

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
Internet e-mail address:
legaudit@legis.state.ak.us

May 15, 1998

Members of the Legislative Budget
and Audit Committee:

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

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

May 15, 1998

Audit Control Number

02-4530-00

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

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


Pat Davidson, CPA
Legislative Auditor

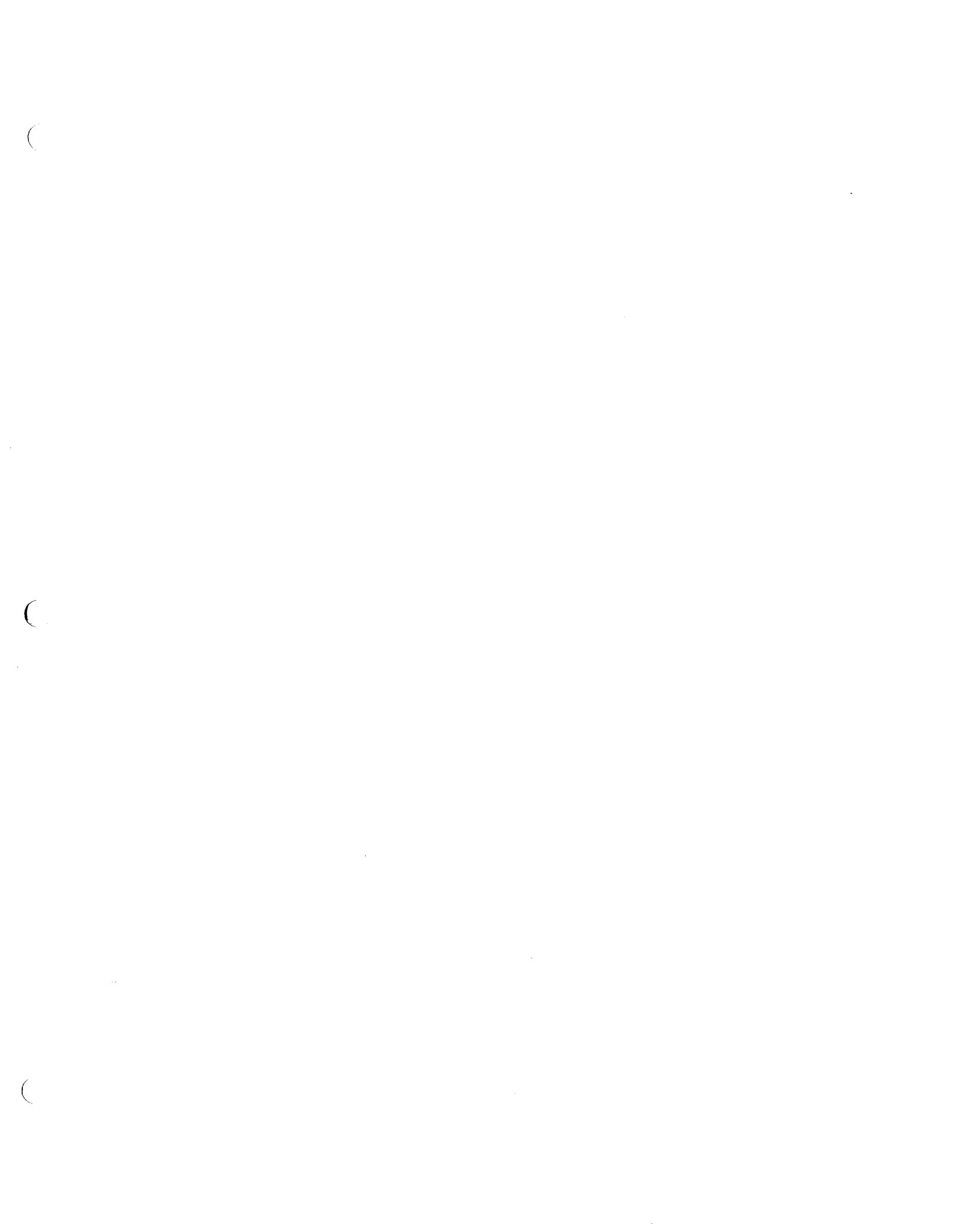


TABLE OF CONTENTS

	<u>Page</u>
Objectives, Scope, and Methodology	1
Organization and Function	7
Background Information.....	9
Report Conclusions.....	13
Subsequent Events	23
Caseload Assessment Issues	25
Findings and Recommendations	29
Prior Audit Recommendations	41
Appendices:	
A. Summary of Responses to Questionnaires Sent to Public Defenders.....	45
B. Summary of Responses to Questionnaires Sent to Ex-Public Defenders.....	67
C. Summary of Responses to Questionnaires Sent to Department of Law Attorneys.....	85
D. Summary of Responses to Questionnaires Sent to Alaska Court System Judges and Magistrates	105
Agency Responses:	
Department of Administration.....	127
Alaska Court System	135
Department of Public Safety.....	143
Legislative Auditor’s Additional Comments	145



OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we conducted an audit of the Department of Administration, Public Defender Agency (PDA).

Objectives

The objectives of this audit were twofold:

- To determine if PDA funding and related expenditures allow for efficient and effective operations in accordance with laws, regulations, and administrative policies and procedures.
- To determine if PDA management and operations are efficient and effective in providing for adequate representation of clients in accordance with applicable laws, regulations, and court rules.

Scope and Methodology

Our approach in addressing the first objective, related to funding and expenditures, involved the following:

- Review and evaluation of PDA's internal control structure over travel and contractual expenditures.
- Test of PDA travel and contractual expenditures for fiscal year 1996 to determine compliance with applicable laws, regulations, and administrative policies.
- Examine PDA budget documents for fiscal years 1992 through 1999.
- Analyze and compare the PDA expenditures for fiscal years 1988 through 1999.
- Identify the number and amount of Criminal Rule 39¹ judgements issued and collected from convicted defendants represented by publicly appointed attorneys.
- Determine the extent that local governments provide for indigent defense.
- Consider alternative revenue sources in addition to Criminal Rule 39 judgements, such as assessment of fees, to fund indigent defense services.

¹*Alaska Rules of Court*, Criminal Rule 39 addresses the requirement of the court to advise the defendant of the right to be represented by counsel and the procedures governing the appointment of counsel for an indigent defendant. In addition, the rule requires that, upon conviction of an indigent defendant, the court enter a judgement for the costs of appointed counsel based on a fee schedule.

- Determine the electronic data processing capabilities of PDA, the utilization of electronic and manual case management systems, and the agency's level of computerization, including the use of hardware and software.
- Determine status of prior Division of Legislative Audit (DLA) recommendations to the Alaska Court System (ACS) regarding eligibility determination for public defense services.
- Obtain for comparison purposes, the funding, expenditures, staffing, case statistics, and electronic data processing capabilities of the Alaska Department of Law (DOLaw) and public defender agencies in other states.

The primary approach in addressing the second objective, regarding efficient and effective representation of clients, was to conduct a detailed study of PDA's caseload. We analyzed PDA's caseload and determined, with the assistance of PDA attorneys, the estimated hours spent on representation. We compared these hours to the hours available in a work year.

We designed this study after similar models used to conduct studies of the public defender agencies in Ohio and Wisconsin. The Wisconsin study² was performed by The Spangenberg Group, which is a nationally recognized research and consulting firm specializing in indigent defense issues.

The major resource used to provide indigent defense representation is the time expended by PDA's attorneys. Approximately, \$6,200,000 or 70% of the FY 97 expenditures were for attorney positions. Therefore, a caseload time study, similar to the Wisconsin study, would assist in determining whether PDA efficiently and effectively manages the majority of its resources.

1. Study methodology widely accepted

Two methods have been typically used in conducting case time studies: the time record-based case-weighting method and the Delphi method. Since PDA does not have either an automated time-keeping system or a manual time-keeping system, we elected to utilize the Delphi method for our time study. The Spangenberg Group in the Wisconsin study also utilized this method.

The Delphi method is summarized as follows.

The Delphi method utilizes the accumulated experience of qualified observers to estimate the value of a parameter of interest. Each observer is asked to assign what he or she believes to be the correct value to an unknown quantity, using a survey method. Each expert observer is fully informed of the purpose of the Delphi study and its methods. In subsequent surveys, experts are shown

²The Spangenberg Group, *Caseload/Workload Study for the State Public Defender of Wisconsin, Final Report*, September 1990.

the results of the earlier surveys, and are asked to reconsider their answers in an effort to bring about convergency of views.³

2. PDA attorneys provided assistance for this study

DLA auditors met with the public defender and 15 PDA attorneys. The purpose of the meeting was twofold: to explain the methodology of the time study and to enlist the assistance of the attorneys. The attorneys were requested to assist in drafting the time estimate forms for the study.

The purpose of the time estimate forms was to assist an attorney in closely estimating the time it takes to process a case from assignment through final disposition. We needed the attorneys' assistance in identifying the case activities⁴ for each case classification.⁵ The attorneys provided the case activity listings from which the DLA auditors developed the time estimate forms. The *Alaska Rules of Court* also provided guidance in the development of the forms.

3. Point-in-time caseload inventory

In addition, all PDA attorneys were asked to perform a physical inventory of the agency's open cases as of November 1, 1996. The reasons for the physical inventory were to provide a beginning caseload for the time study and to provide data for comparison to the PDA case management system to determine its completeness and reliability.

Exhibit 1		
Public Defender Agency		
Open Caseload Inventory as of November 1, 1996		
Case Classifications	Totals	% of Cases
Felonies	1124	18.8%
Misdemeanors	2340	39.1%
Probation Revocations:		
Felonies	379	6.3%
Misdemeanors	571	9.6%
Sentence Appeals:		
Felonies	15	.2%
Misdemeanors	1	.0%
Post-Conviction Relief	47	1.0%
Involuntary Commitments	19	.3%
Parole Hearings	40	.7%
Fugitives	2	.0%
Merit Appeals:		
Felonies	121	2.0%
Misdemeanors	26	.4%
Other	2	.0%
Subtotal: Adult Proceedings	4687	78.4%
Juvenile Delinquencies	287	4.8%
JD Probation Revocations	78	1.3%
Merit Appeals:		
Juvenile Delinquencies	1	.0%
Child-In-Need of Aid (CINA)	4	.1%
Child-In-Need of Aid	921	15.4%
Subtotal: Children Proceedings	1291	21.6%
Total All Cases	5978	100.0%

³Jacobson, *Forecasting Caseload, Workload, Costs, A Primer for Defenders*, National Legal Aid and Defender Association, National Center for Data Mining, 1978, p. 5.

⁴Case activities include items, such as initial interview, pretrial release, preliminary or pre-indictment hearing, arraignment, etc.

⁵Case classifications consist of felony, misdemeanor, juvenile delinquency, etc.

4. Distribution and completion of time estimate forms

A time estimate form was developed for each case type. We selected 12 PDA attorneys to complete 14 of the time estimate forms and to provide feedback to the DLA auditors regarding the forms' content, format, and instructions. Based on those comments, the final time estimate forms were completed and distributed.

Judicial District (JD)		Case Classification	
1 st JD	25	Felonies	103
2 nd JD	26	Misdemeanors	67
3 rd JD	129	Appeals	31
4 th JD	52	Family Law	31
Total	232	Total	232

There were a total of 232 time estimate forms completed by the PDA attorneys. The distribution of the forms by judicial district, case classification, and case type was as shown.

5. Attorney time estimate results

DLA auditors met with the public defender and PDA attorneys to review the time study results. The attorneys were provided with average time estimates compiled from their completed time estimates. They were asked to review the time estimates for each case type and the weighted⁶ time estimate for each case classification for reasonableness and to inform the DLA auditors of any adjustments.

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

The final time estimates are shown at the right. The average estimated times for the felony (excluding homicides), misdemeanor, and the other merit appeal case types were weighted.⁷

6. Comparison of PDA time estimates

We selected a sample of 206 cases represented by the Office of Public Advocacy (OPA) to determine the number of hours the contract attorneys billed for each case. In addition, we

obtained the average estimated case hours from the *Alaska Court System, Attorney Survey*

⁶All case activity times were multiplied by the estimated percentage of cases that proceed through that activity phase.
⁷Each case type time estimate was multiplied by the percentage it represented of the total caseload within the case classification, that is, felony, misdemeanor, or other merit appeal.

on Costs of Representation. As part of the process of developing recommendations related to indigent defense eligibility standards, the Indigency Guidelines Committee⁸ sent a survey to all active members of the Alaska Bar Association. A total of 156 surveys were returned. DLA reviewed copies of the returned surveys⁹ and found 65 surveys with estimates of attorney hours.

The results of the comparison of the OPA and ACS case hours with PDA estimates are shown in Exhibit 9 on page 15 in the Report Conclusions section of this report.

7. Determination of adjustment to PDA manual open case statistics

Using the time estimates, data from DOLaw's PROMIS (Prosecutor's Case Management Information System), and the manual open case statistics for each case type, we calculated the number of cases that should have been open as of November 1, 1996. The calculated open case inventory was then compared to the actual manual inventory provided by PDA. The assumption was made that the difference between the calculated inventory and actual inventory numbers was the result of the systemic problem with case counting. (Refer to the Case Assessment Issues section of this report for further discussion concerning reasons for open case statistics overstatements.)

The open case statistics used in the time study for the period November 1996 through April 1998 were then adjusted by the percentage of difference between the calculated inventory and actual inventory.

8. Calculation of number of attorney positions needed for caseload

After applying the time study data to both the November inventory and the adjusted open case statistics for the period November 1, 1996 through April 30, 1998, we totaled the weekly time by case type. Then the average weekly hours were divided by the available weekly hours to determine the average number of attorneys needed to handle the caseload for that particular case type. (See the Reports Conclusions section of this report for the results.)

Other fieldwork for our second objective included the following:

- Review of the workload/caseload limits of other state public defender agencies and workload studies by national organizations and consultants.
- Compare PDA's ratio of attorneys to support staff (that is, investigators, secretaries, and administrative) with the Alaska Department of Law and other public defender agencies.

⁸ The Indigency Guidelines Committee was established by the chief justice and approved by the Alaska Supreme Court to recommend standards for judges to use in determining a person's eligibility for court-appointed counsel.

⁹ Any identification of the respondent had been blacked out on the copies as the Alaska Court System had assured the surveyed member anonymity.

- Survey justices, judges, and magistrates of the Alaska Court System; attorneys from the Department of Law, Criminal Division and the human services section of the Civil Division; ex-public defender attorneys since 1990; and current public defender attorneys.
- Review of passed legislation from 1992 through 1998 that affected the PDA caseload.
- Review of court decisions for fiscal years 1990 through 1996 to determine if any cases were reversed or remanded to a lower court due to inadequate representation by a public defender attorney.

ORGANIZATION AND FUNCTION

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

By statute¹¹ the Alaska Court System (ACS) is responsible for determining eligibility for public defense services. After eligibility criteria have been met, an attorney is appointed either from PDA or, for some cases, from the Office of Public Advocacy (OPA).¹² Since ACS determines eligibility,¹³ neither PDA nor OPA have control over the number of individuals each agency will be appointed to defend.

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

<u>Exhibit 4</u> Public Defender Agency FY 97 Authorized Positions	
<u>Classification</u>	<u>Number</u>
Management	2
Administrative	3
Attorneys	66
Investigators	12
Paralegals	3
Legal Secretaries	22
Other Clerical	4
Total	<u>112</u>

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

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

<u>Exhibit 5</u> Allocation of Criminal Rule 39 Collections Fiscal Years 1994 through 1997 (Unaudited)		
<u>State Agency</u>	<u>%</u>	<u>Dollar Amount</u>
Public Defender Agency	37%	\$ 935,399
Office of Public Advocacy	13%	310,200
Department of Law	20%	500,910
General Fund	30%	758,046
Total Collections	<u>100%</u>	<u>\$2,504,555</u>

¹⁰See Executive Order No. 42.

¹¹See AS 18.85.120.

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

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

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

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BACKGROUND INFORMATION

Public Defender Agency (PDA) was established in response to a federal legal mandate¹⁵ that grew out of case law and interpretations of the U.S. Supreme Court. Under AS 18.85.100, PDA is required to provide representation in criminal matters and certain civil matters for an indigent person who:

- is being detained or charged with a serious crime;¹⁶
- is being detained under a conviction of a serious crime;
- is on probation or parole;
- is entitled to representation under Supreme Court Delinquency or Child-in-Need of Aid Rules;
- is detained under an order due to infectious tuberculosis; or
- is having a commitment proceeding against him/her for mental illness.

In addition, a defendant in contempt is entitled to representation by a public defender, if he/she is indigent.¹⁷

Indigent defendants are to be provided legal representation to the same extent as an individual retaining private defense counsel. This includes the necessary services and facilities of such representation, including investigation and other preparation, for example, polygraph examinations, forensic analysis, and evaluations and testimony by psychiatric, psychological, and medical experts. Not only is this required by the Alaska and U.S. constitutions¹⁸ and related laws, it is also required by the *Alaska Rules of Court*.¹⁹ In addition, the Alaska Bar Association's Rules of Professional Conduct require an attorney to provide competent representation that includes legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

PDA must by statute accept all appointments by the courts except those for which a conflict of interest exists. For those cases, the courts must appoint an Office of Public Advocacy

¹⁵The sixth amendment to the U.S. Constitution provides for the right to counsel in federal criminal prosecution. The U.S. Supreme Court, through case decisions, extended the right to counsel for indigent defendants being prosecuted for state criminal charges. The U.S. Supreme Court held, in the landmark case of *Gideon v. Wainwright* 372 U.S. 335 (1963), that a defendant charged with a felony, including state crimes, had the right to counsel. The decision in *Argersinger v. Hamlin* 497 U.S. 25 (1972) extended an indigent's right to counsel to all criminal prosecutions, felony or misdemeanor, that carry a sentence of imprisonment.

¹⁶"Serious crime" was defined in *Alexander v. City of Anchorage* 490 P.2d 947 (Alaska 1971) as an offense for which the direct penalty may be incarceration, loss of a valuable license, or a fine heavy enough to indicate criminality.

¹⁷*Public Defender Agency v. Superior Court* 534 P.2d 947 (Alaska 1975).

¹⁸Alaska Constitution Art. I, Sec. 11; see previous footnote 15.

¹⁹These are rules adopted by the Alaska Supreme Court to provide the framework and guidance for, among other functions of the Alaska Court System, criminal procedures and attorney professional conduct. The rules of criminal procedure govern the practice and procedure in the superior court in all criminal proceedings and, as applicable, the practice and procedure in all other courts. The professional conduct rules define proper conduct for purposes of professional discipline and discretion in a lawyer's role. See Professional Conduct Rule 1.1 regarding lawyer competence.

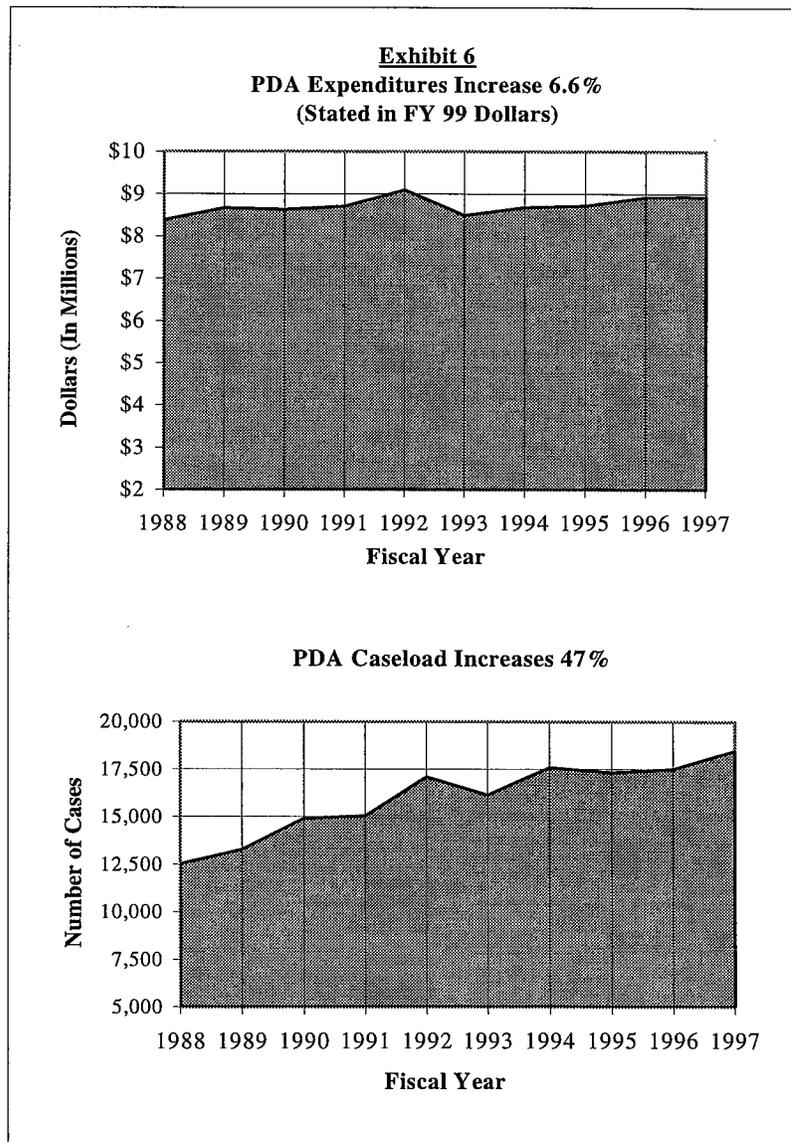
(OPA) attorney.²⁰ If OPA also has a conflict of interest in the case, it will contract for the necessary indigent defense services with a private attorney. As stated previously, given this process, PDA and OPA have no control over the volume of cases appointed by the court.

PDA and OPA are integral, although often overlooked, components of the State's judicial system. Other entities and organizations such as the Alaska Court System (ACS) and Department of Law (DOLaw) are the most commonly thought of components of the judicial system. Escalating caseloads are adversely affecting the operations of all four of these components.

Like other entities in the judicial system, PDA faces increasing caseloads

As shown in Exhibit 6, on an inflation-adjusted basis, PDA's expenditures modestly increased by 6.6%²¹ between FY 88 and FY 97, while PDA's caseload dramatically outpaced expenditures by increasing 47%. Thus, even though PDA increased its attorney staffing by 16% since FY 88, the FY 97 caseload for each attorney was 27% greater than it had been ten years earlier.

Over the ten-year period, PDA management has been forced to manage its funds by holding positions vacant, requiring attorneys to go on leave without pay status, temporarily demoting attorneys to lower paying positions, and by closely scrutinizing direct case expenses (for example, expert witness fees, psychiatric examinations, etc.). Meanwhile, attorneys have managed the increasing caseload by working uncompensated hours. (See the Report Conclusions section of this report for further details.)



²⁰ See AS 44.21.410 (a) (5).

²¹In FY 97 the Department of Administration began allocating its administrative costs for the commissioner's office and the administrative services division to other state agencies/programs. We reduced PDA's FY 97 expenditures by the amount of these allocated expenditures (\$192,624) for comparability purposes.

Increases in caseload affected by external influences

The steady increase in caseload stems, in part, from three distinct factors: new criminal legislation, changes in how and what cases are prosecuted, and the lack of consistent indigency guidelines applied by state judges. The impact of each of these factors is as follows:

1. New legislation. Changes in statutory sentencing policies and reclassification of some crimes from misdemeanors to felonies, such as driving while intoxicated, joy riding, automatic waiver of juveniles to adult court, and the “three strikes”²² felony sentencing laws, all generated more demand for PDA services. New legislation creating laws against “new” crimes such as conspiracy, stalking, and new child protection laws also had an impact on PDA’s caseload. See Exhibit 7 for a more extensive listing of recent statutory changes that resulted in PDA being assigned more cases.

Exhibit 7
Legislation Passed Affecting PDA Caseload
For the Years 1992 through 1997
<ul style="list-style-type: none">• Expansion and elimination of statute of limitations for certain crimes• Mandatory 99-year sentences for certain crimes• Expansion of State’s right to appeal in criminal cases• Stalking law• Sex offender registration law• Conspiracy criminal law• Mandatory waiver of certain juveniles into adult court• Felony driving while intoxicated• Limitations on suspended imposition of sentencing• Domestic violence legislation (including mandatory arrests)• Increased penalties for an assault on a police officer• Conversion of joyriding from misdemeanor to felony auto theft• “Three Strikes” felony sentencing provisions• Knowingly interfering with a report of domestic violence• Discharging firearms at or towards a building or dwelling felony crime• Expansion of automatic waiver of juveniles into adult court• Truth in Sentencing Act of 1997• Mandatory minimum jail sentences for domestic violence crime• Governor’s Ominbus Child Protection Bill• Dual sentencing for serious juvenile offenders• Fleeing or evading a police officer misdemeanor changed to a felony• Changes in sex offender registration law

2. Changes in enforcement resources and prosecution strategy. An example of this factor is when state and federal funds were used to increase enforcement personnel at a local level and through establishment of multi-jurisdictional task forces. In conjunction with the increase in enforcement, funds were provided to employ specially trained prosecutors. No funds were provided for the corresponding increase in PDA’s caseload.

In addition, the strategy of the prosecutor may affect the PDA caseload. Prosecutors have the responsibility to screen cases brought to them for prosecution. The philosophy of the particular prosecutor can affect the volume of cases. More critical screening limits frivolous cases and overcharging, while more cursory screening of those cases/charges requires PDA as well as the judicial system to expend time on the case before being dismissed.

²²“Three strikes” refers to the mandatory sentencing law of a defendant who has been convicted of three or more felonies.

Also, some prosecutors refuse to negotiate until the eve of trial. When current PDA and ex-PDA²³ attorneys were asked about DOLaw's policy and procedures for plea agreements, almost 70% of the respondents believed the resolution of cases through plea agreements were delayed in 25% or more of the cases due to management edicts.

The respondents stated the top areas of change for DOLaw include:

- *Screen cases more carefully prior to the filing of charges.*
- *Early screening of cases by assistant district attorneys for possible plea agreement.*
- *Meet with defense counsel in sufficient time prior to trial to review cases to discuss settlement options.*
- *Give the district attorneys more autonomy to deal cases.*

3. Inconsistent indigency guidelines. The courts may have appointed public defenders for persons who were ineligible for the services, thus increasing PDA's caseload unnecessarily. We recommended in a prior audit that the Alaska Court System develop eligibility criteria for appointment of public counsel along with screening procedures to ensure only eligible persons receive legal services at public expense. In December 1998, the Alaska Supreme Court, with an effective date of May 15, 1999, adopted such eligibility criteria and procedures. (See the Prior Audit Recommendations section of this report for further discussion.)

²³In April and May 1997, we sent questionnaires to current public defender attorneys, former public defenders (ex-PDAs), DOLaw attorneys, and judges and magistrates of ACS. See Appendices A through D for summaries of the responses from each group.

REPORT CONCLUSIONS

The primary objective of this audit was to determine whether the Public Defender Agency (PDA) management and operations were efficient and effective in providing representation of clients. The major resource used to provide such representation is the time expended by PDA's attorneys. Approximately \$6,200,000 (70%) of PDA's FY 97 expenditures were for attorney positions. A detailed study of PDA's caseload was the best way to measure the use of this resource. We analyzed PDA's caseload and determined, with the assistance of PDA attorneys, the estimated hours spent on representation, and compared these hours to the hours available in a work year.

Our time study indicates that the agency is understaffed. However, this manpower shortage may be covered, in part, with the addition of lower paid positions, such as investigators, paralegals, legal secretaries, and other clerical positions. Further, bringing PDA technologically up-to-date will add efficiencies to its provision of public defense services.

Also, the necessary data to allow for future evaluations of the courts', prosecutors', and public defenders' workloads needs to be captured. Currently, the criminal justice agencies are in the process of replacing and/or updating their case management information systems, making it an opportune time to ensure necessary data is provided for such workload analyses.

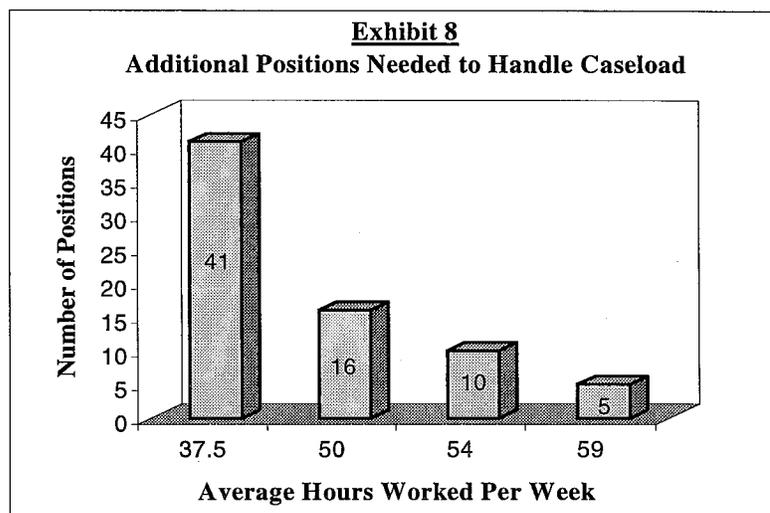
We developed the following conclusions on PDA's staffing and workload, criminal justice system information systems, administrative controls of PDA, and federal grant funds.

Time study shows shortage of PDA positions

Based on the results of our time study and its application to the PDA caseload for the period November 1, 1996 through April 30, 1998, PDA is short attorney positions.²⁴ In order to

determine how PDA could be short positions and still manage its caseload, we looked to the amount of uncompensated overtime that PDA attorneys work. In our surveys to the PDA and ex-PDA attorneys, we asked for the number of hours, on average, they worked each week. The results of the survey show that PDA attorneys work, on average, about 21 hours of uncompensated overtime per week. We applied the time study

data and the amount of uncompensated overtime hours to be worked by attorneys to the



²⁴This shortage is only for the adult criminal and juvenile delinquency cases handled by PDA. Child-in-need of aid (CINA) cases were excluded from our calculations. See the Caseload Assessment Issues section of this report.

caseload. The number of positions needed is shown in Exhibit 8 depending on the number of hours worked per week.

In prior years, PDA was able to handle its increasing caseload because the agency's attorneys worked uncompensated overtime. However, in FY 97 and FY 98 even uncompensated overtime hours at the level of 21 hours per week did not provide sufficient manpower to handle the increasing caseloads.

PDA attorneys dealt with the mounting caseload through tactical legal maneuvers that minimized the affect of the staff shortage. However, this did not solve the problem; it merely deferred it.

We believe our estimate of PDA's staffing shortage is reasonable due to the following factors:

Survey Responses on PDA Caseload

PDA Attorneys –
Caseload makes it difficult or impossible to file motions in a speedy manner. This results in a delay of trial and waiver of a defendant's right to a speedy trial.

Department of Law (DOLaw) Attorneys –
[PDA] must delay to be prepared.

Alaska Court System (ACS) Judges and Magistrates –
Lack of necessary time to spend with client, unable to have face-to-face contact with client except just prior to hearing/trial.

1. Steps taken to avoid overstatement of workload and required personnel.

The total available hours for PDA attorneys to handle their caseloads was more conservatively estimated than in other similar studies. We used a total of 1,875 available hours (1,957.5 annual work hours less only the annual holiday hours totaling 82.5). Other studies of this type calculate the annual number of attorney hours available for casework by also subtracting from the total work hours the average annual leave hours taken and the hours for supervisory, administrative, and professional development activities. Given PDA's workload, we understand there is little time devoted to some of these other activities. By using the higher number of available hours for PDA, we avoided overstating the number of positions needed to handle PDA's caseload.

Also, in developing the estimated positions needed, we made adjustments to PDA's case information to ensure the workload was not overstated. Both the beginning inventory of cases and the number of cases opened during our study period were corrected. (Refer to the Caseload Assessment Issues section for reasons relating to open case statistics overstatements.)

2. Time estimates corroborated.

We selected a sample of 206 cases handled by the Office of Public Advocacy (OPA) to determine the number of hours the contract attorneys billed for each case. In addition, we obtained time estimates from 65 respondents to an Alaska Court System survey. In August 1996, ACS sent a survey to all active members of the Alaska Bar Association in order to obtain information related to the cost of representation of criminal cases. The completed surveys of the 65 respondents also included estimates of the number of hours the attorneys spent on certain types of cases.

The estimated case times obtained from the PDA attorneys were compared to both the average hours for OPA contract attorneys and the time estimate results of the ACS survey. Exhibit 9 shows the results of that comparison:

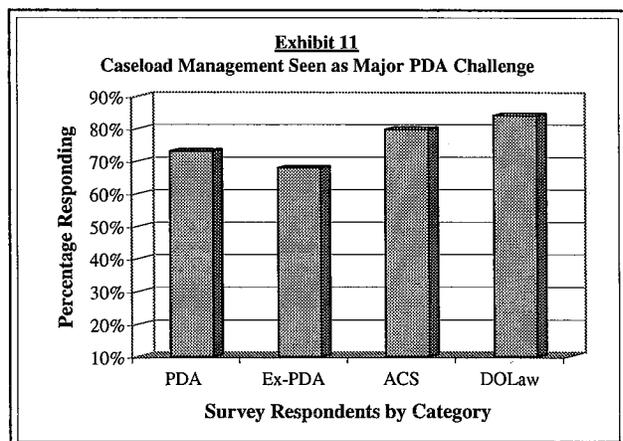
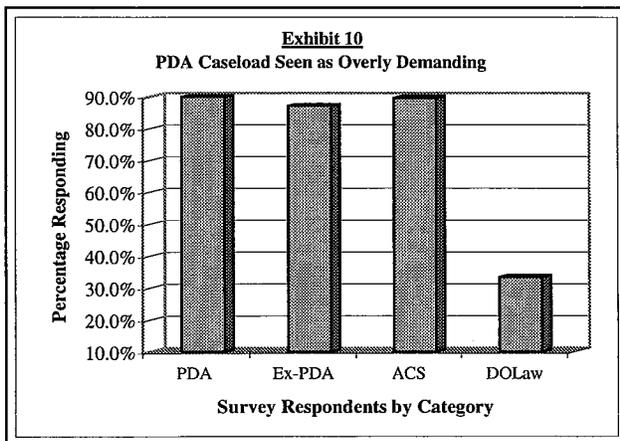
Exhibit 9					
Comparison of PDA Time Estimates to OPA Contract Attorneys and ACS Survey Data					
Case Classification/Type	PDA	OPA	Alaska Court System Survey		
	Average Attorney Hours	Average Contract Attorney Hours ²⁵	Estimated Average Attorney Hours		
			Low	Median	High
Misdemeanors	9	7	10	14	18
Felonies	49	55	38	49	60
Criminal Merit and Sentence Appeals	40	26	38	51	65
Post-Conviction Proceedings	48	20	48	50	53
Juvenile Delinquency Proceedings	21	15	11	13	15
Parents in CINA Cases	38	47	32	64	96

Although the above comparison does not include all case types handled by PDA, it does represent approximately 82% of its caseload as of November 1, 1996. The PDA estimated hours for four of the six case types fall within the range of estimates from the ACS survey. The PDA misdemeanor case time falls between the OPA hours and the low of the ACS survey, while the juvenile delinquency proceedings is within six hours of both the OPA contract attorney hours²⁶ and the ACS estimates. These comparisons support the validity of the time estimates received from the PDA attorneys.

3. Survey results corroborate staff shortage conclusion.

PDA attorneys, ex-PDA attorneys, Department of Law attorneys, and ACS judges and magistrates had varying, and at times contrary, perspectives on PDA's operations. For example, about 90% of current PDA and ex-PDA attorneys as well as the judges and magistrates characterized PDA's caseloads as overly demanding.

However, the prosecution side disagreed, with only 33% of DOLaw attorneys stating that PDA caseloads were overly demanding.



²⁵OPA staff attorneys handle homicide cases and the more complex cases within each case classification. The less complex cases are contracted out.

²⁶PDA's caseload consists of the more serious and complex juvenile delinquency cases compared to those in the sample of OPA contract attorney cases.

All groups surveyed were asked to list the top three challenges faced by PDA. In contrast to the previous responses, all groups agreed that a top challenge for PDA was its caseload management.

Elsewhere, caseload studies used to support budget requests

Currently, there is a national trend for courts, prosecutors, and public defenders to justify budget increases with caseload measurements. The Spangenberg Group²⁷ has conducted caseload studies similar to our study of the Alaska PDA. At the request of the executive and/or legislative state or local governmental branches, the Spangenberg Group conducted studies of several public defense agencies, including Colorado, Minnesota, Wisconsin, and New York City. The legal division staff of the Ohio Public Defender Commission conducted a similar study of its caseload. In addition, the State of Wisconsin contracted for a caseload study for determining the need for judgeships.

Most recently, the State of Tennessee legislative body requested that the comptroller of the treasury hire consultants to conduct caseload studies for the courts, public defenders,²⁸ and prosecutors. No requests for additional positions would be considered until the completion of these studies.

We recommend PDA operating budgets be developed, in part, through the use of this type of data. See Recommendation No. 1.

In addition, the need for reliable and accurate case statistics was emphasized in each of the above mentioned studies. Caseload data needs to be captured not only for PDA, but also for the courts and prosecutors. See Recommendation No. 5.

Confirmation and continuity of the time study data needed

In order to place a continued reliance on the time data for management and budgetary purposes, it must be accurate. Therefore, PDA management must develop a process to confirm and maintain the accuracy of this data. See Recommendation No. 3.

Inefficiencies affect time study results

The PDA attorneys completed the time estimates at a point in time. Inefficiencies in PDA services that made the case processes more time consuming were inherently incorporated into those time estimates. Therefore, in conjunction with the time estimates, we identified the areas of improvement that would enhance the efficiency of PDA services. After corrective action has been taken to improve the identified areas, PDA should update the time estimates to reflect the efficiencies gained in handling the caseload. We identified the following areas

²⁷The Spangenberg Group is a private consulting firm located in West Newton, Massachusetts, which specializes in the study of indigent defense systems.

²⁸The Spangenberg Group was contracted to perform the study of the public defense attorneys.

where improvements should increase efficiencies and decrease the attorney time spent on some or all case types.

- Under-funding public defense services hinder the provision of such services (for example, limited legal research resources and lack of computerized brief/motion banks).
- PDA computer hardware inadequate to provide efficiencies for staff in performing their duties.
- Attorneys perform tasks that should be done by paraprofessionals or clerical staff.

The trend of under-funding and under-emphasizing the defense function is being recognized as a problem at the federal level as well as the state. According to the U.S. Attorney General, Janet Reno,²⁹ the Justice Department has begun to review the status of the federal indigent defense services. Further, Ms. Reno, has urged every state to review its indigent legal defense services and “*recommit itself to the promise of Gideon*”³⁰ to provide counsel to indigent defendants.

We reviewed the funding for both DOLaw prosecution (Criminal Division or CD) and PDA for the fiscal years 1996 and 1997 to determine if PDA was receiving disparate funding compared to other agencies within the state judicial system. We chose a comparison of funding between these two agencies, as both are public legal agencies working within the same judicial system. It is through that link that we make the following observations regarding cost saving strategies that PDA has had to implement while its counterpart CD has not:

- Personal Services – The average salary per attorney position with CD was about \$9,000 higher than that for PDA attorneys.
- Travel – PDA management implemented a policy not to pay per diem to employees for most in-state travel.³¹
- Motor Pool Charges – CD incurred expenditures related to usage of state-owned vehicles, while PDA staff and attorneys used personal vehicles with minimal reimbursement.
- Supplies – CD expended \$125,285 for legal research resources during the two-year period, while PDA only spent \$9,715.
- Machinery and Equipment – In the two-year period, CD spent \$299,228 on communication, computer/data processing, and office equipment. PDA expended only \$52,835 at a time when its communication and computer technology was seriously lacking.

²⁹Janet Reno, “Indigent Defense: Legal Service for Poor Needs Vigilance” *The Champion*, National Association of Criminal Defense Lawyers, Washington, D.C., May 1998 at p. 32.

³⁰*Gideon v. Wainwright* 372 U.S. 335 (1963).

³¹Alaska Administrative Manual at 60.190 states “employees . . . are eligible for reimbursement of actual and necessary lodging expenses plus the applicable [meal and incidental expenses] allowance.” Alaska Statute 39.20.160 states, “the fixing and payment . . . of travel and per diem allowances . . . and reimbursement of travel expenses shall be in accordance with regulations adopted by the commissioner of administration. The regulations shall be uniform for all officials and employees, and all agencies and departments.”

The U.S. Department of Justice is concerned about the disparity in funding for indigent criminal defense and the need to bring the current tools of technology to this leg of the criminal justice system. As stated by the U.S. Attorney General:

Disparities in resources among different parts of the criminal justice system have had a corrosive effect on the ability of poor defendants to secure effective representation. [Further,] technology creates incredible opportunities for accessing and exchanging information, managing cases, investigating crimes, and improving the efficiency and quality of our work.³²

Due to funding constraints, computers purchased in FY 93 and FY 94 by PDA did not have sufficient capacity to operate its case management system (CMS)³³ or to make use of a multitask program operating system (Windows). This caused the use of computers by PDA staff to provide minimal improvement in efficiency over the use of typewriters.

In order to compensate for the inefficiencies the secretarial staff was experiencing, the PDA attorneys performed clerical tasks. In addition, the attorneys performed tasks that normally would be done by paraprofessionals (that is, paralegals and investigators). The PDA attorneys' estimated time to handle a case reflected the time to perform these other tasks.

As previously discussed, our time study shows PDA is short attorneys to handle the adult criminal and juvenile delinquency caseloads. We recommend PDA management upgrade the computerization of its offices to increase efficiencies of both the staff and attorneys and, as efficiencies are gained, review its staffing configurations. Some of the shortage of attorneys may be met by adding paraprofessional or clerical positions typically paid at a lower rate. See Recommendation No. 2.

Heightened concern for professional ethics violations

Another major problem facing professionals in the criminal justice system are claims and charges of ineffective assistance of counsel (defense) and abuse of power (prosecution). While the State defends such claims against its legal professionals, each attorney must weigh his/her ever increasing caseload and the demands from the public, against the potential of violating the professional code of ethics, resulting in disciplinary action. The most serious sanction from the Alaska Bar Association is the suspension or revocation of an attorney's license to practice law.

In 1996, the Alaska Bar Association sanctioned a PDA attorney. This was a result of a grievance filed by an indigent defendant to whom the court had appointed PDA for his representation. The basis of the grievance was an opinion by the Alaska Court of Appeals stating that the PDA attorney committed ineffective assistance of counsel and violated the court rules governing the withdrawal of counsel. The PDA attorney admitted the charges against him.

³²Janet Reno, "Remarks of the Attorney General of the United States, Six Building Blocks for Indigent Defense (National Symposium on Indigent Defense, Mayflower Hotel, Washington D.C., February 25, 1999)," *The Champion*, National Association of Criminal Defense Lawyers, Washington, D.C., April 1999 at p. 28.

³³PDA purchased an existing program from a consultant and with assistance modified it to fit the needs of the agency. The modifications to the program were completed in August 1994.

A condition of his continued practice of law was a requirement for him to be supervised (preferably by a workplace supervisor) for an 18-month period. One duty of the supervisor was to verify that his caseload was current and all obligations to clients were being fully met. However, the attorney chose instead to terminate his employment with PDA.

In our survey of PDA attorneys and ex-PDA attorneys, we asked about the frequency of the monitoring and supervision of PDA attorneys. Ninety percent of the respondents indicated PDA attorneys were monitored or supervised by a more experienced attorney during courtroom appearances only 10% or less of the time. Further, 15% of the respondents did not believe the practices and procedures of PDA for supervising and monitoring its attorneys were effective. Some of the additional comments made were:

Everyone is on their [sic] own - sink or swim.

Senior attorneys are willing [to provide in-court supervision] but are too busy with their own caseload to be able to supervise.

In-court supervision is not effective. Wouldn't be able to work our own caseload properly if we spent the time necessary to adequately monitor other attorneys.

Further, we asked DOLaw attorneys, ACS judges, and magistrates about the frequency of in-court supervision of PDA attorneys. Eighty-five percent of the respondents indicated that they observed PDA attorneys being supervised and monitored during courtroom appearances in only 10% or less of the time. Also, 18% of the respondents did not believe the practices and procedures of PDA for supervising and monitoring its attorneys were effective.

In addition, 58% of the ex-PDA respondents to our survey indicated an overly demanding caseload as one of the primary reasons for leaving the employment of the agency. One respondent wrote, "*I burned out. The caseload in Bethel was always very high and required extra work.*"

It appears that the current trend of increasing caseloads without corresponding increases in resources provides a scenario where additional grievances could be made against PDA attorneys for ineffective counsel. Not only are additional personal losses, such as loss of license for the PDA attorneys possible, but the potential for court reversals or remands of cases is heightened.

ACS appointments of public defense attorneys not tracked

Crucial to any workload analysis of the public defense services of the State is the knowledge of how many cases are appointed by ACS to PDA or OPA and the relation of that total to the total number of criminal cases handled by the judicial system. As discussed in the Caseload Assessment Issues section of this report, methodology for case counting is not consistent

between the criminal justice agencies and neither ACS nor DOLaw record in their information systems the public defense counsel assigned to cases.

PDA maintains manual counts of the cases assigned to it by ACS. In order to obtain some assurance as to the accuracy of those numbers and to gauge the percentage of all court cases handled by PDA, we asked for percentage estimates in our surveys. Both the DOLaw attorneys and the judges and magistrates estimated that PDA defends about 60% to 70% of the criminal, appellate, and juvenile delinquency cases.

In order to provide the necessary data for workload analyses, ACS should capture data on the appointments of PDA and OPA attorneys in its management information system. See Recommendation No. 4.

Weak administrative controls over expenditures and property

PDA's attitude, awareness, and actions impeded compliance with the statutes, regulations, administrative policies and procedures designed to provide appropriate administrative controls over state funds and assets. This problem was reflected in the decision by the Division of Administrative Services (DAS) within the Department of Administration (DOA) to temporarily suspend PDA's authority to certify expenditures.

However, what was more alarming was that it was DAS, which reviewed, and certified all but one of the transactions that we found to be in noncompliance with the State's policies and procedures. The only change, in withdrawing the authority to certify, was the certifying officer; compliance with requirements did not improve. Specifically, PDA and DAS did not follow appropriate administrative requirements in the following areas:

1. Travel and contractual services expenditures were not certified appropriately. We identified numerous exceptions in our review of travel and contractual expenditures. The expenditures were made in a manner that was inconsistent with departmental and agency policy and procedures, as well as generally accepted fiscal controls. This noncompliance with policies and procedures was due primarily to proper supporting documentation not accompanying the invoice prior to the expenditure certification. In the sample we reviewed, 87% of the transactions reviewed had exceptions. These errors could have been avoided if DAS and PDA followed the appropriate statutes and departmental and agency policies and procedures, as required, prior to certifying these expenditure transactions. See Recommendation Nos. 6 and 7.
2. Agency computer equipment not on the State's property control system. PDA is responsible for assigning property control numbers to new purchases of equipment and forwarding the information to DAS. DAS staff is responsible for recording the purchases into the State's property control system. In addition, DOA is responsible for conducting property inventory audits³⁴ on all state agencies. However, DOA did not follow-up on

³⁴See AS 37.05.160.

discrepancies noted in audits of PDA's property to ensure compliance with the State's property control policies and procedures. See Recommendation Nos. 6 and 7.

Executive branch policy decisions limit PDA's access to federal funds

The State of Alaska receives an annual grant from the Edward Byrne State and Local Assistance Grant Program, which was established by the Anti-Drug Abuse Act of 1986 and is managed by the U.S. Department of Justice, Office of Justice Planning, Bureau of Justice Assistance. The U.S. Congress has identified 26 different program areas eligible to receive these funds. Included in the eligible program areas are indigent defense programs such as PDA.

The governor has appointed the commissioner of the Department of Public Safety to manage these grant funds.³⁵ The commissioner has further delegated oversight of the funds to the Drug and Violent Crimes Advisory Committee, which makes recommendations to the commissioner regarding the allocation of these grant monies. Members of the advisory committee are from the Association of Chiefs of Police, Alaska Court System, U.S. Attorneys Office, and the Departments of Law, Corrections, and Public Safety. The director of the Division of the Alaska State Troopers is the chairperson of the committee.

PDA has submitted several grant proposals to the committee; however, each of them has been denied. In 1995, PDA submitted a grant proposal for a "Fast-Track Narcotics Unit." The committee denied the request for the following reasons:

- *The proposed project did not clearly support the goals and objectives of the statewide strategy; and*
- *With only 16 drug cases pending, and 96% of the cases not going to trial, the problem to be addressed by the proposed project was not a significant one.*

The committee had misinterpreted the case data. After the explanation for denial was received, PDA informed the committee that the 16 drug cases referred to were a single days' figure for a pre-indictment hearing in Anchorage; not the total drug cases pending disposition. PDA further explained that it receives an average of 60 new cases each day, of which 25% are drug related. However, the committee refused to reconsider the grant application.

In our view, the advisory committee has used these federal funds to support its own goals, ideals, and funding needs, while ignoring public defense as a component of the adjudication-related program funded by the Byrne grant monies. The committee has

Exhibit 12		
Summary Byrne Grant Recipients		
FY 94 through FY 98		
Recipient/Agency	Amount	Percent
Local Law Enforcement	\$1,170,214	11.5%
Alaska Court System	395,088	3.9%
Department of Corrections	616,406	6.0%
Department of Law	1,783,248	17.5%
Department of Public Safety	6,218,912	61.1%
Total Byrne Grant Funding	<u>\$10,183,868</u>	<u>100.0%</u>

³⁵See P.L. 100-690, Nov. 18, 1988, 102 Stat. 4335.

primarily funded projects (90%) related to law enforcement and prosecution activities, which detrimentally impacted PDA's caseloads and its ability to defend its clients.

According to several members of the Drug and Violent Crime Advisory Committee, it is easier to have a grant approved if you are a member of the committee; very few of the grantees were not represented on the committee. A former committee member felt a high level of frustration with the decision-making process because some of the grants that were approved were "pet projects." Some grants were not constructively criticized because the committee was a "*good old boys club*."

We believe that a representative from the public defense community (PDA, OPA, or private defense counsel) should be appointed as a member to the Drug and Violent Crimes Advisory Committee. See Recommendation No. 8.

SUBSEQUENT EVENTS

As discussed in the Report Conclusions section of this report, the time study was developed using information from the FY 97 caseload. Therefore, it was important to review events since the study may have had an affect on the results of the time study and/or the operations of PDA. We noted the following:

Additional funding and positions authorized

In 1998, the legislature enacted changes to juvenile delinquency procedures and the registration of sex offenders and child kidnappers. Through fiscal notes, PDA received \$109,200 in additional funding for the estimated increase in workload resulting from these statutory changes. Along with the funding, two permanent part-time positions were authorized. PDA chose to combine the part-time positions providing one additional attorney to handle the agency's estimated increase in workload.

In addition, PDA received a \$252,600 increase in its FY 99 operating budget for personal services. This funding allowed for the addition of two legal secretaries and to more fully fund the existing authorized positions. Exhibit 13 shows the FY 99 authorized positions for PDA. However, the increase in personal services was almost totally offset by a \$200,000 miscellaneous budget reduction.

The new positions will need to be considered when PDA updates its time study results and considers the optimum staff configuration to handle its caseload as discussed in Recommendation Nos. 1 and 2.

Exhibit 13	
Public Defender Agency	
FY 99 Authorized Positions	
<u>Classification</u>	<u>Number</u>
Management	2
Administrative	3
Attorneys	67
Investigators	12
Paralegals	3
Legal Secretaries	24
Other Clerical	4
Total	<u>115</u>

Child-in-Need of Aid legal services added

In FY 99, the Department of Health and Social Services (DHSS) contracted with PDA through a reimbursable services agreement (RSA) to provide necessary legal assistance needed to eliminate an adoption backlog and to implement DHSS' Smart Start child protection program. The RSA provides \$195,000 for three attorneys and an administrative clerk and \$140,000 for related travel, legal services, and office supply costs. Both the funding and positions will be eliminated when DHSS' adoption backlog is eliminated and the additional child protection legal services are no longer needed by the department.

PDA funding not significantly changed since FY 97

The fiscal note funding increases discussed above was offset by the additional workload created by the enactment of the related bills. The RSA funding from DHSS was also a direct offset. The FY 99 incremental funding assisted in addressing the funding shortage noted in our review of FY 97. However, the incremental funding only increased PDA's total funding, on an inflation-adjusted basis, by 3.8% between FY 97 and FY 99, while the caseload increased by 3%.

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CASELOAD ASSESSMENT ISSUES

Evaluating Public Defender Agency's (PDA) caseload involves being able to identify two main components, the number and type of cases the agency is responsible for and the amount of time typically involved with each case type. PDA compiles the number of cases it handles through manual counts of court case numbers. The following discusses how law enforcement agencies, the prosecuting attorneys, and the courts affect PDA's case counts.

Content of charging documents and court case number assignments inflate case counts

Alaska Court System (ACS), Department of Law (DOLaw), PDA, and Office of Public Advocacy (OPA) all handle court cases. Management of each of these agency's caseload should include determination of the number of cases handled and certain related data for analyses and budgetary purposes. However, we noted the following issues that impair the accuracy of these agencies' case counts.

Inflated case counts are due, in part, to how the charging documents are completed by the arresting agency. The courts generally assign case numbers to each charging document. Therefore, if the arresting agency charges a defendant with multiple charges in a single incident and records each charge on a separate charging document, the court may assign multiple case numbers, one for each charging document.

Generally, the prosecuting attorney, when made aware of the multiple cases, will request the court to consolidate the case. However, this will not necessarily adjust the case counts for the courts or PDA, since it is an action done after the cases have been incorporated into the opened case statistics.

The Criminal Justice Information Systems Integration Project currently underway is attempting to address this problem. The system will use a case-tracking number for each charging document. Each separate charge listed on the document will receive a sequential, three-digit extension to the case-tracking number. The courts then would assign only one case number per charging document and all individual charges would be tracked by the numerical extensions.

Additional causes for multiple case numbers being assigned by the courts for single criminal incidents are:

- Lapse of *Alaska Rules of Court*, Criminal Rule 5 time limit, requiring dismissal of a case. Defendant may be recharged with the same criminal incident and assigned a new case number by the court.
- Felony criminal complaints are first heard in a district or magistrate court and assigned a case number by that court. Felony cases are then transferred to the superior court for arraignment of the defendant and, if the superior court is not in the same location as the lower court, that court assigns a new case number.

- Defendants' charges are separated by the district attorney, creating multiple charging documents and case numbers of the same criminal incidence. This is done as a prosecutorial tactic and is allowed under the *Alaska Rules of Court*, Criminal Rule 8.
- PDA is appointed to a case by the court but at a later date files a motion for withdrawal due to a conflict of interest. The court then appoints OPA to represent the defendant. PDA's manual opened case counts are not consistently adjusted to reflect the transfer of the case to OPA.

We adjusted for these inaccuracies in PDA's monthly opened case statistics for the purposes of our study.

Inconsistent court case numbers assigned to Child-in-Need of Aid (CINA) cases

In addition to the problems associated with obtaining reliable case counts of felony and misdemeanor cases, the number of CINA cases opened is also difficult to quantify. An Alaska Judicial Council study³⁶ reported there were significant variations among courts, and how courts "counted" CINA cases.

In Fairbanks, case files were identified so that all children of one mother had the same case number, with each child distinguished by "A," "B," "C," etc. The Fairbanks court recorded all subsequent events throughout the children's minorities in that same case file. Elsewhere in the State, a unique case number is assigned to each child when the first case was opened for that child, and all subsequent court events for that child are recorded in the same case file. This case numbering procedure is consistent with an ACS administrative order (Administrative Bulletin No. 7, effective January 1, 1982) and not the system used in Fairbanks. Due to our inability to obtain a reliable count of CINA cases opened during our time study period, we were unable to include this case type in our calculations. Therefore, we had to limit our caseload analysis to adult criminal and juvenile delinquency cases.

The problem with obtaining reliable case counts is illustrated in Exhibit 14.³⁷ ACS and DOLaw case counts should be reasonably close. DOLaw case counts were reduced by cases still in the investigative phase that had not yet been presented to the courts and ACS's misdemeanors were adjusted to reflect only state cases. As shown in Exhibit 14, a 2,700 difference exists in the criminal case counts between the agencies.

Statewide	ACS	DOLaw
Felonies	3,362	4,123
Misdemeanors	<u>19,959</u>	<u>16,498</u>
Total Criminal Cases	<u>23,321</u>	<u>20,621</u>
Children's Proceedings	<u>2,736</u>	<u>1,938</u>

Nationwide inaccuracies and incomplete data plague criminal justice systems

Alaska is not the only state plagued with inaccurate case, arrest, and incarceration statistics, as this is a nationwide problem. U. S. Attorney General Janet Reno recently assessed the

³⁶ *Improving the Court Process for Alaska's Children-in-Need of Aid*, Alaska Judicial Council, October 1996.

³⁷ This exhibit does not include all case types handled by ACS or DOLaw. It is only presented to show examples of the disparities in case data.

nation's ability to use criminal history records to identify criminals, administer justice, and protect the public as poor, "[g]iven the new miracles of technology which emerge everyday, our current ability to conduct reliable background checks is abysmal."³⁸ She noted that of the 53.3 million criminal records in state repositories, only 17.5 million (33%) are available on the FBI's Interstate Identification Index, and only 9.2 million (17%) of the records are supported by conviction information.

According to a 1994 report by ACS consultants Wolfe & Associates, the same deficiency in Alaska's criminal history record computer systems exists, as "*the State's current technologies do not provide accurate, complete, and timely criminal history information.*"

Overview of Alaska's integrated criminal justice information system project

The State's Criminal Justice Records Improvement Plan was developed in 1995. The plan is updated annually and incorporates the recommendations made in the 1994 "integration plan" prepared by Wolfe & Associates. The goal of the plan is to improve automation for agencies reporting information to Alaska Public Safety Information Network (APSIN). By replacing the aging agency systems, upgrading the State's wide-area network, implementing interfaces between agency systems and APSIN, and improving fingerprint automation, the criminal history record data will be more accurate, complete, and timely.

Division of Legislative Audit (DLA) conducted an audit in 1983 on the Alaska criminal justice system. In that audit DLA found that data maintained by the Department of Public Safety (DPS), ACS, and DOLaw was inaccurate and inconsistent. We recommended the criminal justice agencies coordinate the implementation of an integrated criminal justice information system. At that time, DPS was updating its management information system, DOLaw was implementing its current system, PROMIS, and ACS was in the process of installing its statewide trial court information system. However, as evidenced by the results of a 1993 assessment of criminal history records conducted by a DPS consultant³⁹ and our current study, the data maintained is still incomplete and inaccurate.

We recommend PDA, OPA, ACS and DOLaw coordinate to ensure that the pertinent data is captured in the integrated criminal justice system currently being developed and implemented. Then, management reports could be developed using this data and distributed to the appropriate agency for workload analysis and other managerial purposes. See Recommendation No. 5.

³⁸Janet Reno, National Conference on Criminal History Records: Brady and Beyond, Washington D.C., February 9, 1994.

³⁹See *Alaska Criminal History Record Processing, A Baseline Assessment*, SEARCH, The National Consortium for Justice Information and Statistics, March 1993.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

Public Defender Agency (PDA) management should develop its budget requests, in part, using caseload data.

As reflected by our discussion in the Report Conclusions section, much of our evaluation of the adequacy of PDA resources was generated from a time study we developed. The time study estimated the number of hours a PDA attorney would likely spend on various types of cases. This technique, of calculating staff needs from the estimated work hours typically involved in handling different types of cases, could be adopted as a means to develop the agency's annual operating budget request. The time study totals for various categories of cases could lead to the development of caseload standards.⁴⁰ The agency's budget request for personal services, which is 86% of PDA's annual appropriation, could be based, in part, on the number and type of cases in the agency's caseload.

Data developed from our time study indicates there is a need for more public defender resources. This need will be diminished somewhat with improvements in the agency's technological capabilities and through changes in its staffing configuration. See Recommendation No. 2. Nonetheless, linking PDA's budget request to caseload standards would provide more convincing support for incremental funding, thus keeping resources more in line with caseload.

Due to the nature of its mission, PDA is not an agency that enjoys popular constituency support. One judicial officer (a judge or magistrate) observed in response to our survey that:

[t]he PDA is an overworked and under-funded agency. So long as defendants are afforded important rights in criminal cases, each PD will have to work very hard to keep up with the demand of the high volume of cases. I have great respect for the PDA. They are efficient, fiscally responsible and capable. They should receive thanks and encouragement for their work. The justice system could not operate without them. The PDA is not responsible for the number of rights afforded to defendants. It's their job to uphold their rights. I have great concern that the legislature is sending the PDA a very demoralizing message by failing to fund them appropriately, while other agencies are not experiencing these cuts.

Given the circumstances as set out in this comment, it is important that PDA management provide substantive support for its budget requests to increase the likelihood of full funding.

⁴⁰Caseload standards are the number of cases for a given case type that can be handled by an attorney during a work year.

Recommendation No. 2

PDA management should address inefficiencies related to technological equipment and staff configuration.

As discussed in the Report Conclusion section of this report, at the time of our study, PDA staff's underpowered computers provided little efficiencies over typewriters to prepare legal documents and perform research. Therefore, as workloads increased, the staff found it difficult to perform its duties. This situation affected the amount of time attorneys spent on cases and, therefore, their time estimates provided for our study.

We interviewed the legal secretary staff at all 13 PDA office locations. Only two offices were able to use a multi-program operating system. This prevented the staff from being able to efficiently utilize information between its word processing program and other computer programs. In addition, the case information system program for tracking cases would not run on the computers available to the majority of staff, causing more work rather than less for the staff. Further, inadequate equipment either prevented or hindered attorneys from utilizing electronic legal research programs. When the PDA attorneys in our survey were asked to rate the overall computerization of PDA, 58% rated it less than adequate. Some of the comments were:

Our office has no network, no e-mail among office staff, no computerized conflict system, etc.

Most of us don't have access to that [electronic legal research] resource and have computers that barely work.

We also asked the PDA attorneys as well as the ex-PDA attorneys what percentage of the tasks performed by them could be performed by someone with less training (for example, paralegal, legal secretary, investigator, and other clerical or administrative support). Fifty-six percent of the attorneys responded that someone with less training could do more than 10% of the tasks they perform. Comments from these attorneys and from our survey of judges and magistrates included the following:

- PDA attorneys –

We are understaffed badly as to investigators and paralegals. Attorneys are ending up doing work that could be done more effectively by investigators and paralegals.

We have a legal secretary who is so intelligent, and has so much ability; it is a shame we can't use her as a paralegal or litigation assistant. A position of that sort could take 20-25% of the workload from my weary shoulders.

Inadequately staffed support positions. Most of our time is spent doing tasks that could be done by others.

Lack of support staff. Need more attorneys.

- Ex-PDA attorneys –

Often did my own Xeroxing, filing, mailing, etc.

The secretary was overwhelmed.

Not enough money for support staff, computers, libraries, etc.

Inadequate support staff to handle volume, especially client communications.

My main complaint, and one that echoed throughout the smaller offices, was the lack of support staff (paralegal and investigators).

The 'legal secretary', obligated to serve four attorneys and an investigator, was simply buried in an avalanche of details and administrative tasks. The investigator worked half time for five attorneys. This is a very poor situation.

More administration, I shouldn't be doing clerical work.

- Judges and magistrates –

Staff (nonprofessional) cannot get the work done without cutting corners, which affects the quality of the work.

Insufficient staffing and administrative support.

Investigations are stretched very thin. Oftentimes requests for investigation are not even made or attorneys do their own investigation.

Inadequate support services to do as effective a job as professional standards require – failure is built in.

The current ratio of paralegals to attorneys for PDA is 1 to 23, while Department of Law (DOLaw), Criminal Division's (CD) is 1 to 5. CD's ratio of administrative support staff to total staff and attorneys is 1 to 5, in contrast, PDA's is 1 to 15, one-third that of CD. This comparison adds credence to the need for PDA to review its staff configuration.

As previously discussed, our time study shows PDA is significantly short of attorney positions to handle the adult criminal and juvenile delinquency caseloads. We recommend PDA management upgrade the computerization of its offices to increase efficiencies of both the staff and attorneys and, as efficiencies are gained, review its staffing configurations. In this manner, some of the shortage of attorneys determined by our time study may be met by adding paraprofessional or clerical positions generally paid at a lower rate.

Recommendation No. 3

PDA management should implement a process to confirm and maintain the integrity of its attorney time estimates.

The foundation for establishing caseload standards is accurate time estimates. It is crucial that the estimated time it takes a PDA attorney to handle certain types of cases be accurate. To promote accuracy, time estimates should be periodically reviewed and updated. Doing so protects the integrity of the caseload statistics and promotes confidence in using such statistics as a basis for management and budgetary decisions.

Ongoing review and monitoring is necessary because a variety of factors can have an impact on how much time a certain type of case typically will take. Such factors include:

- Changes in agency procedures. For example, PDA recently designated the Anchorage appellate unit to handle appeals for all agency offices. This was done in the interest of efficiency; previously, attorneys in “outlying” offices had been responsible for handling their own appeals. Such reorganization could have a significant impact on the agency’s case handling time standards.
- Changes in work environment. PDA has historically had to get by with little or no technological support. If PDA acquires the computer and communication equipment to bring them technologically up-to-date and staff becomes increasingly proficient in using the improved technology, it is likely that the amount of attorney time spent on some types of cases would decrease.
- Changes in laws and court rules or procedure. Significant changes made to state law, like the recent amendments made to the State’s child protection statutes, certainly will impact the time it takes to effectively handle various types of cases.

In establishing time estimates, PDA management should consider using one of these three alternative methods:

1. Perform a complete time study periodically, perhaps every five to seven years;
2. Periodically require a sample of attorneys to keep track of their hours spent handling particular types of cases, and compare sample results to existing standards to evaluate the need for changes; or
3. Implement an automated system that collects case event data (for example, date the case was opened, date of disposition, nature of disposition) and is integrated with a time system which would allow PDA to record and summarize attorney and other staff time spent on cases.

PDA management should determine which method is most cost beneficial for its management and budgetary needs.

Recommendation No. 4

The Alaska Court System (ACS) should record its appointments of PDA and Office of Public Advocacy (OPA) as public defense counsel in its case management information system and ensure its transmittal to the integrated criminal justice information system.

As discussed in the Background Information section of this report, ACS has the responsibility to determine whether a defendant is eligible to receive defense counsel services at public expense. Currently, ACS cannot provide the number of cases appointed to either PDA or OPA.

It is imperative that the executive and legislative branches of government have the required data to assess and evaluate the workload and cost of public defense services. Therefore, we recommend ACS record into its management information system the case appointments to the attorneys of PDA and OPA. This will require data entry into one additional field and, therefore, will be relatively inexpensive. In addition, the appointment data should be included in the data transmitted to the new integrated criminal justice information system that is currently being developed. See Recommendation No. 5.

Recommendation No. 5

The Criminal Justice Information Advisory Board should assist ACS, DOLaw, PDA and OPA in developing caseload measurement data.

The State is currently redesigning and replacing the criminal justice information system (CJIS) including the subsystems maintained by ACS and DOLaw. The Criminal Justice Information Advisory Board was established to advise the Department of Public Safety and other criminal justice agencies on the development and operation of CJIS and other criminal justice information subsystems.⁴¹

We recommend the board coordinate the development of procedures to ensure that CJIS or its subsystems capture workload measurement data. Definitions of what constitutes a case need to be established as well as case counting procedures. Then, a process should be developed to allow for case counts to be derived from either CJIS or one of the subsystems maintained by ACS or DOLaw. Management reports should be developed to provide caseload information to ACS, DOLaw, PDA, and OPA. Caseload information should include, at a minimum, date opened, date closed, charges, type of disposition, and the appointment of PDA or OPA attorneys.

One or another of the criminal justice agencies is already inputting much of the data required for workload analysis into an information system. The additional expense to the State will mainly be for some additional up-front planning. The use of data from CJIS and its

⁴¹See AS 12.62.100.

subsystems for managerial and budgetary purposes will serve as a control to ensure that reliable data is maintained by the systems.

Recommendation No. 6

The Division of Administrative Services (DAS) in the Department of Administration (DOA) should improve its oversight of state expenditures and property.

Certification of expenditure transactions lacked review

DAS began certifying PDA expenditure transactions in April 1995, after PDA's accounting technician resigned, leaving only the PDA administrative officer to prepare and process expenditures.⁴² While performing the certifying officer's function, DAS personnel noted compliance problems with the supporting documentation of the expenditures submitted for approval by the PDA administrative officer. DAS personnel were unable to obtain compliance from the PDA administrative officer. Therefore, in August of 1995 when PDA hired another accounting technician, DAS revoked the officer's certifying authority rather than allowing him to resume certification duties. This allowed DAS to continue monitoring for needed improvement in expenditure documentation. Subsequently, the PDA administrative officer terminated his employment with PDA.

Not until another person was hired to fill the administrative officer position in May 1996 did DAS reinstate the certification authority to the agency. Therefore, DAS personnel reviewed and certified all PDA expenditure transactions from April 1995 to May 1996. The scope of our expenditure testing included travel and contractual transactions during the period July 1, 1995 through June 30, 1996.

We reviewed 30 transactions from the two account categories. Of the 30 transactions, 29 had been certified by DAS personnel and 1 by the newly hired PDA administrative officer. There were compliance errors related to the supporting documentation in 87% of the transactions reviewed. See Recommendation No. 7.

Responsibilities of state certifying officers are set out in AS 37.10.030, in part:

(a) The officer or employee approving or certifying a voucher (1) is responsible for the existence and correctness of the facts recited in the certificate or stated on the voucher or its supporting papers and for the legality of the proposed payment under the appropriation or fund involved;

We are concerned that the department responsible for drafting the accounting control procedures and standards and for monitoring the compliance of such procedures by all state agencies does not itself comply with those requirements. We recommend that DAS provide adequate training to certifying officers, including those within its division, on the state

⁴²AAM 35.060 prohibits persons who prepare disbursements from also approving such payments.

regulations and administrative policies and procedures for expenditure documentation and control.

PDA computer equipment inventory not entered on the State's property control system

Between FY 93 and FY 96, PDA acquired 90 new computers. We reviewed the State's property control system to determine if the computer equipment was properly accounted for in that system; only four computers acquired in 1988 were on the system. None of the 90 computers or any of their related equipment, such as monitors and printers, had been entered on the state property record. The previous administrative officer had not tagged all of the pieces of equipment or submitted the paperwork to DAS for input into the State's property control system. In May 1996, DAS provided a one-month training period in Juneau at its office for the newly hired administrative officer. However, DAS did not inform him that he was responsible for PDA's property accounting.

DOA's Division of General Services personnel conducted two inventory audits⁴³ of PDA's property. The first was in February 1994 at the Anchorage office and the second was conducted in April 1995 at the Palmer office. Both audits noted that items were not tagged and/or entered into the State's property control system and that an annual inventory had not been conducted by PDA. These audit findings were reported to PDA as well as DAS management along with recommendations for DAS to improve its oversight of property control. Based on our audit of PDA's property accounting, DAS has not improved its oversight.

According to AS 37.05.160, Property Records:

The Department of Administration shall direct the use of inventory records by all state agencies to show all fixed and movable property of the state. The records must be based on a physical inventory and charged with all subsequent purchases and shall be reduced by all property traded in, condemned, or disposed of. The accuracy of the property record shall be verified periodically by actual inspection of the property by the department. The state agencies may be required to take physical inventory of properties annually and at other times as the department directs.

We recommend DOA, DAS comply, and ensure that all agencies within its purview comply, with the required certification authority and property control procedures. Otherwise, it will be difficult for other departments and agencies to take seriously the role of DOA as the key department overseeing the State's fiscal responsibilities. DOA, DAS should provide on-going training to its fiscal and property officers regarding certification and property control procedures, enforce the requirement for annual property inventories, and ensure that property records on the State's property control system are periodically updated.

⁴³Alaska Statute 36.30.010(b) states that ". . . the chief procurement officer shall: . . . (2) exercise general supervision and control over all inventories of supplies belonging to an agency. . ."

Recommendation No. 7

PDA management should ensure compliance with statutes and administrative policies and procedures related to expenditures and property control procedures.

As stated in the previous recommendation, we noted an 87% error rate in the 30 PDA expenditure transactions that we tested. Our testing determined that a number of expenditures were paid late, lacked adequate review, were approved with an unsecured signature stamp, used outdated mileage rates, and crossed fiscal year appropriations.

The primary causes for these errors were as follows:

- There was inadequate documentation to support some of the transactions;
- The expenditure approval process utilized by PDA lacked management control; and
- PDA does not use management encumbrances for budgetary control of expenditures.

We noted the following documentation problems:

- Interpreter fees were paid without being invoiced or billed by the contractor; instead, the supervising attorney completed an *“Interpreter Fees Billing Form”* and forwarded it to the Anchorage office for payment. The Alaska Administrative Manual (AAM) 35.030 states that *“invoices not issued on a printed billing document must be signed by the vendor or the person furnishing the goods or services.”*
- Expenditure transactions were paid from invoice copies faxed to the Anchorage office, as support for payments. According to AAM 35.030, disbursements must be made from original invoices. This is a procedure to assist in avoiding duplicate payments.
- Travel expenditures were paid without supporting documentation. AAM 35.020 requires every payment made by the State to be supported by an invoice. *“An ‘invoice’ includes a sales slip, statement, bill or other written demand for payment of goods or services.”*

As to the approval process and the lack of management control over expenditure transactions, we noted the following types of problems:

- PDA management approved requests for use of expert witnesses contingent upon the vendor agreeing to not bill for services rendered until the following fiscal year’s appropriation was available.
- An unsecured signature stamp was used to approve invoices for payment, which could have been used by an unauthorized person.

- Travel authorizations were not always approved prior to the travel. Additionally, incorrect mileage rates, per diem, and meal allowances were used. AAM 60.030 requires travel to be authorized and approved in advance.
- Expenditure transactions were not approved and processed within a 30-day time frame;⁴⁴ further, they were not date stamped when received. Timely payment of invoices is another procedure to avoid duplicate payments.

We also determined that management encumbrances were not being used as a budgetary control. AAM 30.020 Management Encumbrances states:

In order that unencumbered balances on accounts and reports show the condition of authorizations, agencies may establish management encumbrances for obligations the agency considers necessary to encumber to assist in the management and control of activities. At year-end, management encumbrances must be reviewed and liquidated if they do not represent valid obligations.

We also found property inventory problems. PDA's property officer is responsible for taking inventories annually, and as requested by DOA. In addition, as controlled property is purchased the property officer should tag the equipment and report it to DAS for input into the State's property control system. However, when PDA's newly hired administrative officer, who is the agency's designated property officer, was being trained by DAS, DAS did not inform him of these responsibilities. We notified the administrative officer in June 1997 of the problems with PDA's computer inventory. However, as of our report date, corrective action had not been taken.

We recommend PDA management implement the following to improve expenditure and property controls:

- Ensure manual inventories of property are taken on an annual basis, and that such inventories are forwarded to DAS for entry on to the State's property control system.
- Cease requesting vendors to delay invoicing to the following fiscal year, and if necessary, request supplemental appropriations for any outstanding obligations at year-end.
- Ensure persons responsible for approving invoices and certifying expenditure transactions are adequately trained and receive training on an on-going basis.
- Ensure that approval stamps are properly secured after their use, or cease the use of such stamps for approving expenditures.
- Ensure that statutes, AAMs, and agency policies and procedures are updated on a timely basis.
- Ensure that all offices forward approved invoices to the fiscal officer for payment in a timely manner.
- Consider using management encumbrances to manage expenditures such as expert witness fees and interpreter fees.

⁴⁴See AAM 35.090.

Recommendation No. 8

The commissioner of the Department of Public Safety (DPS) should appoint a public defense representative to the Drug and Violent Crime Advisory Committee (DVCAC).

The commissioner of DPS⁴⁵ is responsible for approval of sub-granted federal funds received from the Edward Byrne Memorial State and Local Law Enforcement Assistance Program or "Byrne" program. Overall funding plans and funding decisions are made by DVCAC and forwarded to the commissioner for final approval. DVCAC members are from the following criminal justice agencies: the Alaska Association of Chiefs of Police, Department of Corrections, U.S. Attorneys Office, ACS, DOLaw, and DPS. The director of the Alaska State Troopers chairs the committee. Therefore, the committee's makeup consists of two law enforcement representatives, two representatives from prosecution, and one representative each from the court system and corrections functions.

The National Legal Aid & Defender Association performed a national survey about the FY 96 and FY 97 Byrne grant funds. Each Byrne grant-administering agency was asked whether indigent defense was included in the state comprehensive plan for the use of the grant funds and whether any indigent defense programs received Byrne grant funds.

Forty of the respondents administered the funds through an advisory board similar to the State of Alaska. There appeared to be a correlation between representation of indigent defense on the board and funds awarded to indigent defense programs. Sixteen (94%) of the 17 states that included an indigent defense representative on the board and/or included indigent defense in its state plans were awarded Byrne grant funds, while only 1 (4%) of the states with no indigent defense representation awarded funds for indigent defense.

The Byrne program federal regulations⁴⁶ state that block grant funds are required to "*assist states and local governments to carry out specific programs, which offer a high probability of improving the functioning of the criminal justice system.*" Further, criminal justice is defined as activities pertaining to:

. . . courts having criminal jurisdiction, and related agencies (including but not limited to prosecutorial and defender services, juvenile delinquency agencies, and pretrial service or release agencies) . . . [Emphasis added.]

At the federal level it has been recognized that the public defenders need to participate in the Byrne grants. U.S. Attorney General Janet Reno stated:

⁴⁵See P.L.100-690, Nov. 18, 1988, 102 Stat. 4335.

⁴⁶See 28 CFR Part 33.30.

*We have also urged State Byrne Program Administrators to **include defenders on their policy boards** and consider the needs of indigent defense in their planning and funding decisions.*⁴⁷ [Emphasis added.]

The State received in excess of \$10 million in federal Byrne program funding between FY 94 and FY 98. As shown below, the allocation of these funds reflects, to a degree, the composition of DVCAC.

- 85% for law enforcement and prosecution,
- 6% for criminal records improvement,
- 4% for corrections,
- 3% for court delay reduction; and,
- 2% for drug awareness and resistance education.

The DPS commissioner has argued against the appointment of a member from the indigent defense community. In a response to a request from PDA for indigent defense representation on DVCAC, the commissioner wrote that a representative from the indigent defense community would “*at minimum, have the appearance of a conflict of interest.*” We do not believe this to be a viable argument. It does not appear to create a problem for many other states in the national survey, nor does the U.S. Attorney General appear to have a similar concern since she is urging states to include indigent defense representation on their boards.

The criminal justice system is interdependent; if one of the components is weaker than another, then the entire system falters. It is important to keep all components of the system in relative balance. If you hire more prosecutors to prosecute more cases, more defendants will be charged and prosecuted. Many of those defendants will be appointed a public defender. If the court and defense functions cannot meet the increase in demands caused by the additional prosecutors, there will be additional motions filed for continuances, court system scheduling problems will become even more apparent and increase the possibility that evidence and witnesses could be lost. These types of delays frequently frustrate public safety officers, delay prosecution, and unnecessarily inconvenience victims and witnesses.

⁴⁷Janet Reno, “Remarks of the Attorney General of the United States, Six Building Blocks for Indigent Defense (National Symposium on Indigent Defense, Mayflower Hotel, Washington D.C., February 25, 1999),” *The Champion*, National Association of Criminal Defense Lawyers, Washington, D.C., April 1999, p. 28.

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PRIOR AUDIT RECOMMENDATIONS

The Division of Legislative Audit (DLA) issued an audit report titled, the *Department of Administration, Alaska Public Defender Agency, Office of Public Advocacy, Eligibility Issues and Other Program Aspects, May 22, 1995, Audit Control Number: 02-4507-95*. In that report, we made five recommendations. We determined the current status of four of those recommendations, as they were within the scope of this audit. Recommendation Nos. 1 through 3 have been implemented.

Prior Recommendation No.1

The Alaska Court System (ACS) in partnership with the Department of Administration should develop public counsel eligibility criteria and screening procedures that can be uniformly and consistently applied.

ACS commissioned and paid for a study by the National Center for State Courts, *Study of the Appointment of Indigent Defense Counsel in the State of Alaska*, December 1991. The study was performed as a result of concerns that large numbers of persons who were not indigent received appointed counsel at public expense. The study outlined the appointment system in place at that time, discussed the various participants in that system, and proposed guidelines for use by the court in future appointments. This study was helpful to ACS in amending the *Alaska Rules of Court*, Criminal Rule 39 in July 1992.

In April 1996, with approval from the Alaska Supreme Court, the chief justice appointed a committee of judges, magistrates, and clerks to an Indigency Guidelines Committee (IGC). The purpose of the committee was to recommend standards for judges and pre-trial services⁴⁸ in determining eligibility for public defense services. The committee proposed additional changes to the *Alaska Rules of Court*, Criminal Rule 39, and recommended adding a new section 39.1. This new section specified procedures and standards that pre-trial services and judges would be required to follow when assessing whether a defendant was eligible for court-appointed counsel in a criminal case. In December 1998, the Alaska Supreme Court adopted the changes to Criminal Rule 39 to become effective on May 15, 1999.

Prior Recommendation No. 2

The Department of Administration, working in concert with ACS, should request statute and regulation amendments to define indigency for public counsel purposes.

DLA and IGC recommended the Alaska Supreme Court request statutory and regulatory clarification from the legislature on the definition of an "indigent person." This is no longer necessary due to the December 1998 adoption of the amendments to Criminal Rule 39 and the addition of Criminal Rule 39.1.

⁴⁸In Anchorage, the pre-trial services staff screen defendants for eligibility rather than the judges.

Prior Recommendation No. 3

Public Defender Agency (PDA) and Office of Public Advocacy (OPA) should follow the Alaska Rules of Court Administrative Rule 12 requiring the notification to the court of a change in a client's financial status that would render him/her ineligible for public counsel services.

The public defender and public advocate informed their staffs that it is policy for an attorney to notify their supervisor and the court, when the attorney becomes aware of a change in a client's financial status. This policy is supported by an opinion⁴⁹ from the Alaska Bar Association's Ethics Committee dated January 5, 1995 and adopted by the Board of Governors on March 17, 1995.

Prior Recommendation No. 4

Alaska Statute 18.85.120, Criminal Rule 39, and Appellate Rule 209 should be amended to permit the court to enter judgment against a defendant represented by public counsel regardless of whether the defendant is convicted.

ACS proposed legislative changes to AS 18.85.120(c). The legislature declined to adopt this part of the proposed change. The *Alaska Rules of Court* cannot be changed until the statute is changed.

⁴⁹The public defender requested the opinion from the Ethics Committee.

APPENDICES

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APPENDIX A

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Public Defenders

Questionnaires sent: 66

Responses received: 63 (95%)

Note that some respondents marked more than one choice for some questions.

1. In what year did you become a member of the Bar?

<u>Alaska Bar Association</u>				<u>Other State Bar Associations</u>	
Number of Responses:			Number	Number of Responses:	
			of Years:		
<u>15</u>	(25%)	1997 - 1993	5 or less	<u>3</u>	1997 - 1993
<u>17</u>	(28%)	1992 - 1987	6 - 10	<u>3</u>	1992 - 1987
<u>12</u>	(20%)	1986 - 1982	11 - 15	<u>12</u>	1986 - 1982
<u>11</u>	(18%)	1981 - 1977	16 - 20	<u>2</u>	1981 - 1977
<u>4</u>	(7%)	1976 - 1972	21 - 25	<u>5</u>	1976 - 1972
<u>0</u>	(0%)	1971	26 - 30	<u>1</u>	1971
<u>1</u>	(2%)	1963	31+	<u>0</u>	1963

2. How many years of litigation experience do you have?

Number of Responses:		
<u>12</u>	(19%)	0 to 2 Years
<u>9</u>	(14%)	3 to 5 Years
<u>16</u>	(25%)	6 to 10 Years
<u>26</u>	(41%)	10 Years or More

3. How long have you been employed by the Public Defender Agency (PDA)?

Number of Responses:		
<u>8</u>	(13%)	Less than 1 Year
<u>22</u>	(35%)	1 to 5 Years
<u>19</u>	(30%)	5 to 10 Years
<u>10</u>	(16%)	10 to 15 Years
<u>4</u>	(6%)	15 Years or More

4. In what judicial district do you currently practice?

Number of Responses:	
<u>9</u>	First Judicial District
<u>4</u>	Second Judicial District
<u>38</u>	Third Judicial District
<u>13</u>	Fourth Judicial District

APPENDIX A

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Public Defenders

5. Is the PDA office where you are located a rural or urban office?

Number of Responses:

22 Rural (Community of Less than 20,000)

41 Urban (Community of 20,000 or More)

6. What types of cases have you represented for indigent defendants? (Check all that apply.)

Number of Responses:

57 Criminal Cases

50 Juvenile Delinquency Cases

54 Probation Revocation Cases

51 CINA¹ Cases

37 Involuntary Commitment Cases

52 Criminal Appeals

17 Juvenile Delinquency Appeals

17 CINA Appeals

7. Do you currently hold a full-time or a job-share position with PDA?

Number of Responses:

57 Full-Time (Go to Question 8 and Skip Question 9)

7 Job-Share (Go to Question 9)

8. On average, how many hours do you actually work on a weekly basis to handle your caseload?

Number of Responses:

0 (0%) 37.5 Hours a Week

17 (26%) More than 37.5 Hours but Less than 50 Hours a Week

29 (51%) More than 50 Hours but Less than 60 Hours a Week

13 (23%) More than 60 Hours a Week

9. On average, how many hours in excess of your weekly, job-share, scheduled hours do you work in order to handle your caseload?

Number of Responses:

1 (14%) No Excess Hours

4 (57%) Between 1 Hour and 10 Hours per Week

2 (29%) More than 10 Hours but Less than 15 Hours per Week

0 (0%) Between 15 Hours and 20 Hours per Week

0 (0%) More than 20 Hours per Week

¹Child in Need of Aid

APPENDIX A

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Public Defenders

10. Generally, how many days per year are you required to be on 24-hour call duty in addition to your regular work schedule?

Number of Responses:

- 4 1 to 5 Days
- 5 6 to 10 Days
- 17 15 to 20 Days
- 19 More than 20 Days
- 17 Not Required to Work On-Call Shift
- 1 No response provided

11. How frequently have proceedings for your cases been delayed or rescheduled due to your participation in a proceeding in one court extending into the scheduled time in another court for another of your cases?

Number of Responses:

- 15 Seldom (0% to 10% of the time)
- 27 Sometimes (About 25% of the time)
- 16 Often (About 50% of the time)
- 5 Very Often (About 75% of the time)
- 1 Always or Almost Always (90% to 100% of the time)

Typical Comments (rural offices):

The big problem is that because of the overall volume of cases there is often delay in beginning hearings on time.

Cross scheduling is not an issue very frequently, because we only have two judges that do misdemeanors. Sheer volume of cases causes delay.

This is a small system where I practice. If I am tied up, so is the judge and prosecutor.

12. How often does a defendant complain to you or the judge about the adequacy of the amount of time you have provided to his/her case?

Number of Responses:

- 26 Seldom (0% to 10% of the time)
- 27 Sometimes (About 25% of the time)
- 8 Often (About 50% of the time)
- 1 Very Often (About 75% of the time)
- 1 Always or Almost Always (90% to 100% of the time)

APPENDIX A

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Public Defenders

13. Do you believe the distribution of the PDA's caseload is equitable?

Number of Responses:

- 2 Very Equitable
- 33 Equitable
- 15 Less than Equitable
- 1 Very Inequitable
- 9 No Opinion
- 3 No response provided

Typical Comments:

I'm working too hard to worry about others' caseloads.

Within this office it is as equitable as it can be under the circumstances. Because felonies are more complex and the outcomes more severe, we apply our resources there first. So the misdemeanor attorneys carry a larger volume of cases than they should and receive little investigation assistance.

Not sure what this means, if you mean office to office, then less than equitable. But the 'caseload' isn't determined by PDA – the cases exist in their geographical locations – the problem is the distribution of PDA resources (i.e., staff).

14. In your opinion, do PDA attorneys have caseloads that are overly demanding?

Number of Responses:

- 0 Seldom (0% to 10% of the time)
- 5 Sometimes (About 25% of the time)
- 12 Often (About 50% of the time)
- 22 Very Often (About 75% of the time)
- 22 Always or Almost Always (90% to 100% of the time)
- 1 No Opinion
- 1 No response provided

15. How frequently are PDA attorneys monitored or supervised by a more experienced PDA attorney during courtroom appearances?

Number of Responses:

- 55 Seldom (0% to 10% of the time)
- 4 Sometimes (About 25% of the time)
- 0 Often (About 50% of the time)
- 0 Very Often (About 75% of the time)
- 0 Always or Almost Always (90% to 100% of the time)
- 4 No response provided

APPENDIX A

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Public Defenders

Typical Comments:

This only occurs with new employees; we don't have the staff.

Everyone is on their own, sink or swim.

Senior attorneys are willing but too busy with their own caseload to be able to supervise.

16. Do you agree that the practices and procedures of PDA for supervising and monitoring its attorneys are effective?

Number of Responses:

11 Strongly Agree
24 Agree
14 Undecided
6 Strongly Disagree
9 No Basis for Judging

Typical Comments:

Depends - in-court supervision not effective . . . Out of court, I would agree [with the statement]. Wouldn't be able to work our own caseload properly if we spent the time necessary to adequately monitor other attorneys.

We don't get a lot of 'supervision and monitoring' in the usual sense. We do get support and help from colleagues. If we're talking about out of court, our colleagues can always find a moment to consult with us.

17. How long has it been since you had a formal, written evaluation?

Number of Responses:

16 Six Months or Less
38 6 to 12 Months
1 13 to 18 Months
1 18 Months or More
7 Employed Less than a Year, Annual Evaluation Not Due

APPENDIX A

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Public Defenders

18. Please rate the quality of the performance evaluation process utilized by PDA (for example, communicates job performance, identifies areas for improvement, allows mutual setting of goals and expectations of performance, provides measurements for future evaluations, forms a basis for sound personnel decisions, etc.).

Number of Responses:

13 Excellent
16 More than Adequate
17 Adequate
7 Less than Adequate
0 Poor
9 No Opinion
1 No response provided

19. In your opinion, does PDA provide adequate training programs and materials to meet your continuing education needs?

Number of Responses:

4 Excellent
9 More than Adequate
21 Adequate
25 Less than Adequate
2 Poor
2 No Opinion

Typical Comment:

Not because management lacks the desire to provide training, but lack of resources prevents it from doing so.

20. How often have you been unable to attend PDA's annual training program due to the unavailability of per diem payments for your travel expenses?

Number of Responses:

45 Never
12 One to Two Times
1 Three to Four Times
0 Five to Six Times
1 More than Six Times
4 No response provided

APPENDIX A

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Public Defenders

Typical Comments:

I have never received per diem payments for travel. Have always had to pay for own housing and meals for training.

I have never missed training, but I have to do without other necessities, like paying my bills.

I have a family and other financial obligations; I think it is a disproportionate impact on non-Anchorage lawyers to attend conferences without more than airfare.

I am not attending the ATLA (American Trial Lawyers Association) conference due to cost.

21. Please rate the knowledge of PDA attorneys in the following areas:

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Substantive Laws	<u>47</u>	<u>11</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>2</u>
Relevant Case Laws	<u>44</u>	<u>13</u>	<u>3</u>	<u>1</u>	<u>0</u>	<u>2</u>
Procedural Rules of the Court	<u>46</u>	<u>12</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>2</u>

Typical Comments:

This [excellent and more than adequate ratings] is due to intensive communication and networking between PDA attorneys.

To the extent there are deficits, it is due to the high caseloads and lack of time.

22. Overall, are PDA attorneys adequately trained?

Number of Responses:

- 19 More than Adequate
- 30 Adequate
- 10 Less than Adequate
- 3 No Opinion
- 1 No response provided

Typical Comments:

[Rated more than adequate] because each individual trains on their own and at their own expense.

Continuing training is a necessity. So is time for supervisors to observe courtroom appearances.

One assumes law school provides a good foundation and the people who work for the PDA are a self-selecting group of smart and dedicated people.

APPENDIX A

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Public Defenders

23. Do the PDA attorneys have access to sufficient resources (e.g., investigators, interpreters, experts, and medical/mental examinations) for representation of indigent defendants?

Number of Responses:

- 0 More than Sufficient Resources
- 10 Sufficient Resources
- 51 Less than Sufficient Resources
- 1 No Opinion
- 1 No response provided

Typical Comments:

We are under staffed badly as to investigators and paralegals. Attorneys are ending up doing work that could be done more effectively by investigators and paralegals. Funding for experts is poor, management usually discourages or rejects request for expert witnesses.

I need a full-time social worker and psychologist to deal with my clients.

24. What percentage of the tasks currently performed by you could be performed by someone with less training (for example, paralegal, legal secretary, investigator, and other clerical or administrative support)?

Number of Responses:

- 5 None
- 11 1% to 5%
- 14 6% to 10%
- 11 11% to 15%
- 22 More than 15 %

Typical Comments:

We have a legal secretary who is so intelligent, and has so much ability, it is a shame we can't use her as a para-legal or litigation assistant. A position of that sort could take 20-25% of the workload from my weary shoulders.

Paralegal 30%, investigator 30%.

More than 15%, if we had the authority to hire such people.

APPENDIX A

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Public Defenders

25. Approximately, what percentage of the defendants represented by PDA attorneys is non-English speaking?

Number of Responses:

45 0% to 10%
15 11% to 25%
2 26% to 50%
0 51% to 75%
0 More than 75%

Typical Comments:

Many people can communicate in English regarding basic information, but legal concepts are far beyond these clients' English comprehension. A person can't make a fully informed decision if they don't understand the explanation of the charge and the process the state has to go through to prove it.

26. Please rate the usual performance of PDA attorneys in the following areas:

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Pretrial Proceedings Preparation	<u>11</u>	<u>24</u>	<u>17</u>	<u>5</u>	<u>0</u>	<u>5</u>
Pretrial Advocacy	<u>23</u>	<u>22</u>	<u>10</u>	<u>3</u>	<u>0</u>	<u>5</u>
Trial Preparation	<u>22</u>	<u>21</u>	<u>11</u>	<u>3</u>	<u>0</u>	<u>5</u>
Trial Advocacy	<u>37</u>	<u>19</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>5</u>
Written Pleadings	<u>15</u>	<u>23</u>	<u>17</u>	<u>2</u>	<u>0</u>	<u>5</u>
Professional Conduct	<u>43</u>	<u>13</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>4</u>
Proper Demeanor	<u>37</u>	<u>18</u>	<u>2</u>	<u>0</u>	<u>1</u>	<u>5</u>
Punctuality and Timeliness	<u>17</u>	<u>18</u>	<u>20</u>	<u>3</u>	<u>1</u>	<u>4</u>

Typical Comments:

To the extent there are deficiencies, [in attorney performance] it is due to caseloads and lack of time.

I rate performance as excellent – given the inadequate time available per case because of case (over) load.

PDA attorneys are on average, very experienced, talented, and knowledgeable – but the quality of work is affected by the sheer number of cases.

APPENDIX A

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Public Defenders

27. How would you rate the overall quality of representation by PDA attorneys of indigent defendants?

Number of Responses:

21 Excellent
29 More than Adequate
7 Adequate
2 Less than Adequate
0 Poor
0 No Opinion
4 No response provided

Typical Comments:

More than adequate, due to the number of hours we put in !!

The quality of work is limited by the resources and time available. I believe the only reason the agency is able to provide such good representation is that everyone works long hours.

28. How frequently do you use the word processing program on your computer in performing your case work (e.g., correspondence, case notes, briefs, motions, other pleadings, etc.)?

Number of Responses

6 Seldom (0% to 10% of the time)
2 Sometimes (About 25% of the time)
7 Often (About 50% of the time)
11 Very Often (About 75% of the time)
36 Always or Almost Always (90% to 100% of the time)
1 No response provided

29. How frequently do you use the PDA case management system in performing your case work (for example, correspondence, case notes, briefs, motions, other pleadings, scheduling, etc.)?

Number of Responses:

48 Seldom (0% to 10% of the time)
3 Sometimes (About 25% of the time)
2 Often (About 50% of the time)
1 Very Often (About 75% of the time)
0 Always or Almost Always (90% to 100% of the time)
9 No response provided

APPENDIX A

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Public Defenders

Typical Comments:

We don't have a case management system.

We do not have a network. We have no case management system attorneys can use. If I had access to one I would use it. The only reason our office has case management at all is because our secretary wrote the program and set it up to keep track of cases.

30. Overall, how would you rate the computerized information system (networks, e-mail, word processing, case management program, brief bank, on-line legal research, etc.) currently operated by PDA?

Number of Responses:

<u>0</u>	(0%)	Excellent
<u>5</u>	(8%)	More than Adequate
<u>18</u>	(29%)	Adequate
<u>18</u>	(29%)	Less than Adequate
<u>18</u>	(29%)	Poor
<u>3</u>	(5%)	No Opinion

Typical Comments:

Only one person in our office has e-mail: the secretary. She is the only person who has internet as well.

Our office has: no network, no e-mail among office staff, no computerized conflict system, etc.

Most of us don't have access to that resource and have computers that barely work.

31. Which of the following items have you had to personally supply in order to either perform your job or to improve the efficiency of your job performance? (Check all that apply.)

Number of Responses:

<u>32</u>	Office Supplies
<u>33</u>	Office Furniture
<u>32</u>	Law Library Books and Publications
<u>18</u>	Computer Equipment
<u>19</u>	Computer Software and/or Accessories
<u>21</u> ²	Other
<u>9</u>	Did Not Personally Provide Any Items

²Some of the comments were as follows: fan, heater, light bulbs, lamp, tape recorders, professional reference materials (e.g., law book, constitutional reference materials, etc.), trial exhibits, calendars, briefcase, cell phone, personal vehicle (no mileage reimbursement), parking meter money, professional license fees, professional conference fees for training, shelving, toilet paper, paper towels, kitchen/break-room appliances (e.g., toaster, microwave, refrigerator, coffee pot), camera, Dictaphone, and shipping fees (e.g., UPS, Federal Express), etc.

APPENDIX A

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Public Defenders

Comments:

Several years ago, two other attorneys and I bought our own computers. They've been replaced but the computer has no other value to me.

General books regarding trial advocacy, constitutional issues, etc.

Photos, exhibits for trial.

Tissue and paper towels.

32. Which of the following sources are available to you for legal research? (Check all that apply)

Number of Responses:

- 56 State Law Library
- 40 WestLaw Computer Disc
- 53 WestLaw On-Line Communications
- 22 Automated Brief Bank
- 10 Other

Typical Comments:

Only available by driving two hours. [State Law Library]

Theoretically we have [WestLaw Computer Disc] but it isn't currently working.

33. If you are located in a rural PDA office, to what extent do you rely on PDA attorneys in urban offices to provide you with legal research information?

Number of Responses:

- 15 Seldom (0% to 10% of the time)
- 6 Sometimes (About 25% of the time)
- 0 Often (About 50% of the time)
- 0 Very Often (About 75% of the time)
- 0 Always or Almost Always (90% to 100% of the time)
- 1 No response provided

Comment:

Not so much actual legal research as brainstorming and advice.

APPENDIX A

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Public Defenders

34. How would you rate the computer training that PDA has provided to its attorneys?

Number of Responses:

0 Excellent
2 More than Adequate
12 Adequate
23 Less than Adequate
25 None Provided
1 No response provided

35. How many times since you were hired by PDA have you been required to take leave without pay due to budgetary constraints?

Number of Responses:

44 Never
11 One to Two Times
6 Three to Four Times
1 Five to Six Times
1 More than Six Times

36. How would you rate the training that you received to perform fiscal administrative tasks (for example, completion of travel expenditure forms, completion of expert witness expenditure request forms, review and approval of direct case costs related to your caseload)?

Number of Responses:

2 Excellent
5 More Than Adequate
31 Adequate
7 Less Than Adequate
18 None Provided (Go to Question 38)

Typical Comment:

'Fill out this form and submit it.' The forms were self explanatory, not requiring 'training'.

Basically oral stuff and instructions on the form seem pretty self-explanatory.

APPENDIX A

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Public Defenders

37. Who provided the fiscal administrative training, if received?

Number of Responses:

29 PDA staff and/or management
0 Department of Administration, Division of Administrative Services staff
3 Both Agencies
12 Co-Worker
3 Other

Comment:

We don't need 'fiscal administrative training.' We don't spend money unless we have to and get it approved. We are literate people and can read the directions on the forms.

38. In your opinion, what are the top three problems faced by PDA in meeting its Federal and State constitutional mandates to provide counsel to individuals financially unable to retain an attorney?

We have categorized the sixty-three responses to this question by topic. All respondents answered this question with at least one comment. Comments addressed challenges for the PDA in the areas of case management, resource allocation, technology, funding, management, training, hiring personnel, court procedures, legislation, and other state agencies. Typical comments in each category are provided below.

Case Management: (46 comments)

Caseloads are above the ABA (American Bar Association) standard for effective representation.

Caseload increases! PDs are very dedicated, hard working lawyers who really care about their clients. Unfortunately, their caseloads are out of control, requiring long hours, late nights, and weekend work to barely keep up.

Caseload makes it difficult or impossible to file motions in a speedy manner. This results in a delay of trial and a waiver of a defendants right to a speedy trial.

Large caseloads per attorney. This is complicated by the fact that a high percentage of our clients have additional personality disorders and mental illness. Thus, additional time goes into these cases.

Attorney burnout: our office has had 5 felony attorneys in the last 2 years; this affects the overall efficiency of the entire system.

Too little time to investigate facts of each case and to interview witnesses. Each of the PDA's clients is needful in many ways and each case takes longer than it would if a client was mainstream and non-indigent.

APPENDIX A

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Public Defenders

Resource Allocation: (6 comments)

As the resources increase for D.O.L..., ours seem to shrink.

The rural offices have a lot less to work with than Anchorage, so our client suffer. Our office has 386 computers and can only use the CD-ROM when the secretary is gone (i.e., after 4:30). I bought a CD-ROM personally, but every attorney in Anchorage has it.

We recognize that we do not get the budget/resources that DOL gets. All of our equipment comes from surplus. Lots of what we get does not work well.

Inadequate resources for outlying offices.

Technology: (16 comments)

Not sufficient technical hardware and software (i.e., slow, old equipment, no internet access).

We scrounged 486s from surplus and we had to hook them up. They routinely freeze up (which is why they were in surplus?). The agency does not have an office internet account—which would certainly make it more convenient for communication with DAO and adult and juvenile probation and social workers via e-mail. Also, we could get to the court system home page for the latest case law and statutes, since our library is far outdated.

Inadequate, outdated computer system, i.e., no calendaring program, e-mail, case management system.

Need resources, like computers and electronic research to do the job adequately.

Funding: (46 comments)

Rule 39 fees (charged for costs of counsel to clients determined not indigent) should go to PDA.

Lack of rehabilitative sources to prevent recidivism.

Lack of resources, which include all those listed in question 23 (investigators, interpreters, experts, medical/mental examinations).

Limited funding for investigation and experts. The PDA does a remarkable job with the resources it has, but it is a strain. Budget cuts are rationalized by saying 'they're good at making do.' The agency is already under funded and operating at the limit of economy.

APPENDIX A

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Public Defenders

The State fails to meet its constitutional obligation by not allowing us funding to do our job to the level it should be done in a constitutional democracy.

Adequate compensation; too many experienced attorneys leave the agency who tire of working 60 hours for 37.5 hours of pay.

Lack of resources for expert opinions (in contrast to the state.)

Not enough money in budget to hire more lawyers and support staff—caseloads are out of control.

Management: (7 comments)

More communication across PDA specialties.

No central policy formulation—individual attorneys often given excessive autonomy. Duplication—every office must reinvent the wheel. Lack of centralized appellate section.

Supervising attorneys' caseloads are too high to observe new attorneys in court.

Training: (13 comments)

Need more trial skills training for lawyers.

Not enough training (no attorneys in our office have been sent to NITA [National Institute for Trial Advocacy] in the past 10 years). I understand the DAs send all new attorneys to NITA as soon as possible.

More time for training and staff development (need more staff so you can cover when staffing is training).

Keeping abreast of changes in the law.

Hiring Personnel: (26 comments)

Inadequately staffed support positions. Most of our time is spent doing tasks that could be done by others.

Understaffed as far as clerical support staff, secretaries, paralegals, investigators and attorneys.

Provide investigators, experts, and support staff in a reasonable percentage of those of the state.

Too few paralegals. Paralegals could do much of the work attorneys currently do.

Lack of support staff. Need more attorneys.

APPENDIX A

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Public Defenders

Alaska Court System: (9 comments)

Easier access to court calendaring of BRs (bail reviews), Cops (change of pleas), trial time.

Inflexible judges and extremely crowded calendars. We need more court time.

Laws and rules limiting attorney involvement with clients until clients formal appointment by a court.

Court will sometimes appoint clients not financially eligible, i.e., difficult persons to deal with in court, but not indigent.

The third-party custodian is being used to keep people in custody rather than as a means to let people out.

Legislation: (8 comments)

If the legislature is going to enact more and more laws requiring more and more jail time, then it must appropriate more money to the agencies impacted: PDA, DAO, Corrections, DFYS, etc.

More advance notice of law changes and time to develop cohesion through brainstorming sessions.

Change in laws which make cases more serious and therefore require more litigation and work.

Increased penalties leave fewer options for clients, other than trial/appeal.

Other State Agencies: (5 comments)

Inefficient Department of Corrections, which causes PDs to wait at the jail for 30 to 45 minutes until they can see a client.

Better access to clients at jail (longer attorney visiting hours, and refrain from doing prisoner counts during attorney visiting hours).

Overcharging by police and troopers.

Access to incarcerated clients. Local jails are totally inadequate for visitation and telephone services.

APPENDIX A

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Public Defenders

Next, we would like to obtain your opinion regarding issues related to the attorneys employed by DOLaw³ (both civil and criminal division attorneys).

39. To what extent do you experience delays in receiving discovery documents from the DOLaw attorneys?

Number of Responses:

- 8 Seldom (0% to 10% of the time)
- 17 Sometimes (About 25% of the time)
- 21 Often (About 50% of the time)
- 11 Very Often (About 75% of the time)
- 4 Always or Almost Always (90% to 100% of the time)
- 2 Question not applicable due to practice in family law or appeals
- 1 No response provided

Typical Comments:

Has been getting better since new supervising attorney came to Palmer D.A.'s office.

The troopers are slow in preparing reports. DOLaw not slow in turning over what they have.

40. In your opinion, how frequently has the disposition of a case through a plea agreement been delayed due to DOLaw management requiring several levels of divisional approvals for the plea agreement?

Number of Responses:

- 19 Seldom (0% to 10% of the time)
- 17 Sometimes (About 25% of the time)
- 7 Often (About 50% of the time)
- 14 Very Often (About 75% of the time)
- 1 Always or Almost Always (90% to 100% of the time)
- 5 Question not applicable due to practice in family law
- 1 No response provided

41. In your opinion, what are the top three areas DOLaw could make changes in its policies and/or procedures to improve the efficiency of processing cases through the judicial system?

We have categorized responses to this question by topic. Of the 63 questionnaires returned, twenty-one respondents either did not answer this question or marked the "no opinion" box. Ideas for improvements are categorized under the areas of case

³Department of Law

APPENDIX A

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Public Defenders

procedures, legislation, and other state agencies. Twenty respondents either marked “no opinion” or did not provide a response to this question, and two comments indicated that the respondent could identify no problems with DOLaw processing. Typical comments in each category are provided below.

Case Management: (37 comments)

Screen cases more carefully prior to the filing of charges in order to minimize frivolous cases and/or overcharging.

Work toward realistic charging decisions, rather than overcharging and then compromising at the level the case should have been charges initially.

Early screening of cases by the assistant district attorney’s for possible plea agreements.

Stop prosecuting people who are chronically mentally ill.

Meet with defense counsel in sufficient time prior to trial call to review cases to discuss settlement options.

Once charges are filed, consult with witnesses as soon as possible so that reasonable resolutions can be reached earlier in the process.

Provide discovery promptly to defense counsel.

Resource Allocation: (1 comment)

More resources in outlying areas.

Management: (31 comments)

Implement a statewide policy to seek reasonable plea and sentence agreements in every case. Employ active supervision to assure that the policy is followed.

Give the district attorneys more autonomy to deal cases. The attorney generals are much more efficient and easier to deal with because they have autonomy and work with their parole officers and social workers.

Give individual assistant DAs authority (depending upon experience) to resolve cases.

Make case by case decisions on pleas, rather than following set guidelines.

Training: (1 comment)

Provide training in professional ethics regarding DOLaw’s role in the justice system.

APPENDIX A

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Public Defenders

Hiring Personnel: (1 comment)

Hire people with better judgement, especially in supervisory positions, or maybe people who understand the prosecutorial role is justice not convictions.

Alaska Court System: (7 comments)

Provide more uniform standards for plea agreements.

Allow guardianships with family members in CINA cases.

Summons non-violent defendants instead of arrest warrants. Not everyone needs to be in jail. It is easier to represent someone who is out.

More alternatives to formal prosecution (e.g., deferred prosecution programs).

Require compliance with Rule 16 (Discovery) –require them to provide discovery, especially APSINs (Alaska Public Safety Information Network) on witnesses.

Legislation: (6 comments)

Have a true deferred prosecution program, not just SIS (suspended imposition of sentence) program.

Allow the complaining witness to 'drop' charges.

Guardian ad litem should be attorneys!!! The kids legal rights are going down the toilet so their 'best interests' can be served.

Find a better way to handle alcohol and drug abuse problems – the system, as it is set up, is not working.

Other State Agencies: (1 comment)

DFYS (division of family and youth services) should not have so much power over peoples lives.

This last question is regarding issues that could be addressed by the state judicial system and/or the Legislature. Improvements to the justice system as a whole could increase the efficiency and effectiveness of each agency within the system, including PDA.

42. Please rate the following, with (1) being the highest priority, for consideration of implementation and funding.

APPENDIX A

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Public Defenders

other states' public defender agencies, federal criminal justice agencies, national criminal justice associations, and consultants.

Responses were ranked as follows:

- 1 - Establishment of a deferred prosecution program with an emphasis on defendant treatment programs.
- 2 - Increase use of alternative to incarceration programs.
- 3 - Reclassification of certain felonies to gross misdemeanors; thus, reducing case processing time.
- 4 - Revise the mandatory sentencing laws and sentencing guidelines.
- 5 - Reclassification of certain misdemeanors to violations (infractions), eliminating the potential incarceration issue.
- 6 - Increase the use of cooperative agreements between the State and village/tribal groups for adjudication and disposition of minor criminal offenses.
- 7 - Increase the municipal responsibility for prosecution and public defense of misdemeanor cases.
- 8 - Increase the use of mediation and/or dispute resolution programs.
- 9 - Revise the indigency eligibility guidelines and procedures.
- 10 - Implement a fully integrated, criminal justice information system with data downloading capabilities.

Other⁴

⁴ Some comments are as follows. Rewrite the CINA statutes and rules. Address the low wages for attorneys and number of staff. Allow the PDA to place a "cap" on its caseload (to be determined by the agency). Recidivism is a terrible problem - better programs for offenders; especially, alcohol treatment and job training might prevent them from reoffending.

(Intentionally left blank)

APPENDIX B

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Ex-Public Defenders

Questionnaires sent: 50

Responses received: 31 (62%)

Note that some respondents marked more than one choice for some questions, or did not respond at all.

1. In what year did you become a member of the Bar?

<u>Alaska Bar Association</u>		Number	<u>Other State Bar Associations</u>	
Number of Responses:		of Years:	Number of Responses:	
<u>4</u> (13%)	1997 - 1993	5 or less	<u>2</u>	1997 - 1993
<u>16</u> (53%)	1992 - 1987	6 - 10	<u>6</u>	1992 - 1987
<u>7</u> (23%)	1986 - 1982	11 - 15	<u>2</u>	1986 - 1982
<u>3</u> (10%)	1981 - 1977	16 - 20	<u>2</u>	1981 - 1977
<u>0</u> (0%)	1976 - 1972	21 - 25	<u>1</u>	1976 - 1972
<u>0</u> (0%)	1971	26 - 30	<u>0</u>	1971
<u>0</u> (0%)	1963	31 +	<u>0</u>	1963

2. How many years of litigation experience do you have?

Number of Responses:	
<u>3</u> (10%)	0 to 2 Years
<u>9</u> (30%)	3 to 5 Years
<u>9</u> (30%)	6 to 10 Years
<u>9</u> (30%)	10 Years or More

3. How long were you employed by the Public Defender Agency (PDA)?

Number of Responses:	
<u>4</u> (13%)	Less than 1 Year
<u>18</u> (58%)	1 to 5 Years
<u>6</u> (19%)	5 to 10 Years
<u>2</u> (6%)	10 to 15 Years
<u>1</u> (3%)	15 Years or More

4. What was your primary reason(s) for leaving PDA employment? (Check all that apply.)

Number of Responses:	
<u>12</u>	Desire to Change Area of Legal Practice
<u>4</u>	Limited Advancement Opportunities at PDA
<u>18</u>	PDA Workload too Demanding
<u>4</u>	Insufficient Compensation
<u>7</u>	Poor Work Environment (office space, equipment, legal research resources, etc.)
<u>17</u>	Other*
<u>1</u>	Do Not Want to Disclose

APPENDIX B

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Ex-Public Defenders

*Typical Comments:

I desired a change in geographical location.

I burned out. The case load in Bethel was always very high and required extra work.

Poor management practices. Insufficient consideration given to bush cases.

I had a case load of 275-300 that was overwhelming.

Insufficient support from the legislature.

5. In what judicial district(s) did you practice while employed by PDA? (Check all that apply.)

Number of Responses:

10 First Judicial District
7 Second Judicial District
27 Third Judicial District
7 Fourth Judicial District

6. Was the PDA office(s) where you were located a rural or urban office(s)?

Number of Responses:

9 Rural (Community of Less than 20,000)
7 Urban (Community of 20,000 or More)
15 Located in both rural and urban PDA offices

7. What types of cases did you represent for indigent defendants? (Check all that apply.)

Number of Responses:

29 Criminal Cases
23 Juvenile Delinquency Cases
27 Probation Revocation Cases
23 CINA¹ Cases
19 Involuntary Commitment Cases
24 Criminal Appeals
10 Juvenile Delinquency Appeals
6 CINA Appeals

8. Did you hold a full-time or a job-share position with PDA?

Number of Responses:

29 Full-Time (Go to Question 8 and Skip Question 9)
2 Job-Share (Go to Question 9)

¹Child-in-Need of Aid

APPENDIX B

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Ex-Public Defenders

9. On average, how many hours did you actually work on a weekly basis to handle your caseload?

Number of Responses:

0 (0%) 37.5 Hours a Week
8 (21%) More than 37.5 Hours but Less than 50 Hours a Week
14 (36%) More than 50 Hours but Less than 60 Hours a Week
11 (42%) More than 60 Hours a Week

10. On average, how many hours in excess of your weekly, job-share, scheduled hours did you work in order to handle your caseload?

Number of Responses:

0 (0%) No Excess Hours
1 (0%) Between 1 Hour and 10 Hours per Week
0 (0%) More than 10 Hours but Less than 15 Hours per Week
0 (0%) Between 15 Hours and 20 Hours per Week
1 (0%) More than 20 Hours per Week

11. Generally, how many days per year were you required to be on 24-hour call duty in addition to your regular work schedule?

Number of Responses:

7 1 to 5 Days
8 6 to 10 Days
4 15 to 20 Days
3 More than 20 Days
8 Not Required to Work On-Call Shift
1 No Response Provided

12. How frequently were proceedings for your cases delayed or rescheduled due to your participation in a proceeding in one court extending into the scheduled time in another court for another of your cases?

Number of Responses:

14 Seldom (0% to 10% of the time)
11 Sometimes (About 25% of the time)
6 Often (About 50% of the time)
1 Very Often (About 75% of the time)
0 Always or Almost Always (90% to 100% of the time)

APPENDIX B

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Ex-Public Defenders

13. How often did a defendant complain to you or the judge about the adequacy of the amount of time you provided to his/her case?

Number of Responses:

- 19 Seldom (0% to 10% of the time)
8 Sometimes (About 25% of the time)
4 Often (About 50% of the time)
0 Very Often (About 75% of the time)
0 Always or Almost Always (90% to 100% of the time)

14. Do you believe the distribution of the PDA's caseload was equitable?

Number of Responses:

- 3 Very Equitable
15 Equitable
3 Less than Equitable
7 Very Inequitable
1 No Opinion
2 No Response Provided

Typical Comment:

Equability depended on the office.

15. In your opinion, did PDA attorneys have caseloads that were overly demanding?

Number of Responses:

- 0 Seldom (0% to 10% of the time)
4 Sometimes (About 25% of the time)
4 Often (About 50% of the time)
7 Very Often (About 75% of the time)
16 Always or Almost Always (90% to 100% of the time)
0 No Opinion
0 No Response Provided

16. How frequently were PDA attorneys monitored or supervised by a more experienced PDA attorney during courtroom appearances?

Number of Responses:

- 25 Seldom (0% to 10% of the time)
4 Sometimes (About 25% of the time)
0 Often (About 50% of the time)
0 Very Often (About 75% of the time)
1 Always or Almost Always (90% to 100% of the time)
1 No Response Provided

APPENDIX B

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Ex-Public Defenders

17. Do you agree that the practices and procedures of PDA for supervising and monitoring its attorneys were effective?

Number of Responses:

2 Strongly Agree
10 Agree
3 Undecided
8 Strongly Disagree
5 No Basis for Judging
3 No Response Provided

Typical Comments:

Within each office I worked with, I had good supervision, and I took my supervisory responsibilities seriously, spending lots of time with my partner attorneys. But I always felt ignored by the Public Defender. Never visited offices, rarely called, rarely asked how things went.

Supervision depends on the office.

18. Please rate the quality of the performance evaluation process utilized by PDA (e.g., communicated job performance, identified areas for improvement, allowed mutual setting of goals and expectations of performance, provided measurements for future evaluations, formed a basis for sound personnel decisions, etc.).

Number of Responses:

1 Excellent
8 More than Adequate
8 Adequate
4 Less than Adequate
4 Poor
4 No Opinion
2 No Response Provided

19. In your opinion, did PDA provide adequate training programs and materials to meet your continuing education needs?

Number of Responses:

3 Excellent
7 More than Adequate
10 Adequate
7 Less than Adequate
4 Poor
1 No Opinion

APPENDIX B

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Ex-Public Defenders

Typical Comments:

Training was adequate, when you could get away from work to attend.

I was pretty much left to my own devices; except however, Fairbanks and Anchorage PD lawyers were always there to answer any questions plus often advise.

20. How often were you unable to attend PDA's annual training program due to the unavailability of per diem payments for your travel expenses?

Number of Responses:

- 22 Never
- 3 One to Two Times
- 3 Three to Four Times
- 0 Five to Six Times
- 0 More than Six Times
- 3 No Response Provided

Typical Comment:

I never missed a training session. The extra expense came out of my pocket.

21. Please rate the knowledge of PDA attorneys in the following areas:

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Substantive Laws	<u>20</u>	<u>7</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>1</u>
Relevant Case Laws	<u>18</u>	<u>9</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>1</u>
Procedural Rules of the Court	<u>18</u>	<u>9</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>1</u>

22. Overall, were PDA attorneys adequately trained?

Number of Responses:

- 11 More than Adequate
- 12 Adequate
- 9 Less than Adequate
- 0 No Opinion
- 0 No Response Provided

Typical Comments:

If on- the-job training counts.

No time for training or staff availability for same.

APPENDIX B

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Ex-Public Defenders

23. Did the PDA attorneys, during your employment, have access to sufficient resources (e.g., investigators, interpreters, experts, medical/mental examinations) for representation of indigent defendants?

Number of Responses:

2 More than Sufficient Resources
7 Sufficient Resources
22 Less than Sufficient Resources
0 No Opinion
0 No Response Provided

Typical Comments:

Had there been more funding, I would have used interpreters more. Also, the expense of obtaining a psychological (sic) exam out in Bethel limited its availability as a tool. Ultimately, I rationed my use of resources because I knew there were limits. I wanted to make sure that the resources would always be there in critical cases.

Money questions limited representation to disadvantaged clients.

You should have an 'Utterly insufficient' category. I did unclassified felonies with no investigator, experts, or interpreters.

24. How often did PDA attorneys appear to use resources efficiently for the representation of indigent defendants?

Number of Responses:

0 Seldom (0% to 10% of the time)
1 Sometimes (About 25% of the time)
6 Often (About 50% of the time)
9 Very Often (About 75% of the time)
15 Always or Almost Always (90% to 100% of the time)
0 No Response Provided

Typical Comment:

We did far more, with far less, than any lawyers I knew.

APPENDIX B

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Ex-Public Defenders

25. What percentage of the tasks performed by you could have been performed by someone with less training (for example, paralegal, legal secretary, investigator, and other clerical or administrative support)?

Number of Responses:

2 None
6 1% to 5%
4 6% to 10%
5 11% to 15%
15 More than 15 %

Typical Comments:

Often did my own Xeroxing, filing, mailing, etc.

The secretary was overwhelmed.

26. During your employment, approximately, what percentage of the defendants represented by PDA attorneys was non-English speaking?

Number of Responses:

19 0% to 10%
9 11% to 25%
4 26% to 50%
1 51% to 75%
0 More than 75%

Typical Comment:

Many clients speak English but not as a first language and not enough comprehension to understand Constitutional issues without a translator.

27. Please rate the usual performance of PDA attorneys in the following areas:

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Pretrial Proceedings Preparation	<u>10</u>	<u>9</u>	<u>9</u>	<u>2</u>	<u>0</u>	<u>1</u>
Pretrial Advocacy	<u>9</u>	<u>11</u>	<u>9</u>	<u>0</u>	<u>1</u>	<u>1</u>
Trial Preparation	<u>9</u>	<u>9</u>	<u>11</u>	<u>1</u>	<u>0</u>	<u>1</u>
Trial Advocacy	<u>17</u>	<u>6</u>	<u>6</u>	<u>0</u>	<u>1</u>	<u>1</u>
Written Pleadings	<u>8</u>	<u>9</u>	<u>9</u>	<u>2</u>	<u>0</u>	<u>3</u>
Professional Conduct	<u>16</u>	<u>6</u>	<u>7</u>	<u>1</u>	<u>0</u>	<u>1</u>
Proper Demeanor	<u>12</u>	<u>9</u>	<u>7</u>	<u>1</u>	<u>1</u>	<u>1</u>
Punctuality and Timeliness	<u>7</u>	<u>10</u>	<u>10</u>	<u>2</u>	<u>1</u>	<u>1</u>

APPENDIX B

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Ex-Public Defenders

Typical Comments:

I have run across 1 or 2 attorneys who were bad. They were the extreme exception, however.

In my experience, the PDA attorneys were excellent.

28. How would you rate the overall quality of representation by PDA attorneys of indigent defendants?

Number of Responses:

10 Excellent
14 More than Adequate
5 Adequate
2 Less than Adequate
0 Poor
0 No Opinion

Typical Comment:

[More than adequate] But only because PD attorneys sacrifice their personal lives and devote so much time and energy to their work.

29. Which of the following items did you personally supply in order to either perform your job or to improve the efficiency of your job performance? (Check all that apply.)

Number of Responses:

10 Office Supplies
17 Office Furniture
16 Law Library Books and Publications
17 Computer Equipment
14 Computer Software and/or Accessories
1 Other
3 Did Not Personally Provide Any Items

30. Which of the following sources were available to you for legal research? (Check all that apply)

Number of Responses:

28 State Law Library
7 WestLaw Computer Disc
18 WestLaw On-Line Communications
2 Automated Brief Bank
2 Other

APPENDIX B

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Ex-Public Defenders

Typical Comments:

In rural areas, none of these services were available.

We did not have WestLaw for a long time because we did not have a computer.

31. If you were located in a rural PDA office, to what extent did you rely on PDA attorneys in urban offices to provide you with legal research information?

Number of Responses:

- 11 Seldom (0% to 10% of the time)
6 Sometimes (About 25% of the time)
4 Often (About 50% of the time)
3 Very Often (About 75% of the time)
0 Always or Almost Always (90% to 100% of the time)
2 Never located in a rural office.
5 No Response Provided

32. How many times, during your employment with PDA, were you required to take leave without pay due to budgetary constraints?

Number of Responses:

- 20 Never
7 One to Two Times
2 Three to Four Times
0 Five to Six Times
1 More than Six Times

33. How would you rate the training that you received to perform fiscal administrative tasks (e.g., completion of travel expenditure forms, completion of expert witness expenditure request forms, review and approval of direct case costs related to your caseload)?

Number of Responses:

- 0 Excellent
6 More Than Adequate
13 Adequate
4 Less Than Adequate
7 None Provided (Go to Question 35)
1 No Response Provided

APPENDIX B

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Ex-Public Defenders

34. Who provided the fiscal administrative training, if received?

Number of Responses:

- 16 PDA staff and/or management
- 3 Department of Administration, Division of Administrative Services staff
- 2 Both Agencies
- 8 Co-Worker
- 2 Other

35. In your opinion, what are the top three problems faced by PDA in meeting its Federal and State constitutional mandates to provide counsel to individuals financially unable to retain an attorney?

We have categorized responses to this question by topic. Of the 31 questionnaires returned, two did not answer this question and one marked the “no opinion” box. Comments addressed challenges for PDA in the areas of clients, case management, resource allocation, technology, funding, management, training, hiring personnel, communications, court procedures, and legislation. Three of the 31 respondents did not answer this question. Typical comments in each category are provided below.

Clients: (1 comment)

Difficult and angry clients often require time to calm down and soothe before getting to the facts and legal options in their case.

Case Management: (19 comments)

I was faced every day with the challenge of living up to my responsibilities of representing a defendant, yet at the same time knowing that I did not have the time to do an adequate job (i.e., I was under a daily ethical dilemma).

Each individual attorney’s workload is increasing, and it is hard to maintain standards.

Dealing with the stress of the job and maintaining high standards at the same time.

The demanding caseload makes a high burn-out job even tougher, leading to unacceptably high turnover, especially in rural areas.

Too many cases, all demanding attention all the time; so there is no time for training, or even stepping back to evaluate the big picture rather than responding to crisis.

Caseloads were too high. The attorneys were wonderful, committed, and resourceful people, but ultimately, most people reach the point where they cannot work that hard any longer.

APPENDIX B

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Ex-Public Defenders

Heavy caseloads.

Resource Allocation: (2 comments)

To provide equal resources in bush offices as in Anchorage and Fairbanks.

Doing more with fewer resources.

Technology: (4 comments)

Aged and outdated computers and office machines.

Better access to computer research and CD-ROM for legal research.

Lack of access to legal research in the rural areas.

Funding: (7 comments)

Inadequate resources for investigation and expert witnesses.

Lack of funding for more staff and research.

Not enough money for support staff, computers, libraries, etc.

Management: (3 comments)

Good leadership, such as Barb Brink, and oversight of outlying offices.

Training: (4 comments)

Proper training; trial advocacy course.

To keep current on law and its applicability to your representation.

Improved support of assistant PDs through provision of investigative resources and training.

Hiring Personnel: (16 comments)

Lack of attorneys; too many cases, not enough time to prepare properly or evaluate a case.

Inadequate support staff to handle volume, especially client communications.

More administrative staff in urban areas.

Lack of adequate support staff – especially investigative help, which is almost non-existent in rural offices.

Lack of resources; i.e., experts, investigators, and paralegals.

To provide effective defense representation with so little resources (support staff mostly).

APPENDIX B

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Ex-Public Defenders

Communications: (1 comments)

Defense work is always unpopular. The public doesn't understand why it must be adequately funded.

Alaska Court System: (1 comments)

Judges who are unwilling to sanction or enforce deadlines for discovery, etc. on agencies on the opposite side of PDA.

Legislation: (7 comments)

The single greatest challenge is a political environment which increases criminal penalties – for example, the DWI felony law, the waiver law, the new DV law – and which also favors budget cut backs. The PDA is likely going to be forced to do more with less. As the burden increases on the individual attorneys, eventually the quality of representation will begin to suffer.

Inability to deal with a legislature that continues to pass criminal legislation with \$0 fiscal notes.

Agency morale in the face of public hostility generated in part by misinformation disseminated by the legislature and other misinformed groups.

Threat of death penalty legislation.

36. In your opinion, what are the top three areas PDA could make changes in its practices to improve the efficiency of processing cases through the judicial?

The responses to this question were categorized by topic. Of the 31 questionnaires returned, two respondents did not answer this question, and three marked the “no opinion” box. Comments addressed improvements for PDA or ACS in the areas of case management, resource allocation, technology, funding, management, training, hiring personnel, communications, court procedures, and legislation. Twelve respondents commented that the PDA was as efficient as possible given available resources. Typical comments in each category are provided below.

Case Management: (15 comments)

Public defenders are remarkably efficient. They have to be. Limitations on efficiency are imposed by astronomical caseloads.

Assistant public defenders have to wear many hats: they function as secretaries, receptionists, investigators, equipment repairers, and most of the time as attorneys. It shouldn't be this way.

APPENDIX B

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Ex-Public Defenders

Could not get time off. Had to use personal time for client contact. Was forced to have office hours at night for client contact, motion practice. Worked every weekend and nearly every night.

I spent a lot of time filing and keeping statistics, which had to be done otherwise you would drown in your own files. I had a misdemeanor caseload of approximately 150 cases.

Better screening and assignment of cases initially.

Use more intake attorneys, and if it appears that a case will not be resolved quickly, assign it to an ongoing unit. Base the case assignment on a particular attorney's experience and the type and difficulty of the case.

Resource Allocation: (3 comments)

Rural offices have poorer equipment, less supplies, larger caseloads. Improper attention is given to rural PDAs.

Experienced attorneys, who are generally based in Anchorage and Fairbanks, did help the newer attorneys. However, the outlying offices generally lacked good, experienced attorneys to train/teach the newer attorneys.

Technology: (10 comments)

The office furniture is strictly from surplus. The computer situation is/was ridiculous. Until about 1992, we either used our own computers and printers or used some borrowed Macintoshes from the Governor's office. After we got our new Compaq PCs, we quickly found out they wouldn't run Windows or support other modern software. They were obsolete when shipped to us.

Lack of resources such as computer access (e-mail and CD-ROM).

Sharing information statewide among all the PDA offices – especially motions, briefs, ideas, legal research, etc.

Brief bank sharing within state and nationwide.

The agency has tremendous institutional knowledge. None (or very little) gets imparted to others. This could change by having a computerized indexed brief bank, e-mail [for all offices], and maybe weekly reports from each of the offices on what's needed and what's happening.

Funding: (9 comments)

There is little inefficiency in the PDA. The declining budget has forced people to be too efficient – not spend the time each case deserves.

APPENDIX B

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Ex-Public Defenders

The PDA is a maligned, misunderstood organization. It is always under funded, overworked and increasingly criticized. I would suggest having a member of the legislature volunteer for 2 weeks in the Anchorage, Palmer, or Ketchikan office to get some perspective on how efficient and cost effective the PDA really is.

They are a barebones operation. You should be aware of the dramatic impact the lack of funding has upon the court system and legal representation of indigent clients. Everyone is short changed when the PDA is short changed.

Management: (11 comments)

Have the appeals section in Anchorage handle rural appeals rather than just Anchorage appeals.

Mentor new attorneys. Also, maybe rotate attorneys in and out of an appellate division so you get a break from trials and clients every once in awhile.

Allow interns to do additional unsupervised work similar to Washington's Rule 9 (requires a rule change).

As more attorneys are hired, place time in one area of practice.

More Alaska practice manuals.

Provide more support to attorneys – it's basically sink or swim as a new hire, particularly in the bush offices.

Training: (9 comments)

Institutionalize a training program for new attorneys.

Train attorneys in negotiation, file management, attorney client interaction skills, and how to efficiently manage case-work and time.

Negotiation training workshops. Jury selection training/workshops.

In office training on how to best use time and resources.

Have a statewide trainer travel among bush offices.

Hiring Personnel: (13 comments)

The 'legal secretary', obligated to serve four attorneys and an investigator, was simply buried in an avalanche of details and administrative tasks. The investigator worked half-time for five attorneys. This is a very poor situation.

My main complaint, and one that echoed throughout the smaller offices, was the lack of support staff (paralegal and investigators).

APPENDIX B

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Ex-Public Defenders

If the public defender had paralegals it would greatly increase the efficiency of the agency.

Increased financial support for assistants (paralegals, investigators, and experts).

More administration, I shouldn't be doing clerical work.

Communications: (3 comments)

Communicate with clients more by letter and in person – cuts down on calls and complaints.

I worked in Anchorage, Palmer, and Bethel. Every bush office feels entirely ignored in favor of Anchorage.

Alaska Court System: (3 comments)

Stop being required to do Rule 35 hearings, which have no merit.

Lobby the judiciary to better screen clients for financial resources, which will reduce the caseload.

Legislation: (2 comments)

Cutting the PDA budget is very short-sighted and counter-productive to the goal of an efficient, fair criminal justice system.

Next, we would like to obtain your opinion regarding issues related to the attorneys employed by DOLaw² (both civil and criminal division attorneys).

37. To what extent did you experience delays in receiving discovery documents from the DOLaw attorneys?

Number of Responses:

- 6 Seldom (0% to 10% of the time)
- 10 Sometimes (About 25% of the time)
- 9 Often (About 50% of the time)
- 3 Very Often (About 75% of the time)
- 1 Always or Almost Always (90% to 100% of the time)
- 2 No Response Provided

²Department of Law

APPENDIX B

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Ex-Public Defenders

Typical Comments:

We frequently received police reports long after the case was charged.

Continuances were routine because of late discovery. Occasionally, cases were dismissed.

Receiving discovery documents from DOLaw depends on the DOLaw office.

38. In your opinion, how frequently was the disposition of a case through a plea agreement delayed due to DOLaw management requiring several levels of divisional approvals for the plea agreement?

Number of Responses:

- 9 Seldom (0% to 10% of the time)
10 Sometimes (About 25% of the time)
6 Often (About 50% of the time)
4 Very Often (About 75% of the time)
0 Always or Almost Always (90% to 100% of the time)
2 No Response Provided

39. In your opinion, what are the top three areas DOLaw could make changes in its practices to improve the efficiency of processing cases through the judicial system?

The most commonly listed answers from the 20 attorneys who responded to this question (other than those who responded No Opinion) are as follows:

- 11 indicated DOLaw attorneys should be given more autonomy
- 4 indicated DOLaw could do more to speed up the discovery process
- 3 indicated DOLaw attorneys should begin the plea bargain process earlier
- 2 indicated DOLaw attorneys have a win/lose mentality that is counterproductive
- 2 indicated plea bargain policies should be more consistent
- 2 indicated DOLaw attorneys needed to be better prepared for cases

Other suggestions included: assigning attorneys to cases earlier, more paralegal and support staff, work more closely with the appellate section, use of the deferred prosecution program, and better economic oversight.

APPENDIX B

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Ex-Public Defenders

This last question is regarding issues that could be addressed by the state judicial system and/or the legislature. Improvements to the justice system as a whole could increase the efficiency and effectiveness of each agency within the system, including PDA.

40. Please rate the following, with (1) being of the highest priority, for consideration of implementation and funding.

We provided a list of ten items for consideration, developed through interviews and review of various reports. Sources included PDA, the Alaska Judicial Council, DOLaw, other states' public defender agencies, federal criminal justice agencies, national criminal justice associations, and consultants.

Responses were ranked as follows:

- 1 - Establishment of a deferred prosecution program with an emphasis on defendant treatment programs.
- 2 - Increase use of alternative to incarceration programs.
- 3 - Reclassification of certain misdemeanors to violations (infractions), eliminating the potential incarceration issue.
- 4 - Reclassification of certain felonies to gross misdemeanors; thus, reducing case processing time.
- 5 - Increase the use of cooperative agreements between the State and village/tribal groups for adjudication and disposition of minor criminal offenses.
- 6 - Revise the mandatory sentencing laws and sentencing guidelines.
- 7 - Increase the use of mediation and/or dispute resolution programs.
- 8 - Revise the indigency eligibility guidelines and procedures.
- 9 - Increase the municipal responsibility for prosecution and public defense of misdemeanor cases.
- 10 - Implement a fully integrated, criminal justice information system with data downloading capabilities.

Other³

³ There were a number of responses to this question, as well as some additional comments. Some responses are as follows: "From a system perspective it would make sense to have more co-ordination of the budget requests (Court System, DOLaw, PDA, OPA, etc.) so as to avoid overemphasis of law and order at the expense of treatment, confinement, legal representation." "Huge amount of time could be saved if attorneys had access to Court System computers. Attorneys spend a lot of time waiting in line for clerks to look up calendar information or check status of cases. There's no reason attorneys and even public can't have dial-up or Internet access to this information, freeing clerks to keep courts running." "The only answer is to get more funding. You can't 'downsize' criminal defendant representation. It's unethical." "The state needs to make a more concerted effort to provide rehabilitative services – substance abuse treatment, education, job training, etc." "Revisit the bail requirements for misdemeanors, esp. 3rd party custodians." etc.

APPENDIX C

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY

Summary of Questionnaires Sent to Department of Law Attorneys

Questionnaires sent: 95

Responses received: 69 (73%)

Note that some respondents chose more than one selection, or did not respond to some questions.

The following set of questions is to provide us with some information about your current position and professional experience.

1. In what year did you become a member of the Bar?

<u>Alaska Bar Association</u>			<u>Other State Bar Associations</u>			
Number of Responses:			Number of Years:	Number of Responses:		
<u>11</u>	(16%)	1997 - 1993	5 or less	<u>1</u>	1997 - 1993	
<u>17</u>	(25%)	1992 - 1987	6 - 10	<u>3</u>	1992 - 1987	
<u>14</u>	(21%)	1986 - 1982	11 - 15	<u>5</u>	1986 - 1982	
<u>11</u>	(16%)	1981 - 1977	16 - 20	<u>6</u>	1981 - 1977	
<u>12</u>	(18%)	1976 - 1972	21 - 25	<u>5</u>	1976 - 1972	
<u>2</u>	(3%)	1971	26 - 30	<u>4</u>	1971	

2. How many years of litigation experience do you have?

Number of Responses:		
<u>9</u>	(10%)	0 to 2 Years
<u>6</u>	(30%)	3 to 5 Years
<u>12</u>	(30%)	6 to 10 Years
<u>42</u>	(30%)	10 Years or More

3. How long have you been employed by DOLaw?

Number of Responses:		
<u>8</u>	(13%)	Less than 1 Year
<u>15</u>	(58%)	1 to 5 Years
<u>19</u>	(19%)	5 to 10 Years
<u>17</u>	(6%)	10 to 15 Years
<u>10</u>	(3%)	15 Years or More

4. In what judicial district do you currently practice?

Number of Responses:	
<u>14</u>	First Judicial District
<u>6</u>	Second Judicial District
<u>37</u>	Third Judicial District
<u>17</u>	Fourth Judicial District

APPENDIX C

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Department of Law Attorneys

5. Is the DOLaw office where you are located a rural or urban office?

Number of Responses:

12 Rural (Community of Less than 20,000)

57 Urban (Community of 20,000 or More)

6. What types of cases have you prosecuted/handled? (Check all that apply.)

Number of Responses:

58 Criminal Cases

36 Juvenile Delinquency Cases

48 Probation Revocation Cases

27 CINA¹ Cases

21 Involuntary Commitment Cases

48 Criminal Appeals

13 Juvenile Delinquency Appeals

11 CINA Appeals

This next set of questions is presented to obtain your opinion on the Public Defender Agency's (PDA) attorneys that provide the defense in the cases you prosecute/handle.

7. To what extent are defendants (percentage of all defendants, both indigent and non-indigent) that you prosecute/handle represented by a PDA attorney in the following types of cases?

	SELDOM IF EVER (Less than 10%)	SOMETIMES (About 25%)	OFTEN (About 50%)	VERY OFTEN (About 75%)	ALWAYS (90% to 100%)	CASE TYPE NOT HANDLED	NO RESPONSE PROVIDED
Criminal Cases	<u>1</u>	<u>3</u>	<u>10</u>	<u>32</u>	<u>10</u>	<u>7</u>	<u>6</u>
Juvenile Delinquency Cases	<u>1</u>	<u>2</u>	<u>5</u>	<u>16</u>	<u>14</u>	<u>12</u>	<u>19</u>
Petition to Revoke Probation Cases	<u>0</u>	<u>3</u>	<u>5</u>	<u>27</u>	<u>11</u>	<u>8</u>	<u>15</u>
CINA Cases	<u>0</u>	<u>0</u>	<u>4</u>	<u>11</u>	<u>9</u>	<u>18</u>	<u>27</u>
Involuntary Commitment Cases	<u>0</u>	<u>2</u>	<u>4</u>	<u>4</u>	<u>13</u>	<u>19</u>	<u>27</u>
Criminal Appeals	<u>0</u>	<u>3</u>	<u>12</u>	<u>20</u>	<u>12</u>	<u>7</u>	<u>15</u>
Juvenile Delinquency Appeals	<u>0</u>	<u>1</u>	<u>2</u>	<u>8</u>	<u>4</u>	<u>19</u>	<u>35</u>
CINA Appeals	<u>1</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>5</u>	<u>22</u>	<u>35</u>

¹Child in Need of Aid

APPENDIX C

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY

Summary of Questionnaires Sent to Department of Law Attorneys

8. How frequently have you observed in the courtroom a PDA attorney being monitored or supervised by a more experienced PDA attorney?

Number of Responses:

- 58 Seldom (0% to 10% of the time)
- 10 Sometimes (About 25% of the time)
- 1 Often (About 50% of the time)
- 0 Very Often (About 75% of the time)
- 0 Always or Almost Always (90% to 100% of the time)

9. Do you agree that the practices and procedures of PDA for supervising and monitoring its attorneys are effective?

Number of Responses:

- 1 Strongly Agree
- 10 Agree
- 18 Undecided
- 19 Strongly Disagree
- 21 No Basis for Judging

10. Please rate the knowledge in the following areas of PDA attorneys that provide the defense in the cases you prosecute/handle.

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Substantive Laws	<u>10</u>	<u>32</u>	<u>23</u>	<u>3</u>	<u>0</u>	<u>1</u>
Relevant Case Laws	<u>7</u>	<u>32</u>	<u>21</u>	<u>8</u>	<u>0</u>	<u>1</u>
Procedural Rules of the Court	<u>5</u>	<u>31</u>	<u>21</u>	<u>8</u>	<u>3</u>	<u>1</u>

11. Overall, do the PDA attorneys appear adequately trained?

Number of Responses:

- 3 Seldom (0% to 10% of the time)
- 6 Sometimes (About 25% of the time)
- 15 Often (About 50% of the time)
- 28 Very Often (About 75% of the time)
- 19 Always or Almost Always (90% to 100% of the time)

12. Has DOLaw management ever filed an official complaint regarding the quality of representation/professional conduct by a PDA attorney in a case prosecuted/handled by you?

Number of Responses:

- 3 Yes
- 65 No
- 1 No Response Provided

APPENDIX C

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Department of Law Attorneys

If yes, were you satisfied with the disposition of the complaint?

Number of Responses:

1 Yes
1 No
1 Do Not Know Disposition

If no, why not?

A complaint was discussed, but not filed. It should have been filed.

Lots of ineffective assistance claims [filed]. [Not satisfied with their dispositions] Because of time we spend defending[such claims].

13. Have you or DOLaw management ever made an **unofficial** complaint to PDA management regarding the quality of representation/professional conduct by a PDA attorney in a case prosecuted/handled by you?

Number of Responses:

22 Yes
47 No

If yes, were you satisfied with the disposition of the complaint?

Number of Responses:

9 Yes
8 No
5 Do Not Know Disposition

If no, why not?

Attorney X is still very careless with facts.

Sometimes good response, other times no response.

No action taken.

Public Defender exercises no authority over assistants.

No action was taken by PD – the problem is not being dealt with as problem is ongoing.

Because PDA officials did not respond!

APPENDIX C

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Department of Law Attorneys

14. In your opinion, do PDA attorneys have caseloads that are overly demanding?

Number of Responses:

- 23 Seldom (0% to 10% of the time)
- 21 Sometimes (About 25% of the time)
- 6 Often (About 50% of the time)
- 11 Very Often (About 75% of the time)
- 5 Always or Almost Always (90% to 100% of the time)
- 4 No Opinion

15. How frequently have proceedings in your cases been delayed or rescheduled due to a PDA attorney participating in a proceeding in another court during the scheduled time for your case?

Number of Responses:

- 33 Seldom (0% to 10% of the time)
- 25 Sometimes (About 25% of the time)
- 7 Often (About 50% of the time)
- 4 Very Often (About 75% of the time)
- 0 Always or Almost Always (90% to 100% of the time)

16. Do the PDA attorneys appear to utilize sufficient resources (for example, investigators, interpreters, expert witnesses, medical/mental examinations) for representation of indigent defendants?

Number of Responses:

- 31 More than Sufficient Resources
- 24 Sufficient Resources
- 8 Less than Sufficient Resources
- 6 No Opinion

17. How often do PDA attorneys appear to use resources efficiently for the representation of indigent defendants?

Number of Responses:

- 2 Seldom (0% to 10% of the time)
- 24 Sometimes (About 25% of the time)
- 20 Often (About 50% of the time)
- 12 Very Often (About 75% of the time)
- 6 Always or Almost Always (90% to 100% of the time)
- 5 No Response Provided

APPENDIX C

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Department of Law Attorneys

Comments:

What resources? They don't have the time or money, generally, to get independent medical/mental examinations, which might be appropriate in the cases I have.

Problem is they waste huge amounts of time on non-sense sometimes.

18. Approximately, what percentage of the indigent parties that you prosecute/oppose is non-English speaking?

Number of Responses:

60 0% to 10%
8 11% to 25%
0 26% to 50%
0 51% to 75%
0 More than 75%
1 No Response Provided

19. Please rate the usual performance of PDA attorneys representing indigent defendants in cases that you prosecute/handle in the following areas:

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Pretrial Proceedings Preparation	<u>6</u>	<u>28</u>	<u>28</u>	<u>6</u>	<u>1</u>	<u>2</u>
Pretrial Advocacy	<u>8</u>	<u>30</u>	<u>25</u>	<u>5</u>	<u>1</u>	<u>2</u>
Trial Preparation	<u>7</u>	<u>24</u>	<u>34</u>	<u>4</u>	<u>0</u>	<u>1</u>
Trial Advocacy	<u>7</u>	<u>33</u>	<u>23</u>	<u>7</u>	<u>0</u>	<u>1</u>
Written Pleadings	<u>3</u>	<u>24</u>	<u>30</u>	<u>8</u>	<u>3</u>	<u>3</u>
Professional Conduct	<u>5</u>	<u>25</u>	<u>30</u>	<u>8</u>	<u>4</u>	<u>1</u>
Proper Demeanor	<u>5</u>	<u>21</u>	<u>28</u>	<u>12</u>	<u>5</u>	<u>1</u>
Punctuality and Timeliness	<u>3</u>	<u>14</u>	<u>32</u>	<u>14</u>	<u>6</u>	<u>2</u>

20. How would you rate the overall quality of representation by PDA attorneys of indigent defendants in the cases you prosecute/handle?

Number of Responses:

8 Excellent
35 More than Adequate
20 Adequate
6 Less than Adequate
1 Poor
0 No Opinion

APPENDIX C

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY

Summary of Questionnaires Sent to Department of Law Attorneys

21. In your opinion, what are the top three challenges faced by PDA in meeting its federal and state constitutional mandates to provide counsel to individuals financially unable to retain an attorney?

We have categorized responses to this question by topic. Comments addressed challenges for PDA in the areas of clients, case management, resource allocation, funding, management, hiring personnel, communications, court procedures, and legislation. There were 25 respondents who either did not answer this question or indicated that they had no opinion. Typical comments in each category are provided below.

Clients: (17 comments)

Clients often don't accord 'their' public defender the respect they would private counsel – largely, I think, because they are not paying for the service (at least up front).

Getting under-educated defendants enough information to make informed decisions.

Difficult clientele (high degree of dysfunction).

Demanding clients who demand frivolous claims - defenses be asserted.

Very demanding caseloads, particularly with rural residents who are unfamiliar with the system.

Case Management: (37 comments)

Workload, time. Must delay to be prepared.

Managing extensive caseloads. The caseload is so high that there does not appear to be sufficient time for all defendants.

Time for preparation – they appear to be running from court appearance to court appearance with no time between.

Prioritizing cases.

Early assessment of cases/investigation/preparation.

Client contact ahead of court dates.

Attach same importance to children's proceedings as adult proceedings (or at least more [than currently attached]).

Resource Allocation: (13 comments)

Avoid frivolous issues and time ineffective approaches to cases.

Effectively managing time and money.

APPENDIX C

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY

Summary of Questionnaires Sent to Department of Law Attorneys

Proper allocation of resources – there must be greater focus on defending clients that have valid claims, and pleading the ones that don't.

The PD is authorized by law to focus on issues that have potential merit. They should do so more consistently.

Funding: (10 comments)

All ten responses dealt with the challenge of providing adequate representation with insufficient funding and resources.

Management: (4 comments)

Better training, supervision, and control of PD attorneys.

Becoming aware early on of conflicts in representation.

Hiring Personnel: (8 comments)

Having and attracting qualified personnel.

Having enough attorneys to spend adequate time on each case.

The PD should hire people who will focus on issues – not 'true believers' who waste everyone's time.

Limited personnel.

Communications: (3 comments)

Improved relations with the court and the DA's office.

Efficient communication.

Alaska Court System (ACS): (9 comments)

Seven of the nine responses were concerned with the adequacy of the screening process in determining eligibility for public defender services. ACS by statute² is responsible for determining an individual's eligibility for such services and for notifying or assigning PDA for representation of the individual³.

Ensuring that the persons represented by PDA are actually financially unable to retain an attorney.

Legislation: (1 comment)

A politically precarious agency is arguably getting even more precarious given the political move to 'get tough' on crime.

² See AS 18.85.120(a).

³ See AS 18.85.110(d).

APPENDIX C

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY

Summary of Questionnaires Sent to Department of Law Attorneys

22. In your opinion, what are the top three areas PDA could make changes in its practices to improve the efficiency of processing cases through the judicial system?

The responses were categorized by topic. Comments addressed improvements for PDA or ACS in the areas of clients, case management, resource allocation, management, hiring personnel, communications, and court procedures. There were 28 respondents who either did not answer this question or indicated that they had no opinion. Typical comments in each category are provided below.

Clients: (2 comments)

Get more training on client control techniques.

Case Management: (34 comments)

Lighten caseload.

Attorneys could specialize in criminal cases.

Assigning cases based upon experience and ability of PD.

Not ask for so many continuances.

Early and more consistent contact with clients, especially in rural areas.

Study discovery early.

File pleadings and other documents on time as ordered by the court.

Prioritize cases – defend the people with valid defenses, don't waste resources on those who don't.

They could stop inventing psychological defenses.

Focus on end product – lot of time spent on multiple bail hearings or motions with little or no chance to prevail.

File pleadings and other documents on time, as ordered by the Court.

Respond to fair offers in a fair and timely manner. Stop waiting until the last minute.

Earlier resolution of cases that will plead.

Assign one PD to a courtroom.

Sharing caseloads so they could assist each other in calendaring conflicts.

Resource Allocation: (27 comments)

*Unnecessary motion practice. Motions are filed with no authority in support.
(14 responses concerned filing unnecessary motions.)*

APPENDIX C

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY

Summary of Questionnaires Sent to Department of Law Attorneys

Discontinue unnecessary use of experts, e.g., having drugs sent out of state for retesting.

Stop self-appointing on cases before an action is filed with the court.

Allocate resources better between felony and misdemeanor cases – misdemeanor attorneys are overworked.

Time efficiency – PDA spends too much time on non-priority areas.

Not blindly do what client wants regardless of ethical constraints and substantive validity of position client wants taken.

Comply with client desires where he or she wants to plead guilty or no contest.

Management: (9 comments)

Better training for new attorneys. I see almost NO training or supervision for new attorneys.

Better supervision – consider giving supervising attorney only half a caseload.

Organization of individual offices for assignment and tracking of cases seems poor.

Provide realistic timekeeping records so that defendants can be assessed attorney fees more fairly. Most 'indigent' defendants will not push for more extensive legal work if they are forced to pay their fair share.

A better system to determine conflicts.

Fiscal responsibility.

Hiring Personnel: (7 comments)

Hire a social worker to get clients into programs, get jobs, etc., instead of a lawyer.

Hire another intake (felony) attorney in Anchorage.

Hire fewer attorneys (now needed to cover every individual case). Hire more staff rather than more attorneys to streamline the handling of files.

In our area there are more assistant public defenders handling felony matters than there are assistant district attorneys for felony matters, yet they only handle 30 – 40% of the caseload.

Find attorneys willing to specialize in children's proceedings.

Show professionalism and professional courtesy.

Hire realists – not 'true believers.'

APPENDIX C

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY

Summary of Questionnaires Sent to Department of Law Attorneys

Communications: (5 comments)

Return phone calls.

Better communication with prosecutors.

Alaska Court System: (2 comments)

PDs should reject cases where clients aren't really indigent.

I believe the PDA represents many people who are not financially eligible for the appointment. Better screening would help the agency more effectively represent the people it should.

As explained under Question No. 21, ACS is responsible for the determination of an individual's eligibility to receive public defender services.

Under the *Alaska Rules of Court*, Administrative Rule 12 (b), when a person is entitled to counsel in accordance with AS 18.85.100(a) the court is required to first appoint the PDA. If the court accepts a motion or a stipulation for the PDA to withdraw due to a conflict of interest, or the court on its own motion finds a conflict of interest, the court shall then appoint the Office of Public Advocacy (OPA). Therefore, the next few questions are regarding the OPA staff attorneys and private defense attorneys contracted by OPA that represent indigent defendants (excluding guardian ad litem representations). The responses to these questions will provide us with comparative data for our evaluation of PDA.

23. To what extent are defendants (percentage of all defendants, both indigent and nonindigent) that you prosecute/handle represented by an OPA staff or contractual attorney in the following types of cases (excluding guardian ad litem representations)?

	SELDOM IF EVER (Less than 10%)	SOMETIMES (About 25%)	OFTEN (About 50%)	VERY OFTEN (About 75%)	ALWAYS (90% to 100%)	CASE TYPE NOT HANDLED	NO RESPONSE PROVIDED
Criminal Cases	<u>15</u>	<u>37</u>	<u>3</u>	<u>0</u>	<u>2</u>	<u>6</u>	<u>6</u>
Juvenile Delinquency Cases	<u>9</u>	<u>23</u>	<u>3</u>	<u>0</u>	<u>1</u>	<u>14</u>	<u>19</u>
Petition to Revoke Probation Cases	<u>14</u>	<u>27</u>	<u>2</u>	<u>0</u>	<u>2</u>	<u>8</u>	<u>15</u>
CINA Cases	<u>4</u>	<u>9</u>	<u>5</u>	<u>4</u>	<u>2</u>	<u>20</u>	<u>27</u>
Involuntary Commitment Cases	<u>15</u>	<u>3</u>	<u>2</u>	<u>0</u>	<u>1</u>	<u>21</u>	<u>27</u>
Criminal Appeals	<u>17</u>	<u>22</u>	<u>3</u>	<u>2</u>	<u>1</u>	<u>9</u>	<u>15</u>
Juvenile Delinquency Appeals	<u>4</u>	<u>12</u>	<u>2</u>	<u>0</u>	<u>1</u>	<u>20</u>	<u>35</u>
CINA Appeals	<u>5</u>	<u>3</u>	<u>4</u>	<u>0</u>	<u>1</u>	<u>22</u>	<u>35</u>

APPENDIX C

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY

Summary of Questionnaires Sent to Department of Law Attorneys

24. Please rate the knowledge in the following areas of the OPA staff and contractual attorneys that provide defense in the cases you prosecute/handle.

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Substantive Laws	<u>10</u>	<u>28</u>	<u>24</u>	<u>2</u>	<u>0</u>	<u>5</u>
Relevant Case Laws	<u>7</u>	<u>29</u>	<u>25</u>	<u>3</u>	<u>0</u>	<u>5</u>
Procedural Rules of the Court	<u>7</u>	<u>31</u>	<u>22</u>	<u>3</u>	<u>1</u>	<u>5</u>

25. Overall, do the OPA staff and contractual attorneys appear adequately trained?

Number of Responses:

- 0 Seldom (0% to 10% of the time)
- 6 Sometimes (About 25% of the time)
- 16 Often (About 50% of the time)
- 28 Very Often (About 75% of the time)
- 18 Always or Almost Always (90% to 100% of the time)
- 1 No Response Provided

26. Has DOLaw management ever filed an **official** complaint regarding the quality of representation/professional conduct by an OPA staff or contractual attorney in a case prosecuted/handled by you?

Number of Responses:

- 1 Yes
- 64 No
- 4 No Response Provided

If yes, were you satisfied with the disposition of the complaint?

Number of Responses:

- 0 Yes
- 0 No
- 1 Do Not Know Disposition

27. Have you or DOLaw management ever made an **unofficial** complaint to OPA management regarding the quality of representation/professional conduct by an OPA staff or contractual attorney in a case prosecuted/handled by you?

Number of Responses:

- 4 Yes
- 63 No
- 1 No Response Provided

APPENDIX C

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY

Summary of Questionnaires Sent to Department of Law Attorneys

If yes, were you satisfied with the disposition of the complaint?

Number of Responses:

- 3 Yes
- 0 No
- 1 Do Not Know Disposition

28. In your opinion, do OPA staff and contractual attorneys have caseloads that are overly demanding?

Number of Responses:

- 32 Seldom (0% to 10% of the time)
- 21 Sometimes (About 25% of the time)
- 4 Often (About 50% of the time)
- 4 Very Often (About 75% of the time)
- 0 Always or Almost Always (90% to 100% of the time)
- 9 No Opinion

29. How frequently have proceedings in your cases been delayed or rescheduled due to an OPA staff or contractual attorney participating in a proceeding in another court during the scheduled time for your case?

Number of Responses:

- 47 Seldom (0% to 10% of the time)
- 16 Sometimes (About 25% of the time)
- 3 Often (About 50% of the time)
- 2 Very Often (About 75% of the time)
- 1 Always or Almost Always (90% to 100% of the time)

30. Do the OPA staff and contractual attorneys appear to utilize sufficient resources (for example, investigators, interpreters, expert witnesses, medical/mental examinations) for representation of indigent defendants?

Number of Responses:

- 24 More than Sufficient Resources
- 30 Sufficient Resources
- 8 Less than Sufficient Resources
- 7 No Opinion

APPENDIX C

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Department of Law Attorneys

31. How often do OPA staff and contractual attorneys appear to use resources efficiently for the representation of indigent defendants?

Number of Responses:

- 5 Seldom (0% to 10% of the time)
- 12 Sometimes (About 25% of the time)
- 27 Often (About 50% of the time)
- 11 Very Often (About 75% of the time)
- 7 Always or Almost Always (90% to 100% of the time)
- 7 No Response Provided

32. Generally, do PDA attorneys utilize more resources (i.e., investigators, interpreters, expert witnesses, medical/mental examinations) than OPA staff and contractual attorneys, about the same amount of resources, or less resources on comparable cases for indigent defendants?

Number of Responses:

- 26 PDA Attorneys Use More Resources
- 29 PDA Attorneys Use about the Same Amount of Resources
- 4 PDA Attorneys Use Less Resources
- 9 No Opinion
- 1 No Response Provided

33. Please rate the usual performance of the OPA staff and contractual attorneys representing indigent defendants in cases that you prosecute/handle in the following areas (excluding guardian ad litem representations):

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Pretrial Proceedings Preparation	<u>7</u>	<u>32</u>	<u>26</u>	<u>3</u>	<u>0</u>	<u>3</u>
Pretrial Advocacy	<u>9</u>	<u>31</u>	<u>26</u>	<u>2</u>	<u>0</u>	<u>3</u>
Trial Preparation	<u>4</u>	<u>37</u>	<u>26</u>	<u>2</u>	<u>0</u>	<u>2</u>
Trial Advocacy	<u>7</u>	<u>34</u>	<u>27</u>	<u>1</u>	<u>0</u>	<u>2</u>
Written Pleadings	<u>4</u>	<u>28</u>	<u>31</u>	<u>4</u>	<u>0</u>	<u>4</u>
Professional Conduct	<u>7</u>	<u>30</u>	<u>29</u>	<u>3</u>	<u>0</u>	<u>2</u>
Proper Demeanor	<u>6</u>	<u>30</u>	<u>29</u>	<u>4</u>	<u>0</u>	<u>2</u>
Punctuality and Timeliness	<u>3</u>	<u>29</u>	<u>28</u>	<u>8</u>	<u>1</u>	<u>2</u>

APPENDIX C

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY

Summary of Questionnaires Sent to Department of Law Attorneys

34. How would you rate the overall quality of representation by OPA staff and contractual attorneys of indigent defendants in the cases you prosecute/handle?

Number of Responses:

- 6 Excellent
- 42 More than Adequate
- 18 Adequate
- 5 Less than Adequate
- 0 Poor
- 3 No Opinion

35. Overall, do PDA attorneys perform more work (e.g., investigation, discovery, preparation, research, motions/briefs, oral arguments, examination/cross examination of witnesses, use of expert assistance/testimony, etc.) than OPA staff and contractual attorneys, about the same amount of work, or less work on comparable cases for indigent defendants?

Number of Responses:

- 15 PDA Attorneys Do More Work
- 37 PDA Attorneys Do About the Same Amount of Work
- 10 PDA Attorneys Do Less Work
- 7 No Opinion

The following questions concern private defense attorneys retained by defendants that provide the defense in cases you prosecute/handle. As with the previous set of questions, the responses to these questions will provide us with comparative data for our evaluation of PDA.

36. Please rate the knowledge in the following areas of retained private defense attorneys that provide defense in the cases you prosecute/handle.

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Substantive Laws	<u>5</u>	<u>22</u>	<u>28</u>	<u>8</u>	<u>0</u>	<u>7</u>
Relevant Case Laws	<u>4</u>	<u>21</u>	<u>28</u>	<u>9</u>	<u>0</u>	<u>8</u>
Procedural Rules of the Court	<u>5</u>	<u>20</u>	<u>33</u>	<u>5</u>	<u>0</u>	<u>7</u>

37. In your opinion, do private defense attorneys have caseloads that are overly demanding?

Number of Responses:

- 34 Seldom (0% to 10% of the time)
- 22 Sometimes (About 25% of the time)
- 3 Often (About 50% of the time)
- 1 Very Often (About 75% of the time)
- 0 Always or Almost Always (90% to 100% of the time)
- 9 No Basis for Judgment

APPENDIX C

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY

Summary of Questionnaires Sent to Department of Law Attorneys

38. How frequently have proceedings in your cases been delayed or rescheduled due a retained private defense attorney participating in a proceeding in another court during the scheduled time for your case?

Number of Responses:

- 35 Seldom (0% to 10% of the time)
- 24 Sometimes (About 25% of the time)
- 4 Often (About 50% of the time)
- 1 Very Often (About 75% of the time)
- 4 Always or Almost Always (90% to 100% of the time)
- 1 No Response Provided

39. How often do private defense attorneys appear to use resources efficiently for the representation of defendants?

Number of Responses:

- 3 Seldom (0% to 10% of the time)
- 11 Sometimes (About 25% of the time)
- 27 Often (About 50% of the time)
- 14 Very Often (About 75% of the time)
- 5 Always or Almost Always (90% to 100% of the time)
- 9 No Response Provided

40. Generally, do PDA attorneys utilize more resources (i.e., investigators, interpreters, expert witnesses, medical/mental examinations) than retained private defense attorneys, about the same amount of resources, or less resources on comparable cases?

Number of Responses:

- 27 PDA Attorneys Use More Resources
- 17 PDA Attorneys Use about the Same Amount of Resources
- 15 PDA Attorneys Use Less Resources
- 9 No Opinion
- 1 No response provided

APPENDIX C

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY

Summary of Questionnaires Sent to Department of Law Attorneys

41. Please rate the usual performance of retained private defense attorneys representing defendants in cases that you prosecute/handle in the following areas:

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Pretrial Proceedings Preparation	<u>3</u>	<u>22</u>	<u>34</u>	<u>3</u>	<u>0</u>	<u>7</u>
Pretrial Advocacy	<u>3</u>	<u>23</u>	<u>33</u>	<u>3</u>	<u>0</u>	<u>7</u>
Trial Preparation	<u>6</u>	<u>21</u>	<u>28</u>	<u>6</u>	<u>1</u>	<u>7</u>
Trial Advocacy	<u>6</u>	<u>24</u>	<u>27</u>	<u>5</u>	<u>0</u>	<u>7</u>
Written Pleadings	<u>3</u>	<u>21</u>	<u>31</u>	<u>7</u>	<u>0</u>	<u>7</u>
Professional Conduct	<u>8</u>	<u>17</u>	<u>32</u>	<u>5</u>	<u>0</u>	<u>7</u>
Proper Demeanor	<u>7</u>	<u>20</u>	<u>31</u>	<u>4</u>	<u>0</u>	<u>7</u>
Punctuality and Timeliness	<u>3</u>	<u>20</u>	<u>32</u>	<u>7</u>	<u>0</u>	<u>7</u>

42. How would you rate the overall quality of representation by retained private defense attorneys of defendants in the cases you prosecute/handle?

Number of Responses:

- 4 Excellent
- 26 More than Adequate
- 31 Adequate
- 4 Less than Adequate
- 0 Poor
- 3 No Opinion
- 1 No Response Provided

43. Overall, do PDA attorneys perform more work (e.g., investigation, discovery, preparation, research, motions/briefs, oral arguments, examination/cross-examination of witnesses, use of expert assistance/testimony, etc.) than retained private defense attorneys, about the same amount of work, or less work on comparable cases for defendants?

Number of Responses:

- 25 PDA Attorneys Do More Work
- 24 PDA Attorneys Do About the Same Amount of Work
- 11 PDA Attorneys Do Less Work
- 8 No Opinion
- 1 No Response Provided

APPENDIX C

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY

Summary of Questionnaires Sent to Department of Law Attorneys

Comments:

At least as far as the less experienced PD's, a lot of the work is unnecessary. The more experienced allocate their time better and avoid previously litigated issues, unless they were successful. Our PDA is seriously understaffed in everything but attorneys leading to excessive non-attorney work being done by the attorneys.

PDA simply expends too much money and uses far too much in resources for a job that could be handled in a much more efficient fashion.

As far as I can tell there is little supervision, training, or oversight of new lawyers by PDA or OPA. They just turn them loose.

PDs do less work because they have less time, money, and resources.

PDA is extremely effective. They provide defendants higher quality representation, on the whole, than OPA or private attorneys.

It is difficult to respond to many of these questions. Some PDA attorneys are excellent, some are not, some use resources appropriately, some do not. The same could be said about the OPA lawyers. Generally, I think less of the contract attorneys.

PDA's are well-trained effective trial advocates, but appear to have little time to investigate and prepare. However, I would rank their performance higher than the private defense attorneys I have had cases with in the Fairbanks area.

This last question is regarding issues that could be addressed by the state justice system and/or the Legislature. Improvements to the justice system as a whole could increase the efficiency and effectiveness of each agency within the system.

44. Please rate the following, with (1) being of the highest priority, for consideration of implementation and funding. (The Division of Legislative Audit (DLA) recognizes that respondents are replying with their personal opinions, and are not expressing an official opinion on behalf of the Department of Law. DLA will consider the opinions received only as opinions of individuals.)

We provided a list of ten items for consideration, developed through interviews and review of various reports. Sources included PDA, the Alaska Judicial Council, DOLaw, other states' public defender agencies, federal criminal justice agencies, national criminal justice associations, and consultants.

APPENDIX C

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY

Summary of Questionnaires Sent to Department of Law Attorneys

Responses were ranked as follows:

- 1 - Revise the indigency eligibility guidelines and procedures.
- 2 - Increase the municipal responsibility for prosecution and public defense of misdemeanor cases.
- 3 - Increase use of alternative to incarceration programs.
- 4 - Reclassification of certain misdemeanors to violations (infractions), eliminating the potential incarceration issue.
- 5 - Establishment of a deferred prosecution program with an emphasis on defendant treatment programs.
- 6 - Increase the use of cooperative agreements between the State and village/tribal groups for adjudication and disposition of minor criminal offenses.
- 7 - Implement a fully integrated, criminal justice information system with data downloading capabilities.
- 8 - Increase the use of mediation and/or dispute resolution programs.
- 9 - Revise the mandatory sentencing laws and sentencing guidelines.
- 10 -Reclassification of certain felonies to gross misdemeanors; thus, reducing case processing time.
- 11 -Other ⁴

⁴ Some alternative suggestions submitted were as follows. Suspended imposition of sentence, in place of deferred prosecution. More community service programs. Video arraignments and teleconferencing. Pattern sentencing after the federal system where defendants are rewarded by receiving a shorter sentence as a result of pleading guilty or no contest before engaging in litigation. Eliminate confidentiality for juvenile crime. The judicial system is overwhelmed with driver's license crimes, which should be reclassified. The Legislature should stop passing "get tough" laws unless they are willing to appropriate more money for additional police, prosecutors, PDs, and judges.

(Intentionally left blank)

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

Questionnaires sent: 111

Responses received: 73 (66%)

Note that some respondents either marked more than one choice or did not respond to some questions.

The following set of questions are to provide us with some information about your current position and professional experience.

1. In what state court do you currently preside?

Number of Responses:

41 District Court
29 Superior Court
3 Court of Appeals
2 Supreme Court

2. In what judicial district do you currently preside?

Number of Responses:

15 First Judicial District
6 Second Judicial District
38 Third Judicial District
14 Fourth Judicial District

3. What type of proceedings do you currently handle in your court?

Number of Responses:

60 Civil
67 Criminal
35 Family
39 Juvenile
16 Other*

*Other types of cases listed include: traffic, probate, appeals, and administrative appeals.

4. In what year were you first appointed as a judge or hired as a magistrate or master for the Alaska Court System?

Number of Responses:	Number of Years on Bench:
<u>19</u> 1997 - 1993	5 or less
<u>25</u> 1992 - 1987	6 - 10
<u>15</u> 1986 - 1982	11 - 15
<u>9</u> 1981 - 1977	16 - 20
<u>4</u> 1976 - 1972	21 - 25
<u>0</u> 1971	26 - 30
<u>0</u> 1963	31+
<u>1</u> No Response Provided	

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

5. If you practiced law before your current position with the court, which of the following areas constituted the majority of your practice?

Number of Responses:

- 4 Prosecution
- 10 Mainly Criminal
- 31 Mixed Criminal and Civil
- 15 Mainly Civil
- 1 Other
- 12 No Response Provided

This next set of questions are presented to obtain your opinion on the Public Defender Agency's (PDA) attorneys practicing in your courtroom.

6. To what extent are defendants (percentage of all defendants, both indigent and nonindigent) in your courtroom represented by a PDA attorney in the following types of cases?

	SELDOM IF EVER	SOMETIMES	OFTEN	VERY OFTEN	ALWAYS	CASE TYPE NOT HANDLED	NO RESPONSE PROVIDED
Criminal Cases	<u>3</u>	<u>7</u>	<u>7</u>	<u>34</u>	<u>16</u>	<u>4</u>	<u>2</u>
Juvenile Delinquency Cases	<u>3</u>	<u>1</u>	<u>7</u>	<u>25</u>	<u>12</u>	<u>20</u>	<u>5</u>
Petition to Revoke Probation Cases	<u>3</u>	<u>11</u>	<u>16</u>	<u>25</u>	<u>13</u>	<u>3</u>	<u>2</u>
CINA Cases	<u>9</u>	<u>7</u>	<u>8</u>	<u>16</u>	<u>14</u>	<u>16</u>	<u>3</u>
Involuntary Commitment Cases	<u>10</u>	<u>2</u>	<u>2</u>	<u>9</u>	<u>13</u>	<u>30</u>	<u>7</u>
Criminal Appeals	<u>3</u>	<u>0</u>	<u>5</u>	<u>10</u>	<u>6</u>	<u>43</u>	<u>6</u>
Juvenile Delinquency Appeals	<u>2</u>	<u>0</u>	<u>4</u>	<u>5</u>	<u>4</u>	<u>49</u>	<u>9</u>
CINA Appeals	<u>2</u>	<u>1</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>52</u>	<u>9</u>

7. How frequently have you observed in your courtroom a PDA attorney being monitored or supervised by a more experienced PDA attorney?

Number of Responses:

- 61 Seldom (0% to 10% of the time)
- 10 Sometimes (About 25% of the time)
- 0 Often (About 50% of the time)
- 0 Very Often (About 75% of the time)
- 0 Always or Almost Always (90% to 100% of the time)
- 2 No Response Provided

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

8. Do you agree that the practices and procedures of PDA for supervising and monitoring its attorneys were effective?

Number of Responses:

- 4 Strongly Agree
- 17 Agree
- 14 Undecided
- 6 Strongly Disagree
- 30 No Basis for Judging
- 2 No Response Provided

9. Please rate the knowledge in the following areas of PDA attorneys appearing before you.

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Substantive Laws	<u>31</u>	<u>28</u>	<u>10</u>	<u>2</u>	<u>1</u>	<u>1</u>
Relevant Case Laws	<u>29</u>	<u>28</u>	<u>12</u>	<u>1</u>	<u>2</u>	<u>1</u>
Procedural Rules of the Court	<u>28</u>	<u>27</u>	<u>13</u>	<u>2</u>	<u>2</u>	<u>1</u>

10. Overall, do the PDA attorneys in your court appear adequately trained?

Number of Responses:

- 2 Seldom (0% to 10% of the time)
- 4 Sometimes (About 25% of the time)
- 8 Often (About 50% of the time)
- 19 Very Often (About 75% of the time)
- 40 Always or Almost Always (90% to 100% of the time)

11. How often does an indigent defendant in your courtroom complain to you about the adequacy of the amount of time provided to his/her case by the PDA attorney?

Number of Responses:

- 38 Seldom (0% to 10% of the time)
- 24 Sometimes (About 25% of the time)
- 5 Often (About 50% of the time)
- 2 Very Often (About 75% of the time)
- 4 Always or Almost Always (90% to 100% of the time)

Typical Comment:

Please note that few defendants complain about their lawyers to the judge. I believe that many APDA clients are unhappy because their attorney is simply too busy to spend sufficient time with each client.

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

12. Have you ever filed an **official** complaint regarding the quality of representation provided by a PDA attorney?

Number of Responses:

2 Yes
70 No
1 No Response Provided

If yes, were you satisfied with the disposition of the complaint?

Number of Responses:

1 Yes
0 No
0 Do Not Know Disposition
1 No Response Provided

13. Have you ever filed an **unofficial** complaint to PDA management regarding the quality of representation provided by a PDA attorney?

Number of Responses:

13 Yes
58 No
2 No Response Provided

If yes, were you satisfied with the disposition of the complaint?

Number of Responses:

7 Yes
3 No
3 Do Not Know Disposition

14. Do you believe the process used by PDA management in obtaining comments from judges regarding the performance of PDA attorneys is adequate?

Number of Responses:

0 Excellent
11 More than Adequate
12 Adequate
11 Less than Adequate
5 Poor
32 No Opinion
2 No Response Provided

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

Typical Comments:

Have never been asked for comments and not sure if it's appropriate. It is ok to ask about management issues.

I'm unaware of such a process.

It is difficult for attorneys to contact us without running into ethics problems – there is an official barrier there which makes it hard to communicate about this.

15. In your opinion, do PDA attorneys have caseloads that are overly demanding?

Number of Responses:

- 0 Seldom (0% to 10% of the time)
- 7 Sometimes (About 25% of the time)
- 12 Often (About 50% of the time)
- 23 Very Often (About 75% of the time)
- 26 Always or Almost Always (90% to 100% of the time)
- 4 No Response Provided

16. How frequently have proceedings in your courtroom been delayed or rescheduled due to a PDA attorney participating in a proceeding in another court during the scheduled time for your court?

Number of Responses:

- 18 Seldom (0% to 10% of the time)
- 36 Sometimes (About 25% of the time)
- 13 Often (About 50% of the time)
- 6 Very Often (About 75% of the time)
- 0 Always or Almost Always (90% to 100% of the time)

17. Do PDA attorneys appear to utilize sufficient resources (for example, investigators, interpreters, expert witnesses, medical/mental examinations) for representation of indigent defendants in your courtroom?

Number of Responses:

- 5 More than Sufficient Resources
- 30 Sufficient Resources
- 24 Less than Sufficient Resources
- 12 No Opinion
- 2 No Response Provided

Typical Comment:

They use what they have well. They just don't have enough and it effects the whole justice system including the civil side.

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

18. How often do PDA attorneys appear to use resources efficiently for the representation of indigent defendants?

Number of Responses:

- 2 Seldom (0% to 10% of the time)
- 14 Sometimes (About 25% of the time)
- 13 Often (About 50% of the time)
- 25 Very Often (About 75% of the time)
- 12 Always or Almost Always (90% to 100% of the time)
- 7 No Response Provided

19. Approximately, what percentage of the indigent parties that appear in your courtroom is non-English speaking?

Number of Responses:

- 52 0% to 10%
- 17 11% to 25%
- 2 26% to 50%
- 0 51% to 75%
- 0 More than 75%
- 2 No Response Provided

20. Please rate the usual performance of PDA attorneys representing indigent defendants in your court in the following areas:

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Pretrial Proceedings Preparation	<u>14</u>	<u>26</u>	<u>21</u>	<u>7</u>	<u>2</u>	<u>3</u>
Pretrial Advocacy	<u>14</u>	<u>29</u>	<u>17</u>	<u>5</u>	<u>3</u>	<u>5</u>
Trial Preparation	<u>17</u>	<u>34</u>	<u>13</u>	<u>3</u>	<u>2</u>	<u>4</u>
Trial Advocacy	<u>24</u>	<u>30</u>	<u>11</u>	<u>2</u>	<u>1</u>	<u>5</u>
Written Pleadings	<u>15</u>	<u>27</u>	<u>21</u>	<u>4</u>	<u>2</u>	<u>4</u>
Professional Conduct	<u>33</u>	<u>25</u>	<u>8</u>	<u>4</u>	<u>0</u>	<u>3</u>
Proper Demeanor	<u>27</u>	<u>31</u>	<u>6</u>	<u>5</u>	<u>1</u>	<u>3</u>
Punctuality and Timeliness	<u>17</u>	<u>21</u>	<u>24</u>	<u>5</u>	<u>3</u>	<u>3</u>

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

21. How would you rate the overall quality of representation by PDA attorneys of indigent defendants in your courtroom?

Number of Responses:

23 Excellent
35 More than Adequate
7 Adequate
5 Less than Adequate
1 Poor
2 No Opinion

22. In your opinion, what are the top three challenges faced by PDA in meeting its federal and state constitutional mandates to provide counsel to individuals financially unable to retain an attorney?

We have categorized responses to this question by topic. Of the 73 questionnaires returned, nine respondents either did not answer this question or marked the “no opinion” box. Comments addressed challenges for PDA in the areas of clients, case management, technology, funding, management, training, hiring personnel, communications, court procedures, legislation, and other agencies. Typical comments in each category are provided below.

Clients: (19 comments)

Clients with disabilities (learning disabled: alcohol/drug addictions).

Increased time necessary to interpret justice system to persons of non-western cultures.

Managing unruly or contentious clients.

Monitoring whereabouts of client.

Distance – PDA in Bethel, defendant in village – communication difficulties.

Communication challenges, i.e., defendant has no telephone (in rural areas).

Case Management: (51 comments)

Lack of necessary time to spend with client, unable to have face-to-face contact with client except just prior to hearing/trial.

Individual PDs have insufficient time to adequately research case law.

The caseload is simply overwhelming.

The geographical challenge of covering defendants in locations other than where attorneys are.

APPENDIX D

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Judges and Magistrates

Zealous, committed PDA attorneys are subject to burnout due to heavy and continuous work load.

Heavy caseloads – they spend far less time on each case than any private attorney. Sometimes minutes a case.

Overwork due to number of indigent defendants in an area. Majority of cases are indigent defendants.

Technology: (2 comments)

Lack of technology.

Lack in overall budget for the PDA to permit updated case management technology like e-mail or modem connections to all court & DA computers.

Funding: (31 comments)

Funding to keep experienced lawyers.

Inadequate budget for travel to rural courts – these clients get neglected.

Not enough money for experts and to co-counsel the major cases.

Lack of money for travel, experts, interpreters, paralegals, etc.

Inadequate funding.

Limited resources for dealing with people of other cultures, languages, disabilities.

Management: (5 comments)

Lack of support – I often feel that the local PD is isolated from the rest of the agency.

Devotion of a large amount of PDA management resources to political activity rather than supervision of their attorneys. Stagnant people and practices within the PDA.

Staff (non-professional) cannot get the work done without cutting corners, which affects the quality of the work.

Training: (10 comments)

Inadequate training and supervision.

Minimal training.

Need sufficient training for new PDA attorneys. New attorneys are subject to an immediate caseload.

Lack of ongoing training support.

APPENDIX D

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Judges and Magistrates

Hiring Personnel: (23 comments)

Insufficient staffing and administrative support.

Investigations are stretched very thin. Oftentimes requests for investigation are not even made or attorneys do their own investigation.

Continuing to attract top quality attorneys as funding decreases and workload increases and good attorneys leave.

Insufficient numbers of attorneys for primary caseload responsibility and for backup/relief responsibilities.

Insufficient manpower to serve indigent defendants.

Inadequate support services to do as effective a job as professional standards require – failure is built in.

Communications: (4 comments)

The perception that defendants are receiving too much (in quantity and quality) defender services.

Hostile citizenry.

Alaska Court System: (2 comments)

PDs are not provided with discovery in a timely manner which hinders progress of cases.

When most clients are incarcerated, it takes a great deal of time to meet with them in jail and prepare properly.

Legislation: (3 comments)

Poorly drafted legislation.

Legislative pressure to push the limits.

New conflicting laws.

Other Agencies: (2 comments)

Lack of support from private bar to do pro bono work.

Need to have adequate pretrial meeting with the DA.

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

23. In your opinion, what are the top three areas PDA could make changes in its practices to improve the efficiency of processing cases through the judicial?

The responses to this question were categorized by topic. Of the 73 questionnaires returned, thirty-four respondents either did not answer this question or marked the “no opinion” box. Nine respondents indicated that PDA functions efficiently. Comments addressed improvements for PDA in the areas of clients, case management, resource allocation, technology, funding, management, training, hiring personnel, court procedures, legislation, and other state agencies. Typical comments in each category are provided below.

Clients: (1 comment)

Easier accessibility for people living in bush communities and no lawyers.

Case Management: (17 comments)

The court is poorly served when it must wait 20 minutes, routinely, for previously engaged attorneys.

Limit cases assigned to each attorney (this may mean hiring more attorneys).

I receive complaints that the PD just wants to plea bargain and never go to trial! Most of the time the defendant hasn't even talked directly with the PD until 5-10 minutes before a pretrial hearing that usually ends up as a change of plea.

Have a person answer the phone to take information from the defendant and begin familiarization of the case. Not a recorder.

Be less adversarial in CINA cases.

Less manipulative procedurally (e.g., preempting judge to secure delay).

More frequent contact with clients before they are brought to court.

Use of para-legals for intake work so clients can meet with someone early on.

Resource Allocation: (2 comments)

More resources given to areas outside Anchorage.

Focus on Rural Alaska and let private bar/pro bono programs take up slack in Anchorage and Fairbanks where the majority of the private bar is located.

Technology: (1 comment)

Electronic (computer) court proceedings with client contacts.

APPENDIX D

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Judges and Magistrates

Funding: (7 comments)

More funding.

The agency provides excellent service to its clients due to extraordinary dedication on the part of its staff and attorneys. The whole justice system should work as efficiently and with such dedication. However this area of justice is grossly underfunded and supported.

Management: (14 comments)

More supervision of management of rural offices.

Appellate work is poor.

End the abuse of the statute allowing the peremptory disqualification of judges, and discourage blanket peremptories as a matter of PDA policy.

Supervise PDA attorneys and emphasize the importance of civility and honesty.

More information and resource sharing between offices – particularly rural and urban areas.

Job sharing for interested attorneys.

Our court has had too many changes in PD serving the area. At one point 6-8 in one year, and always the newest employee. Cases were continued beyond the norm, defendants had no contact prior to court dates, and minimal at the actual time of hearings. Could not reach PD by phone, and calls weren't returned. This has improved recently and will be virtually eliminated if a PD stays long enough to develop a working system.

End the filing of frivolous motions.

Training: (3 comments)

Cross-training at other locations – the problems present in Kenai are not present at all locations. Training regarding the responsibilities of an attorney, to the court, to the client, and to other attorneys. Training is needed with respect to how the professional conduct code relates to attorneys practicing criminal law.

More training and on the job supervision.

Hiring Personnel: (5 comments)

All comments suggested hiring more PDA attorneys.

Alaska Court System: (2 comments)

Have the requirement to reject non-indigent clients who slip through the screening process.

APPENDIX D

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Judges and Magistrates

Make more use of magistrates regarding plea changes and trials to free up Superior Court Judge.

Legislation: (1 comment)

I don't believe PD policies and procedures are inefficient or the basis for problems. The problem lies with the legislators who fail to appreciate that the criminal justice system is a closely interconnected network. If funding is increased for police and additional penal statutes are enacted, sufficient resources must be provided, or the constitution changed.

Other Agencies: (3 comments)

Almost any change requires cooperation with the Department of Law (i.e., Rural emphasis) and/or more funding.

Consult with DA early on to get plea changes at least a few weeks before a trial.

Work with the OPA agency to speed up conflicts faster so that OPA can be appointed quicker.

Under the *Alaska Rules of Court*, Administrative Rule 12 (b), when a person is entitled to counsel in accordance with AS 18.85.100(a), the court is required to first appoint the PDA. If the court accepts a motion or a stipulation for the PDA to withdraw due to a conflict of interest, or the court on its own motion finds a conflict of interest. The court shall then appoint the Office of Public Advocacy (OPA). Therefore, the next few questions are regarding the OPA staff attorneys and private defense attorneys contracted by OPA that represent indigent defendants (excluding guardian ad litem representation). The responses to these questions will provide us with comparative data for our evaluation of PDA.

24. To what extent are defendants (percentage of all defendants, both indigent and nonindigent) in your courtroom represented by an OPA staff or contractual attorney in the following types of cases (excluding guardian ad litem representatives)?

	SELDOM IF EVER	SOMETIMES	OFTEN	VERY OFTEN	ALWAYS	CASE TYPE NOT HANDLED	NO RESPONSE PROVIDED
<u>Criminal Cases</u>	<u>19</u>	<u>42</u>	<u>2</u>	<u>2</u>	<u>1</u>	<u>3</u>	<u>4</u>
Juvenile Delinquency Cases	<u>19</u>	<u>21</u>	<u>4</u>	<u>2</u>	<u>1</u>	<u>19</u>	<u>7</u>
Petition to Revoke Probation Cases	<u>30</u>	<u>32</u>	<u>3</u>	<u>1</u>	<u>1</u>	<u>2</u>	<u>4</u>
CINA Cases	<u>19</u>	<u>21</u>	<u>6</u>	<u>2</u>	<u>2</u>	<u>15</u>	<u>8</u>
Involuntary Commitment Cases	<u>23</u>	<u>5</u>	<u>4</u>	<u>1</u>	<u>1</u>	<u>30</u>	<u>9</u>
Criminal Appeals	<u>12</u>	<u>7</u>	<u>2</u>	<u>1</u>	<u>1</u>	<u>41</u>	<u>9</u>
Juvenile Delinquency Appeals	<u>9</u>	<u>3</u>	<u>2</u>	<u>0</u>	<u>1</u>	<u>48</u>	<u>10</u>
CINA Appeals	<u>8</u>	<u>2</u>	<u>2</u>	<u>0</u>	<u>1</u>	<u>50</u>	<u>10</u>

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

25. Please rate the knowledge in the following areas of the OPA staff and contractual attorneys appearing before you.

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Substantive Laws	<u>16</u>	<u>41</u>	<u>12</u>	<u>1</u>	<u>0</u>	<u>2</u>
Relevant Case Laws	<u>17</u>	<u>41</u>	<u>11</u>	<u>1</u>	<u>0</u>	<u>2</u>
Procedural Rules of the Court	<u>20</u>	<u>38</u>	<u>11</u>	<u>1</u>	<u>0</u>	<u>2</u>

26. Overall, do the OPA staff and contractual attorneys appear adequately trained?

Number of Responses:

- 0 Seldom (0% to 10% of the time)
- 3 Sometimes (About 25% of the time)
- 7 Often (About 50% of the time)
- 35 Very Often (About 75% of the time)
- 28 Always or Almost Always (90% to 100% of the time)

27. How often does an indigent defendant in your courtroom complain to you about the adequacy of the amount of time provided to his/her case by the OPA staff or contractual attorney?

Number of Responses:

- 51 Seldom (0% to 10% of the time)
- 12 Sometimes (About 25% of the time)
- 8 Often (About 50% of the time)
- 0 Very Often (About 75% of the time)
- 1 Always or Almost Always (90% to 100% of the time)
- 1 No Response Provided

28. Have you ever filed an official complaint regarding the quality of representation provided by an OPA staff or contractual attorney?

Number of Responses:

- 4 Yes
- 68 No
- 1 No Response Provided

If yes, were you satisfied with the disposition of the complaint?

Number of Responses:

- 1 Yes
- 1 No
- 1 Do Not Know Disposition
- 1 No Response Provided

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

29. Have you ever filed an unofficial complaint to OPA management regarding the quality of representation provided by an OPA staff or contractual attorney?

Number of Responses:

11 Yes
61 No
1 No Response Provided

If yes, were you satisfied with the disposition of the complaint?

Number of Responses:

10 Yes
0 No
1 Do Not Know Disposition

30. Do you believe the process used by OPA management in obtaining comments from judges regarding the performance of OPA staff and contractual attorneys is adequate?

Number of Responses:

1 Excellent
8 More than Adequate
14 Adequate
8 Less than Adequate
2 Poor
38 No Opinion
2 No Response Provided

31. In your opinion, do OPA staff and contractual attorneys have caseloads that are overly demanding?

Number of Responses:

11 Seldom (0% to 10% of the time)
13 Sometimes (About 25% of the time)
12 Often (About 50% of the time)
5 Very Often (About 75% of the time)
9 Always or Almost Always (90% to 100% of the time)
21 No Opinion
2 No Response Provided

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

32. How frequently have proceedings in your courtroom been delayed or rescheduled due to an OPA staff or contractual attorney participating in a proceeding in another court during the scheduled time for your court?

Number of Responses:

- 34 Seldom (0% to 10% of the time)
27 Sometimes (About 25% of the time)
8 Often (About 50% of the time)
3 Very Often (About 75% of the time)
0 Always or Almost Always (90% to 100% of the time)
1 No Response Provided

33. Do OPA staff and contractual attorneys appear to utilize sufficient resources (e.g., investigators, interpreters, expert witnesses, medical/mental examinations) for representation of indigent defendants in your courtroom?

Number of Responses:

- 3 More than Sufficient
35 Sufficient Resources
16 Less than Sufficient
17 No Opinion
2 No Response Provided

34. How often do OPA staff and contractual attorneys appear to use resources efficiently for the representation of indigent defendants?

Number of Responses:

- 1 Seldom (0% to 10% of the time)
7 Sometimes (About 25% of the time)
20 Often (About 50% of the time)
31 Very Often (About 75% of the time)
6 Always or Almost Always (90% to 100% of the time)
8 No Response Provided

35. Generally, do PDA attorneys utilize more resources (i.e. investigators, interpreters, expert witnesses, medical/mental examinations) than OPA staff and contractual attorneys, about the same amount of resources, or less resources on comparable cases for indigent defendants?

Number of Responses:

- 15 PDA Attorneys Use More Resources
30 PDA Attorneys Use about the Same Amount of Resources
12 PDA Attorneys Use Less Resources
15 No Opinion
1 No Response Provided

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

36. Please rate the usual performance of OPA staff and contractual attorneys representing indigent defendants in your court in the following areas (excluding guardian ad litem representations):

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Pretrial Proceedings Preparation	<u>11</u>	<u>30</u>	<u>23</u>	<u>4</u>	<u>0</u>	<u>5</u>
Pretrial Advocacy	<u>12</u>	<u>31</u>	<u>19</u>	<u>5</u>	<u>0</u>	<u>6</u>
Trial Preparation	<u>10</u>	<u>32</u>	<u>22</u>	<u>1</u>	<u>0</u>	<u>8</u>
Trial Advocacy	<u>14</u>	<u>30</u>	<u>17</u>	<u>1</u>	<u>0</u>	<u>11</u>
Written Pleadings	<u>8</u>	<u>35</u>	<u>22</u>	<u>2</u>	<u>0</u>	<u>6</u>
Professional Conduct	<u>24</u>	<u>32</u>	<u>11</u>	<u>1</u>	<u>0</u>	<u>5</u>
Proper Demeanor	<u>19</u>	<u>36</u>	<u>12</u>	<u>1</u>	<u>0</u>	<u>5</u>
Punctuality and Timeliness	<u>10</u>	<u>29</u>	<u>21</u>	<u>7</u>	<u>1</u>	<u>5</u>

37. How would you rate the overall quality of representation by OPA staff and contractual attorneys of indigent defendants in your courtroom?

Number of Responses:

- 12 Excellent
- 37 More than Adequate
- 19 Adequate
- 3 Less than Adequate
- 0 Poor
- 1 No Opinion
- 1 No Response Provided

38. Overall, do PDA attorneys perform more work (e.g., investigation, discovery, preparation, research, motions/briefs, oral arguments, examination/cross examination of witnesses, use of expert assistance/testimony, etc.) than OPA staff and contractual attorneys, about the same amount of work, or less work on comparable cases for indigent defendants?

Number of Responses:

- 19 PDA Attorneys Do More Work
- 32 PDA Attorneys Do About the Same Amount of Work
- 7 PDA Attorneys Do Less Work
- 12 No Opinion
- 3 No Response Provided

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

The following questions concern private defense attorneys retained by defendants that provide the defense in cases you prosecute/handle. As with the previous set of questions, the responses to these questions will provide us with comparative data for our evaluation of PDA.

39. Please rate the knowledge in the following areas of retained private defense attorneys appearing before you.

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Substantive Laws	<u>5</u>	<u>38</u>	<u>28</u>	<u>1</u>	<u>0</u>	<u>2</u>
Relevant Case Laws	<u>4</u>	<u>38</u>	<u>25</u>	<u>3</u>	<u>0</u>	<u>2</u>
Procedural Rules of the Court	<u>6</u>	<u>36</u>	<u>26</u>	<u>3</u>	<u>0</u>	<u>2</u>

40. How often does a defendant in your courtroom complain to you about the adequacy of the amount of time provided to his/her case by a retained private defense attorney?

Number of Responses:

- 65 Seldom (0% to 10% of the time)
- 5 Sometimes (About 25% of the time)
- 2 Often (About 50% of the time)
- 0 Very Often (About 75% of the time)
- 0 Always or Almost Always (90% to 100% of the time)
- 0 No Opinion
- 1 No Response Provided

41. In your opinion, do private defense attorneys have caseloads that are overly demanding?

Number of Responses:

- 22 Seldom (0% to 10% of the time)
- 30 Sometimes (About 25% of the time)
- 3 Often (About 50% of the time)
- 1 Very Often (About 75% of the time)
- 0 Always or Almost Always (90% to 100% of the time)
- 14 No Basis for Judgment
- 3 No Response Provided

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

42. How frequently have proceedings in your courtroom been delayed or rescheduled due a retained private defense attorney participating in a proceeding in another court during the scheduled time for your court?

Number of Responses:

- 34 Seldom (0% to 10% of the time)
- 32 Sometimes (About 25% of the time)
- 4 Often (About 50% of the time)
- 1 Very Often (About 75% of the time)
- 0 Always or Almost Always (90% to 100% of the time)
- 2 No Response Provided

43. How often do private defense attorneys appear to use resources efficiently for the representation of defendants?

Number of Responses:

- 1 Seldom (0% to 10% of the time)
- 12 Sometimes (About 25% of the time)
- 25 Often (About 50% of the time)
- 26 Very Often (About 75% of the time)
- 2 Always or Almost Always (90% to 100% of the time)
- 7 No Response Provided

44. Generally, do PDA attorneys utilize more resources (i.e. investigators, interpreters, expert witnesses, medical/mental examinations) than retained private defense attorneys, about the same amount of resources, or less resources on comparable cases?

Number of Responses:

- 8 PDA Attorneys Use More Resources
- 20 PDA Attorneys Use about the Same Amount of Resources
- 30 PDA Attorneys Use Less Resources
- 14 No Opinion
- 1 No response provided

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

45. Please rate the usual performance of retained private defense attorneys representing defendants in cases that you prosecute/handle in the following areas:

	EXCELLENT	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	POOR	NO RESPONSE PROVIDED
Pretrial Proceedings Preparation	<u>6</u>	<u>29</u>	<u>30</u>	<u>1</u>	<u>0</u>	<u>7</u>
Pretrial Advocacy	<u>8</u>	<u>27</u>	<u>29</u>	<u>1</u>	<u>0</u>	<u>8</u>
Trial Preparation	<u>9</u>	<u>31</u>	<u>21</u>	<u>3</u>	<u>0</u>	<u>9</u>
Trial Advocacy	<u>8</u>	<u>30</u>	<u>24</u>	<u>1</u>	<u>0</u>	<u>10</u>
Written Pleadings	<u>5</u>	<u>32</u>	<u>28</u>	<u>1</u>	<u>0</u>	<u>6</u>
Professional Conduct	<u>11</u>	<u>39</u>	<u>15</u>	<u>1</u>	<u>0</u>	<u>6</u>
Proper Demeanor	<u>6</u>	<u>41</u>	<u>19</u>	<u>1</u>	<u>0</u>	<u>6</u>
Punctuality and Timeliness	<u>6</u>	<u>33</u>	<u>27</u>	<u>1</u>	<u>0</u>	<u>6</u>

46. How would you rate the overall quality of representation by retained private defense attorneys of indigent defendants in your courtroom?

Number of Responses:

- 6 Excellent
- 42 More than Adequate
- 21 Adequate
- 2 Less than Adequate
- 0 Poor
- 0 No Opinion
- 2 No Response Provided

47. Overall, do PDA attorneys perform more work (e.g., investigation, discovery, preparation, research, motions/briefs, oral arguments, examination/cross examination of witnesses, use of expert assistance/testimony, etc.) than retained private defense attorneys, about the same amount of work, or less work on comparable cases for defendants?

Number of Responses:

- 13 PDA Attorneys Do More Work
- 35 PDA Attorneys Do About the Same Amount of Work
- 14 PDA Attorneys Do Less Work
- 9 No Opinion
- 2 No Response Provided

APPENDIX D

DEPARTMENT OF ADMINISTRATION PUBLIC DEFENDER AGENCY Summary of Questionnaires Sent to Judges and Magistrates

Typical Comments:

The PDA is an overworked and under-funded agency. So long as defendants are afforded important rights in criminal cases, each PD will have to work very hard to keep up with the demand of the high volume of cases. I have great respect for the PDA. They are efficient, fiscally responsible and capable. They should receive thanks and encouragement for their work. The justice system could not operate without them. The PDA is not responsible for the number of rights afforded to defendants. It's their job to uphold their rights. I have great concern that the legislature is sending the PDA a very demoralizing message by failing to fund them appropriately, while other agencies are not experiencing these cuts.

PDA appellate attorneys and brief writers are less than adequate in their accuracy.

District court becomes the training ground for many PDA's. Most become good attorneys and move on to be felony attorneys. This has been true for a long time, but it means that some of the work is not as efficient because of the learning curve. Overall, however, the PD attorneys provide their clients good representation.

As a judge who handles only criminal cases, I deal with the PDA all the time. IT is my firm opinion that the PDA is over-worked and under-funded. These attorneys regularly work 60-70 hours per week to provide adequate representation to their clients. Cutting their budget would cause a crisis in the court system.

They [the PDA] have evolved into a uniform political force more interested in protecting its turf and promoting its political agenda than in practicing law. About the only way to deal with an organization like this is to create a new one and terminate the old one. The PDA attorneys routinely abuse the right to peremptorily disqualify judges. They file blanket disqualifications against individual judges in retaliation for adverse rulings, or to obtain delays and manipulate the system.

It is easier to convict or sentence a defendant if you know that he has been represented by someone who has done a good job representing them. The public defenders are as necessary as the prosecutors and judges to have the system work fairly and well.

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

This last question is regarding issues that could be addressed by the state justice system and/or the Legislature. Improvements to the justice system as a whole could increase the efficiency and effectiveness of each agency within the system.

48. Please rate the following, with (1) being of the highest priority, for consideration of implementation and funding. (The Division of Legislative Audit (DLA) recognizes that respondents are replying with their personal opinions, and are not expressing an official opinion on behalf of the Alaska Court System. DLA will consider the opinions received only as opinions of individuals).

We provided a list of ten items for consideration, developed through interviews and review of various reports. Sources included PDA, the Alaska Judicial Council, DOLaw, other states' public defender agencies, federal criminal justice agencies, national criminal justice associations, and consultants.

Responses were ranked as follows:

1. Establishment of a deferred prosecution program with an emphasis on defendant treatment programs.
2. Increase use of alternative to incarceration programs.
3. Increase the use of mediation and/or dispute resolution programs.
4. Increase the use of cooperative agreements between the State and village/tribal groups for adjudication and disposition of minor criminal offenses.
5. Revise the mandatory sentencing laws and sentencing guidelines.
6. Reclassification of certain misdemeanors to violations (infractions), eliminating the potential incarceration issue.
7. Reclassification of certain felonies to gross misdemeanors; thus, reducing case processing time.
8. Implement a fully integrated, criminal justice information system with data downloading capabilities.
9. Increase the municipal responsibility for prosecution and public defense of misdemeanor cases.
10. Revise the indigency eligibility guidelines and procedures.
11. Other¹

¹ Some alternative suggestions submitted are as follows. Increase responsible funding for prisons and prison programs. Fund a program to send troubled 13 and 14 year olds to a wilderness survival program (long term).

APPENDIX D

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
Summary of Questionnaires Sent to Judges and Magistrates

Typical Comments:

My experience with the PDA has been skewed by the fact that the majority of PDA attorneys appearing in our court have been very experienced and superbly competent. Perhaps not every court has been so blessed, as my contacts through assignments in other locations has revealed. Overall I feel the PDA is a very efficient agency. Most PDA attorneys work harder and longer hours than the prosecutors or other defense attorneys. In my opinion the PDA is delivering the best possible services for the money expended; the major obstacle is the refusal of the funding authority to appropriate sufficient resources to provide representation under conditions which do not require the PDA attorneys to sacrifice themselves in order to represent their clients. This situation is, unfortunately, not unique, as OPA also has been systematically under-funded as well.

The continued criminalization or "felonization" of crimes with NO funding for youth jails, corrections, or defense services is irresponsible and reckless.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

P.O. BOX 110200
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200
FAX: (907) 465-2135

February 3, 2000

Ms. Pat Davidson, CPA
Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

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LEGISLATIVE AUDIT

Dear Ms. Davidson:

Thank you for the opportunity to respond to the Preliminary Audit Report of the Public Defender Agency (PDA) dated May 15, 1998.

Recommendation No. 1

PDA Management should develop its budget requests, in part, using caseload data.

We are in general agreement with this recommendation, particularly the compelling conclusion that there "is a need for more Public Defender resources." (p. 29) In fact, PDA in the past has included caseload data and comparisons with past funding as part of the DOA budget overview booklet as well as the ABS narrative. This data included a ten-year analysis comparing numbers of attorneys, numbers of cases, average cost per case, year to year change in numbers of cases, percentage caseload increase and case per attorney calculations. The conclusion presented by PDA for the FY00 funding request was remarkably similar to that in the Preliminary Report at p. 10: the overall caseload of the Public Defender Agency has increased by 47% while, factoring in inflation, there has only been a 6% increase in resources.

We agree the budget requests could be based in part on the number and types of cases in the caseload. The raw data gathered by the Division of Legislative Audit during its three-year study of the Agency should be provided to assist PDA in providing such a substantive analysis. However, even the LB&A time study with its conclusion that the Agency is understaffed is a very conservative conclusion. PDA believes that this study would have been more realistic had it factored in the supervisory, administrative, professional development and annual leave hours available to each employee. These calculations demonstrate that the Agency is not simply understaffed, but dramatically short of the personnel necessary to fulfill its constitutional mission.

PDA agrees with the Report's conclusions that such lack of resources has contributed to a high rate of turnover, reversals of convictions, lack of adequate supervision, failure to comply with administrative procedures as well as delays and inconveniences to the other participants in the Alaska criminal justice system including courts, prosecutors, victims and witnesses. PDA agrees that any substantive support for its budget request to increase the likelihood of full funding is an excellent idea. The legislature, which actually has the authority to provide adequate resources, should be invited to study the caseload/resource information gathered in this audit and previously by PDA and provide the adequate resources necessary to fulfill the Agency's function.

Recommendation No. 2

PDA management should address inefficiencies related to technological equipment and staff configuration.

PDA is in general agreement with this recommendation.

Technological equipment. The Public Defender Agency staff's underpowered computer equipment has provided little assistance in the preparation of legal documents and research in the past. PDA believes this is a direct consequence of a failure to obtain any capital funding since 1993 to enhance its technological capabilities. Any subsequent computer acquisitions have been by way of state surplus (getting the cast-off computers of other state agencies upgrading to current equipment) and trying to make small technological advances each year out of the limited operating budget. This is a distinctly unsatisfactory position for promoting technological efficiency in a 120-person law firm.

It is fortunate that after repeated failures to obtain capital funding, PDA/DOA saw the handwriting on the wall and made a concerted annual effort to direct some portion of its meager operating budget to that end. After small acquisitions each year, the Agency has finally managed to acquire sufficient hardware to use a multi-program operating system. Several offices have been networked and with the assistance of the DOA-IT group, more remote offices are being brought on-line and achieving e:mail capability. Certainly there is much further work to be done, and no readily accessible resources to do it.

A legal secretary in our Palmer office (who has since been promoted to an analyst/programmer I), in addition to all of her support staff duties, created a case management database for the Palmer office that she then adapted for use statewide. Utilizing Microsoft Access, this database appears to be capable of tracking case information and providing greater efficiencies to the Agency. However, because this is being performed within the limitations of the general operating budget and other work demands, installation and training is an exceedingly slow process.

Lack of Support Staff. PDA is in general agreement that the addition of paraprofessional or clerical positions would be of great assistance in promoting attorney efficiencies. However, the

wording of the recommendation makes it appear that there has been mismanagement in the configuration of staff. It should not be forgotten that PDA is "significantly short of attorney positions" (p.31). It has been difficult in the past to justify hiring additional support and clerical staff and investigators when there are not enough attorneys to cover hearings in court. The greater numbers of judicial officers and district attorneys in most PD locations places a premium on hiring staff attorneys to attend hearings in court. Once the shortage in attorney positions is eased, it certainly will be of great benefit to gain additional clerical and paraprofessional positions paid at a lower rate to perform many functions currently being handled by attorneys.

PDA is also in agreement that the shortage of attorney positions has resulted in inadequate supervision of other attorneys. The actual data comparisons of Department of Law Criminal Division, such as the ratio of administrative support staff to total staff, is very informative. Other data gathered during the PDA/DOLawCD comparisons would provide additional insight as to the allocation of resources. PDA agrees that insufficient staffing and administrative support affects the quality of work and fails to meet professional standards.

Recommendation No. 3

PDA management should implement a process to confirm and maintain the integrity of its attorney time estimates.

We are in general agreement with this recommendation that the time estimate data is useful and should be periodically reviewed and updated. However, lack of administrative resources affects the ability of this division to implement any of the three alternative methods recommended by the letter. Performing a complete time study periodically, perhaps every five to seven years, would necessitate the appropriation of sufficient resources to hire an appropriate consultant (such as the Spangenberg Group as mentioned on p.9) to conduct such a caseload study. Obviously such a task is incredibly time consuming and specialized. This legislative audit has been going on since 1996. The state of Tennessee caseload study has taken over two years. This is not a task that can be borne by PDA with its limited resources. Further, such weighted caseload studies have often been of greater assistance to funders when they include the other participants in the criminal justice system.

Recommendation No. 4

The Alaska Court System (ACS) should record its appointments of PD and OPA as public defense counsel in its case management information system and ensure its transmittal to the Integrated Criminal Justice Information System.

We are in general agreement with this recommendation. However, we will leave it to the Alaska Court System to whom it is directed for implementation. PDA would also like to note its concern that ACS and DoLAW record keeping and management information systems currently appear less than reliable. (see discrepancy noted in Report, p. 26).

Recommendation No. 5**The Criminal Justice Information Advisory Board should assist ACS, DoLAW, PDA and OPA in developing caseload measurement data.**

We certainly agree that criminal justice information should be integrated and shared. Currently, each agency has its own separate information system. We understand that there are plans to integrate APSIN with systems being planned and implemented by the Department of Corrections, DOLaw, and ACS. Recently, we have been invited to participate in the planning process for integration and data sharing by all criminal justice agencies. Hopefully, the plans will be funded and a truly integrated Criminal Justice Information System will be implemented at some point in the future.

This recommendation also asks that the Criminal Justice Information Advisory Board develop procedures to ensure that subsystems capture "workload measurement data." It is also recommended that the subsystems have common definitions of what a "case" is and how cases should be counted. We understand that all the subsystems use a common data field (the Arrest Tracking Number – "ATN") to represent a criminal "case." The purpose of the ATN is to allow a criminal case to be tracked from arrest through the end of the legal and correctional system processes. The agencies that maintain the subsystems would be better able to comment on the feasibility of developing the workload measurement data recommended. The case management system PDA developed in the Palmer office will be able to capture date opened, date closed, charges, and type of disposition (along with much other information). Hopefully, PDA will some day have enough funding to implement it.

Recommendation No. 6**The Division of Administrative Services (DAS) in the Department of Administration (DOA) should improve its oversight of state expenditures and property.****Certification of expenditure transactions lacked review.**

The Division of Administrative Services (DAS) agrees with this recommendation. DAS has made the necessary changes to ensure staff is well trained on the state regulations and administrative policies and procedures for expenditure documentation and control.

A comprehensive review of the DAS financial transaction processing procedures to include the certification process was undertaken in the fall of 1996, in part, as a proactive response to this ongoing legislative audit. Staff changes took place, in part, as a result of the DAS review and new functions including internal auditing, were added to the Accountant III duties.

Department-wide training, an integral component towards achieving our objective of increased accountability for DOA, was undertaken in the fall of 1997 and has been an ongoing function. Training sessions include travel reimbursement procedures, accounts payable processing and a

host of other topics. The accounts payable sessions include discussions on the required supporting documentation for payments as well as the responsibilities of Approving Officers, accounting input personnel and Certifying Officers.

PDA computer equipment inventory not entered on State's property control system.

This statement is accurate, however, the majority of these 90 computers listed in the Report have been replaced and the replacements have been entered into the State's property control system.

DOA/DAS procedures have been established to ensure that all computers, monitors and other accountable electronic property that has been purchased are tagged and entered into the property system before the items are placed into service. This was accomplished by setting up a system in which DOA Desk Top Support (DOA-IT) will not install computers for any division in the Department until a check is made with the property officer and DOA-IT is assured the items have been tagged and entered into the State's property system.

Currently, all property data entry forms submitted to the Department Property Officer are entered into the property system upon receipt. The Division of General Services (DGS) is in the process of modifying the State's property control system and a part of that modification process will include an inventory of all property and a correction of all property records prior to loading data from the old to the new system. This inventory and property system upgrade should correct any discrepancies in the existing system.

DAS conducted department-wide property custodian training in the fall of 1998. During 1999 the DOA Property Control Officer upgraded property records for the Department. In the spring of 2000 the DGS State Property Manager has plans to provide training to the Property Officers in each Department and as soon as this is completed the DAS Property Officer will set out an annual schedule of training for all property custodians within the DOA.

Recommendation No. 7

PDA management should ensure compliance with statutes and administrative policies and procedures related to expenditures and property control procedures.

We agree with this recommendation and recognize that since initial problems were noted, PDA has made great strides in changing the procedures that were in practice when this audit began. With the addition of a new administrative officer and the appointment of a new Director, much corrective action has been taken: PDA with the assistance of DAS, is ensuring that persons responsible for approving invoices and certifying expenditure transactions are adequately trained and receive training on an ongoing basis. PDA has ceased the use of signature stamps. PDA has ceased requesting vendors delay invoicing to the following fiscal year and now requests supplemental appropriations for outstanding obligations. PDA now ensures that statutes, AAM manuals and Agency policies and procedures are updated on a timely basis and followed by staff. PDA now ensures that all offices forward appropriate invoices to the fiscal officer for payment in a timely manner with ongoing training and reminders. PDA has now ensured that travel

authorizations are always approved prior to travel and reviewed at the conclusion of travel.

PDA disagrees with the use of management encumbrances to manage expenditures such as expert witness fees and interpreter fees. Given the many variables which influence the progress of a case, including the defendant's decision to exercise constitutional rights and the district attorney's great discretion in settling a case, it is impossible to know which cases will actually go to trial in advance. Expert witness fees and interpreter fees vary greatly depending on whether or not a case proceeds to trial. While the Agency has increased its use of encumbrances in other areas in the recent past, encumbrances of expert and interpreter fees would not promote greater efficiencies in PD management.

PDA acknowledges that a property inventory needs to be accomplished. PDA has recently filled its vacant administrative manager position. DAS will provide the information and guidance necessary to aid that person in the performance of this responsibility.

Recommendation No. 8

The Commissioner of the Department of Public Safety (DPS) should appoint a Public Defense representative to the Drug and Violent Crime Committee (DVCAC).

We agree with this recommendation, however, as it is directed to the Commissioner of the Department of Public Safety, we would leave it to that department for implementation. It should be noted that the Public Defender was invited to attend the multi-year statewide strategy 2000 planning process meeting on September 13th, 1999 in Anchorage, Alaska. While the report of that committee is still in the drafting stage, it appears there is still a strong sense that the Public Defender Agency and indigent defense in general are neither full participants nor likely recipients of funds. This again is in direct contravention of the Byrne program federal regulations, the directive of the U.S. Attorney General, and the majority of the members participating at the planning process meeting. The struggle continues for acknowledgement of the criminal justice system as interdependent and recognition of the PDA as an integral component of that system.

Subsequent Events.

PDA believes it is important to review data regarding FY00. The paragraph reading PDA funding not significantly changed since FY97 (see the Report, p.23) perhaps more accurately should read, "PDA funding in even worse shape since FY97." In FY00 the Public Defender Agency budget was reduced from the FY99 expenditures. Not only was there no incremental funding, there was a decrement in available resources. These reductions have resulted in even more drastic steps by PDA to cut services in line within this inadequate budget.

In response to the 00 funding reductions, PDA has instituted an additional number of budget managing measures for the Agency that are unduplicated in other criminal justice agencies. A Budget Advisory Group meets after hours on a regular basis to discuss money-saving ideas statewide. An investigator in the Kodiak office was laid off after two years of service; PDA is

maintaining vacancies for extended periods of time (even months); eliminating after-hours on-call attorneys and answering services; withholding promotions that have been earned; banning out of state travel; banning in-state travel except for trials; drastically reducing all computerized legal research; billing OPA and private counsel for discovery costs incurred; fighting court appointments made without an adequate financial determination; eliminating the distribution of Court Opinions and Orders to staff attorneys; hiring people for positions at lower ranges, and eliminating transportation for the law student summer volunteer program. While these measures save money, they do NOT promote efficiencies and certainly have led to higher turnover and reduced services.

The overall funding decrease for FY00 completely reaffirms the Preliminary Report's conclusion. It is important to keep all components of the criminal justice system in relative balance. PDA has been left behind in the planning and development of the Alaska criminal justice system. We are proud of the fact that PDA has carried out its mission of providing quality legal representation to Alaska's indigent population despite its severe lack of resources. It is a testament to the dedicated and hard-working staff at PDA that Alaska's criminal justice system has not ground to a halt. The hard work and effort of the last three years that has resulted in this report are greatly appreciated. Any recommendations that the Division of Legislative Audit can make to reverse this demoralizing and dangerous trend will be of great benefit to achieving balanced funding in Alaska's criminal justice system.

Sincerely,



Robert Poe, Jr.
Commissioner

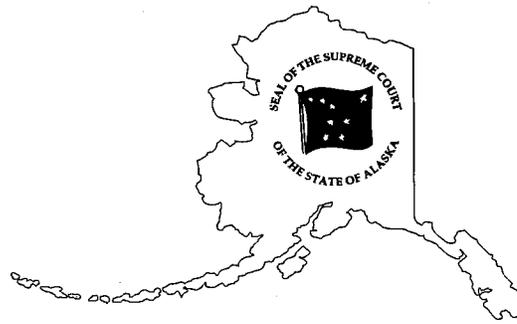
RP/sh

cc: Alison Elgee, Deputy Commissioner
Department of Administration

Barbara Brink, Director
Public Defender Agency

Dan Spencer, Director
Division of Administrative Services

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ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

C. S. Christensen III
Staff Counsel

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8228; FAX (907) 264-8291
cchristensen@courts.state.ak.us

February 4, 2000

RECEIVED
FEB 04 2000
LEGISLATIVE AUDIT

Pat Davidson, CPA
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

Re: Department of Administration
Public Defender Agency
Case Management Time Study
and Performance Review
May 15, 1998

Dear Ms. Davidson:

Thank you for the opportunity to offer a written response to the findings and recommendations contained in the above-referenced audit. This response represents the views of the Administrative Office of the Alaska Court System (ACS). We appreciate the consideration given to the comments that were previously submitted in this matter, noting that a number of our concerns have been addressed.

1. As noted on page 10 of the audit, the Public Defender Agency (PDA) experienced a caseload increase during the ten-year period reviewed (FY88 – FY97), as did ACS and other entities in the justice system. As to the cause of this increase, the audit concludes:

The steady increase in caseload stems, in part, from three distinct factors: new criminal legislation, changes in how and what cases are prosecuted, and the lack of consistent indigency guidelines applied by state judges. (Emphasis added)

The determination that judges were appointing public defenders for persons who were ineligible for services was originally made in the audit report titled *Department of Administration, Alaska Public Defender Agency, Office of Public Advocacy, Eligibility Issues and Other Program Aspects, May 22, 1995, Audit Control Number. 02-4507-95*. ACS agrees that prior to May 15, 1999, judges were appointing PDA without consistent, statewide guidelines for determining eligibility. However, we reject as unsupported by the proffered evidence the prior audit's conclusion that the lack of consistently applied guidelines was resulting in a significant number of appointments of public defenders for persons who were ineligible for services.

That conclusion was drawn by the auditor based upon purely anecdotal evidence, without any serious review of the handful of cases cited as proof of the proposition. The auditor declined ACS's offer to inspect the confidential financial records collected in those cases; failed to provide identifying information that would allow ACS to investigate and respond to the cited cases; and relied upon second-hand, unverified information. This particular conclusion from the prior audit was largely speculation rather than the end result of rigorous analysis.

As noted on page 12, subsequent to both the prior audit and the period of time reviewed in the instant audit, Criminal Rule 39 and Criminal Rule 39.1 set uniform statewide standards and procedures to be followed by judicial officers in determining eligibility for public defender services. These rules took effect on May 15, 1999. Accordingly, it should be kept in mind that any conclusions drawn about eligibility determinations and their effect on PDA caseload prior to May 15, 1999 are not applicable after that date.

2. The audit states on page 7: "Since ACS determines eligibility, neither PDA nor OPA have control over the number of individuals each agency will be appointed to defend." On page 10, the audit reiterates this point: "As stated previously, given this process, PDA and OPA have no control over the volume of cases appointed by the court."

While ACS is charged by statute with determining eligibility for public defense services, it has no control over the number of state cases filed by municipal police departments, the Alaska State Troopers (AST), or the Department of Law (DOLaw). More specifically, it has no control over the number of indigent persons arrested and charged by those entities. "Indigent person" has been defined by the legislature in AS 18.85.170(4); that definition reflects the legal standard promulgated by the U. S. Supreme Court. As noted above, since May 15, 1999, Criminal Rule 39 and Criminal Rule 39.1 have set uniform statewide standards and procedures to be followed by pre-trial services and judicial officers in determining if a defendant meets the

statutory definition of "indigent person."

Ultimately, the caseload of PDA and OPA is determined by the number of "indigent persons" charged by law enforcement entities, not by an arbitrary determination of eligibility made by ACS.

3. It is important to note that court rules have given PDA and OPA some ability to impact eligibility determinations. Administrative Rule 12(f)(1) provides that PDA or OPA must advise the court if it learns of a change in a person's financial status "that would make the person financially ineligible for appointed counsel." Administrative Rule 12(f)(2) provides that PDA or OPA must move to withdraw as appointed counsel if it reasonably believes that the client has made a material misrepresentation of the person's financial status to the court. "A material misrepresentation is a misrepresentation of facts that would make the person financially ineligible for appointed counsel."

4. On pages 25 - 26, the audit discusses differing counts of court cases by ACS, DOLaw, PDA, and OPA. We agree that management of each of these entities' caseloads should include determination of the number of cases handled and certain related data for analysis and budgetary purposes. We agree that there is a discrepancy between the number of court cases reported by those entities. We do not agree, however, with the implication that ACS's case count is inaccurate, or that our method of counting cases is inappropriate.

Each entity in the criminal justice system counts cases because this information has meaning to its process. ACS tracks case totals as an arbitrary yet valid measurement of its workload. It is arbitrary, because a felony case with a four-week jury trial counts the same as a felony case in which the defendant pled guilty, even though the former case involved more work. It is nonetheless valid, because assuming that trial rates and similar factors have stayed the same, it allows one year's workload to be compared to another year's workload.

ACS's Administrative Bulletin No. 7 has very clear and specific guidelines relating to case numbering, ensuring that precise case counts can be made. These guidelines were developed because they have meaning to our process, and thus charges of duplicate counting are misplaced. Each case number assigned represents an individual request for services by a charging entity. It has required a separate expenditure of clerical and judicial time that must be tracked for management purposes.

Take the example cited in the audit:

The courts generally assign case numbers to each charging document. Therefore, if the arresting agency charges a defendant with multiple charges in a single incident and records each charge on a separate charging document, the court may assign multiple case numbers, one for each charging document.

Generally, the prosecuting attorney, when made aware of the multiple cases, will request the court to consolidate the case. However, this will not necessarily adjust the case counts for the courts or PDA, since it is an action done after the cases have been incorporated into the opened case statistics.

Whether or not DOLaw later consolidates those charges into a single case is irrelevant for ACS case management purposes because each charge represented a request for services by AST, services were provided, and they must be accounted for. DOLaw's process may only need to account for this situation as one case, but ACS's process requires it to account for each individual request for service.

Remember, "case" is an arbitrary measurement of workload. The separately filed charges later consolidated into a single case may take substantially more time or less time to resolve than a different case in which multiple charges were filed together. What matters is rationality and internal consistency in defining what constitutes a case. It is not unreasonable for this work measurement unit to be defined differently by entities with distinct roles and management issues. In fact, by requiring that this measurement of work be identical for each entity, certain entities may suffer an inability to track work that is meaningful to their processes.

While ACS case totals may be different than case totals arrived at by DOLaw, PDA, and OPA, ACS totals are calculated consistently from year to year. That makes these case totals accurate for purposes of determining how ACS caseload has changed over time. It is tracking these internal changes in workload that is most relevant for budgetary purposes, as opposed to comparing case counts between criminal justice entities.

5. On page 26, the audit indicates that ACS has assigned inconsistent case numbers to Child in Need of Aid (CINA) cases. It states, "An Alaska Judicial Council study reported there were significant variations among courts, and how courts 'counted' CINA cases."

References made by the study to "significant variations among courts" were an

allusion to how CINA cases were handled, not to how they were counted. Differences in counting methods were limited to the Fairbanks superior court; all other court locations complied with Administrative Bulletin No. 7, which specified the proper method of numbering and thus counting CINA cases. As of January 1, 1999, the Fairbanks superior court began numbering CINA cases in conformance with Administrative Bulletin No. 7. Thus, CINA case counting by ACS is currently uniform throughout the state.

6. Exhibit 7 on page 26 shows data for cases opened in FY 97, as recorded by ACS and DOLaw. While case totals for ACS and DoLAW are different, each of the 23,321 cases logged by ACS represents a separate request for services by DOLaw, AST, or a municipal police department.

As noted above, Administrative Bulletin No. 7 has very clear and specific guidelines relating to case numbering, ensuring that precise case counts can be made. With the exception of the unique CINA numbering system used by Fairbanks prior to January 1, 1999, this bulletin has been followed at all court locations. Thus, while ACS case totals may be different than case totals arrived at by DOLaw, ACS totals are calculated consistently from year to year. That makes these case totals accurate for purposes of determining how ACS caseload has changed over time.

7. The audit makes eight recommendations. ACS takes no position on the recommendations directed at other entities. With regard to the two recommendations that impact ACS, our responses are as follows:

Recommendation No. 4: The Alaska Court System (ACS) should record its appointments of PDA and Office of Public Advocacy (OPA) as public defense counsel in its case management information system and ensure its transmittal to the integrated criminal justice information system.

On pages 19 - 20, the audit states that ACS does not track the number of appointments of public defense attorneys. This is correct. Unfortunately, ACS's existing case management system (RUG) does not have any available fields, and therefore cannot be used for such tracking without modification. RUG is not a true case management system; it is a 20-year old statistics program that has been modified over the years to do some limited case tracking. It is thoroughly inadequate for both ACS's internal management purposes, as well as the legislature's oversight purposes. This point has been made to the legislature on a number of occasions in recent years. Because of the primitive nature of the software, estimates are that it would take a Range 20 programmer approximately five weeks to make the necessary modifications to RUG.

As noted in the audit, PDA currently keeps track of the number of appointments made by ACS. Because statistical appointment information is thus already available to the legislature, we do not believe that limited resources should be used to modify an antiquated case management system. ACS has requested capital funding from the legislature in FY 01 for a modern, comprehensive case management system. If funded, we will ensure that the system includes fields for tracking public defense appointments. It is also our intent that this new system feed back information to DOLaw, PDA, and OPA relating to outcomes of all cases filed with ACS. This will allow better reconciliation of case numbers.

Recommendation No. 5: The Criminal Justice Information Advisory Board should assist ACS, DOLaw, PDA and OPA in developing caseload measurement data.

ACS has no objection to having the Criminal Justice Information Advisory Board serve as a coordinating entity for development of workload data collection procedures for the Criminal Justice Information System (CJIS). It should be kept in mind, however, that CJIS is an Executive Branch system, designed as the state's central repository of criminal history record information. Its focus is tracking specific individuals from the point of their first arrest, through all subsequent contacts with the justice system. Many of these individuals are never charged, and ACS is unaware of their existence. "Case" is not a unique term; a "case" for AST or DOLaw or PDA purposes may not be a "case" for ACS purposes. Moreover, it is very likely that ACS requires workload measurement data for internal management purposes which has no relevance to Executive Branch agencies. Thus, a coordinated effort to develop caseload measurement data for CJIS may produce more limited areas of agreement than is anticipated.

8. The audit refers to four prior recommendations made in the audit report titled *Department of Administration, Alaska Public Defender Agency, Office of Public Advocacy, Eligibility Issues and Other Program Aspects, May 22, 1995, Audit Control Number: 02-4507-95*. It notes that prior recommendations one, two, and three have been implemented. Regarding the remaining prior recommendation, our response is as follows:

Prior Recommendation No. 4: Alaska Statute 18.85.120, Criminal Rule 39, and Appellate Rule 209 should be amended to permit the court to enter judgment against a defendant represented by public counsel regardless of whether the defendant is convicted.

The supreme court does not have the legal authority to implement this

Pat Davidson, CPA
February 4, 2000
Page 7

recommendation until AS 18.85.120 has been amended by the legislature. In 1999, the supreme court submitted draft legislation proposing the necessary amendments. This was the second time that the court has proposed such changes to AS 18.85.120. SB 100 passed the Senate by a vote of 12 – 8 on April 21, 1999. The bill is currently awaiting action in the House Finance Committee.

Thank you for providing the opportunity to comment on this audit. Please feel free to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. S. Christensen III', written in a cursive style.

C. S. Christensen III
Staff Counsel

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STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322
FAX: (907) 465-4362

February 9, 2000

Ms. Danna S. Moser, CPA
In-Charge Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

RECEIVED

FEB 10 2000

LEGISLATIVE AUDIT

Dear Ms. Moser:

Re: Preliminary Audit Report
Public Defender Agency

Thank you for the opportunity to respond again to recommendation No. 8 of your Preliminary Audit Report of the Public Defender Agency. Since we had responded to the draft in late November, I did not realize that you required another response.

Recommendation No. 8

The commissioner of the Department of Public Safety (DPS) should appoint a public defense representative to the Drug and Violent Crime Advisory Committee (DVCAC).

In responding to this recommendation, I have again reviewed the Edward Byrne Memorial State and Local Law Enforcement Assistance Program and the make-up of the Drug and Violent Crime Advisory Committee. I have also reviewed my April 25, 1997, letter to Ms. Barbara Brink, Alaska Public Defender Agency, in which I responded to her request that a representative from the indigent defense community be included on the Program's Advisory Committee.

As I expressed to Ms. Brink in my earlier letter, I believe that the Alaska Public Defender Agency's participation in law enforcement funding discussions would, at minimum, create an appearance of a conflict of interest. In addition, I do not believe it is appropriate for a criminal defense attorney to be privy to the kind of confidential information often reviewed by the Byrne committee.

Ms. Danna S. Moser
February 9, 2000
Page 2

As you know, the Public Defender Agency provides representation for the majority of criminal defendants in Alaska. Thus, many clients of the agency are arrested, prosecuted and convicted as a result of programs funded by the Byrne Formula Grant Program. Clients of the agency might question the loyalty of their attorneys if they knew that the agency had a role in providing funding to hire the officer, or in financing the undercover operation, that caused their arrest. The consequences of this potential conflict cannot be overlooked. For example, it is not inconceivable that a convicted offender could raise this potential conflict in challenging their conviction. Public Defender attorneys might be required to notify their clients of the potential conflict, and give the client an opportunity to request "conflict counsel" from the Office of Public Advocacy, which would not only affect the workload of that office, but also create delays in criminal prosecutions.

In addition, problems are also created if criminal defense attorneys have access to some of the information discussed by the committee. As you now, the Byrne committee reviews proposals from many police agencies for undercover police operations. The committee discussions often involve a detailed review of the methods to be employed, the resources to be devoted, the crimes and geographic areas to be targeted, and the duration of the operation. I am not suggesting that a Public Defender representative on the committee would knowingly divulge this information to clients or potential clients. However, I believe that many law enforcement agencies would be disinclined to be completely candid about the details of their proposals if they knew that the information was being communicated to a criminal defense attorney, and the job of the committee would be made that much harder.

I would like again to note that Ms. Brink did attend and was an active participant at the strategic policy planning meeting of the Advisory Committee. The points I have raised would not preclude the Public Defender Agency from participating in broad-based strategic discussions. However, for the reasons I have given, it is not appropriate that they participate in the review of proposals or in making specific funding decisions.

Again, I appreciate an opportunity to respond to your recommendation.

Sincerely,


for Ronald L. Otte
Commissioner

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
Internet e-mail address:
legaudit@legis.state.ak.us

February 17, 2000

Members of the Legislative Budget and Audit Committee

We have reviewed the responses from the Department of Administration, Alaska Court System, and Department of Public Safety (DPS) to our preliminary report on the Public Defender Agency. Nothing contained in these responses gives us cause to reconsider our conclusions.

However, the DPS response warrants some additional comments. DPS states that the placement of an indigent defense representative on the Drug and Violent Crime Advisory Committee would, "at a minimum, create an appearance of a conflict of interest." However, DPS's position on the committee's makeup, and the related lack of funding of indigent defense issues, runs counter to the purpose of the program. Federal regulations state that these grant funds are specifically for the courts, prosecution, **and defense**. Without proper representation on the committee, defense issues will likely continue to be ignored. Inclusion of a "defense" member would be no more of a "conflict of interest" than it is for a "prosecution" member, both represent valid components of Alaska's judicial system and input from both is needed to best allocate available funding.

Further, as we reported, 17 states include an indigent defense representative on their advisory board and/or indigent defense in their state plans. In addition, the U.S. Attorney General, Janet Reno, has publicly stated:

*We have also urged State Byrne Program Administrators to **include defenders on their policy boards** and consider the needs of indigent defense in their planning and funding decisions.*¹ [Emphasis added.]

¹Janet Reno, "Remarks of the Attorney General of the United States, Six Building Blocks for Indigent Defense (National Symposium on Indigent Defense, Mayflower Hotel, Washington D.C., February 25, 1999)," *The Champion*, National Association of Criminal Defense Lawyers, Washington, D.C., April 1999, p. 28.

Therefore, we reaffirm our recommendation that the commissioner of DPS should appoint a public defense representative to the Drug and Violent Crime Advisory Committee.


Pat Davidson, CPA
Legislative Auditor

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
Internet e-mail address:
legaudit@legis.state.ak.us

SUMMARY OF: A Special Report on the Department of Administration, Public Defender Agency, Case Management Time Study and Performance Review, May 15, 1998.

PURPOSE OF THE REPORT

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we conducted an audit of the Department of Administration, Public Defender Agency (PDA).

The objectives of this audit were twofold:

- To determine if PDA funding and related expenditures allow for efficient and effective operations in accordance with laws, regulations, and administrative policies and procedures.
- To determine if PDA management and operations are efficient and effective in providing for adequate representation of clients in accordance with applicable laws, regulations, and court rules.

REPORT CONCLUSIONS

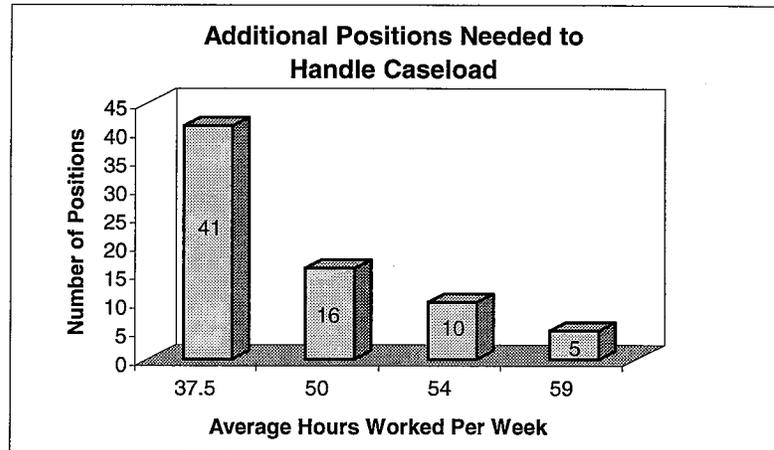
Our time study indicates that the agency is not sufficiently staffed to keep current with its caseload. However, this staff shortage may be covered, in part, with the addition of lower paid positions, such as investigators, paralegals, legal secretaries, and other clerical positions. Further, bringing PDA office technologically up-to-date will add efficiencies to its provision of public defense services.

Based on the results of our time study and its application to the PDA caseload for the period November 1, 1996 through April 30, 1998, PDA is short attorney positions.¹ In order to determine how PDA could be short positions and still manage its caseload, we looked to the amount of uncompensated overtime that PDA attorneys work. In our surveys² to the PDA and ex-PDA attorneys, we asked for the number of hours, on average, they worked each

¹This shortage is only for the adult criminal and juvenile delinquency cases handled by PDA. Child-in-Need of Aid (CINA) cases were excluded from our calculations. See the Caseload Assessment Issues section of this report.

²In April and May 1997, we sent questionnaires to current public defender attorneys, former public defenders (Ex-PDAs), DOLaw attorneys, and judges and magistrates of the Alaska Court System (ACS).

and ex-PDA attorneys, we asked for the number of hours, on average, they worked each week. The results of the survey show that PDA attorneys work, on average, about 21 hours of uncompensated overtime per week. We applied the time study data and the amount of uncompensated overtime hours to be worked by attorneys to the caseload. The numbers of positions needed are shown at the right depending on the number of hours worked per week.



Also, the necessary data to allow for future evaluations of the courts', prosecutors' and public defenders' workloads needs to be captured.

FINDINGS AND RECOMMENDATIONS

1. PDA management should develop its budget requests, in part, using caseload data.
2. PDA management should address inefficiencies related to technological equipment and staff configuration.
3. PDA management should implement a process to confirm and maintain the integrity of its attorney time estimates.
4. The Alaska Court System (ACS) should record its appointments of PDA and Office of Public Advocacy (OPA) as public defense counsel in its case management information system and ensure its transmittal to the integrated criminal justice information system.
5. The Criminal Justice Information Advisory Board should assist ACS, Department of Law, PDA and OPA in developing caseload measurement data.
6. The Division of Administrative Services in the Department of Administration should improve its oversight of state expenditures and property.
7. PDA management should ensure compliance with statutes and administrative policies and procedures related to expenditures and property control procedures.
8. The commissioner of the Department of Public Safety should appoint a public defense representative to the Drug and Violent Crime Advisory Committee.