

# Alaska Judicial Council

Remarks for Rural Justice Commission:  
January 26, 2005

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## **Alaska Judicial Council**

### **Remarks for Rural Justice Commission: January 26, 2005**

Hello. I am Larry Cohn, Executive Director of the Alaska Judicial Council. With me today is Teri Carns, the Council's Senior Staff Associate. You have invited us to speak about some of work related to rural justice in recent years. We will talk first about the Council's recent felony study and its findings about Native disparities in length of incarceration, and then about some of the Council's other work in recent years associated with rural justice.

You have some materials in front of you from the Council's study of felony cases that were filed in 1999. This is the first major study of bail issues done in Alaska, and the first major study of Alaska plea negotiations and sentencing done in fifteen years. Among our major findings was one that Native defendants serve more total time in jail than do Caucasian defendants. Although the disparities did not appear in every category of offenses, they persisted even when seriousness of offense, the defendant's prior record, type of attorney, rural residence, alcohol abuse and mental illness and many other factors were accounted for.

Table 39a in your materials summarizes the report's findings about the association of ethnicity with all of the major dependent variables - predisposition incarceration, non-presumptive post-disposition incarceration, and total time incarcerated. The table shows that the disparities can be seen in all offenses taken together, statewide, and in Violent and Drug offenses in particular. Table 38a indicates the size of these differences. For example, being Native is associated with an estimated increase of 24 total days incarcerated, for all offenses together statewide. For Violent offenses in particular, the increase is closer to an estimated 46 days. It is useful to know that the estimated extra days on the table add together. So, for example, a Native defendant with an alcohol problem would have 24 extra days, plus another 14 extra days. If that same defendant was male, there would be another 47 days, and so forth. The days are approximate, and intended to show generally that the effect of being Native, and particularly being Native combined with other common factors, is likely to increase the total time served by weeks or months.

Other tables in the report (Figure 5, page 59) show that Natives are charged with certain types of offense more often than other defendants. Although 14% of Alaska's population of adults (18 and older) was Native in 1999, 30% of the defendants charged with felonies were Natives, and 35% of the defendants charged with Violent offenses were Natives. A majority - 55% - of all defendants

charged with Sexual crimes were Natives.

The percentages of Native defendants also varied by community, of course. Figure 22 (page 109) shows that 16% of the Anchorage defendants were Native, although they were only 8% of Anchorage's adult population. In the category "Other" which included Kodiak, Bethel, Barrow, Nome, Kotzebue and Dillingham, 60% of the population was Native, and 75% of the felony defendants.

One of the major issues with which you must deal is the prevalence of substance abuse, particularly alcohol. Table 16 (page 111) showed that 63% of all defendants in the report had alcohol abuse problems. In Juneau, Southeast and the rural communities, over 70% of the defendants had alcohol problems. Slightly fewer than average were identified in the court case files as having drug or mental health problems. The Council's data showed that defendants with these problems often had more days of incarceration throughout their cases than did other defendants.

What recommendations can we offer you in your work? Our recommendations from the felony report are included in your materials. In particular, the Council suggested that the state's criminal justice agencies create a Criminal Justice Working Group. The agencies have done this. The group has met and has begun to consider the Council's recommendations. The group is co-chaired by Stephanie Cole, Administrative Director of the Courts, and Susan Parkes, Deputy Attorney General who heads up the Department of Law Criminal Division. The Council further recommended that this group meet with people from ethnic organizations, community groups and local law enforcement to review policies that might be associated with these disparities.

The Council recommended that the state and local communities consider greater use of therapeutic courts to resolve the persistent problems related to alcohol abuse and mental health issues. Because so many Native defendants appear to be in the criminal justice system primarily because of these problems, new ways to make a long-lasting change in the problems is important.

Finally, the Council recommended that the state should look at the issues associated with predisposition incarceration, with public attorneys' ability to represent clients, with charging and charge reduction practices, and with the improved collection of data about ethnic participation in the justice system.

We are happy to provide with more detailed information about any of these topics, and wish you well in your important work. Now, Teri Carns from our staff will review briefly some of the Council's other work related to rural justice issues.

# Attachments

Alaska Rural Justice and Law Enforcement Commission

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All attachments are from the Council's report, *Alaska Felony Process: 1999*.

1. Table 39a, page 262
2. Table 38a, pages 256 - 257
3. Figure 5, page 59
4. Figure 22, page 109
5. Table 16, page 111
6. Recommendations, page 22
7. Remarks by Teri Carns

Table 39a Disparities Summarized by Ethnicity by Offense <sup>b</sup>				
	Predisposition Incarceration	Charge Reduction <sup>b</sup>	Non-Presumptive Post-disposition Incarceration	Total Time Incarcerated
<b>All Offenses Combined</b>				
Statewide	Native, Black/longer	Other Ethnicities/ some effect	NS	Native/longer
Anchorage	NS	N/A	NS	NS
Outside Anchorage	Native/longer	N/A	Native/longer	Native/longer
<b>Violent</b>				
Statewide	Native/longer	Other Ethnicities/ some effect	NS	Native/longer
Anchorage	NS	N/A	NS	NS
Outside Anchorage	NS	N/A	NS	Black, Native/longer
<b>Property</b>				
Statewide	Native/longer	Other Ethnicities/ some effect	NS	NS
Anchorage	NS	N/A	NS	NS
Outside Anchorage	Native/longer	N/A	NS	NS
<b>Sexual</b>				
Statewide	NS	NS	NS	NS
Anchorage	NS	N/A	N/A	NS
Outside Anchorage	NS	N/A	NS	NS
<b>Drug</b>				
Statewide	Black/longer	NS	Native, Black/longer	Native/longer
Anchorage	NS	N/A	Black/longer	Black, Native/longer
Outside Anchorage	NS	N/A	Native/longer	NS
<b>Driving</b>				
Statewide	Native, Black/longer	NS	NS	Black/longer
Anchorage	NS	N/A	NS	NS
Outside Anchorage	NS	N/A	NS	NS

Alaska Judicial Council 1999 Felony Report

<sup>a</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for "Other Ethnicities" (Asian/Pacific Islanders and Hispanic defendants) appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggested that further review of larger groups of these defendants was warranted to show whether disparities persist in bigger data sets.

<sup>b</sup> Charge reduction analyses were done only statewide, not by Anchorage/non-Anchorage. See *infra* Table 36. Other ethnicities (Hispanic, Asian/Pacific Islanders) were the only groups to show significant differences in charge reductions. Table 36 showed the outcomes of three separate charge reduction analyses. For these tables (39a, b, c, and d), the three equations' outcomes are summarized as: NS (No effect in any of the three equations) some effect (some statistically significant difference for this group in one or two of the equations) and all (all three equations showed a significant effect for this group).

Table 38a  
Association with Total Time Incarcerated - Statewide Cases<sup>a</sup>

Variable and Comparison Group <sup>b</sup>	All Offenses Combined <sup>c</sup>		Violent <sup>d</sup>		Property		Sexual		Drug		Driving <sup>e</sup>	
	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect
Black vs. Caucasian <sup>a</sup>	NS		NS		NS		NS		NS		N/A <sup>f</sup>	
Native vs. Caucasian <sup>a</sup>	93/69	+24 Days	126/80	+46 Days	NS		NS		74/31	+43 Days	NS	
Male vs. female	89/42	+47 Days	115/57	+58 Days	46/12	+34 Days	N/A		NS		NS	
Private attorney vs. public attorney	46/89	-43 Days <sup>a</sup>	64/114	-50 Days <sup>a</sup>	9/43	-34 Days <sup>a</sup>	NS		NS		NS	
Rural vs. non-rural <sup>h</sup>	NS		NS		NS		NS		81/36	+45 Days	NS	
Prior felony record vs. no prior felony record <sup>i</sup>	130/91	+39 Days	132/113	+19 Days	70/43	+27 Days	NS		86/49	+37 Days	307/222	+85 Days
Alcohol problem vs. no alcohol problem	84/70	+14 Days	117/74	+43 Days	42/30	+12 Days	NS		NS		239/91	+148 Days
Drug problem vs. no drug problem	101/63	+38 Days	130/88	+42 Days	48/31	+17 Days	NS		45/24	+21 Days	NS	
Mental health problem vs. no mental health problem	113/67	+46 Days	151/83	+68 Days	53/30	+23 Days	NS		NS		NS	
Presumptive charge vs. Non-presumptive charge	117/69	+48 Days	193/87	+106 Days	NS		NS		NS		390/186	+204 Days
Contemporaneous cases vs. single case	94/77	+17 Days	NS		53/32	+21 Days	NS		341/352	-11 Days <sup>a</sup>	NS	N/A
Two charges filed vs. one charge filed	77/76	+1 Day	94/86	+8 Days	39/33	+6 Days	NS		333/317	+16 Days	NS	

Alaska Judicial Council 1999 Felony Report

<sup>a</sup> The statewide total time incarcerated equation included 1,898 defendants who were convicted and who had sufficiently complete information about predisposition incarceration and length of sentence to be analyzed. Defendants were grouped by their original single most serious charge against them at the beginning of the case (even if they were later convicted of a charge in a different class or type of offense). The equation included defendants convicted of both presumptive and non-presumptive charges, which distinguished it from the analysis reported in the section on non-presumptive post-disposition incarceration (Tables 37, 37a, 37b, and 37c). Total time incarcerated was defined as the defendant's predisposition incarceration or unsuspended time imposed at sentencing (without the adjustments that were made for predisposition incarceration in Tables 37, 37a, 37b and 37c), whichever was greater. Because the total time incarcerated tables included a different set of defendants than did the other equations, no information from these tables can be directly compared to information from any other set of equations.

Table 38a (continued)  
 Association with Total Time Incarcerated - Statewide Cases

The variables included on the table are described with their comparison groups (e.g., Black compared to Caucasian). Some variables used in the Tobit equations were not included in these tables. Specifically, variables of age at time of offense and "Other Ethnicity" (too few cases) were not included. On the statewide table, type of offense as a variable was not included because the results for each offense group were reported.

These tables show the estimated increase or decrease in the defendant's total days to serve based on the presence of a particular characteristic of the defendant or case. For example, if the hypothetical defendant was a male in the statewide analysis of Violent offenses, he would expect to serve an estimated 58 more days in total time incarcerated than a comparable female defendant. If the male's total time incarcerated did not differ significantly, it was shown as NS. If data were not available to analyze, it was shown as N/A.

<sup>b</sup> The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggests that further review of larger groups of these defendants is warranted to show whether disparities persist in bigger data sets.

<sup>c</sup> For each category of All Offenses Combined and specific offense groups, an E number was calculated. See text, *supra*, for further discussion. E=the estimated length of total time incarcerated that the hypothetical defendant, average in all characteristics, could expect. The total time incarcerated was based on all defendants in the equations, with all characteristics. The purpose of showing the estimated total time incarcerated was to provide context for the individual disparity findings. The numbers for the Es and the estimated days for each individual variable can only be used relative to each other, to give an approximate estimate of the relative size of the contribution that having a specific characteristic (e.g., having a prior felony record) made to the amount of time that a defendant with that characteristic might have spent incarcerated overall during the case. The Es on this table are: Statewide All Offenses Combined E=79 days; Violent E=103 days; Property E=36 days; Sexual E=350 days; Drug E=40 days; Driving E=235 days.

All other things being equal, the equations show that a defendant with several of the characteristics present would be likely to spend substantially more time incarcerated than a defendant without those characteristics. They also show that variables had relatively greater or lesser effects (e.g., the association of total time incarcerated for a male in a Violent offense was +58 days; it was relatively larger than the association with a Violent offender with a drug problem (+42 days).

DWI and Refusal felonies had mandatory minimum sentences ranging from 120 days to 360 days, depending on the number of prior convictions. See discussion *infra* Appendix D, Table D-4.

<sup>d</sup> For predisposition incarceration and total time incarcerated, these analyses included Murder and Kidnap cases in the group of Violent cases.

<sup>e</sup> See following tables for ethnicity findings in Drug offenses inside Anchorage and outside Anchorage.

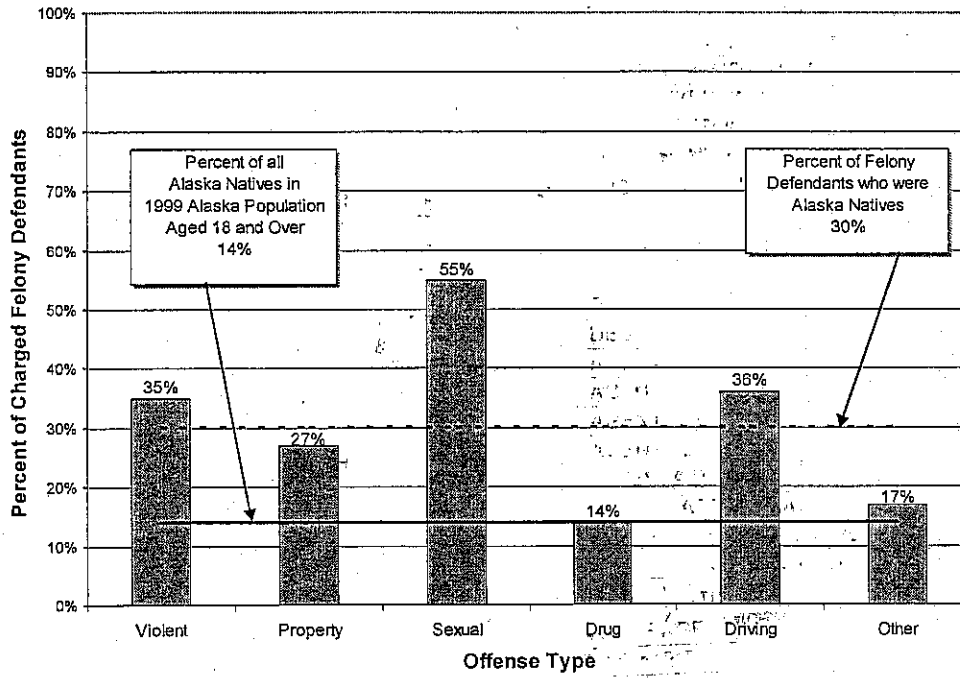
<sup>f</sup> Insufficient data available to analyze.

<sup>g</sup> A minus sign on the table meant that the defendant spent significantly less total time incarcerated.

<sup>h</sup> Rural refers to court location. Kodiak, Barrow, Kotzebue, Nome, Dillingham, and Bethel were rural. Anchorage, Fairbanks, Juneau, Southeast, and Southcentral were non-rural.

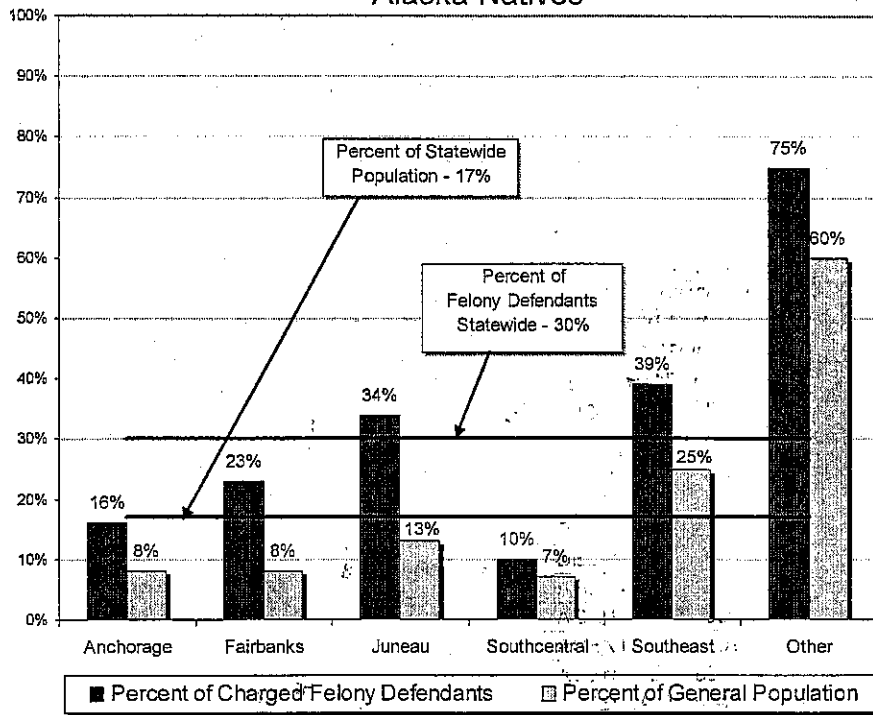
<sup>i</sup> This variable is shown as prior felony record (defined as defendants with one prior felony conviction) vs. no prior felony record (defined as defendants with four or more prior misdemeanor convictions but no prior felony convictions). The variable had six values, ranging from no prior convictions to three or more prior felony convictions. There would be larger or smaller effects than the +39 days shown on the table for All Offenses Combined for prior conviction histories that were more or less serious than the values reported on the tables.

Figure 5  
Percentage of Charged Felony Defendants Who Were Alaska Native  
by Offense Type



Alaska Judicial Council, 1999 Felony Report

Figure 22  
 Ethnic Disproportions Among Charged Defendants by Location  
 Alaska Natives



*Alaska Judicial Council, 1999 Felony Report*

**Table 16**  
**Distribution of Alcohol, Drug and Mental Health Problems by Location**

Location	Defendants in this Location with Alcohol Problems		Defendants in this Location with Drug Problems		Defendants in this Location with Mental Health Problems	
	N	%	N	%	N	%
Anchorage	500	54%	412	44%	267	29%
Fairbanks	163	63%	119	46%	74	29%
Juneau	69	78%	48	54%	47	53%
Southcentral	261	64%	197	48%	122	30%
Southeast	105	71%	77	52%	43	29%
Other	374	76%	184	37%	111	23%
Statewide	1,472	63%	1,037	45%	664	29%

*Alaska Judicial Council 1999 Felony Report*

## D. Recommendations

Based on the findings reported here, the Judicial Council made a series of recommendations. These included:

- The court should encourage criminal justice agencies to work together toward the elimination of unwarranted disparities throughout the criminal justice process. The inter-branch working group should meet with representatives of ethnic organizations, community groups, local law enforcement, and others to review policies and procedures that might be associated with disparities. It also should meet with professionals and staff from the agencies that make up the justice system.
- Appropriate agencies should look at current predisposition incarceration practices and consider other options.
- The state and local communities should consider greater use of therapeutic courts to resolve the pervasive problems with alcohol, substance abuse and mental health issues.
- The state should consider the need to increase resources available to public defense attorneys and other criminal justice agencies.
- The state should review charging and charge reduction practices.
- The state should consider better monitoring for defendants convicted of misdemeanors and should provide sufficient resources to carry out its decisions.
- The state should improve collection of data about ethnicity in agency files, court case files, and the court's new case management system for reporting offenses, arrests, prosecutorial screening, and subsequent court actions. Agencies should routinely review data to identify disparities, and the state should provide sufficient resources for independent comprehensive analyses.

**Remarks by Teri Carns, Alaska Judicial Council  
for Alaska Rural Justice and Law Enforcement Commission**

January 25, 2005

Hello. My role with the Council is, in part, to supervise research projects and write reports. In that capacity, I served as Staff Director for the Criminal Justice Assessment Commission and the Criminal Justice Council, and I now serve a limited role as staff for the present Criminal Justice Working Group. You have been provided with some of the materials and recommendations from those earlier groups. During the 1990s, the Council also produced several reports about tribal courts and councils in the state. We characterized those groups as alternative ways of resolving disputes in local areas - ways that were compatible with Alaska's courts, but not competitive with them.

Two major threads run throughout the Council's work for the past three decades: one is the need to address the disparities in the justice system experienced by Natives and other minorities; the second is the need to find effective ways of responding to close ties between alcohol and crime, particularly for Native defendants. A third focus of our work, on the ability of tribal courts and councils to resolve disputes locally has tied these two needs together to some extent.

For example, in its 1993 directory of local organizations that were resolving disputes, the Council recommended that the executive branch and legislature should cooperate full with voluntary groups such as trial councils and courts to resolve disputes in local areas. The Council observed that the state could not pay for many justice services in rural areas, and further noted that in many areas, existing local groups were providing those services voluntarily and at no cost to the state. The Council recommended that the Alaska Court System and the executive branch find ways to collaborate with local groups to resolve assist in release situations, appropriate cases, seek input from the community on sentencing issues and disposition of appropriate non-criminal cases, and supervise probation and community work service (especially for misdemeanors).

The Council recommended that the Alaska Natives Commission, and the statewide and regional Native organizations explicitly encourage the use of culturally appropriate dispute resolution whenever possible, for both civil and minor criminal matters. It recommended that local governments should collaborate with tribal and village organizations to look at ways to work more closely on justice issues, citing a Sitka task force formed in 1992 as an example.

Perhaps the most useful thing that I can do for you is to summarize again some of the ways in which the Council has suggested that state agencies, courts, and other governmental groups can

work with rural residents, tribes and local groups to use local resources. Among these recommendations that have been made in past reports are:

Delegate responsibilities to local individuals or groups:

- Refer cases and tasks to rural justice organizations (*Fairness and Access*, page 111), including encouraging parties to use these organizations for dispute resolution.
- Appoint tribal judges and council members as marriage commissioners, guardians ad litem, and other appropriate roles (*Fairness and Access*, page 111).
- Appoint and train local residents to handle domestic violence, probate, adoption, and appropriate children's cases as special masters (*Fairness and Access*, page 15, page 110).
- Ask tribal groups to help supervise probation (*Fairness and Access*, page 22, page 108).
- Ask tribal groups to make home visits in children's cases (*Fairness and Access*, page 22).
- Ask tribal groups to monitor court orders in children's cases (*Fairness and Access*, page 22).
- Refer some types of juvenile delinquency cases to local organizations, including Youth Courts, tribal courts, and other voluntary local dispute resolution organizations (*Fairness and Access*, page 22).
- Use volunteers where appropriate to help in the supervision and treatment of probationers and parolees, including administrative and educational responsibilities, and use tribal councils to supervise probation in rural areas (*Criminal Justice Council*, page 87).
- Provide community-based probation and parole supervision by partnering with tribes, villages and regional organizations to expand services and treatment (*Criminal Justice Council*, page 86).
- Collaborate with tribal entities and others to create local aftercare and re-entry programs (*Criminal Justice Council*, page 87).

Consult with local organizations and resources:

- Judges and magistrates should seek the assistance of local dispute resolution and tribal organizations in criminal cases (provide information, make sentencing recommendations) (*Fairness and Access*, page 22).
- Ask tribal organization to recommend placement options in children's cases (*Fairness and Access*, page 22).
- Request insight from tribal groups into family and cultural dynamics in children's cases (*Fairness and Access*, page 22).

These are a sample of the ways in which state agencies and courts can work with tribes and other rural organizations to improve the administration of justice in rural area.