criminal Justice Developments

Other developments since the early 1980's have contributed to the steady rise in numbers of offenders. Like the legislatures of many other states, the Alaska Legislature has responded to many criminal justice issues by passing "get tough on crime" laws. Examples include legislation making a third or subsequent DWI offense within five years a class C felony, making joyriding a class C felony offense, and requiring juveniles accused of certain crimes to be waived into adult court. The effect of some of these laws has been that more offenders are serving longer sentences.

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<sup>25</sup> *Id.* at 4.

<sup>26</sup> Prior to the criminal code revision effective in 1980, prisoners were required to serve at least one-third of their sentence before they could apply for parole eligibility. A sentencing judge could increase the period of parole ineligibility. Under the criminal code revision, prisoners subject to sentencing for an offense with a mandatory minimum term are not eligible for discretionary parole until after serving the greater of the mandatory minimum term or one-third of the sentence imposed. AS 33.16.100. Presumptively sentenced offenders are not eligible for discretionary parole during the presumptive term. AS 33.16.090.

<sup>27</sup> ALASKA JUDICIAL COUNCIL, ALASKA'S PLEA BARGAINING BAN RE-EVALUATED 130 (1991).

<sup>28</sup> ALASKA FELONY SENTENCES:1984, *supra* note 24, at 78.

## 5. Changes in Law Enforcement and Prosecution

Changes in law enforcement and prosecution also have affected the rate of prison population growth. In the early 1980's - at the same time that the criminal code revision and the presumptive sentencing scheme first became effective - the budgets for both state police and state prosecutors jumped by 75 percent.<sup>29</sup> While these budgetary phenomena did not carry through the latter part of the 1980's, the impact of this combination, even for a three to four-year window of time, no doubt contributed to the rapid jump in prison population numbers in the early 1980's.<sup>30</sup>

Law enforcement practices also changed during the early 1980's as a result of changing social values regarding drunk driving, sexual abuse and assault. For example, between 1980 and 1984, the number of sexual abuse of a minor cases accepted for prosecution increased by 25 percent. The rates of convictions in these cases also went up.<sup>31</sup> This increase in prosecutions may have been related to an increase in the rate of sexual abuse, an increased willingness to report such abuse, or a greater interest on the part of the prosecution in prosecuting abuse cases, particularly intra-familial abuse cases, or a combination of these factors. Whatever the cause or causes, as a result of this increase in prosecutions and convictions, prison population size increased. Subsequent changes in social values in the 1990's regarding domestic violence and juvenile offenses also have resulted in increased attention to these offenders.

Although the rate of growth of Alaska's prison population has diminished, the prison population has continued to grow through the 1990's. Between June 30, 1997 and June 30, 1998, Alaska experienced a prison population growth rate of 12.7 percent.<sup>32</sup> In comparison to the other 49 states, Alaska had the fifth fastest growing prison population.<sup>33</sup>

The following section describes how the Department of Corrections manages this growing prison population.

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<sup>29</sup> *Growth in the Alaska Corrections Budget: FY79 - FY93, supra note 21, at 8.*

<sup>30</sup> ALASKA SENTENCING COMMISSION, 1990 ANNUAL REPORT TO THE GOVERNOR AND THE ALASKA LEGISLATURE 24 (1990).

<sup>31</sup> *Id.*

<sup>32</sup> This figure applies only to the population of prisoners serving a sentence of more than one year. See BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PRISON AND JAIL INMATES AT MIDYEAR 1998, Table 3 (March 1999).

<sup>33</sup> *Id.*

### C. Overview of the Current Prison Population

Alaska's unified jail and prison system creates complexities in managing prisoner populations that most other states do not share. Under this system, the Department of Corrections is solely responsible for the cost and care of all inmates - not just convicted felons.<sup>34</sup> The result is a high annual volume of bookings spread across a huge geographical area. In 1998 alone, the Department booked 29,786 inmates into its fifteen institutions statewide. While the majority of these bookings occurred in Anchorage, there exists a pressing need statewide for beds for pretrial inmates.<sup>35</sup>

To house all of the inmates committed to its custody, DOC has relied on a number of options. According to the 1999 Long-term Plan filed by DOC in the *Cleary* case, as of June 30, 1999, the 4,213 prisoners in the custody of DOC were supervised as follows: 2,642 were housed in DOC's fifteen Alaska institutions (referred to as hard beds because of the secure nature of the incarceration); 720 were housed in several out-of-state prisons (also referred to as hard beds);<sup>36</sup> and another 880 prisoners were supervised through various arrangements termed soft beds because of their lower cost, greater community connection, and different security measures.<sup>37</sup> These included:

Community Residential Centers	682
Point MacKenzie Farm	112
Treatment beds	39
Electronic monitoring	11
CRC Offender Supervision Program	36 <sup>38</sup>

**Community Residential Centers:** Community Residential Centers (CRC's) are privately run facilities, operating under contract with the state, that provide twenty-four hour supervision in a residential setting. CRC's stress employment, community work service, restitution, and treatment. Inmates pay 25 percent of their gross earnings to the state while housed in the

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<sup>34</sup> In all states except six, local governments are responsible for the cost and care of all misdemeanants and unsentenced felons, a population that is much more erratic than convicted felons alone.

<sup>35</sup> Due to the extremely high costs associated with transporting prisoners, bookings and pre-sentence housing need to occur as close as possible to the place of arrest and subsequent trial.

<sup>36</sup> In response to the *Cleary* case, the Department of Corrections has endeavored to relieve overcrowding by shifting a number of inmates to out-of-state prisons. The majority of these out-of-state prisoners are housed in the Central Arizona Detention Center, a privately-run prison facility in Florence, Arizona.

<sup>37</sup> *Department of Corrections Long-term Plan*, *supra* note 18, at 3.

<sup>38</sup> *Id.* at 18.

CRC. The daily cost per inmate at a CRC is just slightly more than half the statewide average for institutions.

**Point MacKenzie Farm:** Point MacKenzie Farm, run by DOC, operates as a minimum security facility. Its 112 inmates perform farm work, raising pigs, cattle, turkeys, hydroponic tomatoes and lettuce, and potatoes. Inmates also perform community service.

**Treatment beds:** DOC furloughs a small number of offenders to community-based facilities for residential substance abuse treatment.

**Electronic monitoring:** In 1997, the Legislature passed HB 272 permitting electronic monitoring for eligible sentenced offenders. Participants must attend required programs, submit to drug and alcohol testing, and pay a daily fee for the cost of the program. This allows offenders to maintain employment and stay with their families, yet still be accountable for their crimes through continuous 24-hour electronic monitoring and supervision. Offenders must be classified for community custody, have no pending disciplinary actions, and have a sentence to serve of between 20 and 365 days. A private vendor runs the program under contract with the state. Violations are reported to DOC personnel.

**CRC Offender Supervision Program:** The CRC Offender Supervision Program, a new program phased in by the Department of Corrections in 1999, provides an intermediate transition between CRC placement and probation. Eligible participants must attend appropriate programs, submit to drug and alcohol testing, and pay 12.5 percent of their gross income for the cost of the program. Participants must be within six months of release, have a written release plan, an approved residence and means of support. They must have completed all residential treatment requirements, and be without pending disciplinary requirements. Participants live at home with 24-hour supervision that DOC enforces with supervised or unsupervised checks performed by staff from the CRC.

## D. Substance Abuse and the Criminal Justice System

### 1. Introduction

In a 1994 report, former Governor Hickel's Criminal Justice Work Group estimated that alcohol was a primary or contributing factor in 80 percent to 95 percent of all criminal offenses committed in

Alaska.<sup>39</sup> The percentages run even higher among Alaska Natives. According to a 1999 report by the Alaska Commission on Rural Governance and Empowerment, more than 97 percent of the crimes committed by Alaska Natives are committed under the influence of alcohol or drugs.<sup>40</sup> Commission members agree that alcohol weighs heavily in the criminal justice equation.

Alcohol abuse in Alaska results in tremendous costs to the state. A large percentage of those costs are reflected in the budgets of the criminal justice system agencies as a result of substance abuse related crime. As did former Governor Hickel's Criminal Justice Work Group, the Commission believes that alcohol drives the criminal justice system and that reducing alcohol use, by even a small amount, will reduce crime and the resulting pressure on criminal justice system agencies.

The following subsections discuss the link between crime and alcohol, the costs incurred as a result of this link, the effectiveness and economic benefits of treatment, and the criminal justice system populations most in need of treatment. The Commission's specific recommendations aimed at reducing the effects of alcohol are contained in Chapter IV of the report.

## 2. The Correlation between Substance Abuse and Crime

Substance abuse creates problems nationwide. According to a 1998 report published by the National Center on Addiction and Substance Abuse at Columbia University (CASA), substance abuse is implicated in the incarceration of approximately 80 percent of the nation's prison population.<sup>41</sup> This figure includes inmates who violated drug or alcohol laws, were under the influence at the time they committed their crimes, stole property to buy drugs, had a history of drug and alcohol abuse and addiction, or shared some combination of these characteristics.

Bureau of Justice statistics, compiled in 1997, estimate that half of all state prisoners (52.5%) were under the influence of drugs or alcohol at the time of their offense.<sup>42</sup> Drug possession, drug

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<sup>39</sup> GOVERNOR'S CRIMINAL JUSTICE WORK GROUP, OPTIONS FOR COST CONTAINMENT IN THE CRIMINAL JUSTICE SYSTEM 2 (1994).

<sup>40</sup> ALASKA COMMISSION ON RURAL GOVERNANCE AND EMPOWERMENT, FINAL REPORT TO THE GOVERNOR 106 (1999).

<sup>41</sup> Steven Belenko, *Behind Bars: Substance Abuse and America's Prison Population 2* (National Center on Addiction and Substance Abuse at Columbia University 1998). (This publication is available on the Internet at [www.casacolumbia.org](http://www.casacolumbia.org).)

<sup>42</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, SPECIAL REPORT: SUBSTANCE ABUSE AND TREATMENT, STATE AND FEDERAL PRISONERS, 1997, Table 1 (1999). It is worth noting that the above statistics do not include state prisoners in local jails - local jails being locally administered facilities typically incarcerating individuals serving sentences of a year or less. A look at a 1996 Bureau of Justice survey of inmates in local jails shows an even greater percentage of crimes being committed by offenders who are under the

trafficking, and robbery are the crimes most closely tied to drug influence, while alcohol use correlates most closely with violent offenses. Alcohol is implicated in most homicides resulting from arguments or disputes<sup>43</sup> and it is often a contributing factor in incest, child sex abuse, spouse abuse, robbery with injury, and family violence.<sup>44</sup> According to statistics compiled by the Municipality of Anchorage, in Anchorage alone alcohol is implicated in nearly half of all homicides, and over fifty percent of all sexual abuse cases and domestic violence cases. It appeared as a factor in 83 percent of child abuse cases.<sup>45</sup>

While Department of Public Safety (DPS) information on alcohol-related crime generally tracks Bureau of Justice figures, it differs in one significant respect - alcohol appears much more frequently as a factor in crimes committed in rural and Bush areas.<sup>46</sup> In rural Alaskan and Bush communities, the amount of violence and crime appears directly proportional to the amount of alcohol consumed by the residents.<sup>47</sup> This was nowhere more strikingly demonstrated than in Barrow when, in 1994, the community voted to go dry. During the year that followed that vote, the level of reported violence and the crime rate fell dramatically. Felony assaults declined by 86 percent; fights broken up by the police declined by 61 percent; drunk driving stops declined by 79 percent; suicide attempts

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influence. According to these figures, 60.2 percent of those in local jails admitted committing their current offenses while using drugs or alcohol. BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1997, Table 6.32 (1998).

<sup>43</sup> KAI PERNANEN, ALCOHOL IN HUMAN VIOLENCE, (Guilford Substance Abuse Series 1991); J. Bradford et al., *Substance Abuse and Criminal Behavior*, in CLINICAL FORENSIC PSYCHIATRY, at 605-622 (The Psychiatric Clinics of North America) (15) 3 (1992).

<sup>44</sup> Research Monograph No. 24, *Alcohol and Interpersonal Violence: Fostering Multidisciplinary Perspectives*, (National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, NIH Publication No. 93-3496, S.E. Martin, ed.) (1993).

<sup>45</sup> *Percent of Crimes, Injuries, and Deaths Alcohol-Related in Anchorage*, HEALTHY ANCHORAGE INDICATORS REPORT (Department of Health and Human Services, Municipality of Anchorage, Community Health Promotion Number 9), November 1998, at 1.

<sup>46</sup> Information taken from unpublished data prepared by the Department of Public Safety, provided to the Alcohol Policy Committee by committee member Alaska State Trooper D. Norris. The Department of Public Safety records are drawn from police reports that note whether the suspect or the victim was under the influence at the time of the offense. Because this information is not always included when appropriate, DPS records may underestimate the role of alcohol in crime.

<sup>47</sup> The likelihood of physical assault upon family members or others by male Alaska Native drinkers is frequently double that of the other populations. The Center for Alcohol and Addiction Studies & The Institute for Circumpolar Health Studies, *Alaska Natives Combating Substance Abuse and Related Violence Through Self-healing: A Report for the People* 33-35 (June 1999) (report prepared for the Alaska Federation of Natives).

declined by 34 percent; and domestic dispute calls declined by 27 percent.<sup>48</sup> When alcohol was restricted in Barrow, school attendance rates shot up; fetal alcohol exposure fell 35 percent; alcohol-related injuries fell 43 percent; harm to children fell 32 percent;<sup>49</sup> and alcohol-related outpatient visits to the Barrow hospital decreased.<sup>50</sup>

### 3. The Costs of Alcohol and Drug Related Crime

Substance abuse related crime carries a high cost. According to the CASA study, of the \$38 billion spent nationally on prisons in 1996, more than \$30 billion paid for the incarceration of the 80 percent of the total prison population whose crimes were tied to the use of alcohol or drug abuse.<sup>51</sup> Many had special health needs such as detoxification programs, mental and physical health care, and AIDS treatment that added to their incarceration expenses.

Incarceration expenses represent only a part of the criminal justice system costs resulting from substance abuse related crime. Most crimes also have related police costs, court costs, prosecutorial costs, public defender, probation and parole costs as well. The CASA report gave one example:

[T]he bill for arresting and prosecuting the 1,436,000 DUI arrests in 1995 was more than \$5.2 billion, exclusive of the costs of pretrial detention and incarceration.<sup>52</sup>

Recidivism also increases costs. Substance abusing inmates are the most likely to be reincarcerated.<sup>53</sup> Repeat offenders usually stay incarcerated longer and often have more burdensome probation or parole conditions.

The social costs of substance abuse also are great. Alcohol abuse plays a leading role in child abuse and neglect. Children whose parents abuse drugs and alcohol are almost 3 times as likely to be abused and more than 4 times as likely to be neglected than children of parents who are not

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<sup>48</sup> Hugh Dellios, *Booze and darkness are deadly mix in Barrow: Alcohol Pits Inupiat Values Against Those From Outside*, Anchorage Daily News, November 10, 1995, at B4.

<sup>49</sup> *Id.*

<sup>50</sup> A.Y. Chiu et al., *Impact of Banning Alcohol on Outpatient Visits in Barrow, Alaska*, 278 JAMA 1775-1777 (1997).

<sup>51</sup> *Behind Bars: Substance Abuse and America's Prison Population*, *supra* note 41, at 17.

<sup>52</sup> *Id.* at 9 (footnote omitted).

<sup>53</sup> *Id.* at 7.

substance abusers.<sup>54</sup> Over the past 10 years, reports of abused and neglected children reports in America have more than doubled.<sup>55</sup> Nationally, substance abuse causes or exacerbates 7 out of 10 cases of child abuse or neglect in America.<sup>56</sup> In Alaska, the figures run even higher. Statistics gathered by the State of Alaska, Department of Health and Social Services, Division of Alcohol and Drug Abuse (DADA) showed 81 percent of all Division of Family and Youth Services reports of harm statewide involved substance abuse. DADA statistics showed alcohol was a factor in 90 percent of the cases reviewed by the Citizen's Foster Care Review Board.<sup>57</sup> Substance abuse by parents also increases, among other things, the risk of poor health, retardation, fetal alcohol syndrome, fetal alcohol effect and learning impairments.<sup>58</sup>

Although difficult to quantify, the true costs of alcohol and drug abuse have far-reaching implications. In 1989, the State Office of Alcoholism and Drug Abuse estimated that Alaska spent \$184,829,417 in costs associated with substance abuse.<sup>59</sup> In 1999 dollars, that cost is now

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<sup>54</sup> Jeanne Reid *et al.*, *No Safe Haven: Children of Substance-Abusing Parents* 16 (National Center on Addiction and Substance Abuse at Columbia University, 1999). (This publication is available on the Internet at [www.casacolumbia.org](http://www.casacolumbia.org).)

<sup>55</sup> *Id.* at 14. Improved recognition and reporting of child abuse may be a factor in the increased number of cases reported. *Id.* at 16.

<sup>56</sup> *Id.* at 17.

<sup>57</sup> Unpublished data prepared by the Department of Health and Social Services, Division of Alcohol and Drug Abuse, provided to the Alcohol Policy Committee on March 16, 1999 by committee member Ken Duff.

<sup>58</sup> According to a November 1998 publication by the Municipality of Anchorage, Department of Health and Human Services:

Alcohol is a significant contributing factor to crime, preventable injuries (motor vehicle crashes, domestic violence, child abuse, drowning, suicide, etc.) and adverse health outcomes, such as cirrhosis - the 9<sup>th</sup> leading cause of death in the US - immune system problems, brain damage, and cancer. Alcohol use increases the risk for certain cancers, especially those of the liver, esophagus, throat, and larynx or voice box. Alcohol use during pregnancy is the leading preventable cause of birth defects.

*Why Should We Care? The Social Costs of Alcohol Consumption*, HEALTHY ANCHORAGE INDICATORS REPORT (Department of Health and Human Services, Municipality of Anchorage, Community Health Promotion Number 9), November 1998, at 1.

<sup>59</sup> This figure represents costs incurred by criminal justice system agencies (prosecution, defense, courts, law enforcement, and corrections); social services agencies (youth services, foster care, day care, and institutional care for children, homemakers services, protective services, substance abuse treatment, and child protection); medical care payments (API, mental health and state-insured treatment expense); and increased assistance payments (AFDC, Aid to the Disabled, Food Stamps, and Medicaid). Other expenses include costs associated with fetal alcohol syndrome, insurance payments for residents not employed by the state, private security costs, and out-of-state treatment costs. OFFICE OF ALCOHOLISM AND DRUG ABUSE, ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES, *THE ECONOMIC COST OF ALCOHOL AND OTHER DRUG ABUSE IN ALASKA* (1989).

\$245,823,125, the majority of which is borne by non-alcohol abusing citizens who pay in such ways as taxes, increased private health and life insurance costs, and medical and property bills as victims of crime and alcohol-related accidents.<sup>60</sup> Little of the cost of alcohol is offset through alcohol-related revenues. For example, in FY98, alcoholic beverages taxes combined with alcohol-related license fees, permit fees, and application fees generated only \$13.5 million in revenue.<sup>61</sup>

#### 4. The Effectiveness of Treatment in Reducing Crime

As substance abuse has become increasingly identified as a root cause of crime and other social ills, more research has been devoted to analyzing the efficacy and cost-effectiveness of treatment. The results have made clear to many policymakers that the crime-related costs of untreated addiction far exceed the expenses of treatment, causing them to rethink their approach to substance-abusing offenders.

A growing body of research favors providing effective treatment to alcohol and drug abusing inmates as a means of reducing crime. Several well-recognized studies have shown decreased recidivism among offenders who received treatment. The National Treatment Improvement Evaluation Study (NTIES), conducted by the federal government, looked at the recidivism rates of a population of offenders one year after treatment. NTIES found that re-arrests for any crime declined by 64 percent.<sup>62</sup> The California Drug and Alcohol Treatment Assessment (CALDATA) concluded that the level of criminal activity declined by two-thirds from before treatment to after treatment.<sup>63</sup> The

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<sup>60</sup> *Who Pays the Cost?*, HEALTHY ANCHORAGE INDICATORS REPORT (Department of Health and Human Services, Municipality of Anchorage, Community Health Promotion Number 9), November 1998, at 1 (footnote omitted).

<sup>61</sup> In FY98, alcoholic beverages taxes generated \$11,771,505 in revenue. The figure for FY97 was \$11,553,183. The figure for FY96 was \$11,985,466. See Department of Revenue website at <http://www.revenue.state.ak.us/iea/98report/index.htm>. The state received an additional \$1.7 million in alcohol related license, application and permit fees. Telephone interview with D. Griffin, Executive Director, Alcoholic Beverages Control Board (November 1999).

<sup>62</sup> The National Treatment Improvement Evaluation Study (NTIES) was a Congressionally mandated five-year study of individuals enrolled in federally funded drug and alcohol treatment. In examining the effectiveness of treatment, evaluators conducted interviews at admission to treatment, at the end of treatment, and then at a follow-up, approximately twelve months after the end of treatment. See CENTER FOR SUBSTANCE ABUSE TREATMENT, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, THE NATIONAL TREATMENT IMPROVEMENT EVALUATION STUDY PRELIMINARY REPORT: THE PERSISTENT EFFECTS OF SUBSTANCE ABUSE TREATMENT - ONE YEAR LATER (September 1996).

<sup>63</sup> DEAN R. GERSTEIN ET AL., EVALUATING RECOVERY SERVICES: THE CALIFORNIA DRUG AND ALCOHOL TREATMENT ASSESSMENT (National Opinion Research Center at the University of Chicago and Lewin-VHI, Inc.) (July 1994).

greater the length of time spent in treatment, the greater the percent reduction in criminal activity.

The Center for Substance Abuse Treatment (CSAT), a division of the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services, has published results from eight states that provided treatment.<sup>64</sup> According to CSAT, on a national average, the rate of re-arrest without treatment was 47 percent. In comparison, several states reported significantly lower recidivism rates among individuals receiving treatment. One year after treatment, arrests among participants had decreased at the following rates:

Ohio - 90%  
Minnesota - 90%  
Hawaii - 87%  
Florida - 82%  
Colorado - 80%  
Texas - 80%  
Maine - 79%  
California - 60%

## 5. The Economic Benefits of Treatment

CALDATA also looked at the economic benefits of treatment. The study concluded that benefits outweigh the costs of treatment by a factor of 7 to 1, largely because of reductions in crime, with some added reductions in health care costs. Reports from other jurisdictions vary in the amount of savings attributed to treatment but all results are favorable. According to a January 1999 CSAT publication, in 1991-92, Oregon spent \$14.9 million on treatment and produced \$83.1 million in avoided costs over the next three years. In the first year after treatment, Minnesota saved \$28.7 million in reduced medical, DUI, and justice costs, and recovered 67 percent of its investment in treatment. Iowa saved \$87 million from reductions in crime in just six months after treatment.<sup>65</sup> A recent report by the Arizona Supreme Court similarly concluded that drug treatment of non-violent offenders is more cost-effective than incarceration.<sup>66</sup> The report was issued following passage, in 1996, of a referendum requiring that first and second time non-violent drug offenders be sent to

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<sup>64</sup> *Effective Treatment Saves Money*, SUBSTANCE ABUSE IN BRIEF, (Center for Substance Abuse and Treatment, U.S. Dep't of Health and Human Services, Rockville, Md.), January 1999, at 2.

<sup>65</sup> *Id.* at 1.

<sup>66</sup> ADMINISTRATIVE OFFICES OF THE COURT, STATE OF ARIZONA, DRUG TREATMENT AND EDUCATION FUND LEGISLATIVE REPORT FISCAL YEAR 1997-1998 10 (March 1999).

treatment programs rather than prison.<sup>67</sup> Results in the report show Arizona saved more than \$2.5 million during the law's first year of implementation.<sup>68</sup>

## 6. The Availability of Treatment

Effective treatment is not readily available to many offenders in Alaska. Within the prison setting, DOC does not have the resources to provide sufficient treatment services. In communities that have programs, many of those in need experience barriers to receiving treatment. The following sections briefly discuss several of the populations identified by the Commission as most in need of services.

### a) The Dual-Diagnosis Population: Substance Abuse and Mental Disability -

Although a large group of offenders suffer from both mental disabilities and substance abuse problems,<sup>69</sup> DOC has very limited resources to meet the needs of this population. Currently, the only specialized programs for dually-diagnosed individuals are the substance abuse group sessions held in DOC's mental health units.<sup>70</sup> And, although not specifically designed to treat dually-diagnosed offenders, on a case-by-case basis, the Women's Residential Substance Abuse Treatment program at Hiland Mountain will sometimes admit mentally ill females who are stable. These programs serve only a small percentage of the offenders in need of services.

Dually-diagnosed offenders who are released to the community face treatment problems as well. They often do not qualify for either substance abuse or mental health treatment services because of their co-occurring problems. Several factors contribute to this problem. In 1999, only five

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<sup>67</sup> In November 1996, Arizona voters approved passage of Proposition 200, formally known as the Drug Medicalization, Prevention and Control Act of 1996. One purpose of the act was to expand drug treatment and education services for drug offenders and to use probation for non-violent drug offenders. To meet this end, the act established the Drug Treatment and Education Fund (DTEF). The DTEF is funded with a percentage of the revenue from luxury taxes on liquors. By focusing on education and treatment, the goals are to: 1) reduce and/or eliminate the offender's substance abusing behaviors; 2) improve the substance abusing offender's quality of life; 3) reduce the likelihood the offender will commit future offenses and thereby increase community safety; and 4) reserve prison beds primarily for violent and chronic offenders. *Id.* at 1, 4.

<sup>68</sup> *Id.* at 10.

<sup>69</sup> National prevalence estimates indicate that between 72 and 90 percent of mentally ill inmates have co-occurring substance abuse disorders. According to the Department of Corrections' Strategic Plan for Trust Beneficiaries, up to 77 percent of the seriously mentally ill inmates in DOC have co-occurring substance abuse disorders. See DEPARTMENT OF CORRECTIONS, STATE OF ALASKA, STRATEGIC PLAN FOR TRUST BENEFICIARIES IN THE DEPARTMENT OF CORRECTIONS 6-7 (May 1999).

<sup>70</sup> There are only two psychiatric treatment units in DOC - the Cook Inlet Pretrial Mike Module for men and the Hiland Mountain Correctional Center (HMCC) Women's Psychiatric Treatment Unit for women. Mike Module has the capacity to treat up to 29 seriously mentally ill men in need of acute psychiatric treatment. The HMCC unit has the capacity to treat up to 18 seriously mentally ill women in need of acute psychiatric treatment. DOC estimates that on any given day, there are 883 mentally ill inmates in its custody.

residential programs specifically served this group,<sup>71</sup> and all had long waiting lists. The assessments needed to qualify for specialized treatment can not be performed quickly and may take months to complete. Most programs will not take dual-diagnosis offenders because of their history of violent or aggressive behavior. Finally, federal requirements limit the use of Medicaid funding to treat this population.

**b) Incarcerated Substance Abusers** - Funding constraints restrict the treatment programs DOC can offer substance abusing inmates.<sup>72</sup> Only limited services are available, with long waiting lists in most facilities. Except for a women's residential treatment program at Hiland Mountain, DOC currently does not provide the intensive level of substance abuse treatment that a substantial number of its most chronically addicted offenders need.<sup>73</sup> Offenders released to community residential centers or on probation or parole likewise have limited access to treatment in the community. Based on research showing that treatment reduces recidivism and can lead to significant savings to the state, the Commission has recommended the creation of new treatment programs for offenders in DOC custody and for those who are released on probation or parole. *See* Recommendations B-9, B-11, B-16, B-17, and B-21.

**c) Offenders in Pretrial Status** - Offenders in pretrial status have even less access to treatment. Longer term treatment programs often will not accept offenders on pretrial status, fearing that treatment will be interrupted when the individual is sentenced. Offenders who need short term treatment often find that lengthy waiting lists make a timely assessment impossible. As a result, offenders often complete the criminal justice process before they can obtain treatment. The lack of standardized assessments among treatment agencies also creates problems. Agencies conduct their own assessments and cannot easily share information, even if an alternative treatment program is more appropriate for a particular individual. This compounds the waiting list problem. Several

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<sup>71</sup> Clitheroe Center in Anchorage had twelve beds, Bryn Mawr (ARC of Anchorage) had six beds, Nugen's Ranch in Wasilla had thirteen beds, and RCADA (Fairbanks Native Association) had six beds. The Gateway Center in Ketchikan also had a program with a single residential treatment bed.

<sup>72</sup> For at least the last seven years of the 1990's, although prison population numbers increased sharply, the funding level for inmate substance abuse treatment programs did not increase. *See* STRATEGIC PLAN FOR TRUST BENEFICIARIES, *supra* note 69, at 32.

<sup>73</sup> While all of DOC's thirteen institutions, as well as Point Mackenzie and the Central Arizona Detention Center (CADC), offer some form of substance abuse treatment, programs vary depending on the function and location of the institution. Five facilities offer only a basic substance abuse education program. Two institutions offer substance abuse education with an introduction to treatment. Six institutions, plus the CADC, offer some form of institutional out-patient substance abuse treatment services. Only one institution, Hiland Mountain, offers an in-house residential substance abuse treatment program. Furthermore, this program is only available to women. *Id.* Currently, DOC is planning to open a men's program at the Wildwood Correctional Center in the year 2000 using matching funds from the Mental Health Trust Authority and the federal government. *See* Recommendation B-11.

of the recommendations in this report include policy changes aimed at improving the efficiency of the assessment process.

**d) Title 47 Alcohol Holds -** Alaska Statute 47.37.170 authorizes a peace officer or a member of the emergency service patrol to take custody of a person who appears intoxicated and in need of help, or a person who appears to be incapacitated by alcohol or drugs. If no treatment facility is available, the statutory scheme requires that the person "be taken to a state or municipal detention facility in the area that appears necessary for the protection of the person's health or safety."<sup>74</sup> Because many communities do not have adequate (or any) treatment services, these intoxicated persons are frequently booked into a correctional facility for a twelve-hour protective custody hold.<sup>75</sup> In FY99, state correctional facilities admitted more than 2,000 Title 47 holds.<sup>76</sup> Most Commission members concur that community-based treatment for this group would reduce criminal justice system costs.

## E. The Mentally Disabled and the Criminal Justice System

### 1. Introduction

Another significant issue considered by the Commission concerns the interplay between Alaska's mentally disabled population and the criminal justice system. In recent years, the Department of Corrections (DOC) has housed and treated an increasing number of the state's mentally disabled. The increase has led some to characterize DOC as the state's largest mental health service provider. According to a 1997 study funded by the Alaska Mental Health Trust Authority (MHTA),<sup>77</sup> on a snapshot day in January of 1997, 37 percent of the 3,091 inmates (or 1,154 inmates) in Alaska's

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<sup>74</sup> AS 47.37.170.

<sup>75</sup> AS 47.37.170(i) provides, in pertinent part:

(i) A person taken to a detention facility under (a) or (b) of this section may be detained only (1) until a treatment facility or emergency medical service is made available, (2) until the person is no longer intoxicated or incapacitated by alcohol or drugs, or (3) for a maximum period of 12 hours, whichever occurs first.

<sup>76</sup> In FY98, 2,273 Title 47 holds were admitted. In FY97, there were 2,585; in 1996, there were 3,185; and, in FY95, there were 3,012.

<sup>77</sup> The report was published as a part of a needs assessment commissioned by the Department of Corrections but funded by the Alaska Mental Health Trust Authority. The assessment was performed to determine the number and diagnoses of mental health trust beneficiaries under the custody of the department and the services they receive. It was conducted by looking at the inmate population on the "snapshot" day of January 15, 1997. See CARE SYSTEMS NORTH, MENTAL HEALTH NEEDS ASSESSMENT FOR OFFENDERS IN CUSTODY AND UNDER SUPERVISION OF THE ALASKA DEPARTMENT OF CORRECTIONS (June 1997).

correctional institutions were Mental Health Trust beneficiaries.<sup>78</sup> On that same day, the census at API was 79.

Infusion of a mentally disabled population of this magnitude into the criminal justice system creates serious problems. Most obvious are the tremendous costs associated with housing this population and processing these individuals through the criminal justice system. Other issues are the appropriateness of criminalizing behavior that stems from a mental disability<sup>79</sup> and incarcerating individuals in a prison without adequate treatment facilities. Correctional and criminal justice resources are diverted to managing problems that these systems are not designed to handle.<sup>80</sup>

Commission members believe that a lack of adequate programs, including assisted housing, day treatment, intensive case management options, and an emergency response system of mental health care, is the primary cause for the criminalization of the mentally disabled in Alaska. With more treatment services and community residential services, many of the mentally disabled who find themselves caught up in the criminal justice system would avoid it entirely. For others, appropriate treatment and housing would provide a greater chance of success at community life and reduce recidivism. For both mentally disabled and substance abusing offenders, providing appropriate community-based services would achieve the twin goals of providing "need- appropriate services" and freeing up expensive prison bed space.

## 2. Background of the problem

Alaska is not alone in finding its prison beds increasingly filled by the mentally disabled. The national movement to de-institutionalize the mentally disabled during the 1980's and 1990's had the

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<sup>78</sup> The mental health trust beneficiary groups include: the "mentally ill;" the "mentally defective and retarded;" "chronic alcoholics suffering from psychoses;" and "senile people who as a result of their senility suffer major mental illness." The term "mentally disabled" as used throughout this report refers collectively to these four categories of beneficiary groups. *See also*, note 13, *supra*.

<sup>79</sup> Mentally disabled individuals are often arrested for minor crimes when publicly acting out because of their disability. Criminalization refers here to placing mentally disabled offenders who have committed minor crimes, such as trespass and disorderly conduct, into the criminal justice system instead of the mental health system.

<sup>80</sup> Mentally disabled offenders often languish in jail for lack of alternative housing resources. In one study, jail stays of mentally ill offenders were approximately three times longer than those of other offenders. POLICY RESEARCH ASSOCIATES, INC., DIVERSION AND TREATMENT SERVICES FOR MENTALLY ILL DETAINEES IN THE KING COUNTY CORRECTIONAL FACILITY (December 1991). This results in: (1) expensive jail beds being used to stabilize mental health crises instead of to isolate serious offenders, and (2) mentally disabled individuals spending inordinate periods of time in a venue that does not promote mental stability.

unfortunate consequence of re-institutionalizing many mentally disabled people in prison facilities.<sup>81</sup> Many believe the primary cause of this criminalization of the mentally disabled is a lack of community-based programs, including assisted housing options, support staff, and an emergency response system of health care that includes alternatives to incarceration.<sup>82</sup> To compound the problem, 77 percent of the inmates treated by DOC mental health staff have co-occurring substance abuse disorders.<sup>83</sup> The shortage of mental health services, the prevalence of alcohol and drug abuse among the mentally disabled, and the shortage of dual diagnosis treatment programs has resulted in an unprecedented number of mentally disabled individuals being arrested and incarcerated.

The MHTA study attributed part of the steady rise of mentally disabled offenders in the criminal justice system to the following factors as well:

an increase in the Alaska prison population in general;  
changes in sentencing laws;  
changes in Alaska's laws relating to insanity as a defense in criminal cases;<sup>84</sup> and  
the elimination of most pretrial diversion programs.

The end result for many chronically mentally disabled Alaskans is that arrest on criminal charges and incarceration have become common forms of emergency respite care and, in many cases, alternative forms of long-term re-institutionalization.

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<sup>81</sup> Alaska, like many other states, has experienced a downsizing of its state psychiatric institutional capacity. Between 1984 and 1999 the Alaska Psychiatric Institute (API) bed capacity dropped from 225 to 79. As a part of comprehensive project called Community Mental Health/API 2000 Project, the state is currently pursuing a plan to replace API with a smaller 54 bed facility. Pursuant to the project, community-based mental health and substance abuse treatment services in Anchorage will be increased and enhanced. Under the proposed plan, once the new system is in place, a person experiencing a mental health crisis will be able to go to a psychiatric emergency room called a "single point of entry" (SPE). The SPE will provide emergency intervention, stabilization, and treatment referral services to individuals in mental health and/or substance abuse crisis.

<sup>82</sup> Although funding for community mental health services has nearly doubled since 1992, the services available are not sufficient to meet the existing demand. While the community mental health system served between 600 and 700 adults in 1986, that number is now approximately 3,900. The demand for services is growing at a much faster rate than the available supply.

<sup>83</sup> *Supra* note 69.

<sup>84</sup> In 1984, the legislature effectively eliminated the "not guilty by reason of insanity" defense by substituting a new form of verdict allowing for a finding of "guilty but mentally ill." The small number of offenders found "guilty but mentally ill" (GBMI) are committed to the custody of the Department of Corrections and serve their entire sentences in correctional facilities where they undergo psychiatric treatment. See AS 12.47.020 - .050. These offenders generally serve more time in correctional facilities than individuals found guilty (but not mentally ill) of the same offense due to statutory restrictions on furlough and parole eligibility for GBMI offenders.

### 3. Care of the Mentally Ill in Custody

The number of mentally ill inmates in Alaska's correctional institutions needing treatment far exceeds DOC's resources.<sup>85</sup> On the study day in January of 1997, there were 883 mentally ill trust beneficiaries in DOC's fifteen institutions. DOC has attempted to prioritize treatment among these individuals to best use its limited resources. Accordingly, DOC primarily treats those mentally ill inmates who are the first statutory responsibility of the MHTA.<sup>86</sup> These include individuals who are at risk for hospitalization or experience such major impairments in self-care that they require intensive services or create a management problem for a correctional facility.<sup>87</sup>

Recently, DOC developed a plan to improve care for its mentally ill inmates.<sup>88</sup> The highest priority recommendation in the plan for mental health services is to create a sub-acute care unit for mentally ill men. Even this still would not fully meet the needs of DOC's chronic and acutely mentally ill population,<sup>89</sup> but a sub-acute unit is one of the essential components in a continuum of care for incarcerated mentally ill offenders. An adequate continuum of care would help DOC meet the clinical, safety and management needs of its seriously mentally ill.

### 4. Groups with Special Needs

Other MHTA beneficiaries also require specialized treatment but usually do not receive it. These include the developmentally disabled,<sup>90</sup> those who suffer from Fetal Alcohol Syndrome (FAS)/Fetal

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<sup>85</sup> The discussion in this section refers only to the "mentally ill," one of the four beneficiary groups of the Mental Health Trust Authority. See note 13, *supra*.

<sup>86</sup> By statute, the Alaska Mental Health Trust Authority is charged with the oversight of and advocacy for the beneficiaries of the mental health trust settlement income account. See AS 47.30.011, AS 37.14.011 and AS 37.14.031.

<sup>87</sup> Because the more stable inmates are among those transferred to facilities in Arizona, Alaskan facilities experience a much higher concentration of psychiatrically and behaviorally disturbed inmates.

<sup>88</sup> The Department's plan, released in 1999, was developed by an interagency committee composed of members of the Advisory Board on Alcoholism and Drug Abuse, the Alaska Mental Health Board, the Governor's Council on Disabilities and Special Education, the Division of Mental Health and Developmental Disabilities, the Division of Alcoholism and Drug Abuse, the Department of Corrections, and the Alaska Mental Health Trust Authority. See STRATEGIC PLAN FOR TRUST BENEFICIARIES, *supra* note 69. Funding for the recommendations in the plan has not yet been approved.

<sup>89</sup> STRATEGIC PLAN FOR TRUST BENEFICIARIES, *supra* note 69, at 7.

<sup>90</sup> National prevalence estimates would suggest that there are as many as 185 inmates with developmental disabilities in Alaska's correctional institutions on any given day. STRATEGIC PLAN FOR TRUST BENEFICIARIES, *supra* note 69, at 8.

Alcohol Effect (FAE),<sup>91</sup> and those with dementia.<sup>92</sup> Within the institutional setting, DOC frequently does not have sufficient resources to screen for and identify individual needs. In still other cases, it cannot provide the specialized programs necessary to meet the populations' needs. Without additional funding, the situation is likely to worsen as offenders with long sentences age and develop other health problems. The Department's Strategic Plan addresses some of these needs.

## 5. The Need for Transitional Housing

The DMI Committee identified transitional housing as the most critical need of mentally disabled inmates. No facilities currently provide guaranteed transitional housing for this population. Many of the existing beds in mental health adult residential assisted living centers and other housing programs are not accessible to DOC clients because of various restrictions.<sup>93</sup> As a consequence, mentally disabled offenders are frequently released from the structure of the DOC institutional environment to a motel room or a homeless shelter. Neither of these options provides the support, supervision, structure and safety essential for an effective transition from institutional to community life. Increasing the number and variety of housing options would increase the chance of successful reintegration into the community and reduce the likelihood of recidivism.

## 6. Title 47 Holds

Title 47 holds present a unique problem for the criminal justice system. By statute, a mentally ill individual who has not committed a crime may be held in a correctional facility while awaiting either a psychiatric evaluation or transportation to a designated psychiatric evaluation facility.<sup>94</sup> Holds can last for several hours or even days, depending on transportation contingencies. As a result, expensive beds designed for serious offenders are occupied by non-criminals experiencing mental

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<sup>91</sup> Due to the complex medical diagnosis, FAE/FAS has historically been under-diagnosed and under-reported in the community at large and within DOC. The actual number of inmates with FAS/FAE is not known. Eventually, the state hopes to conduct surveys to establish the number of inmates with FAS/FAE. *Id.*

<sup>92</sup> Another group, often associated with the mentally disabled that frequently does not qualify for mental health beneficiary status, is persons with organic brain impairment that may be caused by head injuries or substance abuse (although some substance abuse-related mental disabilities are covered by the MHTA). Very limited services and resources are available for these individuals.

<sup>93</sup> Most of these restrictions are imposed by federal housing grant regulations and local zoning ordinances.

<sup>94</sup>The term "Title 47 holds" is used interchangeably to refer to one of two scenarios. It may refer to the use of prison beds to temporarily detain seriously intoxicated or incapacitated persons for a protective custody period of up to 12 hours. *See* AS 47.37.170. Alternatively, it may refer to the use of prison beds to detain mentally ill individuals awaiting transportation to a psychiatric facility for evaluation. *See* AS 47.30.705. Although DOC does not statistically separate the mental health holds from the substance abuse holds, DOC staff believe the greater percentage of Title 47 holds are alcohol-related. *See* STRATEGIC PLAN FOR TRUST BENEFICIARIES, *supra* note 69, at 73.

health emergencies. Commission members concur that appropriate community-based alternative care options would reduce the cost to the correctional system caused by this population.

## F. Restorative Justice

As criminal justice practitioners look for new ways to grapple with the diverse and often disconnected issues of accountability, victims' rights, rehabilitation, cost controls and demands for more punitive responses to offenders, the term "restorative justice" appears more frequently. Literature about restorative justice gives several definitions, all of which emphasize the need to repair harm resulting from the crime, and, as far as possible, prevent new crime.

### 1. Principles, Goals and Examples of Restorative Justice

Most restorative justice programs focus on two principles: 1) recognizing and fulfilling the victim's needs for restitution and healing; and 2) recognizing the need to hold the offender accountable for the injuries he or she caused. The community plays a role in meeting these needs by providing the environment and resources necessary for justice to occur. Restorative justice does not eliminate the need for incarceration. Offenders who pose significant safety risks should still be placed in supervised settings, but they can also be exposed to elements of restorative justice. At times, an outside authority must make decisions for uncooperative offenders, using the principle that actions should be reasonable, restorative and respectful.

The goals of restorative justice are:

- Restitution and healing for victims;
- Healing the relationship between the victim and the offender;
- Accountability and reparation by offenders; and
- Healing for the community (community often is defined as the victim, the offender and their families/friends/support groups, rather than as a geographical community).

Many practices and programs target these goals, including:

- Victim impact statements;
- Victim awareness education programs and panels;
- Victim-offender mediation;
- Reparative court hearings (to determine victim reparation);

- Community reparative boards;<sup>95</sup>
- Community or neighborhood impac. statements;
- Community based supervision;
- Community work service;
- Restitution;
- Family group conferencing;
- Circle sentencing;<sup>96</sup> and
- Education of offender to increase accountability and avoid future offenses.

## 2. Restorative Justice Practices in Alaska

In Alaska, community work service, victim impact statements and restitution all are practices authorized by statutes and regularly used by the justice system. Other restorative justice practices, such as victim-offender mediation, circle sentencing and community-based supervision, are being used more frequently in communities across the state. Some practices, such as family group conferencing and community reparative boards, are being discussed but not yet used. Community/neighborhood impacts often have been taken into account in individual cases. Community-based supervision has been tried in a variety of contexts, again, on an individual basis. The Division of Community Corrections has made a substantial commitment to incorporating the restorative justice principles of victim participation and offender accountability as often as possible in its programs and policies.

Some of the programs currently operating within the state that use various restorative justice principles include:

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<sup>95</sup> Community reparative boards, staffed by volunteers, are used throughout Vermont. They are used primarily as a condition of probation for convicted offenders, although in some instances they are used after conviction as a condition of deferred sentencing (the equivalent of an SIS in Alaska). Typically, the board meets with the offender to establish the conditions and requirements that the offender must satisfy. These are set forth in a contract. Conditions may include such things as community work service, restitution, an apology letter to the victim(s), a written paper about the offense, or a substance abuse assessment (not treatment). The offender meets regularly with the board. This provides an opportunity for various forms of discussion and interaction, and it allows the board to follow up on the progress made by the offender after set periods of time. Participating victims may choose the level of involvement with which they are comfortable. If an offender does not comply satisfactorily with the agreed-upon contract, the board can refer the case back to the court.

<sup>96</sup> Alaska judges and magistrates have received training on a circle sentencing model used in the Yukon Territory in which the judge, attorneys, victim, offender, families, probation officer and others participate. Minnesota uses another model in which judges refer cases to a volunteer committee. Committee members conduct circles for the victim and offender separately. They then conduct a shared circle, after which they make sentencing recommendations to the judge. They also may use the model in which judge, attorneys and others participate in the process more directly. Minnesota also uses follow-up circles in some communities to monitor offenders' progress.

- **The Municipality of Anchorage Pretrial Diversion Program.** The Municipality of Anchorage Pretrial Diversion Program uses several restorative justice principles. In effect for more than ten years, the program works primarily with nonviolent offenders who are required to make restitution to their victims and complete a designated amount of community work service. The program charges offenders a fee to defray a substantial part of the program's expense and saves money through reduced prosecution and defense costs, as well as through reduced court hearing time.
- **The Municipality of Anchorage Restorative Justice Program.** The Municipality also operates a program, titled Restorative Justice, that emphasizes victim involvement through either adult victim-offender mediation or, alternatively, through the civil compromise of certain misdemeanor offenses. Although victim-offender mediation has been available in Anchorage for juvenile offenders for some time, the Municipality is currently experimenting with a pilot project targeting adult offenders. The civil compromise alternative is based on AS 12.45.120 which allows the court to dismiss certain types of misdemeanor cases if the victim and offender agree to an appropriate amount of restitution to be paid to the victim. Although this statutory provision has been available for many years, the Municipality has instituted a new pre-arraignment screening process to quickly identify cases appropriate for this disposition in order to reduce prosecution, defense, and court costs related to these cases.
- **Juvenile Victim-Offender Mediation.** A juvenile victim-offender mediation program operates in Anchorage through the nonprofit corporation Community Dispute Resolution Center (CDRC). Juvenile probation officers refer offenders to the program. Now in its fifth year, the program handled about 150 cases in 1998, and expects about 200 in FY00. Offenders have paid more than \$9,000 in restitution as a result of the mediations. Victims report a high degree of satisfaction with the program. Individual staff at McLaughlin Youth Center also do victim/offender mediations.
- **Victim Impact Panels and Classes.** Several Anchorage organizations conduct victim impact panels, including Standing Together Against Rape (STAR), Mothers Against Drunk Driving (MADD), and Abused Women's Aid in Crisis (AWAIC). Typically the victims' panels meet with offenders, both adult and juvenile, who have been sentenced to a treatment program that includes this as a part of probation. Victims discuss the effects of the crimes on their lives, their perspectives on offenders, and the types of actions they hope that offenders will make in reparation.

Victims for Justice also sends victim speakers to work with incarcerated juveniles. Fairbanks groups are beginning to offer the same types of services and opportunities for victim/offender interaction.

The Department of Corrections offers Victim Impact Classes (VIC). The VIC are designed to hold offenders accountable to victims and the community in general, by clarifying who the victims are and how the offender's behavior impacted both the victim and the community. DOC provides extensive training for staff, nonprofit organizations and victim advocacy groups to serve as instructors in the VIC. DOC also operates a statewide Victim's Advisory Committee (VAC) to develop and coordinate victims' services and a victim notification program (VINE) to notify victims of an offender's release.

- **Circle Sentencing.** All state court judges and magistrates have received training on circle sentencing. At least one Anchorage judge and several judges and magistrates in smaller courts have conducted circle sentencings.
- **The Dillingham Village Public Safety Officer (VPSO) Project.** Village Public Safety Officers in the Dillingham area have been trained through a DOC Division of Community Corrections pilot program to assist in the supervision of probationers and parolees in the area's villages. The purpose of the project is to provide additional supervision for probationers and parolees living in communities outside the hub communities where probation officers are located. Through this project, the restorative justice goal of increased community participation in providing justice is served. The Division of Community Corrections has also provided similar training to village public safety officers and village public officers in King Salmon, Bethel, Sitka and Nome.
- **Tribal Courts and Councils.** Some tribal courts and councils operate in traditional ways that embody restorative justice principles. While some tribal courts are structured to resemble the western adversarial justice model, most also incorporate restorative justice principles at various points in their processes, particularly in dispositions. Tribal courts and councils operate throughout the state, focusing particularly on quasi-criminal events and family matters.
- **Community Justice.** Another example of a practice that some characterize as restorative is "community justice." Examples are communities or villages (or perhaps tribes) that provide the law enforcement system or a community court.

- **Community Policing and Probation.** In larger communities, community policing refers to various programs in which the police work within a specific neighborhood or beat. The police may help resolve disputes without arrests or prevent them by their presence. In the process of providing these services, the programs often incorporate practices that can be characterized as “restorative,” such as having police trained in resolution of disputes. These programs rely on a combination of adversarial justice approaches and restorative justice practices. To the extent that they do not give special emphasis to the victim, some practitioners would not categorize them as “restorative.”

The Neighborhood Based Supervision (NBS) project in Anchorage is an example of community probation. Operated by the Division of Community Corrections, the project brings probation officers into the neighborhood communities to work with community members to resolve concerns. By spending more time in the neighborhoods, probation officers also improve relationships with the local police, businesses and social service providers working in the area, and they establish a better understanding of probationers’ activities.

- **Drug Courts.** The state court system has established a planning committee for a drug court that, in its initial phases, will deal only with felony offenders. The Anchorage Municipal Prosecutor’s office has expressed its willingness to work with the Anchorage District Court judges to create a pilot district court program. The tribes of Chevak and Kwethluk each received \$100,000 grants from the United States Department of Justice to plan and implement courts for alcohol and drug misdemeanors. These courts will emphasize rehabilitation and monitoring through the use of community resources. Drug courts are often considered restorative because they focus on the offender’s responsibilities to the family and community, rather than exclusively on the offender’s supervision and rehabilitation.

## G. Monitoring

### 1. Introduction

Commission members generally agreed that one of the most important ways in which the criminal justice system can achieve the Commission’s goals is to better monitor offenders’ compliance with conditions of pretrial release, probation and parole. The benefits of monitoring may include:

- increased accountability of offenders;
- reduced recidivism resulting from successful completion of required treatment;
- significant reductions in the amount of resources spent by prosecutors, law enforcement officers, judges, attorneys and corrections officers enforcing court-ordered conditions; and
- increased safety for victims and the larger community because offenders are more likely to be receiving treatment, making court appearances, and complying with other probation conditions.

As used throughout this report, monitoring means a level of contact with an offender that is limited to reminders to the offender of court hearings, court-imposed requirements and treatment conditions, rather than more formal supervision by a probation officer able to petition to revoke probation. The monitoring function may be structured to let offenders know when they are not in compliance and inform them of the consequences. It may also be structured to report lack of compliance to the prosecutor, court, or other appropriate agency.

## 2. Need for Monitoring

The criminal justice system imposes many requirements on defendants. Typically, a defendant must appear in court for hearings, comply with pretrial release provisions, report for substance abuse or other intervention screening, report for service of a sentence at a date after the sentencing hearing,<sup>97</sup> and comply with a wide variety of probation or parole conditions. The defendant must keep track of these different requirements and find the transportation, child care and other resources they need to comply with them. Defendants often must hold a job or go to school while meeting the additional court requirements.

The criminal justice system has no consistent means of assuring that defendants meet these requirements. Defense attorneys or bondsmen may remind defendants of pretrial responsibilities, and treatment or screening programs may remind misdemeanor defendants of post-conviction requirements. However, these reminders are not required - they occur because a specific person or agency has a policy of using them.

Most attorneys, judges, and other criminal justice system personnel agree that many misdemeanants would benefit greatly from some form of monitoring. Many misdemeanants have prior records, are

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<sup>97</sup> In most communities, if a defendant requests an opportunity to serve his/her sentence at a later date because of work or family needs, the judge will authorize a delay. In a few communities, including Anchorage, prison overcrowding is so serious that DOC routinely is unable to take offenders until a date several weeks or months after the sentencing date.

reluctant to attend treatment and intervention programs, and repeatedly demonstrate poor judgment and limited time awareness. For the vast majority of misdemeanants, unlike felony offenders, no monitoring or probation supervision is available. Monitoring would help the community by increasing the chances that the defendant will appear in court and comply with conditions of release. Assisting in time management and increasing the likelihood that the offender will receive needed treatment reduces the chances that offenders will commit new crimes. Reducing recidivism would lead to a reduction in criminal justice system costs.

Monitoring could also save the state money in other ways. At present, in some parts of the state, defendants are often required to find a third-party custodian who must agree to sight and sound monitoring of the defendant 24 hours a day. Defendants who cannot meet this requirement or other bail conditions, usually remain incarcerated. Pretrial incarceration is expensive and presents few opportunities for rehabilitation or productive activity. It also may result in a defendant serving more time than the offense otherwise would have warranted at sentencing. In appropriate cases, monitoring would afford the court an alternative to the third-party custodian requirement, thereby freeing up expensive jail beds.

Monitoring also could save the state money that would otherwise be spent tracking down defendants who have failed to appear through oversight. When a defendant fails to appear or meet a condition of release or probation, a costly process is set into motion. Updates to files, appearances in court to obtain warrants, service of warrants, arrest and booking, appearance of the defendant and attorneys, appearances by witnesses and probation/parole officers, remands to custody, and imposition of various criminal penalties, all consume substantial amounts of time and scarce resources, including prison beds. In many situations, monitoring may be the key to avoiding the needless invocation of this costly process, while ensuring that the public is protected and that respect for the justice system is maintained.

### 3. How Monitoring Differs from Probation Supervision or Case Management

Monitoring differs from supervision or case management of offenders on pretrial release, probation or parole. Traditional supervision may include surveillance of the offender, pro-active assistance to the offender in finding employment and housing, and otherwise meeting the offender's needs. A supervising probation officer has the authority to arrest offenders and return them to court if warranted. Case management, as the term is most often used, includes screening for specific defendant needs, referrals to other agencies for services, and follow up to be sure the defendant is receiving the services and other services, depending on the case management model.

Monitoring, as the term is used here, does not include most of these functions. It may entail a staff person calling to remind an offender of a court date or treatment requirement. Or, if an offender does not appear for an intervention or a court date, the monitor may contact the offender, ask why the appointment was not kept, remind the offender of the next date, and encourage the offender to attend. The monitor also would notify the appropriate agencies - courts, prosecutors, law enforcement, treatment programs - of the offender's noncompliance and, if needed, provide information to be used in a warrant.

An example of a successful monitoring program in Alaska is the Alcohol Safety Action Program (ASAP). From the early 1980's until 1995, ASAP was responsible for monitoring a wide range of requirements for misdemeanants. During this time, the criminal justice system found that the need to immediately issue arrest warrants was substantially reduced. ASAP screened offenders for alcohol and substance abuse problems, referred those with problems to appropriate programs, tracked attendance, and tracked attendance at other treatment or intervention required by the court. The court, for the most part, received notices of noncompliance only from ASAP. In addition to reducing court, clerical and attorney costs, ASAP reduced the likelihood that an offender would refuse to or fail to appear. However, ASAP did not monitor all of the different aspects of defendants' activities that would be helpful. In particular, it did not monitor pretrial releases and, after 1995, it monitored only substance abuse treatment rather than the broader range of substance abuse programs, anger management programs, batterers' intervention programs, and other treatment.

#### 4. Benefits to the Criminal Justice System

Monitoring is envisioned as a far less intrusive and less costly activity than formal probation supervision. As such, it would benefit the system in several ways. Because of the lower level of formality and the lack of authority to arrest or otherwise enforce court requirements, monitoring would require substantially less training. Communities could provide volunteers to monitor offenders at very low cost to the state, with the added benefit of increasing the community's participation in the offender's rehabilitation. Finally, research suggests that offenders who complete programs are less likely to re-offend than those who never begin or who complete only part of a program or intervention. Monitoring is one tool to help hold offenders accountable for their actions, ensure that they complete programs, and otherwise assure that they comply with court orders.

#### 5. Types of Activities Appropriate for Monitoring

Certain types of activities are particularly appropriate for monitoring. These include:

- Compliance with pretrial and post-sentencing substance abuse screening, treatment, and intervention program requirements, (ASAP currently performs this function for most sentenced misdemeanor offenders);
- Compliance with other treatment or intervention conditions of probation, especially attendance at batterers' intervention or anger management programs (while many programs perform some level of their own monitoring, most providers and justice system personnel agree that it is more effective to have a central agency monitor all of an offender's requirements);
- Compliance with additional conditions of probation or parole, particularly in smaller communities, where volunteers could assist in monitoring these conditions, such as performance of community work service; and
- Compliance with pretrial conditions of appearance at court hearings. These could be monitored through phone calls, reducing the need for issuance of costly warrants in cases of nonappearance.

Rather than monitoring all defendants, monitoring could be limited to higher-risk offenders. Higher risk offenders might be defined as those offenders with a prior criminal history or who present some indications of substance abuse problems (such as substance abuse at the time of offense or a prior indication of substance abuse problems). Practitioners believe that these are the defendants who would most clearly benefit from monitoring.

## 6. Model for Program

The Alcohol Safety Action Program can serve as one possible model for monitoring. ASAP staff use standard case management techniques such as mailing letters to clients notifying them that they should come to ASAP for screening and program assignment, contacting service providers to notify them that a client has been assigned, reassigning clients to different treatment programs when needed and filing affidavits of noncompliance with the prosecutors' offices when necessary. Additional types of monitoring that ASAP does not perform include notifying a client before a court hearing or treatment program date, or calling the client who has failed to appear to tell them that another failure will mean filing of an affidavit of noncompliance. Rather, when ASAP is notified by the treatment or intervention program that the offender has failed to appear, staff prepare an affidavit of noncompliance to file with the prosecutor.

Another model is the Anchorage Municipal Prosecutor's Pretrial Diversion Program that monitors offenders and provides other services. On the appropriate date, the staff sends a single letter notifying offenders who have not completed their requirements that they must comply within 90 days or fail the program and have prosecution reinstated. If an offender calls about the letter, a staff

member reviews the consequences of noncompliance with the offender. The staff member may reschedule any due dates and may assist in other ways. More than 75 percent of offenders in 1998 completed the program satisfactorily, paying their administrative costs and completing their community work service. This program collects enough in fees from defendants to defray most costs of operation.

The Commission has recommended that its successor organization design a monitoring program to meet the needs described by criminal justice agencies throughout the state. The program can build on successful existing programs within the state, or adopt additions or alternatives based on successful programs in other jurisdictions. Measures of effectiveness of a new program could include reductions in numbers of bench warrants issued for failures to appear or to comply with court-imposed conditions, increased completion of required programs, and reductions in jail time imposed for violations of conditions.

## H. Outcome Measures for Criminal Justice Projects

### 1. Introduction

In making its recommendations, the Commission examined various ways to measure the success or usefulness of each recommendation or project, if implemented. For many of the recommendations, the Commission viewed recidivism as one of the potentially most useful measures of success. For other recommendations, the Commission believed that other measures of success, such as reductions in the crime rate or a savings in personnel hours, might be more meaningful. The complexities of using outcome measures in making policy decisions led the Commission to include this discussion.

### 2. Recidivism as an Outcome Measure

For many observers, the bottom line in criminal justice policies and programs is recidivism - the likelihood that the offender will commit another crime or receive another conviction. The long term goal is seen as reduction in crime. The assumption is that by reducing the chances that this offender will commit another crime the overall rate of crime will be reduced. The additional assumption is that if crime is reduced, the public will be safer and money spent on crime reduction or prevention programs can be re-directed to other uses.

The actual proof of reductions in recidivism, or most other measures of the effectiveness of criminal justice programs and policies, is quite difficult. Some important considerations in measuring recidivism, or any other commonly used criterion of success, include:

- **Lack of a common definition for an outcome.** “Recidivism” is the most familiar outcome that programs attempt to measure. Recidivism is defined in Webster’s Ninth New Collegiate Dictionary as “a tendency to lapse into a previous condition or mode of behavior. . . .” Among researchers, however, recidivism may be measured very differently. Some researchers count any new arrest as recidivism. Others count only convicted and sentenced offenses. Some count only offenses committed after a period of incarceration. Others count any offenses committed after an arrest or conviction on the first offense of the series. Some count charges of multiple offenses charged in the same document or set of cases (e.g., several drug sales, several burglaries) as one incident of recidivism. Others may count these as several instances of recidivism. Some consider the seriousness of the new offense relative to seriousness of previous offenses, believing that the trend towards greater or lesser offenses tells more about an offender than the bare fact of a new offense. Because of the lack of a common definition for recidivism, caution must be used in interpreting any results aimed at measuring recidivism.
- **Lack of consistently recorded data, particularly for misdemeanor offenses.** Little data is recorded for most misdemeanor offenses, making it difficult to measure outcomes. Missing data include information about prior records, the current offense, offender demographics, substance abuse history, and other factors that might serve as an alternative explanation for recidivism.
- **Lack of sufficient time in which to measure the outcome.** Particularly for recidivism, many professionals believe that substantial periods of time must elapse before an offender’s likelihood of committing another crime can be truly estimated. Ideal lengths of time range from two to five years. However, many evaluators rely on much shorter periods (six months to one year) because they do not have sufficient funding to carry out longer studies.
- **Other possible explanations for positive findings.** Many phenomena could be explained in several ways. Evaluators frequently do not have the time, resources, or necessary permission to conduct research that looks at many variables, or that is designed to be rigorously experimental. For example, sentencing variations rarely can be tested in a controlled/random setting because defendants’ constitutional rights would be jeopardized.

Finally, in thinking about the usefulness of recidivism as a measure of success for a criminal justice program, it is helpful to keep in mind that demonstrable reductions in recidivism may not translate into clear-cut reductions in costs. Even though a program can keep forty offenders per year out of jail, it may not be sufficient to reduce the number of jail beds used by forty, because of economies of scale and other factors causing simultaneous increases in jail populations. Nonetheless, reducing recidivism reduces the numbers of crime victims, property losses, and all of the other costs (economic or otherwise) associated with crime, making it a worthwhile measure of benefit.

### 3. Use of Other Outcome Measures

Evaluators can use a variety of methods and measure many outcomes other than recidivism, depending on the goals of the program or procedure. Measures useful in many criminal justice programs could include numbers of bench warrants issued, completion or partial completion of programs, or changes in crime rates. Other outcomes that can be measured, such as crimes committed or arrest rates or program completion, may experience difficulties in finding a consistent definition, similar to the difficulties described above for recidivism.

Evaluators also can measure the success of programs by looking at more subjective measures, such as fairness, by using surveys (conducted using correct methodology to assure reliable results), or, depending on the subject, by looking at proxy measures such as numbers and outcomes of appealed cases. If a program goal is to reduce the amount of time required for a procedure, before and after comparisons, or control group comparisons, can track the amounts of time needed under different circumstances. Case studies can be used to measure outcomes when limited samples are available, or when information must be more detailed in order to be meaningful. Many rigorous evaluations use several different methods to determine whether a program has achieved the goals set. Statistical analyses, interviews, surveys, case studies and historical analysis all contribute to a more accurate determination of the program's effects and the likelihood that it can be successfully transposed to another setting.

### 4. Conclusion

Recognizing the many and varied complexities of assigning outcome measures to evaluate the success of a particular proposal, the Commission concluded it would be premature to include specific outcome measures in each recommendation. The Commission anticipates that as individual recommendations are acted upon, the implementing agency will be in a better position to formulate specific outcome measures. At that point, the implementing agency will be aware of the funding available for use in measuring program success, the available sources of data that can be relied upon to measure program success, and any other variables that may affect program success, such as the implementation of multiple new programs targeted at the same population.

## IV. Commission Recommendations

### A. General Recommendations

1. **The criminal justice system entities should create a small organization to implement the recommendations made by the Commission, to resolve policy issues, to provide liaison with federal and other governments, and to take responsibility for longer-range criminal justice planning.**

*Goals:* To provide continuing criminal justice agency policy and planning coordination, to increase the ability of agencies to work together effectively, and to enable inter-branch cooperation to improve the functioning of the criminal justice system.

*Commentary:* Based on the success of prior criminal justice collaborative groups, the Commission believes that the state would benefit greatly from the creation of a successor organization to serve as an ongoing inter-branch cooperative criminal justice system working group. The organization's responsibilities should include, at a minimum, the following tasks:

- 1) Problem-solving, including policy issues, legislative responses, and management issues;
- 2) Encouraging implementation of Commission recommendations in the appropriate forums;
- 3) Longer-range criminal justice planning;
- 4) Liaison with federal funding and policy agencies; and
- 5) Liaison with other governments, including municipalities, tribes, and other states.

Members should include the Attorney General, the Commissioners of Corrections, Health and Social Services, and Public Safety, the Administrative Director of the Courts, the Public Defender, the Director of the Office of Public Advocacy, a representative of the Judicial Council, a representative of the Alaska Association of Chiefs of Police and a representative of the municipal attorneys association. These ten members, or their designees, should set the specific parameters of the successor organization's functions and meet several times each year to accomplish its missions. In addition, the organization should create subcommittees that include a broad range of persons with the skills and experience necessary to

meet specific challenges. These subcommittees would carry out much of the organization's work.

*Action Needed:* Requires agency action but no new funding.

*Implementing Agencies:* The criminal justice system entities.

2. **Criminal justice system agencies should continue to work together to develop criminal justice information systems that can interact efficiently and provide data that enable policymakers to make reliable decisions on policy issues.**

*Goals:* To provide sufficient data to policymakers in all branches of government to make cost-effective decisions that improve the administration of justice.

*Commentary:* During the course of the Commission's work, each of the committees, as well as the Commission itself, stressed the need for additional data to aid it in its work. Agencies have made substantial progress toward creating the systems that will provide this data. The Criminal Justice Information Advisory Board, in the Department of Public Safety, has the primary responsibility for helping the state design and operate criminal justice information systems and provide for their interaction. The Commission recommends that this group continue its work, keeping in mind the need for additional data repeatedly emphasized in this report and the Criminal Justice Assessment Commission Preliminary Report.

*Action Needed:* Continued agency policy action.

*Implementing Agencies:* All criminal justice system agencies.

3. **The successor organization to CJAC should review and evaluate systems for monitoring of misdemeanor probation and pretrial conditions, giving consideration to the special needs of the different populations expressed throughout these recommendations. The organization should recommend a system or systems that will improve the likelihood that offenders will comply with court conditions and orders.**

**Goals:** To respond to the need for better methods of assuring that offenders comply with court conditions and orders, and to reduce use of bench warrants and incarceration.

**Commentary:** Most of the Commission's committees made recommendations that the state find a better way of monitoring or supervising misdemeanants, both pretrial and post-conviction. Although judges can release offenders on bail with conditions or impose conditions of probation after conviction, the state has few means of enforcing court orders other than with bench warrants and arrests for failure to comply. The most frequently used sanctions are either a repetition of the court's orders and additional warnings, or incarceration. Both appear to be ineffective and costly.

This recommendation anticipates that the Commission's successor organization will identify monitoring and supervision systems used by other jurisdictions or in other contexts, will evaluate them in light of Alaska's needs, and will recommend cost-effective alternatives to the present procedures. Possible alternatives could include new uses of technology, volunteers, or expansion of existing programs and policies. Needs of specific populations, including the mentally disabled, substance abusers, and repeat offenders, should be considered in the evaluation.

**Action Needed:** Action by CJAC successor organization.

**Implementing Agency:** CJAC successor organization.

4. **Individual criminal justice system agencies and the criminal justice system agencies working together should explore further the principles of restorative justice.**

**Goals:** To increase accountability of offenders, to repair the harm resulting from individual crimes to the maximum extent possible, and to increase the participation of communities and victims in that process.

**Commentary:** The Commission supports the principles of restorative justice outlined in the body of this report. Many of the Commission's recommendations incorporate these principles. The Commission believes that criminal justice system agencies should work, individually and together,

to explore further the principles of restorative justice and continue to implement programs and policies that support these principles.

*Action Needed:* May require agency policy changes or action but no immediate need for funding.

*Implementing Agencies:* All criminal justice system agencies.

5. **Appropriate organizations should explore all available means to reduce the disproportionate number of Alaska Natives and other minority offenders and victims in the justice system. These efforts should include increased reliance on local justice initiatives and treatment programs.**

*Goals:* Reduce the disproportionate number of Alaska Natives and other minority offenders and victims in the justice system.

*Commentary:* The Commission, like many groups before it, is concerned about the disproportionate number of Alaska Natives and other minority offenders and victims in the justice system. It believes that state and local agencies and organizations should work together to reduce their disproportionate representation. Many of the recommendations in this report, such as the expansion of treatment programs, particularly in rural and Bush areas, better enforcement of alcohol distribution laws, and the consideration of cultural relevance in treatment programs, are intended to address this problem in some measure. Local communities and organizations should participate in identifying other means of reducing the disproportions and in implementing those means.

*Action Needed:* May require agency policy changes or action but no immediate need for funding.

*Implementing Agencies:* All criminal justice system agencies, local communities and organizations.

## B. Alcohol Policy Committee Recommendations

1. **The Commission supports an increase in the statewide excise tax on alcoholic beverages by measures such as Initiative 99ATAX.**

**Goals:** To reduce crime and child abuse, to increase public safety, and to reduce costs of criminal justice system agencies.

**Commentary:** The Commission believes the excise tax on alcoholic beverages should be increased. Studies show that when the price of alcohol is increased, the amount of alcohol consumed by every type of drinker decreases. A decrease in consumption reduces the number of alcohol-associated problems - violent crime, child abuse, sexual assault, suicide, motor vehicle fatalities, and drunk-driving - all of which result in immense costs to the state. According to a 1989 estimate by the State Office of Alcoholism and Drug Abuse, the state spends \$184,829,417 annually in costs associated with substance abuse. In 1999 dollars, that cost is now \$245,823,125. A tax increase would cost nothing to implement. Yet, it could potentially realize great savings through a reduction in costs associated with alcohol abuse.

Taxes on alcoholic beverages have fallen by almost 75 percent since 1961. In 1961, the tax on the average alcoholic drink was equivalent to \$0.47 in 1997 dollars. In 1997, the average tax on an alcoholic drink in Alaska was only \$0.13. The legislature has not increased alcohol taxes in Alaska since 1983.

The \$.25 per drink tax increase proposed in Initiative 99ATAX would generate \$70 million dollars each year in new tax income. A portion of this, used within the constitutional limits for state spending, could fund rehabilitative treatment programs and services that, in turn, would lead to further savings through decreased recidivism and decreased demand for state services.

**Action Needed:** Requires substantive legislation but no new funding.

**Implementing Agencies:** The legislature and the Department of Revenue.

- 2. The Commission supports legislation allowing municipalities to tax alcoholic beverages at a rate independent of the rates used for other sales.**

**Goals:** To reduce crime and child abuse, to increase public safety, and to reduce costs of criminal justice system agencies.

**Commentary:** Under present Alaska law, cities may not impose a sales tax on alcohol that is higher than the tax imposed on the sale of any other item. See AS 4.21.010(c). Permitting cities to exercise their discretion to tax alcoholic beverages at a rate determined by the community, independent of the taxes assessed on other sales, would produce many of the same benefits described in the commentary to Recommendation B-1 above.

**Action Needed:** Requires substantive legislation but no new funding.

**Implementing Agencies:** The legislature and local communities.

**3. The legislature should remove the statutory cap and increase wholesale license fees to fund increased enforcement of Title 4 statutes.**

**Goal:** To provide better enforcement of laws regarding sales and distribution of alcohol.

**Commentary:** Enforcement of Title 4 laws regarding the sale and distribution of alcohol needs to be more aggressive. More aggressive enforcement requires additional funding for more enforcement personnel. Increasing the revenue generated through license fees, which are already earmarked for local enforcement of Title 4, is an appropriate and reasonable means to generate additional revenue.

Under existing law, liquor wholesalers pay a licensing fee calculated on the amount of sales that they complete, up to a statutory cap of \$10,000 (the maximum license fee charged to a wholesaler who distributes more than \$1,000,000 of alcoholic beverages.) The legislature should remove the cap on those fees. A wholesaler who sells \$2,000,000 worth of alcoholic beverages should be expected to pay a higher licensing fee than someone selling half that amount. Increasing the wholesale liquor license fees would generate approximately \$350,000 to \$500,000 in new revenue.

**Action Needed:** Requires substantive legislation but no funding.

**Implementing Agencies:** The legislature, the Department of Revenue, and local communities.

4. **The responsibility for coordination of, and education on, alcohol policy should be vested in one person, rather than shared by many.**

**Goals:** To reduce crime, child abuse and neglect, and other consequences of alcohol addiction, and to reduce the costs associated with those consequences.

**Commentary:** The Commission believes that the state must address the problem of alcohol abuse using a highly visible, focused, and coordinated approach. Many Commissioners, including those from Law, Public Safety, Health and Social Services and Administration, currently share responsibility for dealing with the impact of alcohol abuse. No one person has the responsibility to develop policies and implement measures that go to the root of the problem. At the federal level, the creation of a cabinet level drug "czar" has dramatically enhanced public visibility of the drug problem and has focused attention on coordinated approaches to the problem. This administration should consider the creation of a similar position for alcohol issues. Due consideration also should be given to broadening and strengthening the existing Governor's Advisory Board on Drug and Alcohol Abuse.

**Action Needed:** Requires substantive legislation and funding.

**Implementing Agencies:** The legislature and the executive branch.

5. **The legislature should increase the number of members on the Alcohol Beverage Control Board from five to seven, with the two additional members representing the public health or medical community and the law enforcement community.**

**Goals:** To make the Alcohol Beverage Control Board more reflective of and responsive to the public's interests.

**Commentary:** Given the pervasive impact of alcohol on Alaska society, it is imperative that the public interest be fairly represented in each and every decision of the ABC Board. AS 04.06.020 mandates that two members of the board be actively engaged in the alcoholic beverage industry. Historically though, at least one other member of the board has created a majority for alcohol dispenser interests because of past experience in the industry. While

alcohol dispenser interests should be represented on the board, adding two members, one from the public health or medical community and one from the law enforcement community, will provide a broader range of interests and ensure that the public interest is better protected. Additional travel and lodging costs for two individuals for the regular meetings of the Alcohol Beverage Control Board would be minimal.

*Action Needed:* Requires substantive legislation and minimal additional funding.

*Implementing Agencies:* The legislature and the Department of Revenue.

6. **The legislature should remove the law enforcement functions of the Alcohol Beverage Control Board from the Department of Revenue and place them in the Department of Public Safety.**

*Goals:* To improve enforcement of Title 4 liquor laws and thus reduce violent crime and other harmful consequences of alcohol abuse.

*Commentary:* The enforcement authority of the Alcoholic Beverage Control Board is undermined by a lack of investigative personnel as well as by the lack of clarity in its mandate. The purpose of the Department of Revenue is to raise revenue, not to assist law enforcement. To ensure quality enforcement of Title 4, this function should be moved to a law enforcement department. Licensing functions would remain with the Alcoholic Beverage Control Board.

*Action Needed:* Requires substantive legislation but no new funding.

*Implementing Agencies:* The legislature, the Department of Revenue, and the Department of Public Safety.

7. **Recommendations relating to dry communities.**

- 7(a). **The legislature should take steps to deter illegal alcohol sale and possession in dry communities by amending AS 04.11.010(c) to decrease the amount of alcohol that individuals may presumptively possess for their own use.**

**Goal:** To decrease rural and Bush crime by decreasing unlawful drinking in dry towns.

**Commentary:** In rural and Bush Alaskan communities, the amount of violent crime is directly proportional to the amount of alcohol consumed by the residents. The majority of villages in four rural regions (those surrounding Bethel, Nome, Kotzebue, and Point Barrow) have responded by prohibiting the sale and importation of alcohol, but the hub communities in these four regions remain either “damp” or “wet.” The Commission believes that measures designed to restrict the availability of illegally-imported alcohol in the dry areas of Alaska will reduce violent crime in those areas.

The Legislature should amend AS 04.11.010(c) to reduce by half the amount of alcohol necessary to trigger the “possession for sale” presumption. The legislative change to AS 04.11.010(c) should include a point system for each type of alcoholic beverage, so that liquor laws can be better monitored and enforced. The proposed amendment is:

- (c) In a criminal prosecution for possession of alcoholic beverages for sale in violation of (a) of this section, the fact that a person possessed more than [12 LITERS OF DISTILLED SPIRITS, 24 LITERS OR MORE OF WINE, OR 12 GALLONS OR MORE OF MALTED BEVERAGES] 24 points or more individually or in combination of distilled spirits, wine, or malt beverages in an area where the sale of alcoholic beverages is restricted or prohibited under A.S. 04.11.491 creates a presumption that the person possessed the alcoholic beverages for sale. This is based on the following point system: 1 liter of distilled spirits = 4 points; 1 liter of wine = 2 points; 1 liter of malted beverages = 1 point.

**Action Needed:** Requires substantive legislation. Initially, legislation may lead to a need for increased funding due to a potential increase in the number of bootlegging violations. However, this initial spike in violations (and funding) is not expected to continue for the long-term. The Commission anticipates an overall reduction in criminal justice system costs through a reduction in alcohol-related crime.

**Implementing Agencies:** The legislature, the court system, law enforcement agencies, prosecution and defense agencies.

- 7(b). **The legislature should take steps to deter illegal alcohol sale and possession in dry communities by amending AS 04.11.150 to require monitoring of liquor sales in package liquor stores located within 100 miles of a dry community.**

**Goals:** To decrease rural and Bush crime and thus reduce criminal justice system costs.

**Commentary:** Package stores in communities adjacent to dry towns should be required to record all purchases of alcoholic beverages that trigger the presumptive limit contained in AS 04.11.101(c). The proposed amendment reads:

- (j) If a business premises licensed under A.S. 04.11.150 is located within 100 miles of one or more communities that has banned the importation and sale of alcoholic beverages under A.S. 04.11.491, that liquor package store shall record all purchases of 24 points or more individually or in combination of distilled spirits, wine, or malt beverages. This is based on the following point system: 1 liter of distilled spirits = 4 points; 1 liter of wine = 2 points; 1 liter of malted beverages = 1 point.

Records should include the name of the purchaser, the date of the transaction, and the point total of merchandise purchased.

**Action Needed:** Requires substantive legislation. Initially, legislation may lead to a need for increased funding due to a potential increase in the number of bootlegging violations. However, this initial spike in violations (and funding) is not expected to continue for the long-term. The Commission anticipates an overall reduction in criminal justice system costs through a reduction in alcohol-related crime.

**Implementing Agencies:** The legislature, the Department of Revenue, and the Department of Public Safety.

- 7(c). **The Office of the Governor should strongly request that the United States Postal Service put a higher priority on curtailing the illegal mailing of alcohol to dry communities and increase its level of cooperation with state, local and tribal law enforcement.**

*Goals:* To decrease alcohol-related crime in dry communities and reduce criminal justice system costs.

*Commentary:* The Chief Inspector of the U.S. Postal Service for the Alaska Region could greatly increase the interception of illegally imported alcohol by placing a higher priority on stopping alcohol importation by mail. Increased cooperation with state, local and tribal law enforcement in cases involving violations would have a strong deterrent value in local communities. Last year, the majority of alcohol violations discovered by postal employees were not forwarded to state enforcement officials for follow-up investigation or prosecution. More prosecutions would deter future violations.

*Action Needed:* Requires agency policy change or action. Initially, may lead to a need for increased funding due to a potential increase in the number of violations. However, this initial spike in violations (and funding) is not expected to continue for the long-term. The Commission anticipates an overall reduction in criminal justice system costs through a reduction in alcohol-related crime.

*Implementing Agencies:* The Governor, the court system, law enforcement agencies, prosecution and defense agencies, and the United States Postal Service.

8. **Recommendations relating to underage drinkers.**

- 8(a). **The Commission's successor organization should evaluate and recommend programs for diversions, incentives for treatment, and enhanced consequences to better modify underage drinking behaviors without triggering the appointment of counsel and jury trials. The successor organization should explore the feasibility of creating a new misdemeanor offense for repeat minor consuming alcohol offenders, and of changes to administrative driver's license revocations to encourage treatment.**

**Goals:** Decrease violent and non-violent juvenile crime and alcohol-related problems by decreasing underage drinking.

**Commentary:** Although the Commission has limited its work to offenders ages 18 and over, a number of these are convicted of alcohol-related offenses because the state's drinking age is 21. These recommendations address only offenders aged 18 to 21. Alcohol-related offenses are a major cause of death and injury among teenagers. Research indicates that reducing juvenile drinking may result in a significant drop in youth violence. A growing number of professionals who deal with juvenile drinking offenses believe that the present response of the Alaska justice system to underage drinking is ineffective. Since the legislature moved jurisdiction over the offenses of "minor consuming" and "minor in possession" from juvenile court to adult court, these offenses have been given a lower priority for prosecution. The only penalty available to the sentencing judge is a fine. Driver's license revocation has become the principal sanction, but it is done administratively through the Department of Motor Vehicles. The courts have fewer tools to influence a teenager's drinking behavior. New strategies are needed to address this problem. The Commission believes earlier and more effective intervention in the lives of drinking teenagers can effectively reduce underage drinking and significantly reduce criminal justice system costs.

**Action Needed:** Requires action by the Commission's successor organization.

**Implementing Agency:** The Commission's successor organization.

**8(b). The Commission's successor organization should study whether Youth Courts should be allowed to resolve charges of minors' alcohol possession and consumption.**

**Goals:** Decrease violent and non-violent juvenile crime by decreasing underage drinking.

**Commentary:** Youth courts provide an opportunity for early intervention. Through the imposition of sanctions such as community work service, jail tours, late night emergency room visits, written essays, and alcohol treatment, youth court programs appear to successfully modify behavior of young people and deter future misconduct. Anchorage Youth Court statistics from 1998

show 89 percent of the defendants who completed Youth Court, by successfully satisfying their court-imposed conditions, did not come back to the justice system before their eighteenth birthday. The Commission believes that use of youth courts to help reduce underage drinking for offenders 18 to 20 warrants further study. Because the Youth Court system is staffed principally by unpaid volunteers, it costs little to operate. Greater use in youthful offender cases could lead to substantial savings for all criminal justice system agencies and the Department of Motor Vehicles.

*Action Needed:* Requires action by the Commission's successor organization.

*Implementing Agency:* The Commission's successor organization.

**9. The State should increase the number of substance abuse treatment beds for Alaskans in need of intensive residential alcohol treatment.**

*Goals:* To decrease crime, recidivism and related costs by treating alcohol abuse and addiction.

*Commentary:* Alcohol programs that provide the intensive residential treatment needed by many long-term or chronic alcohol abusers are constantly and severely short of space. The few existing programs usually refuse treatment to clients who have a previous history of violence, even though effective treatment of these persons could provide a great public benefit by reducing future violent crime. The treatment bed shortage also means that few resources exist to permit the involuntary commitment of alcoholics, who pose a risk to themselves or others, resulting in the use of expensive jail beds. More programs are needed.

*Action Needed:* Requires agency policy action and funding.

*Implementing Agencies:* The legislature, the Department of Corrections, and the Department of Health and Social Services.

**10. The Department of Health and Social Services should review the progress made in the use of Title 47 civil commitment procedures for alcoholics and addicts and consider further changes to reduce jail stays by chronic substance abusers.**

**Goals:** To decrease crime, recidivism and related costs by treating alcohol abuse and addiction.

**Commentary:** Title 47 authorizes the temporary detention and/or involuntary commitment of persons intoxicated or incapacitated by the use of drugs or alcohol. Only the City and Borough of Juneau has consistently used this statutory tool to force long-time alcoholics into treatment. Many Juneau treatment professionals who work with this chronic inebriate population believe that use of the involuntary commitment process has reduced recidivism. The Commission believes that further study of the effectiveness of this statutory tool as a means to reduce recidivism statewide is warranted.

**Action Needed:** Requires agency policy action but no new funding.

**Implementing Agency:** The Department of Health and Social Services.

11. **The state should support the Department of Corrections' plan to create a "therapeutic community" substance abuse treatment program for male inmates.**

**Goals:** To prevent future addiction-related crime and recidivism by treating chronic substance abusers.

**Commentary:** The Department of Corrections estimates that, on any given day, institutions hold 100 male inmates who need intensive residential treatment for substance abuse. The Alaska MHTA has agreed to match federal funds to allow the Department of Corrections to fund a "Therapeutic Community Treatment Program" for men at the Wildwood Correctional Center to meet this need. A reduction in recidivism among male offenders is expected to result in significant savings to the state.

**Action Needed:** Requires agency policy action with no immediate funding (but may require funding in the future).

**Implementing Agencies:** The Mental Health Trust Authority, the federal government, and the Department of Corrections.

12. **The state should encourage the development of a standard information release form and a standard interpretation of that form to be used among various substance abuse treatment providers and state agencies.**

*Goals:* To get addicted offenders into treatment quickly, to facilitate treatment monitoring, and to achieve savings by avoiding duplicative action.

*Commentary:* Federal and state laws impose confidentiality requirements on substance abuse assessment and treatment information. These create significant barriers to the sharing of information between treatment providers and state agencies working with a client. Clients may sign a release that permits the information to be released, but differing interpretations of releases based on differing reasons for their existence result in limited use of the release. Development of a standardized release form(s) for limited purposes would speed the assessment and treatment of offenders and reduce delay and duplication of effort.

*Action Needed:* Requires agency policy action but no new funding.

*Implementing Agencies:* The Department of Corrections and the Department of Health and Social Services.

13. **State agencies, treatment providers, tribal entities, and community organizations should collaborate to establish programs and procedures that emphasize the treatment and monitoring of underlying alcohol, drug and inhalant abuse and psychological disorders.**

*Goals:* To reduce recidivism, by directly addressing the underlying addiction and mental health problems contributing to criminal conduct, and to reduce criminal justice system costs.

*Commentary:* The federal government and state and local governments are beginning to believe that treating an offender's addiction or mental disability may be the best way to prevent recidivism. Jurisdictions are using a variety of different approaches to provide offenders with treatment. Some divert offenders prior to entry of a plea and dismiss cases after successful completion of treatment. Some allow only for post-plea participation with probation conditions that require monitoring and treatment. Programs may be designed for juvenile offenders or adults, felons or misdemeanants. Some

focus on specific populations such as drunk drivers, drug offenders or mentally disabled offenders. Key components of many programs include: establishing eligibility criteria and screening procedures; providing a range of treatment to meet varying needs; integrating treatment services with justice system case processing; interaction after disposition between judges and offenders; frequent monitoring and evaluation; and partnerships between the courts, public agencies, and community-based organizations. Promising results in other jurisdictions lead the Commission to recommend that more programs and procedures emphasizing the treatment and monitoring of underlying substance abuse and psychological disorders be established in Alaska. Any drug court established in Alaska should address alcohol abuse issues.

*Action Needed:* Requires agency policy action but no immediate funding. Recommendation may require funding in the future.

*Implementing Agencies:* Department of Health and Social Services, Department of Corrections, Department of Public Safety, court system, treatment providers, tribal entities, and community organizations.

**14. Judges are encouraged to consider the voluntary use of Naltrexone in conjunction with alcohol treatment as a condition of bail or probation.**

*Goal:* To reduce recidivism by helping alcoholic offenders achieve sobriety.

*Commentary:* Naltrexone has been used for more than 20 years as part of treatment programs for drug addicts. Recently, traditional alcoholism treatment programs have used it with striking effectiveness in connection with their regular programs. During the four years of its use by a criminal court judge in Chico, California, the program won many awards and the recidivism rate in that court dropped from 80 percent to about 9 percent. In the Chico program, judges tracked the offender's progress using frequent court appearances. Offenders brought the judge proof that they had been taking their medication and that they were meeting their treatment requirements. In Anchorage, Providence Hospital, through Break Through, a private outpatient treatment program, has found that this drug to be very effective in 60 percent to 70 percent of cases.

*Action Needed:* Requires agency policy action but no new funding.

*Implementing Agency:* The court system in cooperation with treatment programs.

15. **The state should encourage the expansion of the Department of Health and Social Services Alcohol Safety Action Program (ASAP) through legislation and funding.**

*Goals:* To increase the success of alcohol and substance abuse treatment and thus reduce probation revocations and recidivism.

*Commentary:* ASAP screens offenders for problem drinking, refers offenders to treatment programs, and monitors compliance with court-ordered alcohol treatment. The legislature created ASAP in 1977 to identify problem drinkers early in their contacts with the criminal justice system. Administered through the state Department of Health and Social Services, ASAP screens all persons convicted of driving while intoxicated for alcohol problems. For ten years, it also monitored other offenders' compliance with drug and alcohol treatment, anger management, counseling, parenting training, and other matters. ASAP also monitored court-ordered random drug-screening tests, and forwarded positive results to prosecutors. ASAP provides the only routine supervision for misdemeanor offenders who are not supervised by parole/probation officers.

Alcohol abuse is a major factor in domestic violence ["DV"] assaults. An estimated 50 percent of the 3,000 DV protective order requests filed in Anchorage in 1998 were alcohol or drug-related. Courts can order an alcohol assessment and treatment when issuing a six-month DV order, but they rarely do so because no monitoring is available. If the scope of its monitoring abilities were expanded, ASAP could perform this function.

Between 1988 and 1995, ASAP's caseload almost doubled but its budget shrank. It closed five offices and significantly cut back on monitoring offenders' compliance with treatment. Many misdemeanants' compliance with court-ordered treatment is no longer monitored. The Commission views the Alcohol Safety Action Program (ASAP) as one of the most important alcohol abuse intervention tools in the state. The Commission strongly recommends that the legislature restore funds to ASAP and expand its monitoring ability.

*Action Needed:* May require substantive legislation and/or agency policy action and funding.

*Implementing Agencies:* The legislature and the Department of Health and Social Services.

- 16. The state should create more community aftercare for abusers being released from substance abuse programs by the Department of Corrections.**

*Goal:* To reduce recidivism by supporting continued sobriety for released offenders.

*Commentary:* Offenders released on probation and parole at present have very little follow-up care in the community. Offenders released from the "therapeutic community" programs especially need aftercare to decrease the chance of relapse.

*Action Needed:* Requires agency policy action and funding.

*Implementing Agencies:* The legislature, the Department of Health and Social Services, and the Department of Corrections.

- 17. The state should support culturally-relevant programs for alcohol treatment.**

*Goal:* To enhance treatment effectiveness.

*Commentary:* Many rural and Bush alcohol treatment providers believe the present alcohol treatment regimen is designed for urban, non-Native clients. They believe that "culturally relevant" alcohol treatment, offered in rural and Bush areas, would better meet the needs of their clients. Existing barriers make it difficult to create and offer the range of "culturally relevant" treatment options necessary to satisfy the diverse needs of Alaska's Native population. Chief among these is the fact that the term "culturally relevant" lacks an agreed-upon definition. Some treatment providers resist the idea of providing "culturally relevant" treatment on the theory that it negates or diminishes the effectiveness of treatment. Others perceive that too few clients would benefit from the addition of culturally appropriate elements to

make it worthwhile on an overall cost-benefit analysis. Federal and state agencies that fund alcohol treatment have criteria that programs must meet before receiving funding. Programs that incorporate "cultural" elements do not always meet these agencies' criteria. Establishing the effectiveness of new or alternative treatment modalities to the satisfaction of these agencies is often difficult. Many Native offenders therefore go untreated. For example, many treatment programs require literacy skills. If a young Native client lacks literacy skills, it may be appropriate to encourage him or her to obtain a GED and become literate. A different approach may be more appropriate for an older Native client whose lack of literacy is more related to bilingual issues and who is returning to a village. Very few programs currently exist that can respond appropriately to these needs. The Commission believes the state should support the development of treatment programs that incorporate appropriate cultural elements to treat Alaska Natives.

*Action Needed:* Requires agency policy action but no immediate funding.

*Implementing Agencies:* The legislature, the Department of Health and Social Services, and the Department of Corrections.

18. **Judges who sentence individuals with alcohol issues should ensure that offenders are assessed for treatment. Specific treatment programs should not be required unless justified by a prior assessment.**

*Goal:* To avoid unnecessary complications in meeting sentencing requirements.

*Commentary:* Some rural treatment providers expressed concern that sentencing judges order offenders to complete a *specific* treatment program before the offender had undergone an alcohol assessment. They also expressed concern that many of their clients did not understand why the judge ordered alcohol treatment, noting that this lack of understanding prevents effective treatment. They asked that sentencing judges ensure offenders are assessed for treatment, that they consider the assessment's recommendations regarding treatment, and that they explain to the offender why they are requiring alcohol assessment and treatment.

*Action Needed:* Requires possible agency policy action but no new funding.

*Implementing Agency:* The judiciary.

19. **The legislature should create a statutory mitigating factor for use at criminal sentencing, recognizing when the wrongful conduct was substantially affected by an organic brain disorder.**

*Goals:* To increase the flexibility and discretion available to judges in fashioning appropriate sentences for organically impaired offenders, and to decrease the likelihood of recidivism.

*Commentary:* Persons born with Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE) suffer from birth defects in the brain and central nervous system. These dysfunctions impact social and behavioral interactions, judgment, task persistence, employment options, and independent living. The neurological disability may lead to criminal behavior. Sentences for behavior that is beyond the conscious control of the offender should be different from sentences for behavior that the offender could consciously control. Sentences for FAE/FAS related behavior should focus on developing skills in the offender to avoid similar conduct in the future. The Commission anticipates decreased overall costs to the criminal justice system through reduced recidivism and potentially significant savings through placements that are less costly than incarceration.

*Action Needed:* Requires substantive legislation but no new funding.

*Implementing Agencies:* The legislature and the judiciary.

20. **The state should respond more quickly to offenders with chronic substance abuse problems by identifying them early in their contact with the criminal justice system.**

*Goals:* To reduce recidivism and its related costs.

*Commentary:* Chronic substance abusing offenders consume significant criminal justice system resources and have poor records of treatment follow-through. The state should develop an instrument or procedure to identify chronic substance abusers at an early stage of contact with the justice system to enable the system to move substance abusers as quickly as possible to the appropriate diversion, treatment or other outcome. Early identification of chronic abusers should reduce time spent incarcerated while waiting for

assessment and treatment decisions, as well as time spent waiting for trial and, if convicted, sentencing decisions.

*Action Needed:* Requires agency policy action but no new funding.

*Implementing Agencies:* The Department of Corrections, the Department of and Health and Social Services, and, possibly, the court system.

21. **State and local agencies should develop adequate facilities and services, including housing, to address the unique needs of offenders who are suffering from both serious mental disabilities and substance abuse problems.**

*Goals:* To reduce recidivism and to reduce the number of admissions and lengths of stay in DOC and API beds.

*Commentary:* DOC estimates that, on a given day, 77 percent of the mentally ill inmates (679 individuals) treated by DOC staff are “dual-diagnosis,” having both substance abuse disorders and mental health disorders. Offenders suffering both from mental disabilities and from alcohol or drug addiction often have unique treatment needs based on their “dual-diagnosis.” Violent or aggressive behavior is not unusual for these individuals, making treatment problematic. All of the existing community-based programs exclude violent offenders. Part of the Community Mental Health/API 2000 Project will create state-supported dual diagnosis treatment beds in Anchorage. It also will provide psychiatric treatment in conjunction with detoxification and substance abuse treatment. DHSS will use federal funds to design cross-cultural and cross-diagnosis training for mental health and substance abuse providers and to streamline the delivery of services to individuals with dual diagnoses. The state should continue to support this project and ensure that sufficient beds are made available at the community level. The state should also explore ways to expand Medicaid funding streams for substance abuse and mental health services. In addition, the state should support the creation of more treatment programs for dually-diagnosed offenders who are incarcerated. The only DOC programs with a specific treatment component targeted at meeting the needs of inmates with co-occurring substance abuse and mental illness are the substance abuse groups held on DOC’s mental health units. Additionally, although not specifically

designed to treat dually-diagnosed offenders, on a case-by-case basis, the Women's Residential Substance Abuse Treatment program at Hiland Mountain admits mentally ill females who are stable. These programs serve only a small percentage of the offenders in need of treatment. The development of additional intra-facility and community-based dual-diagnosis treatment programs is essential to preventing relapse and recidivism among this population.

*Action Needed:* Requires agency policy action and funding.

*Implementing Agencies:* The Department of Health and Social Services and the Department of Corrections.

## C. Decriminalizing the Mentally Ill Committee Recommendations

1. **State and local agencies should continue to support the Coordinated Resources Project (CRP) in Anchorage. Dependent upon an evaluation of outcome measures, agencies should make this project permanent in Anchorage and replicate it in other appropriate locations.**

*Goals:* To respond appropriately to mentally disabled persons, relieve jail overcrowding, reduce recidivism and enhance public safety.

*Commentary:* The Court Coordinated Resources Project (CRP), a specialty mental health court within the Anchorage District Court, has functioned since July of 1998. Two Anchorage district court judges, trained in mental health issues, staff the court. The court quickly identifies mentally disabled misdemeanor offenders coming into the criminal justice system, coordinates criminal justice and community mental health resources on behalf of the defendants, and diverts mentally disabled misdemeanants from jail when appropriate, by linking them with community services. The judge approves a treatment plan for services for defendants (who participate voluntarily), and requires that defendants receive the services as conditions of bail or probation. Through regular status hearings, the judge evaluates compliance with treatment conditions, adjusts conditions as necessary and addresses technical non-compliances before they result in decompensation and recidivism. Designated staff from the prosecuting agencies and indigent

defense agencies or firms who have received similar training are assigned to these cases. The court conducts bail reviews, changes of pleas and sentencings, but no trials. In FY99, approximately 165 individuals were sentenced through the CRP mental health court.

*Action Needed:* Requires agency policy action but no new funding. Project may require funding for additional staff in the future.

*Implementing Agencies:* The Alaska Court System, the Department of Corrections, the Department of and Health and Social Services, and state and municipal prosecuting and defense agencies.

2. **State and local agencies should continue to support the Jail Alternative Services Project (JAS) in Anchorage. Dependent upon an evaluation of outcome measures, this project should be made permanent in Anchorage and replicated in other appropriate locations.**

*Goals:* To respond appropriately to mentally disabled persons, relieve jail over-crowding, reduce recidivism and enhance public safety.

*Commentary:* The Jail Alternatives Services Project (JAS), a pilot project funded by the Mental Health Trust Authority, provides specialized sentencing, diversion, and monitoring for chronically mentally disabled misdemeanants in Anchorage. JAS serves a subset of those individuals who qualify for Coordinated Resources Project court treatment - the most chronically mentally disabled misdemeanor offenders facing substantial misdemeanor sentences. A case coordinator identifies eligible offenders and links them with community behavioral health services. If the offender is convicted, the case coordinator provides intensive probation monitoring to ensure that treatment conditions are satisfied.

Since July of 1998, JAS has served approximately 40 individuals. Data from the JAS FY99 report to the Mental Health Trust Authority shows that the total number of days in API for all JAS project participants was reduced from 652 days in the one year prior to JAS participation to 112 days in the first year of JAS participation. The average length of stay in API was reduced from 16 to 9 days. Similarly, the total number of days in DOC was reduced from 3,062 days in the one year prior to JAS participation to 585 days in the

first year of JAS participation. The average length of stay was reduced from 30 to 23 days.

**Action Needed:** Requires agency policy action but no new funding. JAS is funded through 2001. It may require funding in the future.

**Implementing Agencies:** The Alaska Court System, the Department of Corrections, the Department of Health and Social Services, and state and municipal prosecuting and defense agencies.

**3. State and local agencies should train personnel in management of mental health crises and appropriate responses to mentally disabled misdemeanor offenders.**

**Goals:** To ensure better identification, diversion, and appropriate referrals of mentally disabled individuals to community support programs, thereby reducing the use of jail beds.

**Commentary:** Law enforcement personnel should be trained in intervention in mental health crises to reduce potential risks to officers. Criminal justice personnel should learn how to identify mentally disabled misdemeanor offenders at an early stage, and how to divert low risk offenders from jail into community treatment and resources. Behavioral health personnel should learn about law enforcement and criminal justice issues so that they can better collaborate with the criminal justice system. Grant funding for training may be available.

**Action Needed:** Requires agency policy action but no new funding.

**Implementing Agencies:** The Alaska Court System, the Department of Corrections, the Department of Health and Social Services, and state and municipal prosecuting and defense agencies.

**4. State and local agencies should support a continuum of housing options and services for stable mentally disabled misdemeanor offenders upon release from custody.**

**Goals:** To reduce the likelihood of recidivism and to reduce inappropriate use of jail beds and psychiatric beds.

**Commentary:** The Decriminalization of the Mentally Ill Committee identified transition housing and other housing needs upon release from custody as the most critical need for stable mentally disabled misdemeanor offenders. No facilities currently provide guaranteed transitional housing for this population. Mentally disabled offenders frequently move from the structure of the DOC institutional environment to a motel room or a homeless shelter. These options do not provide the support, supervision, structure and safety essential for an effective transition from institutional to community life. The lack of supervised housing and service options can lead to quick deterioration and behavior resulting in recidivism and re-incarceration. A subset of this group will need permanent structured and supervised housing. Results from the JAS program show that appropriate support and supervision for this group of offenders can result in significant reductions in jail and API stays.

**Action Needed:** Requires agency policy action and operational funding.

**Implementing Agencies:** The Department of Health and Social Services, the Alaska Housing Finance Corporation, and other state and community organizations.

5. **State and local agencies should assure a continuum of support, rehabilitation, treatment and supervision services for mentally disabled individuals.**

**Goals:** To successfully reintegrate seriously mentally disabled offenders into the community, to reduce recidivism and to reduce the number of admissions and lengths of stay in DOC and API beds.

**Commentary:** The Commission supports the Department of Corrections' and the Alaska Mental Health Board's recommendations to increase the number of programs that provide daily structure, support, rehabilitation, treatment and supervision, and to create new programs as necessary. Services needed include partial hospitalization, intensive case management services, specialized work programs, clubhouses, therapeutic/recreational activities,

life skills and anger management. Community mental health centers often cannot provide intensive case management services for high risk individuals. Daily case management services for mentally disabled offenders combined with enhanced day treatment services are critical to successful re-integration and reduced recidivism. Statewide, an estimated 150-200 seriously mentally disabled individuals need enhanced services each year.

*Action Needed:* Requires agency policy action and funding.

*Implementing Agencies:* The legislature and the Department of Health and Social Services.

**6. State and local agencies should provide sufficient community resources and treatment for individuals with organic mental disorders.**

*Goals:* To reduce recidivism and to reduce the number of admissions and lengths of stay in DOC and API beds.

*Commentary:* An estimated 25-30 organically impaired individuals arrested each year in the Anchorage area occupy DOC beds and are released into the community with few or no community support services. Very limited resources exist at present for the treatment and/or management of persons with organic mental disorders (such as mental retardation, FAS/FAE, traumatic brain injuries, substance abuse related brain damage, etc.) even if they are eligible for mental health or developmental disability funding. No resources exist for the sub-set of brain injured individuals who do not meet the eligibility criteria for mental health or developmental disabilities funding. State and local agencies should create appropriate resources to provide case management, treatment and housing resources for this population. State planning agencies must make the necessary funding and policy decisions so that agencies can develop appropriate programs.

*Action Needed:* Requires agency policy action and funding.

*Implementing Agencies:* The legislature, the Department of Health and Social Services and local agencies.

- 7. State and local agencies should create enough detoxification beds to meet the need in hub communities and train staff in detox centers.**

**Goal:** To reduce the number of Title 47 alcohol holds in jails statewide.

**Commentary:** Hub communities need more detoxification beds to handle the Title 47 substance abuse holds in DOC facilities. In FY99 DOC facilities recorded 2,109 Title 47 non-criminal holds statewide. DOC estimates that 90 percent (1,898) were alcohol holds. The Yukon Kuskokwim Correctional Center in Bethel had 544 Title 47 holds in FY99, most of which were for substance abuse. Title 47 holds accounted for 23 percent of all bookings in Bethel. Staff in detox centers need training to recognize symptoms of suicide and mental disability, and to effectively link those suffering from co-occurring disorders to community resources for treatment.

**Action Needed:** Requires agency policy action and funding.

**Implementing Agency:** The legislature and the Department of Health and Social Services.

- 8. State and local agencies should support the API 2000 Single Point of Entry (SPE) project.**

**Goals:** To provide an alternative to booking individuals in DOC facilities and to decrease the demand for API by diverting individuals in crisis to more appropriate and more cost-effective treatment and care.

**Commentary:** The Anchorage Single Point of Entry (SPE) Project, the cornerstone of the Community Mental Health/API 2000 Project, will provide emergency intervention, stabilization, and treatment referral services to individuals in mental health or both mental health and substance abuse crisis. Open around the clock with a "no refusal" policy, the SPE will give law enforcement officers an alternative, when appropriate, to booking individuals in a DOC facility. Through the SPE, individuals will be linked to the most appropriate community-based inpatient or outpatient treatment resources, whether those be API, detox, dual diagnosis treatment, inpatient designated evaluation and treatment (DET), respite care or other services. An estimated

25 percent of Anchorage's 10,000 annual misdemeanor bookings could be diverted to the Single Point of Entry before arrest and charging by police.

*Action Needed:* Most of the initial funding for this project is committed and the project currently is being implemented.

*Implementing Agency:* The Department of Health and Social Services.

9. **State agencies and local entities should provide an adequate number of "Designated Evaluation and Treatment (DET)" beds in hub communities throughout the state for use as private sector alternatives to API and DOC beds.**

*Goals:* To eliminate the use of jail beds for Title 47 mental health holds, to reduce the costs of transporting mentally disabled offenders in need of crisis intervention to Anchorage, and to maximize the use of third party revenues, including Medicaid, that are not available to the state to cover API or Department of Corrections costs.

*Commentary:* Senate Bill 97, passed in 1997, paves the way to develop the inpatient evaluation and treatment capacities of the state's hospitals for mentally disabled persons, and to shift to more community-based care for the acute hospitalization needs of the seriously mentally disabled. Up to 200 Title 47 non-criminal mental health holds in jails outside of Anchorage could be served in private provider DET beds.

*Action Needed:* Requires agency policy action but no new funding.

*Implementing Agency:* DHSS is responsible for designating facilities to provide DET services and to receive payment for individuals eligible for financial assistance.

#### D. Pretrial Practices and Procedures Committee Recommendations

1. **The state should review and evaluate the existing Anchorage Municipal Prosecutor's Pretrial Diversion Program and implement a pilot program to fast-track minor misdemeanor cases.**

**Goal:** To replicate programs that have demonstrated success in reducing criminal justice system agency costs.

**Commentary:** The Municipal Prosecutor's office in Anchorage has operated a pretrial diversion program since 1989. The Municipality diverts about 27 percent of the cases that it accepts for prosecution, and defers prosecution while the offender completes the program. If the offender successfully completes the program, the case is dismissed. In 1998, 78 percent of those referred completed the program successfully, made restitution to victims, performed community work service, obtained drivers' licenses and met other requirements. The program requires relatively few resources for its operation, relying on referral of appropriate cases by the staff attorneys and one part-time staff person who runs the program. The Commission believes that a review is warranted to evaluate the merits of this program and determine its potential applicability in other locations.

The Commission also believes that a pilot project to fast track minor misdemeanor cases should be established. Speedier trials in misdemeanor cases would shorten pretrial incarceration periods that often exceed the amount of time a sentencing judge otherwise would have imposed. Faster resolution of cases also could lower the failure to appear rate for released offenders, saving costs to many criminal justice system agencies. If the pilot project proves successful, other communities can implement it.

**Action Needed:** Requires agency policy action but no new funding.

**Implementing agencies:** The legislature, the court system, the Department of Law and the Municipality of Anchorage.

**2. The state should continue to work towards the development of a pretrial release electronic monitoring program.**

**Goals:** To reduce unnecessary use of expensive jail beds while ensuring protection of the public and compliance with conditions of release.

**Commentary:** In 1997, the legislature passed HB 272, allowing electronic monitoring of eligible sentenced prisoners. Participants must attend appropriate programs, submit to drug and alcohol testing, and pay the \$12 daily fee for the cost of monitoring. Offenders can stay employed and remain

with their families, yet still be accountable for their crimes through continuous 24-hour electronic monitoring and supervision. The Commission believes electronic monitoring also should be used as a bail release tool for pretrial detainees. Further study will help decide the best agency to administer a pretrial release program, the appropriate means of paying for electronic monitoring and whether defendants being monitored should receive *Nygren* credit for time served.

**Action Needed:** Requires agency policy action and possibly legislation. Funding needs depend on program development.

**Implementing agencies:** The legislature and all criminal justice system agencies.

3. **The state should assure that adequate pretrial data will be included in the development of the state's new management information systems and that criminal justice system agencies share new data as well as existing data.**

**Goals:** To create and share the quantitative information necessary for pretrial policy planning and decision-making.

**Commentary:** The lack of data on pretrial-related matters creates planning and policy difficulties for all criminal justice system agencies. General statistics, as well as data on individual defendants, would allow increased fairness and effectiveness in the management of this population and provide information critical to policy-making and planning.

**Action Needed:** Requires agency policy action but no new funding.

**Implementing Agencies:** All criminal justice system agencies.

4. **The state should establish a process to resolve issues related to *Nygren* credit.**

**Goals:** To maximize appropriate use of alternatives to incarceration.

**Commentary:** In *Nygren v. State*, 658 P.2d 141, 146 (Alaska App. 1983), the Alaska Court of Appeals held that, when a defendant is subjected to court-ordered restrictions of the type that "approximat[e] those experienced

by one who is incarcerated," the defendant is entitled to receive credit against his or her sentence for the time spent subject to those restrictions. The move to a variety of alternatives to incarceration has led to a series of unresolved *Nygren* credit issues. Rather than litigating the applicability of *Nygren* in every case, the Commission believes that the criminal justice system would benefit greatly from a committee that would regularly examine existing programs and incarceration alternatives to determine whether agencies could agree about the *Nygren* credit issues. Besides saving court and attorney time, the process would let offenders enroll in programs prior to sentencing knowing whether they would receive credit for time served, thus optimizing use of rehabilitation services.

**Action Needed:** Requires agency policy action but no new funding.

**Implementing agencies:** The Departments of Law and Corrections, the Public Defender Agency, the Office of Public Advocacy, and local prosecutors.

**5. The state should continue to develop and implement bail schedules for appropriate offenses and offenders.**

**Goals:** To maximize efficient use of court system resources, minimize inappropriate or unnecessary incarceration, and increase fairness.

**Commentary:** The court, in consultation with the defense bar, the prosecution bar, law enforcement and corrections, has adopted an official bail schedule for a variety of minor offenses. Different communities sometimes use informal bail schedules that apply only in that community. The Commission believes the wider use of routine bail schedules would increase fairness by treating defendants similarly statewide. Bail schedules also would reduce the time needed for hundreds of bail decisions each year, saving costs for nearly all criminal justice system agencies. Agencies should continue to work together to develop formal bail schedules for a greater range of offenses.

**Action Needed:** Requires agency policy action but no new funding.

**Implementing Agencies:** The Department of Law, the Department of Corrections, the Alaska Court System, the Public Defender Agency, the Office of Public Advocacy, and local prosecutors.

6. **The state should consider the creation of a pretrial bail evaluation and supervision unit using private sector resources and working under the direction of the court. The agency responsible for implementation would be determined during the development process.**

*Goals:* To provide judges with the information necessary to make informed and appropriate jail decisions and to ensure public safety while freeing up expensive jail beds.

*Commentary:* At present, the court receives bail information through the adversarial process and releases defendants either unsupervised or to a privately arranged third-party custodian. Based on data from other jurisdictions, the Commission has concluded that using a neutral third party to gather bail information, present it to the court, and then monitor and supervise released defendants would benefit the criminal justice system in a number of ways. The court could process cases more quickly, reducing both the need for multiple bail hearings and the amount of time many offenders spend in jail prior to release. Correctional costs would be reduced as a number of additional defendants could be released with the provision of adequate supervision. In Milwaukee, 4,568 defendants were released to pretrial supervision in one year. Twenty-five percent of these defendants would not have been released without a program of supervision in place. The Commission believes that similar results can be reached in Alaska.

*Action Needed:* Requires agency policy action and possibly legislation. Funding needs depend on program development.

*Implementing Agencies:* Agencies involved in planning should include the Department of Corrections, the Department of Law, the courts, and defense agencies.

## E. Probation and Parole Committee Recommendations

1. **The Department of Corrections should standardize the forms and procedures used in petitions to revoke probation and parole.**

**Goals:** To increase fairness by using consistent procedures statewide, to reduce staff and court time, and to allow probation/parole officers to work statewide without re-training.

**Commentary:** Until recently, the forms and procedures for petitions to revoke probation and/or parole varied greatly among the different geographic and judicial regions of the state. In early 1999, the Department of Corrections began a pilot program to standardize the policies and procedures for probation revocations in all jurisdictions. Using a consistent statewide procedure has resulted in less staff and court time spent on petitions to revoke probation and parole and greater flexibility on the part of probation/parole staff. The Commission recommends that the Department of Corrections adopt this pilot program on a permanent basis.

**Action Needed:** Requires agency policy action but no new funding.

**Implementing agency:** The Department of Corrections.

2. **Additional treatment programs, including substance abuse and sex offender treatment programs, should be made available, particularly in rural and Bush areas.**

**Goals:** To reduce recidivism, to make use of local resources and family or community networks and to improve the likelihood of rehabilitation.

**Commentary:** A majority of offenders suffer from substance abuse problems or need treatment for other problems. Research indicates that successful completion of treatment is an important factor in reducing recidivism. If treatment is provided in the community in which the offender lives, rather than in a centralized location, aftercare services, family support and employment or subsistence opportunities all can help maintain successful rehabilitation. The lack of treatment programs in general and particularly in rural and Bush areas creates continuing problems for the courts, the Department of Corrections, and the Board of Parole in ensuring that offenders receive the treatment and follow-up that have been shown to be effective in rehabilitation.

**Action Needed:** Requires agency policy action and funding.

*Implementing Agencies:* The Department of Corrections, the legislature, and the Department of Health and Social Services.

3. **The state should expand the Department of Corrections' Enhanced Probation Program to other large cities and to rural communities in partnership with other community organizations.**

*Goals:* To provide an alternative to the incarceration of revoked probationers and parolees and to provide the resources for rehabilitation needed to reduce recidivism.

*Commentary:* The Department of Corrections initiated the Enhanced Probation Program (EPP) in Anchorage four years ago with federal grant funds. The program serves as an alternative to incarceration for probationers and parolees who otherwise would have been incarcerated for technical violations of their conditions. By combining six to eight months of intensive probation/parole supervision with accountability programs, EPP saves the state about \$80/day (cost of incarceration, less costs of the enhanced supervision) and it has reduced the recidivism rate for technical probation/parole violators in Anchorage. The Commission supports funding to continue the program in Anchorage, to expand it to other major Alaskan communities, and to begin using it in rural communities in partnership with other community organizations.

*Action Needed:* Requires agency policy action and funding.

*Implementing Agencies:* The legislature, the Department of Corrections and the Department of Health and Social Services.

4. **The state should provide a community-based program for probation/parole supervision that uses partnerships with other agencies, regional organizations and tribes and villages to expand services and treatment.**

*Goals:* To provide alternatives to incarceration for offenders, both at initial sentencing and after probation and parole violations, to use local resources and family or community networks to increase the number and types of treatment and supervision for probationers and parolees, and to reduce recidivism by providing more effective treatment and better follow-up.

*Commentary:* The Commission believes that using local resources through partnerships to increase the range of treatment and supervision at the local level would reduce technical violations and general recidivism rates for probationers and parolees. Probationers and parolees often need a variety of services that no single program can meet. A support network of resources and programs based in the communities in which the probationers or parolees live would permit more effective supervision and treatment, even without direct contact with a probation/parole officer. The use of partnerships and local resources would reduce costs to the state and increase the number of probationers and parolees supervised in their home communities rather than in an unfamiliar urban center.

*Action Needed:* Requires agency policy action but no new funding.

*Implementing Agencies:* The Department of Corrections, the Department of Public Safety, the Department of Health and Social Services, and regional and village tribal organizations.

**5. The state should supplement existing probation supervision with video supervision of offenders, particularly in small communities.**

*Goals:* To increase supervision of probationer/parolees, especially in smaller communities of the state where a probation/parole officer is not physically located.

*Commentary:* Supplementing the present level of probation/parole supervision by using inexpensive video equipment has been tested in a pilot program. The probationers appeared weekly before a video camera installed in a cooperating local agency. This increased the amount of contact that the probation officer had with the offender at a much lower cost than travel to the location. It also increased the local community's awareness of the probationer's activities. Cooperating agencies used the video equipment for other purposes as well, thus further reducing the overall costs to the state. Eventually, the equipment may prove useful in treatment services and education. Video supervision capability could also be a valuable tool to help implement Recommendation E-4 above. (The purchase of the technical hardware for a given location is expected to cost about \$600 for each location. Locations to be served must have phone service available.)

*Action Needed:* Requires agency policy action and funding.

*Implementing Agency:* The Department of Corrections and the legislature.

6. **The Department of Corrections should use volunteers where appropriate to help in the supervision and treatment of probationers and parolees.**

*Goals:* To provide a way for communities and citizens to participate in correctional programs, to reduce recidivism and to expand and augment the work of probation and parole staff.

*Commentary:* Many states have volunteer programs that play an integral part in the treatment, monitoring, rehabilitation, programming and support network for probationers and parolees. Volunteers augment the work of paid staff and serve as community mentors and sponsors for individuals. The one-on-one contact that volunteer programs provide has been shown in other jurisdictions to help reduce recidivism. The use of volunteers supports the restorative justice principles endorsed by the commission.

*Action Needed:* Requires agency policy action but no new funding.

*Implementing Agency:* The Department of Corrections.

## F. Sentencing Committee Recommendations

1. **The legislature should amend AS 12.30.010(b) to allow judges to use performance bonds for offenders released on bail. The Supreme Court should amend Criminal Rule 41 to allow judges to order forfeiture of a performance bond if an offender fails to comply with the conditions of release.**

*Goals:* To relieve jail over-crowding by increasing the number of offenders released on bail, to increase compliance with bail conditions and to increase victim safety.

*Commentary:* The Commission believes that performance bonds can be an effective tool to ensure compliance with conditions of release. Under current practice, some judges believe they have the authority to order performance bonds and are using them. Other judges do not. To resolve this conflict, the

Commission recommends that the legislature amend AS 12.30.010(b) to expressly authorize performance bonds. This will enable judges to release greater numbers of offenders on bail while ensuring victim safety and protection of the public.

*Action Needed:* Requires substantive legislation but no new funding.

*Implementing Agency:* The legislature, the judiciary, and the Supreme Court.

2. **The legislature should amend AS 12.55.025(c) to grant the sentencing judge authority to allow a defendant to report for service of sentence on a date other than the date the sentence is imposed.**

*Goal:* To conform the statute to existing practice.

*Commentary:* AS 12.55.025(c) provides that an offender shall begin service of a sentence on the day it is imposed unless the offender (1) files an appeal and is released on bail, or (2) the sentence runs consecutive to the sentence for which the offender is in custody. Existing practice among most judges, for many years, has been to allow defendants to delay service of sentence. In some instances, this is to meet the defendant's needs such as employment circumstances. In other instances, it is to meet the needs of the criminal justice agencies. The Commission believes that the public interest is served by granting judges the flexibility and authority to allow a defendant to delay reporting for jail service and that this statute should be amended accordingly. The amendment should provide for bail or release as appropriate.

*Action Needed:* Requires substantive legislation but no new funding.

*Implementing Agency:* The legislature.

3. **The legislature should double the dollar amounts that define the levels of property crimes.**

*Goals:* To have property value amounts keep pace with inflation.

*Commentary:* Value amounts distinguish felony property crimes from misdemeanor property crimes. They also distinguish between the levels of

felony or misdemeanor. For example, under current law, theft of an item valued at \$499 is a Class A misdemeanor. Theft of an item valued at \$500 is a Class C felony. These value amounts were established in 1977 when the legislature enacted the Revised Criminal Code. Since that time, inflation has essentially halved the value of the dollar. A number of states and Congress have increased the value amounts for property crimes to reflect inflation. The Commission recommends that the legislature double the value amounts for property crimes in Alaska, an amount proportional to the inflationary increase in the value of the dollar.

*Action Needed:* Requires substantive legislation but no new funding.

*Implementing Agency:* The legislature.

4. **The legislature should amend AS 33.05.070 to clarify the appropriate judicial district in which the adjudicative phase of a probation violation hearing shall be heard.**

*Goals:* To clarify existing case law, and to increase the number of witnesses to the violation of probation who can personally attend revocation proceedings.

*Commentary:* In the case of a probation violation, the existing statutory sentencing scheme does not squarely identify the court location where a probation violation hearing must be held. The Commission believes that the statutory scheme should be amended to reflect the body of case law that has developed on this point. In *McRae v. State*, 909 P.2d 1079 (Alaska App. 1996), the Court of Appeals distinguished between the adjudicative (fact-finding) phase of the revocation proceedings and the dispositive (sentencing) phase of the proceedings. The court ruled that the original sentencing judge should ordinarily preside over the sentencing phase of the revocation proceedings unless good cause exists to assign the case to another judge. For the adjudicative phase, the court ruled that, except in unusual cases, the policy reasons for having the original sentencing judge hear the case do not apply, and any appropriate judge may preside over the adjudicative portion of the proceeding.

Probationers are often arrested for probation violations in a court location different from the one in which they were originally sentenced. Many choose

to have the probation revocation proceeding conducted where the violation or arrest occurred. Some probationers, however, insist that the entire probation revocation hearing be held in front of the original sentencing judge, resulting in confusion about the proper hearing location. The Commission believes that the statute should be amended to state that the adjudicative phase of the probation revocation proceeding should be held in the most convenient location - the place of arrest, the place of the violation, or place of the original sentencing court - and that the judge in the location where the probationer is arrested should have the discretion to make this decision, based on the facts.

***Action Needed:*** Requires substantive legislation but no new funding.

***Implementing Agencies:*** The legislature.

## Appendix A

### ESTABLISHMENT OF THE ALASKA CRIMINAL JUSTICE SYSTEM TASK FORCE

*Whereas* Alaska's correctional facilities have not been able to keep pace with the growing number of criminal offenders in the state;

*Whereas* all of Alaska's correctional facilities are seriously overcrowded and virtually all have populations that exceed the maximums established in the *Cleary* lawsuit;

*Whereas* Alaska's financial resources are decreasing rather than increasing;

*Whereas* Alaska Natives and other minorities are over-represented as clients of the criminal justice system and are under-represented in the administration of the criminal justice system;

*Whereas* it is vital to the safety of the public that offenders be held accountable for their criminal conduct and that dangerous offenders be incarcerated in appropriate institutions;

*Whereas* these circumstances require the State to develop and implement greater efficiencies in its criminal justice system;

*It is therefore resolved* that the State of Alaska should establish a Criminal Justice System Task Force whose task it shall be for three years to review, develop, and implement recommendations for the responsible allocation of resources within the criminal justice system to create efficiencies in the system so that all offenders are held accountable for the conduct while, at the same time, adequate prison and jail space is made available for dangerous offenders.

*In furtherance thereof* I, Warren Matthews, Chief Justice of the Alaska Supreme Court, under the authority of art. IV, secs. 1,2 and 15, of the Alaska Constitution, hereby appoint the following representatives of the judicial branch to the Alaska Criminal Justice System Council:

Justice Dana Fabe  
Alaska Supreme Court

William Cotton  
Alaska Judicial Council

Judge Elaine Andrews  
Alaska Superior Court

Judge Stephanie Rhoades  
Alaska District Court

\_\_\_\_\_  
Chief Justice Warren Matthews

***And in furtherance thereof*** I, Tony Knowles, Governor of the State of Alaska, under the authority of art. III, secs. 1, 22, 24, and 26 of the Alaska Constitution, hereby appoint the following persons as representatives of the executive to the Alaska Criminal Justice System Council:

Attorney General Bruce Botelho

Commissioner Margaret Pugh  
Department of Corrections

Commissioner Ron Otte  
Department of Public Safety

Cynthia Cooper  
Deputy Attorney General

Harry Davis  
District Attorney, Fairbanks

Ken Goldman  
District Attorney, Palmer

Barbara Brink  
Public Defender

Brant McGee  
Office of Public Advocacy

Jeff Jesse, Executive Director  
Ak. Mental Health Trust Authority

Vicki Otte, Executive Director  
Native Justice Center

Natalie Brooks  
Hiland Mountain Advisory Group

Kathryn Boggs-Gray  
Vice President, All Vest

Janice Lienhart  
Victims For Justice

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Governor Tony Knowles

***And in furtherance thereof*** I, Mike Miller, President of the Senate, under the authority of art. II, secs. 1 and 12, of the Alaska Constitution, hereby appoint the following members of the Senate to the Alaska Criminal Justice System Council:

Senator Jerry Ward  
Alaska State Legislature

Senator Georgiana Lincoln  
Alaska State Legislature

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President Mike Miller

*And in furtherance thereof* I, Gail Phillips, Speaker of the House, under the authority of art. II, secs. 1 and 12, of the Alaska Constitution, hereby appoint the following members of the House to the Alaska Criminal Justice System Council:

Representative Eldon Mulder  
Alaska State Legislature

Representative Gene Kubina  
Alaska State Legislature

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Speaker Gail Phillips

## **Appendix B**

### **CJAC Mission Statement**

**The Criminal Justice Assessment Commission shall use a collaborative process to:**

review, develop, recommend, and implement strategies within the criminal justice system so that all offenders are held appropriately accountable for their conduct;

promote responsible alternative options or community solutions for pre-trial and post-conviction incarceration for misdemeanants and felons;

work to make the criminal justice system more cost-effective to the extent this may be achieved without compromising public safety;

and promote system efficiencies to relieve prison overcrowding.

## **Membership List for Alcohol Policy Committee**

**Brant McGee**, Chair, *Director Office of Public Advocacy*

**Judge Peter Ashman**, *Anchorage District Court Judge*

**Dan Branch**, *Assistant Attorney General*

**James Crary**, *BP Exploration*

**Kenneth Duff**, *Akeela Treatment Services*

**Judge Michael I. Jeffery**, *Presiding Judge Second Judicial District*

**Jeff Jessee**, *Executive Director Alaska Mental Health Trust Authority*

**Captain Doug Norris**, *Alaska State Troopers*

**Greg Pease**, *Executive Director Gastineau Human Services*

**Bruce Roberts**, *Deputy Anchorage Municipal Prosecutor*

**Betsy Robson**, *Director of Inmate Programs Department of Corrections*

**Nancy Shaw**, *Administrative Attorney Alaska Court System*

**Chrystal Smith**, *Special Assistant to Attorney General*

**Arthur Snowden**, *Retired Administrative Director of the Alaska Court System*

**Ron Taylor**, *Alcohol Safety Action Program Coordinator*

**Rhonda Lundborg**, *Federal Aid Coordinator*

## **Membership List for Decriminalizing the Mentally Ill Committee**

**Judge Stephanie Rhoades, Chair, Anchorage District Court Judge**

**Leonard Abel, Program Administrator Mental Health Services**

**Kelly Bartholomew, Office of Public Advocacy**

**Karl Brimmer, Director Division of Mental Health & Developmental Disabilities**

**Laura Brooks, Jail Alternative Services/Department of Corrections**

**Randall Burns, Alaska Psychiatric Institute Director**

**Mike Campbell, IDP+ Coordinator, Department of Mental Health & Developmental Disability**

**Carmen ClarkWeeks, Anchorage Deputy Municipal Prosecutor**

**Cindy Cooper, Deputy Attorney General**

**Cindy Drinkwater, Disability Law Center of AK**

**Geoff Duncan, Divisional Director Southcentral Counseling Center**

**Ken Duff, Akeela Treatment Services**

**James Gay, Department of Corrections/Probation Officer**

**Linda Gerber, Department of Corrections/Probation Officer**

**Robin Henry, NAMI Alaska**

**Leslie Hiebert, Office of Public Advocacy**

**Laura Hokenstad, API 2000**

**Jeff Jessee, Executive Director Alaska Mental Health Trust Authority**

**Loren Jones, Director Division of Alcoholism and Drug Abuse**

**John Lohff, Anchorage District Court Judge**

**Michael Logue, Gorton & Associates**

**Carrie Longoria, SAFE City Program**

**Lt. Dan Lowden, Alaska State Troopers**

**Gary Mandzik, Department of Mental Health & Developmental Disability**

**Brant McGee, Director Office of Public Advocacy**

**Maxwell Mercer, Assets, Inc.**

**Margie Mock, Assistant Public Defender**

**Allen Moma, *Quyana House***  
**Hilary Morgan, *Homeward Bound***  
**Greg Pease, *Executive Director Gastineau Human Services***  
**Mara Rabinowitz, *Department of Corrections Mental Health Planner***  
**Colleen Patrick-Riley, *Department of Corrections Mental Health Clinician III***  
**Mary Elizabeth Rider, *Alaska Mental Health Trust Authority Planner***  
**Stuart Ross, *Private Attorney***  
**Keri Ann Scott, *Assistant District Attorney***  
**Meg Simonian, *Assistant Public Defender***  
**Dr. David Sperbeck, *Department of Corrections Mental Health Supervisor***  
**Ronald Taylor, *Director Alcohol Safety Action Program***  
**Dave Wagner, *Mental Health Consumer of Alaska***  
**Herman Walker, *Private Attorney***  
**Margo Waring, *Alaska Mental Health Board Health and Social Services Planner***  
**Scott Wheat, *Consumer Advocate***  
**Don Dapceovich, *Executive Director Governor's Advisory Board on Alcoholism & Drug Abuse***  
**Captain Laren Zager, *Anchorage Police Department***

### **Membership List for Parole and Probation Committee**

**Larry Jones, Co-Chair, *Executive Director Alaska Board of Parole***  
**Lynda Zaugg, Co-Chair, *Director Division of Community Corrections***  
**David Cooper, *Parole Board Member***  
**William T. Cotton, *Executive Director Alaska Judicial Council***  
**Mary Ann Eininger, *Parole Board Member***  
**Blair McCune, *Deputy Public Defender***  
**Denise Morris, *Executive Director Alaska Native Justice Center***  
**Tim Terrell, *Assistant Attorney General***  
**Deputy Chief James Welch, *Fairbanks Police Department***  
**Judge Michael L. Wolverton, *Anchorage Superior Court Judge***

## **Membership List for Pretrial Practices & Procedures Committee**

**John Richard, Chair, Anchorage Municipal Prosecutor**

**Judge Peter Ashman, Anchorage District Court Judge**

**Steve Bouch, Deputy Administrative Director Alaska Court System**

**Barbara Brink, Public Defender**

**Michael Logue, Gorton & Associates**

**Brant McGee, Director Office of Public Advocacy**

**Susan Parkes, Anchorage District Attorney**

**Judge Charles Pengilly, Fairbanks Superior Court Judge**

**Gary Webster, Superintendent Sixth Avenue Jail/Department of Corrections**

## **Membership List for Sentencing Committee**

**Cindy Cooper, Chair, Deputy Attorney General**

**Barbara Brink, Public Defender**

**Natalie Brooks, Hiland Mountain Advisory Group**

**Michele Christiansen, Alaska Native Justice Center**

**Robert Galea, Akeela Treatment Services**

**Blair McCune, Deputy Public Defender**

**John Richard, Anchorage Municipal Prosecutor**

**Judge David Stewart, Court of Appeals Judge**

**Lynda Zaugg, Director Division of Community Corrections**

## Appendix C

### September 1998 Conference/Other Committee Proposals

In September 1998, the Commission held a two-day conference attended by most Commission members and some committee members. At this conference, each of the committees presented a number of proposals for consideration by the Commission. Many of the proposals submitted by the committees were approved by the Commission and, as a result of follow-up action by the respective committee, appear either as an accomplishment or as a recommendation in this report. This appendix briefly summarizes the proposals that, for the reasons explained below, were not developed further.

#### *1. Specialized Sex Offender Treatment for the Mentally Ill*

The DMI Committee proposed that the state develop both specialized DOC intra-facility and community-based sex offender treatment programs for mentally ill offenders. Committee members expected that better treatment opportunities would allow the safe release of more offenders on parole and furlough and leave more jail beds free. Treatment also would enable other offenders to qualify for housing and substance abuse services that are available only to treated offenders. At the September 1998 meeting, the Commission endorsed the concept and referred it back to the Committee for refinement. After further discussion, the Committee deferred development of this project in order to focus on projects that were further along in their progress.

#### *2. Non-Arrest Alternatives for Court Ordered Program Noncompliance*

When misdemeanants fail to participate in treatment programs required as a condition of probation, courts typically issue a bench warrant for their arrest. Executing a warrant requires substantial system resources to find, arrest and book the offender at the nearest jail. As an alternative, the Pre-trial Practices and Procedures Committee proposed that the court institute a pilot project using summonses instead of bench warrants. The Commission endorsed this proposal and Anchorage set up a pilot project. The Committee reviewed the results of the pilot project and concluded that police agencies ranked service of summons as one of their lowest priorities. Because so few summonses were being served, the committee recommended that the pilot project not be continued. The Municipal Prosecutor's office in Anchorage has since assigned staff to contact misdemeanor probation violators about their failure to comply, and estimates that it has significantly reduced bench warrant costs.

### **3. *Post-sentence Status Conference***

A second pilot project in Anchorage to reduce bench warrant costs involved scheduling post-sentence status hearings before the original sentencing judge to monitor compliance with probation conditions. The Commission endorsed the proposal by the Pretrial Practices and Procedures Committee. Calendaring the hearings before the original sentencing judge proved unworkable because of the high volume of cases in Anchorage district court. Judges evaluating the program believed that misdemeanor probation supervision or monitoring by ASAP or another agency might be more effective. A different outcome might have resulted if this proposal had been piloted in a judicial district with fewer judges and cases.

### **4. *Creation of a Class D Felony***

The Sentencing Committee proposed that the Commission encourage the creation of a Class D felony, to reduce the number of offenders convicted of Class C felonies and thereby reduce prison crowding. The Commission did not endorse this proposal because of concerns that a Class D felony would lead to longer sentences for more offenders. Instead, it asked the Committee to study whether the state should update the statutory limits that differentiate among classes of property crimes. The committee concluded that the value limits on property crimes should be doubled to reflect inflation. The Commission adopted this recommendation and it is included in the recommendation section of this report.

### **5. *Pamphlet for Substance Abuse Treatment Violations***

Sentencing Committee members proposed that the Commission endorse creation of a pamphlet to inform offenders about available treatment programs, how to apply to the programs, and the consequences for failing to comply with treatment. The Committee reasoned that providing this information to offenders at the time of sentencing might reduce the number of probation revocations for "failure to comply with treatment." The Commission did not endorse the proposal, and the Committee took no further action.

### **6. *Pre-sentence Reports in Rule 11 Cases***

Probation and Parole Committee members recommended the creation of an abbreviated pre-sentence report, jointly prepared by the prosecutor and defense attorney, for all Criminal Rule 11 plea agreements. The purpose would be to provide information to the court or Parole Board in case of a violation of probation or parole conditions. Commission members believed that the proposal was impractical and did not endorse the idea.

7. *Modification of Sentence Length for Unconditional Discharge on Mandatory Parole*

Under AS 33.20.010, an offender may qualify for a sentence reduction of up to one-third for good behavior. Offenders with a sentence of less than two years who qualify for the good time reduction are released from prison at the end of their sentence without supervision. Offenders serving a term greater than two years who qualify for a good time reduction are released on "mandatory parole" to the jurisdiction of the Parole Board; they constitute a large portion of the Parole Board's workload.

The Probation and Parole Committee proposed changing the statute to increase the mandatory parole threshold from two years to four years. The Commission referred the proposal back to the Committee, asking for data about the types of offenders who fell into the two to four year sentence range. The Committee decided to postpone taking further action until after the Department of Corrections has created its new management information system, when the necessary data will be more readily available.

8. *Pathways*

The Probation and Parole Committee proposed that the Commission endorse a privately-funded one year pilot project, Pathways, to give Alaska Native inmates tools needed to move responsibly from prison to community life. DOC would identify eligible inmates one year prior to release and begin case management services six months later. Services would include: resume preparation and job search, legal advocacy, education, substance abuse treatment, cultural enrichment, support services and transitional housing upon release from custody. The Commission endorsed the concept at the September conference. (Cook Inlet Tribal Council was to provide much of the support for the project through in-kind contributions, as well as seeking additional funding from other non-profits.)

## For Further Information

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For information about CJAC, its recommendations and its successor organization, please contact:

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