

# A Guide to Alaska's Criminal Justice System

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Marcia Vandercook  
Project Attorney

## **Alaska Judicial Council Staff**

William T. Cotton, Executive Director  
Teresa W. Carns, Senior Staff Associate  
Susanne D. Di Pietro, Staff Attorney  
Josefa M. Zywna, Fiscal Officer  
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Mary Matthews  
Vicki A. Otte

### ***Attorney Members***

Geoffrey Currall  
Paul J. Ewers  
Robert H. Wagstaff

alaska judicial council  
1029 West Third Avenue, Suite 201  
Anchorage, AK 99501-1969  
(907) 279-2526  
FAX (907) 276-5046  
e-mail: [bill@ajc.state.ak.us](mailto:bill@ajc.state.ak.us)  
[www.ajc.state.ak.us](http://www.ajc.state.ak.us)

## Note to the Reader

In 1992, the Alaska Sentencing Commission concluded that the criminal justice system is extremely difficult for most people to understand. The Alaska Legislature requested that the Alaska Judicial Council develop a guidebook to help members of the public understand this important area of government.

This guide was written in July 1995 and updated in April 1998. The Judicial Council would like to thank the many people who contributed to it, including judges, prosecutors, defense attorneys, probation officers, juvenile corrections officers, victims' advocates, and others. Their knowledge, suggestions, and support are greatly appreciated.

Additional copies of this guide are available from the Judicial Council. It can also be downloaded from the Internet at <http://www.ajc.state.ak.us>. If you have any comments on the guide, please contact the Alaska Judicial Council at (907) 279-2526 or [bill@ajc.state.ak.us](mailto:bill@ajc.state.ak.us).

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## Purpose of This Guide

This guide describes Alaska's criminal justice system from the time an offender commits a crime to the offender's release from state supervision. It describes the movement of cases through the system and the roles played by various agencies. It also defines technical terms so that people who need to understand the system can follow the events in a particular case.

The guide has eight sections:

- 1) **Basic background on the law:** criminal law and procedure; constitutions, statutes, and regulations; the differences between federal, state, and local laws; the structure of the court system . . . . . page 2
- 2) **What are Alaska's laws? Alaska criminal law:** crime classification; sentencing . . . . . page 6
- 3) **What happens in a criminal case? stages in the criminal justice process:** how to follow a case through the criminal system; flow chart of the system; the roles of police, prosecutors, victims, defendants, defense attorneys, juries, judges, magistrates, probation and parole officers; jails and prisons . . . . . page 10
- 4) **How are juvenile cases handled?** the juvenile justice process . . . . . page 32
- 5) **Where do I go for more information?** phone numbers for state agencies, community groups, and complaints; library reference materials . . . . . page 39
- 6) **Criminal justice terms:** words and phrases commonly used . . . . . page 45
- 7) **Picture summary:** drawings of a typical criminal case's progress through the system . . . . . page 57
- 8) **Index:** where to find specific topics . . . . . page 60

This guide does not cover everything about criminal justice. All cases are different, and laws often change. This booklet is not a substitute for hiring a lawyer or working with a victim advocate. Most cases need special attention by an expert. Look in the section on resources to find out how to contact lawyers, victim advocates, and other agencies.

## Basic Background on the Law

### Criminal Law and Procedure

When a crime occurs, the criminal justice system tries to answer many questions.

- ▶ What happened?
- ▶ Who appears to have committed the crime?
- ▶ What law or laws did the person break in committing the crime?
- ▶ Can the government prove that this defendant committed the crime?
- ▶ If so, how should the government punish the defendant?
- ▶ What can be done to change the defendant's future behavior?
- ▶ What can be done to help the victim and protect the community?

Many people help answer these questions: police, prosecutors, defense attorneys, juries, judges, probation and parole officers, and correctional institution officers. All this makes the system seem complicated and hard to understand.

Laws and regulations define what acts are **crimes**, and how the government can punish them. Citizens report crimes and act as witnesses, but only the government can prosecute a crime or dismiss a case. Some acts, like assault, may break both civil and criminal laws. An assault victim can sue the offender for committing a **tort** (a personal injury) and ask a court to order the offender to pay money damages. The government can prosecute the same offender for the same assault and ask for imprisonment, fines, restitution to the victim, further victim protection and rehabilitation programs.

**Criminal procedure** refers to the rules that police, attorneys, and courts must follow before a person can be convicted and sentenced for a crime. Criminal procedure includes court rules, laws, constitutional rights, and case law. The rules cover the length of time until trial, the defendant's right to an attorney, the evidence used at trial and sentencing, the victim's rights, and much more.

### Sources of Criminal Law

The American legal system grew from ancient biblical laws, English common law, and ideals of the American Revolution. People put their religious values, social ideas, and theories about government into the law. The American legal system tries to balance the competition between the interests of individuals and those of groups. Four kinds of laws have resulted:

- ▶ **Constitutions** set up the basic structure of government in the United States and in each of the fifty states. They describe the three branches of the government (legislative, executive, and judicial), the powers of the government, and the rights of citizens. In criminal matters, the Alaska constitution addresses protection of the public, reformation of the offender, the rights of defendants, and the rights of crime victims.
- ▶ **Statutes** are laws that Congress or the state legislatures write. Cities, boroughs, and tribal governments also can adopt their own laws and **ordinances** to govern their citizens. Law-making bodies like legislatures define what the people of that state or community consider a crime. Legislatures also set the upper and lower limits on jail time and fines.

- ▶ **Case law** (also known as common law) is written by the courts. Case law is based on earlier decisions by courts in similar situations, settled legal principles, existing laws, and constitutions. Judges use these principles and laws to decide what to do in each new case. Courts interpret statutes and regulations, but do not create or define crimes. The courts also make rules about how to handle cases.
- ▶ **Regulations** are created by the executive branch of government. They set out detailed rules to carry out the law. Some regulations (such as fish and game, and health and safety regulations) create and define crimes and penalties.

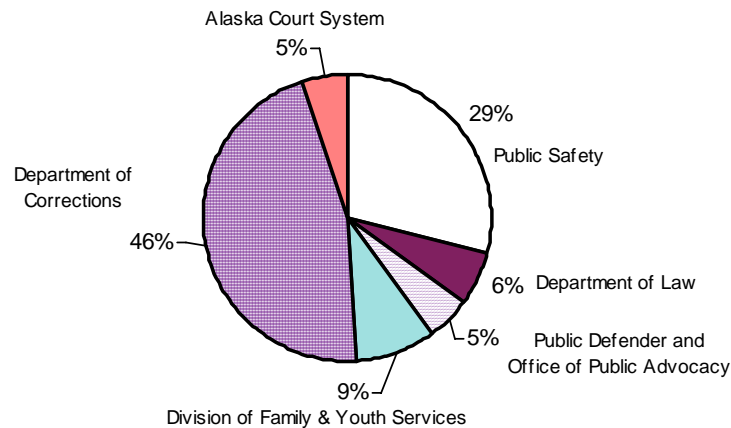
The resources section of this guide can refer you to the sections of the constitution and statutes that are used most in Alaska criminal law.

### **Federal, State and Local Governments**

America's governments (federal, state, and local) handle different problems. Each layer of government controls (has **jurisdiction** over) certain issues.

- ▶ The **federal government** includes the President, Congress (the United States Senate and House of Representatives), and the United States Supreme Court. Agencies under the President enforce laws that Congress has made against drugs and weapons trafficking, organized crime, bank robberies, crimes occurring on military bases and in national parks, immigration, and fishing violations on the high seas. This guide does not cover federal criminal law and procedure.
- ▶ **State government** in Alaska includes the Governor, the Legislature (Alaska Senate and House of Representatives), and the Alaska Supreme Court. The state legislature makes laws which define crimes and set sentences in Alaska. The legislature also decides how much money to spend each year for justice, reflecting state priorities for punishment, enforcement, prevention, and treatment. The state enforces laws against murder, sex offenses, assault and domestic violence, robbery, burglary, theft, driving while intoxicated, drug and liquor smuggling, and fish and game offenses. The state also handles most juvenile offenses. This guide covers cases under state and local laws.

## The Alaska Criminal Justice Budget



This chart shows how the state divided operating funds among state criminal justice agencies in fiscal year (FY) 1997. Approximately \$243,048,100 in state funds were used in FY97 for direct criminal justice services, about 6.7% of the operating budget. Of these funds, 29% went to the Department of Public Safety for law enforcement, 6% to the Department of Law for adult prosecutions and juvenile adjudications, 5% to the Public Defender and Office of Public Advocacy for adult and juvenile defense, 9% to the Division of Family & Youth Services for juvenile intake, probation & detention, 46% to the Department of Corrections for adult probation, imprisonment, and parole, and 5% to the Alaska Court System for court hearings and trials. The state also allocated \$10,231,000 for criminal justice capital improvements, mostly for expansion of youth detention facilities and improvement of information systems. In addition, the monetary cost of crime includes community-based alcohol and drug treatment programs, private defense costs, tribal and youth courts, municipal prosecution and law enforcement, and most losses borne by crime victims.

The figures used in this chart are approximate. The Alaska Court System and the Office of Public Advocacy (OPA) do not separate their budgets by civil and criminal cases. The figures for this chart were arrived at by using the court's caseload figures (24% of its filings in FY97 were criminal cases) and so attributing 24% of its budget to criminal matters. A similar process was followed for OPA criminal defense and juvenile delinquency cases. Because different types of cases vary greatly in time and processing costs, the underlying budget figures for these two agencies are only approximate.

- ▶ **Local governments** exist many places in Alaska. Most towns and boroughs have mayors, assembly or council members, and police. Some cities and boroughs have their own laws or ordinances that cover misdemeanors committed within city or borough limits. Some of these ordinances overlap with state law, and some cover issues of local concern like domestic violence, prostitution, traffic, sale of alcohol, and gambling. Although local police and prosecutors enforce these ordinances, the cases are heard in state courts. Convicted offenders may serve time in either state or local jails. Most of the procedures described in this guide apply to these cases.
- ▶ **Tribal governments** exist across Alaska. Most have governing councils, some have executive agencies, and some have tribal courts, although tribal governments do not always have three separate branches of government. Many villages in rural Alaska have tribal courts or tribal councils that can resolve disputes for the residents of the village. Some of these organizations hear cases about public drunkenness, disorderly conduct, and minor juvenile offenses. The tribal court or council often imposes fines, community work service, alcohol treatment, or other conditions. Community residents staff the courts, and all parties participate voluntarily. Tribal courts and

councils work with village public safety officers, village police, state troopers, and the state's justice system agencies. This guide does not cover cases heard in tribal courts because they have different procedures.

## The Alaska Court System

The judicial branch of Alaska's government is the Alaska Court System. The state court system has four levels of courts. Unlike most states, Alaska has no county or municipal courts.

District court judges hear misdemeanor cases, felony cases before indictment, and some felony trials. Seventeen district court judges sit in Anchorage, Fairbanks, Homer, Juneau, Ketchikan, Palmer, and Valdez. The district court includes **magistrates**, who have fewer powers than a district court judge. Magistrates hear cases in many small communities.

Superior court judges hear all felony cases and some misdemeanors. There are thirty-two superior court judges, located in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Juneau, Kenai, Ketchikan, Kodiak, Kotzebue, Nome, Palmer, Sitka, and Wrangell-Petersburg. Judges may travel to smaller towns to hear cases and sentence offenders. The superior courts use **masters** to hold hearings and make recommendations to the judge in children's cases.

The Alaska Court of Appeals is an appellate court, which means that it does not hear evidence or take testimony. These three judges review the decisions of lower courts and issue written decisions. They decide whether the government met all procedural requirements in prosecuting the case and whether the trial judge applied the constitution and statutes properly. Their decisions correct errors in individual cases and guide judges in future cases. Many appellate court decisions are printed in the *Pacific Reporter*, a national case reporting system.

The highest state court is the Alaska Supreme Court. The supreme court's five justices hear appeals from civil and criminal cases. They can choose to review criminal case decisions made by the Court of Appeals. The justices also make **court rules** about how the courts must handle cases.

The Governor appoints judges from a list of qualified attorneys recommended by the Alaska Judicial Council. Judges do not run for office but citizens vote on their retention in general elections. You can review detailed information about judges on the ballot for retention at [www.ajc.state.ak.us](http://www.ajc.state.ak.us), or by calling the Judicial Council for a booklet containing the information. Masters and magistrates are hired by the court system; citizens do not vote on their retention.

# Alaska Criminal Law

## Crime Classification

The legislature defines crimes and sets out permissible punishments. Crimes and punishments are found throughout the Alaska Statutes: driving offenses are in Title 28, fish and game offenses are in Title 16, alcohol offenses in Title 4, and most other offenses in Title 11. Sentencing statutes for adults are located primarily in Title 12, with probation and parole in Title 33. Juveniles (those under 18) must obey the same laws as everyone else, along with restrictions on underage drinking, smoking, and curfew laws. Juvenile procedure and sentencing are different from adult, and those laws are found in Title 47.

The criminal code (Titles 11 & 12) divides crimes into several types: felonies, misdemeanors, and violations. **Felonies** are serious offenses, for which the sentence can include imprisonment for a year or more. **Misdemeanors** are less serious crimes that still can lead to imprisonment for up to one year. **Violations** are minor infractions that cannot be punished by imprisonment, and generally are punished by fines. Most traffic tickets and health code violations fall into this category.

Alaska's laws define six types of felonies and two types of misdemeanors:

- ▶ **murder**, which includes only first-degree murder;
- ▶ **unclassified felonies**, which include second-degree murder, attempted murder, selling heroin to a minor, and kidnaping;
- ▶ **unclassified felony sexual offenses**, which include first-degree sexual assault (rape) and first-degree sexual abuse of a minor (sexual penetration with anyone under 13, or a son or daughter under 18);
- ▶ **class A felonies**, which include manslaughter, armed robbery, arson with risk of physical injury, selling heroin to an adult, and first-degree assault;
- ▶ **class B felonies**, which include unarmed robbery, theft over \$25,000, selling cocaine or marijuana to a minor, burglary in a dwelling, bribery, perjury, second-degree assault, and second-degree sexual abuse of a minor;
- ▶ **class C felonies**, which include negligent homicide, burglary not in a dwelling, third-degree assault, theft of \$500-\$25,000, check forgery, possession of heroin or cocaine, selling marijuana, vehicle theft, repeat drunk driving, and bootlegging.
- ▶ **class A misdemeanors**, which include fourth-degree assault, theft of \$50-\$500, drunk driving, refusing a breath test, resisting arrest, wanton waste of a moose, and trespass in a dwelling;
- ▶ **class B misdemeanors**, which include carrying a concealed weapon, gambling, and possession of marijuana.

## Sentencing

Judges must impose sentences within the ranges set by the Alaska Legislature. The criminal code sets **mandatory minimum** sentences for the most serious offenses, murder and kidnaping. The code also has mandatory minimum sentences for drunk driving, refusing a breath test, driving with a suspended license, some domestic violence cases, and a few other offenses. The judge must sentence the Offender to at least the minimum period of imprisonment but can sentence to more.



The code sets **presumptive** sentences for some felony offenses. A presumptive sentence is a prison sentence that applies to typical or average offenses, with lower and upper limits for less and more serious offenses. The idea behind presumptive sentencing is that offenders with similar records, committing similar crimes, should get similar prison sentences. For example, the presumptive sentence for armed robbery committed by a first offender is seven years. (A **first offender** has no other adult felony convictions, but may have a history of juvenile crimes or adult misdemeanors.) The average robber will receive a seven-year sentence. A robber who committed an especially dangerous robbery could get a sentence longer than seven years. A robber who played only a minor role in the crime might get a sentence shorter than seven years.

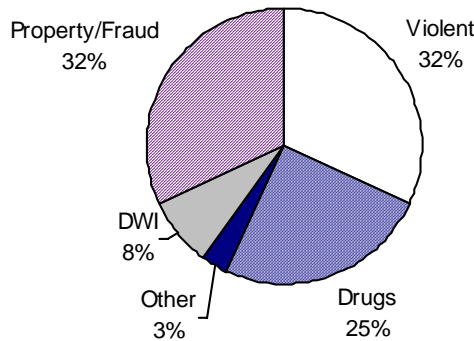
Presumptive sentences do not cover all offenses. In some cases, the Alaska Court of Appeals has set **benchmark** sentences, which are used to keep sentences more consistent and fair. These benchmarks apply to first offenders convicted of Class B felonies, aggravated cases of sexual assault and sexual abuse of a minor, and second-degree murder, among others. There are no presumptive or benchmark sentences for first offenders committing Class C felonies or misdemeanors. For these offenders, trial court judges have more discretion to base the length and type of sentence on individual circumstances.

Each crime gets a separate sentence. An offender may have assaulted the same person several times, or several people one time. Depending on the circumstances, the judge may make the sentences **consecutive** (following one another), **concurrent** (running at the same time), or **partially concurrent** (partially overlapping).

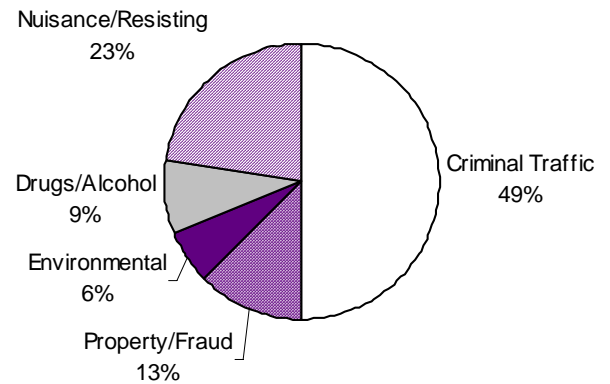
For all sentences, Alaska law tells the sentencing judge to balance several factors:

- ▶ how serious the offense is compared to similar offenses;
- ▶ the offender's prior criminal history and the likelihood of rehabilitation;
- ▶ whether confining the offender is necessary to keep the victim or public from further harm;
- ▶ the general nature of the offense, including harm to the victim or threat to the public order;
- ▶ whether the sentence will deter (discourage) this offender or others from committing crimes;
- ▶ the need to express a sense of community disapproval.

**Adult Felony Cases 1996**



**Adult Misdemeanor Cases 1996**



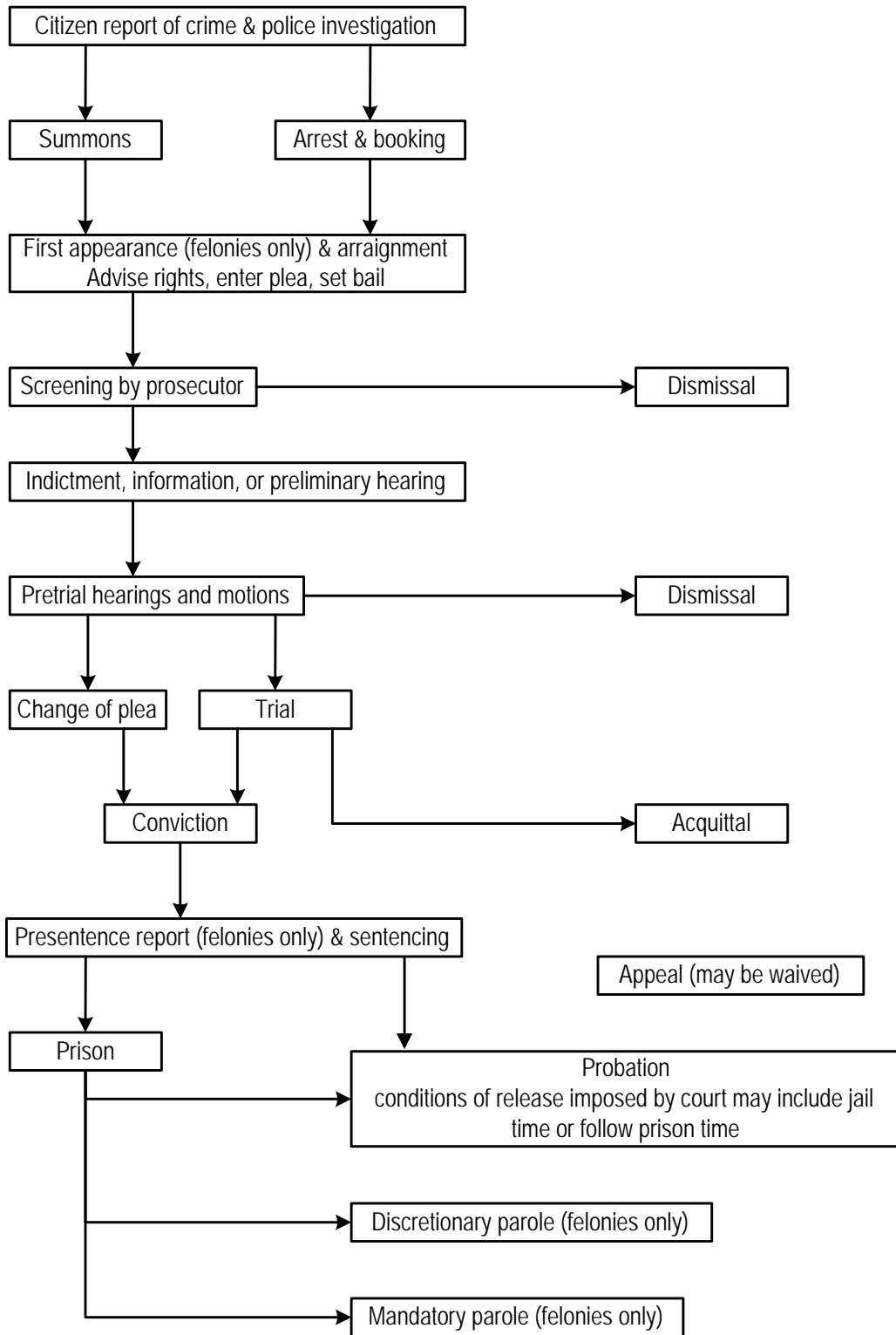
In fiscal year 1996, 3,228 felony cases were filed in the Alaska superior courts, a 16% increase over felony case filings from the previous year. Most felonies were violent crimes (such as murder, kidnaping, assault, robbery, and sex offenses), property crimes (such as burglary and theft), or drug crimes (possession and sale). Driving while intoxicated (DWI) can be prosecuted as a felony for certain repeat offenders. Adult criminal prosecutions accounted for 15% of the superior court caseload.

The majority of adult crimes are misdemeanors filed in district courts. In FY 1996, 30,312 misdemeanor cases were filed, about the same number as the previous year. Most misdemeanors are traffic-related crimes (such as DWI and driving with license suspended), nuisance (such as disorderly conduct, trespass, criminal mischief, and resisting an officer), and violent crimes (usually less serious assaults). Environmental crimes include littering, fish and game, and animal control offenses. Drug and alcohol crimes include sale and possession of drugs and bootlegging.

The district courts also handle a large number of non-criminal traffic violations not shown on these charts, such as speeding, registration, and equipment violations. In FY 1996, there were 70,678 non-criminal traffic dispositions.

Information for these charts was taken from the Alaska Court System 1996 Annual Report, pp. 45, 51, 53, S-21, S-43.

## Stages of a Typical Adult Criminal Case



## Stages in the Adult Criminal Justice Process

This section describes the way adult felonies and misdemeanors usually move through the criminal justice system. Cases differ greatly, especially between urban and rural locations. Crime victims, witnesses, and defendants often are surprised and frustrated by how long a criminal case can take. Misdemeanors nearly always move faster than felonies, and cases with guilty pleas move much faster than cases that go to trial.

The defendant has a right to a **speedy trial**, which means a trial within 120 days of arrest or arraignment on the charges. The defense and prosecution can agree to **waive** (skip) certain steps to speed up the proceedings. Or, defendants can agree to waive the speedy trial rule, to allow more time for writing motions, developing evidence, or negotiating a plea. Generally, there will be a number of delays and continuances in felony cases.

### How Does a Case Start?

**Investigation.** Many criminal cases begin with police investigation of a reported crime. A crime victim or witness may report a crime to the police, or to someone who tells the police. The police may interview the victim or witness and look for evidence at the scene of the crime. If the police are able to identify a suspect, they can check the suspect's criminal record and look for other evidence that might connect the suspect to the crime. If there is no particular suspect, the police can check reports of similar crimes to see if a suspect or pattern can be identified. For complicated crimes, a thorough investigation often can take quite a while.

**Arrest.** An arrest happens when a police officer takes a person into custody on suspicion of a crime and does not let the person leave. An officer can arrest a person without a warrant if the officer has **probable cause** (reasonable grounds) to believe that the person committed a felony. If the crime was a misdemeanor, the officer can arrest the person without a warrant only if the officer sees the crime committed, or in some domestic violence or drunk driving cases. Police can arrest an offender using a warrant from the court that tells police to find the accused person and bring him or her before the court.

**The police:** Police protect lives and property. They respond to reports of crime, patrol areas to prevent or observe crime, investigate potential criminal behavior, arrest suspected offenders, collect evidence for the prosecutor, and testify in court. They try to prevent crime by helping neighborhoods and schools to build stronger communities. Besides dealing with crime, police give first aid, direct traffic, work on suicide prevention, and provide disaster relief.

Alaska has many law enforcement agencies. The **state troopers** work all across the state, enforcing primarily state laws. **Village public safety officers** enforce state and local laws in villages. **City and borough police** enforce state and local laws and ordinances. Federal marshals, state fish and game officers, and airport and university police also enforce laws.

Some cases start without arrest. A police officer can give a **citation** (like a traffic ticket) that requires the person to go to court on a certain day. Or, the court can send the accused a **summons**, telling the person to come to court on a specific date.

**Booking.** After arrest, police can take the defendant to a police station or jail for booking. The police or jail officials will fingerprint and photograph the defendant, and write down the charges against the person. The defendant has the right to call an attorney. For less serious offenses, the defendant often can pay bail right away to get out of jail. If the defendant stays in jail, corrections officers will search him or her for weapons or drugs, can take personal possessions for safekeeping, and may attend to medical problems. Police may ask to talk to the defendant, for drug and alcohol tests, or for permission to search the defendant's house or car. In Anchorage, the defendant may go before a magistrate immediately for a bail hearing.

**Complaint or information.** The police submit written reports about the crime to the prosecutor, who usually prepares the charges against the defendant. A criminal complaint or information says that the defendant committed a particular crime or crimes. Each **count** describes violations of separate laws, or crimes against separate victims. Complaints and informations are used for misdemeanor offenses and some felonies. Some felony cases are prosecuted with **indictment** by a grand jury.

## What Happens First in Court?

**Arraignment.** At the defendant's first hearing the court tells the defendant about the reasons for arrest and about his or her legal rights. The defendant has a right to a lawyer at arraignment.

District court judges or magistrates hear most misdemeanor arraignments. The misdemeanor defendant must plead either guilty, not guilty, or nolo contendere. A plea of **nolo contendere** (no contest) is nearly equal to a guilty plea. It means the defendant does not contest the charges but does not admit them either. The defendant gets the same punishment, but does not admit civil liability. A nolo contendere plea can give some protection against civil lawsuits. If the defendant refuses to make any plea, the court enters a plea of not guilty.

**The magistrate:** Magistrates have less authority than a judge. Magistrates can try and sentence misdemeanors with the consent of the defendant, can try and sentence municipal ordinance violations, can do felony preliminary hearings and bail hearings, and can issue search warrants and arrest warrants. Unlike judges, magistrates need not be lawyers.

**Are you the victim of a crime?** If you are the victim of a crime, your cooperation with the police and prosecutor is an important part of the case. The justice system works much better when victims of crime cooperate with police and prosecutors. If the defendant has a trial, the victim usually testifies as one witness at the trial. Even if you would rather see the charges dropped, once a crime is reported the prosecutor may continue to prosecute a case and call you to testify.

Victims of crimes in Alaska have the right to:

- ▶ know the date of trial and sentencing;
- ▶ be present at most court proceedings;
- ▶ have their phone numbers and addresses kept confidential;
- ▶ be protected from further harm and threats by the defendant;
- ▶ make statements at sentencing and parole hearings;
- ▶ receive restitution from the offender; and
- ▶ know when the offender is released from jail.

You may make a written or oral victim impact statement for the presentence report in a felony case. This statement describes the physical and emotional harm you have suffered, your economic losses, and your recommendation for an appropriate sentence. The victim impact statement lets the offender and the judge know about the harm you have suffered and any further protection you may need. If you need restitution (repayment) for medical bills, property loss, or lost wages, you can ask that the offender pay you back from prison wages, permanent fund dividends, wages after release, or other sources of income. These rights also belong to the parents of child victims and to the survivors of victims who have died.

There are many sources of help for crime victims. Alaska has victims' groups concerned with domestic violence and sexual assault, violent crimes, and drunk driving. These groups can help you understand the justice system, get medical aid, come to terms with your loss, escape from abusive situations, or protect yourself from further harm. Victim-witness coordinators in most prosecutors' offices help victims prepare testimony and provide information and referrals. Probation officers can give victims information about court and parole proceedings, restitution, and victims' rights. In Anchorage, there is a program of victim-offender mediation for some crimes committed by juvenile offenders. There is also a program that can answer questions about immigration problems arising from domestic violence and divorce. The Resources section of this booklet has a list of these groups and offices.

The Violent Crimes Compensation Board can give some victims financial compensation or emergency assistance. Most prosecutor's offices, the police or state troopers, and many victim groups have application forms for this money. You also can sue the defendant for damages such as lost wages, medical bills, and pain and suffering, if restitution in the criminal case does not cover all of these costs. In some cases, you may be able to sue the defendant for violation of your civil rights. If you want to do this, you should consult a private lawyer.

The Alaska Judicial Council publishes "A Handbook for Victims of Crime in Alaska", a book that provides additional information and resources useful to crime victims. You may obtain this handbook from prosecutors, probation officers, many victim organizations, and the Alaska Judicial Council. It is also available on the Internet at <http://www.ajc.state.ak.us>. The district attorney's office and most state courthouses also have useful pamphlets.

If the misdemeanor defendant pleads guilty or no contest, the judge tells the defendant about the penalties for the offense and the rights the defendant gives up by pleading. The judge makes sure that the defendant really committed the crime, and that no one threatened or tricked the defendant into pleading guilty. In misdemeanor cases, the judge usually sentences the defendant immediately after the plea.

In felony cases, the defendant comes before the court within twenty-four hours after arrest for a **first appearance**. A district court judge or magistrate reads the charges and advises the defendant of his or her rights. The defendant does not enter a plea until a formal arraignment in the superior court. At the superior court arraignment, if the defendant pleads guilty or no contest, the court tells the defendant about the possible penalties, makes sure that facts support the plea, and decides whether the defendant entered a voluntary plea. Then, the judge sets a date for sentencing. If the defendant pleads not guilty, the judge sets a date for trial.

**Bail hearing.** Alaska law gives defendants the right to bail before conviction if the victim can be protected by imposing bail and requiring special conditions of release. The bail hearing usually happens after the arraignment or first appearance, unless the defendant paid bail at the police station. The judge decides whether to release the defendant before trial. Sometimes, judges release defendants on their **own recognizance** (OR release) without posting bail, or with an unsecured appearance bond. In many cases, the prosecution asks that the defendant post a **secured bond**, which means leaving money or other property with the court. If the defendant can pay the money for the secured bond, or get a bail bondsman to put up the money (usually for a 10% fee), the defendant can stay out of jail. The judge may require a secured bond:

- ▶ if the case is a serious felony;
- ▶ if the defendant might not appear in court; or
- ▶ if the defendant might hurt the victim, other people or the community.

The judge also sets conditions of release, such as restrictions on drinking, driving, or approaching the victim. The judge must consider the safety of the victim and the community in any bail release decision. The judge can appoint a **third-party custodian**, usually an employer or relative, who must see that the defendant goes to court and obeys the conditions of release. If the defendant does not comply with the conditions, the judge can raise the bail, change the conditions, or put the defendant in custody.

**Are you accused of a crime?** If the police or prosecutors are investigating you for a crime, you should call a lawyer immediately. Criminal convictions can have far-reaching consequences for you and for your family and friends. Criminal law and procedure are complicated. For some less serious misdemeanors, you may be able to represent yourself well enough, but you should still talk to a lawyer to make sure you understand all the consequences. Even if you decide to plead guilty, a lawyer can help you give the judge and prosecutor favorable information that might change your sentence. The sooner you call an attorney, the more the attorney can help you.

The judge will ask about your financial situation. Defendants who have the money to pay a lawyer hire a private attorney. If the judge decides you cannot afford a lawyer, the judge will send you to a **public defender**, a state-funded lawyer who represents clients who do not have much money. The Public Defender Agency has offices in most cities where there is a superior court. If the public defender cannot represent you, the court will appoint the **Office of the Public Advocate** or a private attorney. Local governments also hire attorneys to defend persons accused of violating local laws. You will be required to pay some costs, depending on the charges and the outcome of your case. Juvenile offenders are entitled to counsel if a petition for adjudication of delinquency is filed.

People charged with crimes in Alaska have the right to:

- ▶ not talk to police;
- ▶ not be searched without a warrant, except for weapons or evidence that could disappear;
- ▶ not let their homes be searched without a warrant;
- ▶ choose whether they will testify at trial;
- ▶ require witnesses to testify at trial; and
- ▶ have a jury trial for many offenses.

Anyone charged with a crime in Alaska is presumed innocent until the state proves that he or she is guilty, or until the person pleads guilty. Your lawyer helps you safeguard these rights. These rights apply to both adults and juveniles.

If you are afraid that you may be deported as a result of an arrest or conviction for a state crime, you can contact Catholic Social Services Immigration and Refugee Project, listed in the back of this book. This project can provide information, advice, and help finding an experienced immigration attorney. If you are arrested by the Immigration & Naturalization Service, this guide is not applicable. You should contact the Immigration & Refugee Project or an immigration attorney. You have a right to contact an attorney and a right not to answer questions when contacted by an INS agent.

**The defense attorney:** Defense attorneys represent people accused of crimes. Lawyers protect the legal rights of defendants and ensure that the court hears their side of the story. Defense counsel represent defendants at bail hearings, in plea bargaining with the prosecutor, through pretrial motions on legal and evidence issues, at trial, at sentencing, and on appeal. Defense attorneys often use investigators to find witnesses and evidence for trial.

The right of a criminal defendant to be represented by counsel is a fundamental protection for individual liberty in our system of criminal justice. We have a complicated adversary system. Defendants need attorneys to challenge governmental authority and to assure that the rules of evidence, procedure, and constitutional law are followed. In this way, the criminal justice system tries to protect the community from crime and still protect the rights of individual defendants.



The prosecutor can charge a separate offense of **failure to appear** if the defendant skips the court date. The defendant may forfeit a secured bond for failure to appear. The judge can hold a third-party custodian in contempt of court if he or she fails to tell the court about any violations of the conditions of release.

**Screening.** The prosecutor looks at all cases to see if the state should continue to press charges. The prosecutor usually talks to police before making this decision. Prosecutors may dismiss (screen out) cases if the evidence is not strong enough, if important evidence is missing, or if other pending cases will send the defendant to jail anyway. The prosecutor also can reduce charges to less serious levels, such as from felonies to misdemeanors. The prosecutor can dismiss or reduce charges, or try to resolve the charges in other ways that serve the interests of justice.

**Preindictment hearing** (Anchorage only). In Anchorage, the state prosecutor meets often with defense attorneys to talk about the new cases that have started in the past few days. If they reach an agreement about how they will handle a case, and the defendant also agrees, they tell the judge at a pre-indictment hearing about their decision. Judges usually hold pre-indictment hearings twice weekly.

**Indictment.** An indictment is a written accusation of a crime made by a grand jury, based on evidence presented by the prosecutor. The grand jury is a panel of citizens who hear the state's evidence against the accused in a closed hearing. Only the DA and the grand jurors are present. Police officers, victims and witnesses appear by **subpoena** (court order). The purpose is to determine if there is enough evidence to take the case to trial. Felony defendants have the right to be charged by indictment, but they may waive that right and agree to let the prosecutor file charges in an **information**. They often do this as part of a plea agreement.

**The prosecutor:** A prosecutor is an attorney who works on behalf of the citizens of a city or the state. The prosecutor decides whether police have collected enough evidence against a suspect, and then decides what crime to charge. The prosecutor can negotiate the charges and sentences with the defendant and the defendant's lawyer. If the case goes to trial, the prosecutor prepares and presents the case. At sentencing the prosecutor gives the judge information and makes recommendations. In case of an appeal, the Office of Special Prosecutions and Appeals represents the state government.

In Alaska, the Department of Law hires and supervises all district attorneys and assistant district attorneys in the state. The Department of Law has offices in most cities where there is a superior court. Some cities and boroughs hire their own attorneys to prosecute local laws.

**The grand jury:** The grand jury has twelve to eighteen citizens who serve for several weeks. The prosecutor brings evidence of felonies. Each case may take an hour, or as long as several days. Unlike trial jurors, grand jurors can question the witnesses themselves. If the grand jury decides that the evidence is strong enough for trial, it indicts the defendant and the case goes on from there. If the grand jury decides the evidence is weak, it does not return an indictment. The grand jury meets privately. Defendants, victims and the public cannot attend unless subpoenaed. Grand juries in Alaska can investigate and make recommendations about public welfare and safety.

**Peremptory challenge.** When a case is assigned to a particular judge, each side has the right to one change of judge. Each party can request this change without giving any reason for it.

**Preliminary examination.** An indictment or information must be filed within 10 days of the defendant's first appearance in court (20 days if the defendant is not in custody). If charges are not filed by then, the defendant can ask for dismissal of the case. At a preliminary examination in district court, both sides present evidence and witnesses to the judge. The judge decides whether the prosecution has shown probable cause (reasonable grounds) to hold the defendant for trial. If not, the judge dismisses the charges without prejudice, which means the prosecution can bring the same charges again later.

**Omnibus hearing.** After the defendant has been charged in superior court, the judge usually holds a hearing shortly before the trial. The defense and prosecution make **motions**, which are requests for legal rulings by the judge. The judge decides what evidence will be admitted, whether physical or psychological tests are needed, which witnesses may testify, when the trial will take place, and other questions.

**Change of plea.** Most criminal cases do not go to trial. Defendants often decide to plead guilty or no contest in between the arraignment and the date set for trial. Sometimes the defendant's lawyer will negotiate with the prosecutor to reach a **plea bargain** or **plea agreement**. In a plea agreement, the defendant agrees to give up the right to trial and to plead guilty or no contest. In return, the prosecutor agrees to dismiss or reduce some charges, or to make favorable recommendations at sentencing. If the defendant decides to plead guilty or no contest, the judge holds a hearing to be sure the defendant understands the right to trial and is giving it up voluntarily, and understands the conditions of the plea agreement.

## How are Trials Conducted?

**Trial.** Only a small percentage of criminal cases ever go to trial: about 1% of misdemeanors and 7% of felonies statewide. At trial, each side has a chance to present evidence and arguments about the facts. A jury or a judge decides whether the prosecution has proven beyond a reasonable doubt that the defendant is guilty of the charges.

**The trial court judge:** The judge acts as an impartial decision-maker in the adversary system. Trial court judges oversee a large part of the criminal justice process. Judges make decisions about bail, appointment of defense counsel, motions on legal issues, trial, sentencing, and probation revocations. A **bailiff** helps the judge by assuring that no one interferes with the jury. The **in-court clerk** records the proceedings on tape and takes care of all of the paperwork. In adult cases, most court records are open to the public through the court clerk's office.

The defendant has a right to a jury trial if the conviction could result in a jail sentence, loss of a valuable license, or a large fine that implies that the defendant is a criminal. Six-person juries hear misdemeanor trials in district court. Twelve-person juries hear felony trials in superior court. The parties and judge may agree to waive jury trial in favor of a bench trial, where the judge alone decides issues of fact and law.

**Voir dire.** Voir dire (pronounced "vwar deer") is the process of jury selection. The judge questions jurors about their qualifications and their freedom from bias or prejudice. The prosecution and defense can ask each juror about impartiality. Attorneys often ask jurors if pretrial publicity or strong personal views would influence their decisions. They may challenge a juror for cause, asking the judge to dismiss a person who they think cannot be fair or impartial. They also can make a peremptory challenge of a juror, excusing the juror without giving any reason why he or she should not sit on the case. In felony cases, each side has ten peremptory challenges; in misdemeanor cases, each side has three.

**The jury:** A jury is a group of citizens who listen to the evidence presented at trial, decide disputes about facts, apply the law given by the judge, and come to a verdict of guilty or not guilty. The court selects potential jurors in Alaska randomly from the list of adults receiving permanent fund dividends. From the pool of citizens called to court on a particular day, the judge and attorneys choose the jurors who serve for each trial. The jurors must presume that the defendant is innocent until proven guilty. Jurors are only permitted to hear certain facts of the case and may not be given any additional information as to the character of the defendant or the victim.

**Conduct of trial.** The trial opens with the prosecutor and defense attorney describing the evidence they expect to present and what they plan to prove. The prosecutor goes first. He or she offers evidence such as testimony by witnesses, documents, photographs, laboratory test results, and physical objects, to convince the jury that a particular crime was committed and that the defendant committed it.

Questions often come up about whether the jury should hear some particular evidence and about the way the trial is going. The judge may ask the jury to leave the courtroom during these discussions, so that jurors will not hear inadmissible evidence. Whenever one side presents evidence, the other side can **cross-examine** (question) the witness testifying about it. Sometimes the parties **stipulate** (agree on the record) how to handle a particular piece of evidence. The judge tells jurors not to talk about the case with anyone, even with each other, while the evidence is being presented.

The defense attorney often puts on evidence to dispute the prosecution's case or to raise a reasonable doubt that the defendant committed the crime. However, the defendant has the right to offer no evidence at all. The defendant also has the constitutional right to testify or not to testify at trial. Sometimes, the defendant will offer an **affirmative defense**, admitting that he or she committed the crime but saying that there was a legal reason for doing it. Then the defendant must give evidence to prove the affirmative defense.

When the defense finishes, the prosecution may **rebut** (contradict) the evidence presented by the defense. At the end of the evidence, both sides make a **closing argument**, talking about the facts raised at trial and offering theories upon which the jury can base a verdict.

**Jury deliberations.** After the defense and prosecutor finish, the judge gives the jury **jury instructions**, telling the jury about the laws and how to apply them to the facts of the case. The jurors meet privately to decide what facts were proven, to apply the law, and to decide whether to find the defendant guilty or not. In many cases, the judge instructs the jury that it can convict the defendant of the most serious offense charged or of a **lesser-included offense**, a less serious version of the crime charged. The jurors must reach a unanimous verdict in a criminal trial. If they cannot (a **hung jury**), the jurors are discharged and the prosecutor can try the case again. If a mistake occurs during the trial or jury deliberations, the judge can order a **mistrial**, and the prosecutor can ask for a new trial. An **acquittal** (not guilty verdict) absolves the accused, who may not be tried again on the same charges (double jeopardy). A **conviction** (guilty verdict) is followed by sentencing or setting a date for sentencing.

## What Happens After Conviction?

**Presentence report.** In most felony cases, the judge will order probation officers to prepare a presentence report. The report describes the defendant's background, past criminal record, substance abuse history, details of the crime, need for treatment, and prospects for rehabilitation. The report includes a victim impact statement, describing the physical and mental impact of the crime on the victim. The victim may ask for restitution or for special conditions of probation for future protection. The report also includes the sentencing recommendations of the probation officer.

The sentencing hearing in a felony case usually occurs 2-3 months after conviction, to allow time for preparation of the presentence report. In misdemeanor cases, the judge usually has information about the crime and the defendant's criminal record, but does not have the detailed information of a presentence report. Sentencing in misdemeanor cases usually occurs immediately after the trial or a guilty plea.

**Probation officers:** Probation and parole officers work in the **Division of Community Corrections**, part of the Department of Corrections. They carry out the orders of the judge, supervising felony offenders who are not sent to jail or prison or who have already served their terms of imprisonment. Probation officers monitor the offender's conduct to make sure the offender is complying with all the conditions of supervision. They may try to help the offender find work, obtain drug and alcohol treatment, and become a law-abiding citizen. They write presentence reports for the judge. They are also considered peace officers and may arrest offenders for violating the conditions of supervision, with or without a warrant. The Department of Corrections has probation offices in most cities that have a superior court.

**Sentencing.** Judges often see sentencing as one of their toughest jobs. The law requires the judge to consider both the protection of the public, the reformation of the offender, and the interests of the victim. Sentencing calls for insight into human nature, compassion and tough-mindedness, awareness of the social attitudes and customs of the community, and predictions about an offender's future behavior. The judge's choice of sentence is based on many factors. These include the charging decisions of the police and the prosecutor, recommendations by the prosecutor, defense attorney, and presentence report, what programs and prison space the Department of Corrections has available, the victim's interests, and other testimony.

At the **sentencing hearing**, both the prosecution and the defense can call witnesses to talk about the circumstances of the crime, the effect on the victim and the community, the offender's background, the risk posed by the offender, and the prospects for rehabilitation. The victim has the right to speak at the sentencing hearing about the effect of the crime and what type of sentence the judge should impose. The presentence report writer answers challenges to the report. The judge always asks the defendant if he or she has anything to say. The judge sentences the offender within the limits set by the legislature and the appellate courts. The judge will also discuss how long the sentence may be if the offender is released on mandatory parole.

**Appeal and post-conviction relief.** Defendants convicted at trial have the right to request an appeal. This means the entire case, from investigation through sentencing, can be reviewed by a higher (appellate) court. The defense submits a written brief noting the areas where errors may have occurred. Common reasons for appeal include an invalid arrest, improperly admitted evidence, and incorrect jury instructions. A defendant may also appeal the length of a misdemeanor sentence longer than 120 days or a felony sentence longer than two years.

Because of the constitutional protection against double jeopardy, the prosecutor cannot appeal the jury's decision to acquit the defendant. Under certain circumstances, the prosecutor can appeal court rulings and the length of the sentence. The written briefs of the parties, along with a transcript or tape of the trial, go to the appellate court for review. The attorneys sometimes present their arguments to the judges, but no one can give new evidence or testimony.

The appellate court may either affirm the conviction or overturn the trial court decision. If the court overturns the conviction, the prosecutor sometimes retries the case. Occasionally, the state supreme court or even the U.S. Supreme Court reviews the case.

A convicted defendant also may ask the trial court judge to modify the sentence or overturn the conviction. The defendant may argue that the defense attorney was ineffective, new evidence has been discovered, or the judge misunderstood the law. Sometimes new evidence and testimony is given to support a motion for this type of post-conviction relief. If the sentence was illegal for any reason, the trial court judge can modify it at any time. Otherwise, the defendant must ask for a change within 180 days of sentencing.

## Sentence Lengths Set by Alaska Legislature

Offense	First Felony Conviction	Second Felony Conviction	Third Felony Conviction	Maximum Fine
Murder	20-99 years			\$75,000
Other unclassified felonies	5-99 years			\$75,000
Unclassified sexual offenses	4-30 years presumptive 8	7.5-30 years presumptive 15	12.5-30 years presumptive 25	\$75,000
Class A felonies	2.5-20 years presumptive 5/7	5-20 years presumptive 10	7.5 - 20 years presumptive 15	\$50,000
Class B felonies	0-10 years	0-10 years presumptive 4	0-10 years presumptive 6	\$50,000
Class C felonies	0-5 years	0-5 years presumptive 2	0-5 years presumptive 4	\$50,000
Class A misdemeanors	0-1 year			\$5,000
Class B misdemeanors	0-90 days			\$1,000
Violations	No imprisonment			\$300

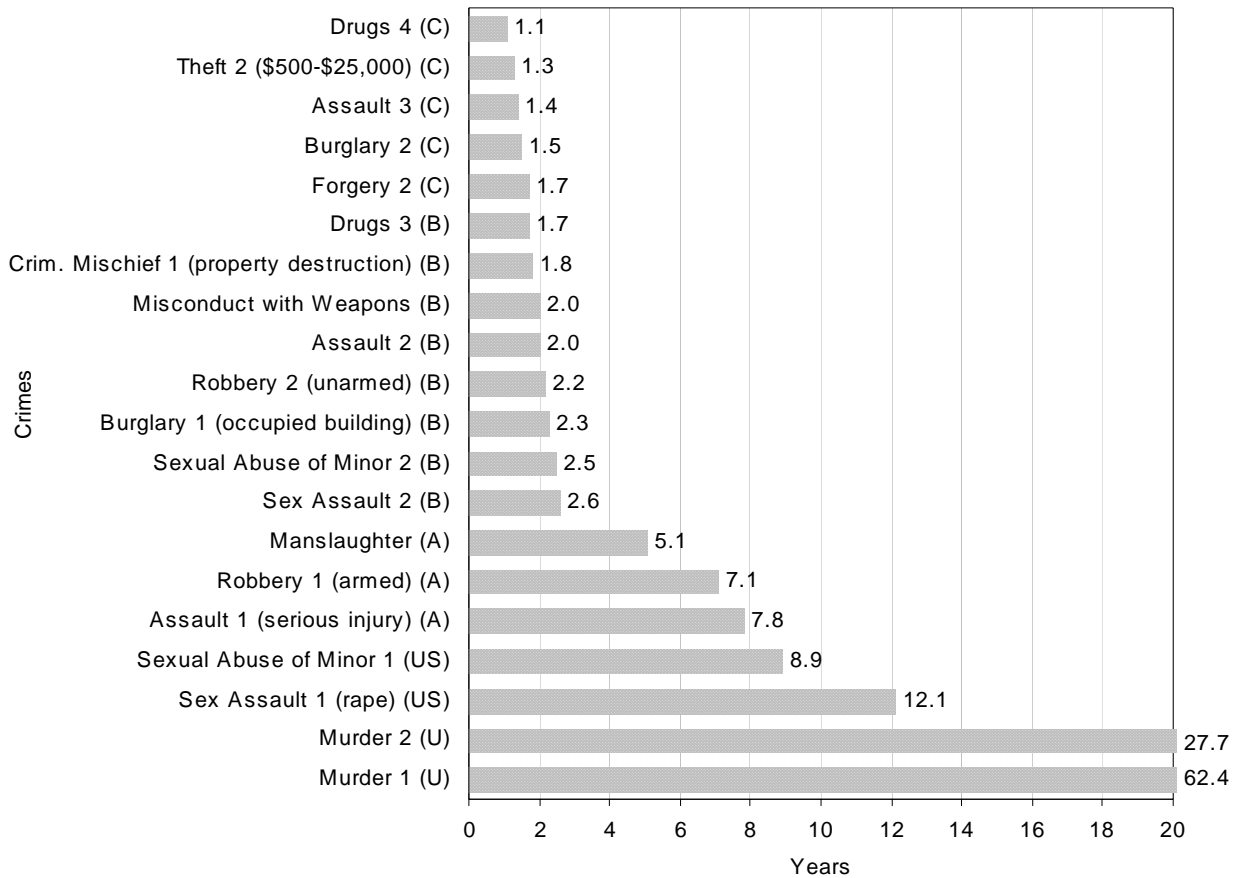
This chart shows the general range of sentences set by the Alaska Legislature for various crimes. It shows the minimum, maximum, and presumptive length of imprisonment for different classes of crimes. A presumptive sentence is the sentence that applies if the crime is about as serious as the typical crime of this type, and the offender's criminal history is typical for this type of offender.

There are a number of exceptions to this general chart. In some cases, longer sentences apply to defendants who knowingly direct the crime at a police or correctional officer. For some Class A felonies, a longer presumptive term applies if the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury. Under certain circumstances, a three-judge panel may sentence outside the presumptive ranges. Some offenses have mandatory minimum sentences not shown on this chart, which may not be reduced.

Most offenders will serve less time than the judge imposes. All offenders serving longer than three days can earn credit for good behavior, which can reduce a sentence by up to one-third. About one-third of offenders also can apply for discretionary parole.

This chart has been adapted from Alaska Sentencing Commission, 1991 Annual Report, p.17, and AS 12.55.035, .125, .135.

## Average Sentence Length for Common Felonies



This graph shows the average sentence length for offenders sent to prison for the most common felonies during the years 1984-1987. It represents the time to serve imposed by the judge, although the sentences may have been shortened later by good time and/or discretionary parole. These data are taken from Alaska Judicial Council, *Alaska's Plea Bargaining Ban Re-evaluated*, Tables C-2 - C-7 (1991).

These sentences represent averages only, and cannot be used to predict what sentence an individual defendant may receive in a particular case. Changes in statutes and case law over the past 10 years may have affected these averages somewhat.

U = unclassified    US = unclassified sex offense    A = class A    B = class B    C = class C



**Imprisonment.** Most offenders convicted of serious felonies such as rape, manslaughter and murder must serve many years in jail. Offenders convicted of felonies such as burglary and assault will generally be sentenced to prison, particularly if they have a history of other felonies. A few misdemeanors, such as drunk driving, require jail time. Judges imprison offenders to protect the public, to express the community's condemnation, or to deter (discourage) the offender and others.

Judges often combine a term of imprisonment with other requirements. The judge can sentence an offender to jail and suspend part of the time. The offender is placed on probation and may go back to jail for the suspended time if he or she violates probation conditions.

Many offenders spend time in jail waiting for trial and sentencing or in restricted settings like halfway houses and residential treatment programs. The judge gives these offenders credit for **time served**, deducting the time spent waiting in jail from the total sentence. If the time spent waiting is about the length of an appropriate sentence, the judge may sentence an offender to time served and release him or her. If the offender is in jail for more than one offense, credit for time served will be applied to only one case.

**Probation.** If it serves the best interests of the public and the offender, a judge may place the offender on probation for a definite length of time up to 10 years. In some cases, the judge can sentence to probation instead of imprisonment or after imprisonment. The judge can impose **conditions of probation** related to the offense, or to the offender's rehabilitation, that do not unnecessarily restrict the offender.

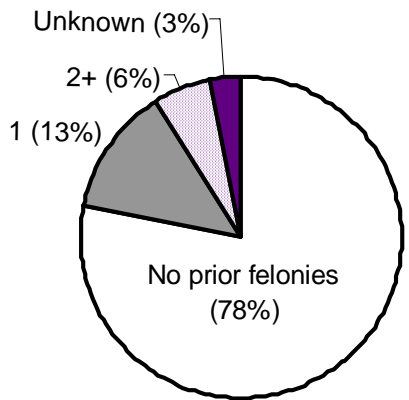
Judges often impose these conditions of probation:

- ▶ report for **alcohol and drug screening** and get treatment if recommended;
- ▶ do not drink or use drugs and submit to testing;
- ▶ **forfeit weapons** used in the crime (give them to the court) and do not carry other weapons;
- ▶ submit to searches for drugs, alcohol, and weapons;
- ▶ report to the probation officer regularly;
- ▶ stay employed, look for work, or go to school;
- ▶ pay **fines** to the court (common for traffic offenses and fish and game offenses);
- ▶ pay **restitution** to the victim (repairs, medical bills, counseling bills, and other losses);
- ▶ do **community work service**, some hours of volunteer work for a local organization;
- ▶ follow **restraining orders** to stay away from the victim (a common condition in sexual abuse and domestic violence cases);
- ▶ stay away from certain people or neighborhoods (**area restrictions**) (common in prostitution and drug cases);
- ▶ forfeit things used in the crime, such as airplanes and boats used on illegal hunting trips;
- ▶ give up **revoked or suspended licenses** (such as driving and hunting licenses);
- ▶ go to **battering intervention** programs for assaultive or abusive offenders; and
- ▶ go to **sex offender counseling**.

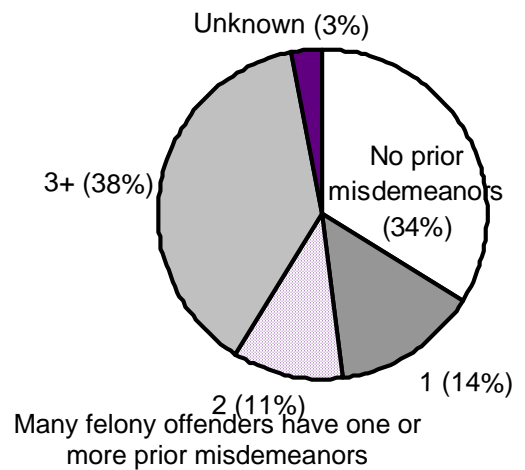
## Offender Profile

The Department of Corrections writes presentence reports in most felony cases. These reports give the judge information about the defendant's criminal record, substance abuse problems, education and work history, the nature of the crime, and the impact of the crime on the victim. These charts come from a study of presentence reports filed between 1986-1991, Alaska Sentencing Commission, 1992 Annual Report, Appendix A.

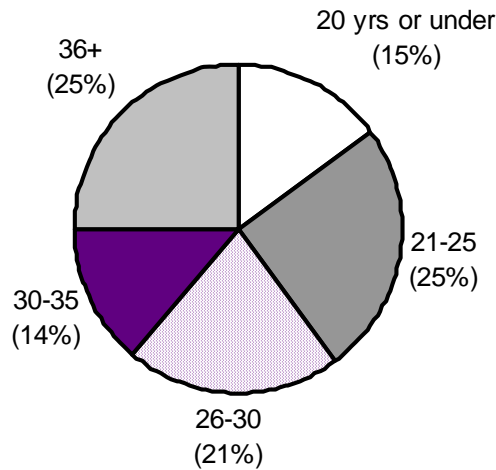
Felony offenders in Alaska tend to be young (under 30) and undereducated (half did not finish high school). Most have longstanding problems with alcohol (73%) and drugs (55%). Many were under the influence of alcohol at the time of the offense.



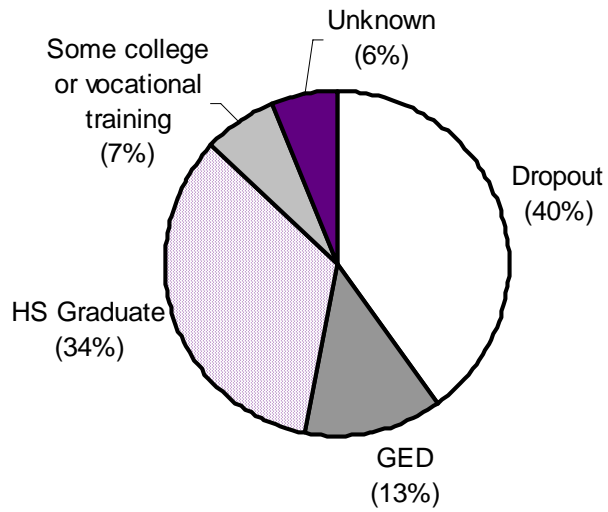
Most felony offenders do not have a prior felony record



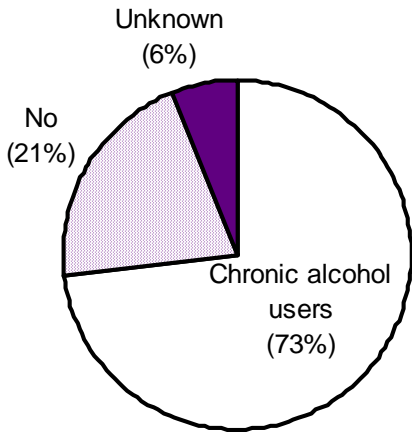
Many felony offenders have one or more prior misdemeanors



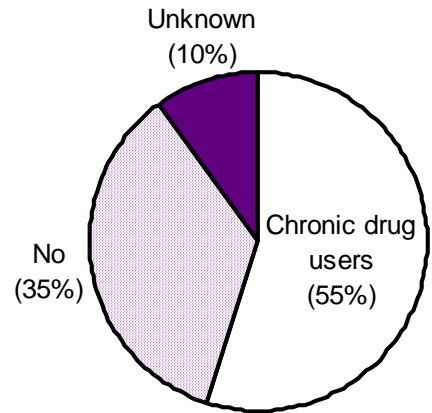
Most offenders are less than 30 years old at the time of the crime



About half of felony offenders did not finish high school



Most felony offenders are chronic alcohol users



About half of felony offenders are chronic drug users

Misdemeanor offenders are not supervised by a probation officer. If a misdemeanor offender fails to pay fines and meet the conditions of probation, the court will issue a **bench warrant** to bring the offender back to court. A felony offender must report to a probation officer regularly, and comply with the court's conditions and officer's requirements. Probation officers can arrange for additional help such as job counseling, education, and housing.

**Probation revocation.** If the offender does not follow the conditions of probation, the probation officer can file a petition to revoke probation, to bring the offender back to court. If the public or the victim is at risk, the probation officer can arrest the offender before the hearing. At the revocation hearing, the government must prove that the offender has violated one of the conditions of probation. The offender can have an attorney at any court hearings. The judge can continue probation, can put more restrictions on the offender, or can revoke probation and send the offender to jail.

**Alaska is using more alternatives to imprisonment:** The Alaska criminal justice system has always used conditions of probation and parole to hold offenders accountable. As prison costs have risen and prison overcrowding has become a serious problem, the state has emphasized non-prison alternatives for some crimes.

For some offenders, good programs may protect the public as well as a jail sentence can. For example, many offenders have substance abuse problems. Requiring them to get treatment and watching them carefully may reduce both present and future crime. For some offenders, jail or prison is easier than making real changes, like staying sober or keeping a job.

Alternative punishments are not used for all offenders, especially very violent criminals and offenders with long criminal records. Those offenders may still receive treatment while in prison, because most will be released eventually.

**Serving a sentence of imprisonment.** Once the judge sentences an offender to imprisonment, the offender goes to the custody of the Department of Corrections. In rural areas, offenders can serve short periods of imprisonment in a **local jail**. In larger towns, short-term inmates go to state facilities. Jails generally have limited counseling and other programs available.

The Department of Corrections decides where an inmate will serve time by using a system of **classification**. Classification is based on the nature of the inmate's crime and prior record, release date, treatment needs, institutional work history, and behavior in custody. An institution is then chosen for its **security** (the number of bars and fences between the inmate and the outside world) and its levels of **custody** (the type of supervision and number of limits placed on the inmate's liberty within the institution).

**Correctional institutions:** The Division of Institutions, part of the Alaska Department of Corrections, runs the state prison system. Prisons and pretrial facilities located across the state provide secure facilities to keep offenders in custody. Most prisons offer work, education and treatment programs to inmates. The Department of Corrections works with private contractors to provide **halfway houses**, where offenders can work or go to school during the day and stay locked up at night. Smaller communities have **local jails**, run by local police. Offenders stay in these jails after arrest; some also serve short sentences there.

Offenders begin longer terms in one of ten **state prisons**. Prison programs include alcohol and drug treatment, college and adult basic education classes, anger management, and vocational classes. Some prisons offer work training, sex offender treatment, or other specialized programs. While in prison, many offenders work as prison cooks, maintenance workers, and launderers. State prisons provide medical and dental care and some mental health care for prisoners. With good institutional behavior, the classification system gradually reduces the inmate's level of custody and allows more participation in programs. The lowest level of supervision, **community custody**, allows selected inmates to serve their remaining time in halfway houses or on work release. Offenders get treatment, find work, pay restitution, and learn how to live in the community. Many institutions provide prerelease classes and counseling to help the offender make the transition from prison.

Alaska correctional institutions have rules about most parts of an inmate's life, including daily schedule, telephone access and mail, books and magazines, showers, and drug monitoring. The prisons use a disciplinary system of institutional infractions, penalties, and grievance procedures. They encourage good behavior with good time (time credited for good behavior), privileges, and the chance to take part in some programs.

**Special programs.** In addition to prisons, the Department of Corrections runs a number of specialized programs. These include:

- ▶ **halfway houses** (also known as community residential centers, or CRCs): Offenders often go to work or school during the day, then return to a halfway house at night. Halfway houses are run by private contractors.
- ▶ **furloughs:** Furloughs are designed for offenders reaching the end of their sentence. They get treatment, find work, pay restitution, and learn how to live in the community.
- ▶ **electronic monitoring:** Offenders wear an electronic device that alerts officials if the offender leaves an approved location. Electronic

monitoring can be used for 24-hour confinement (“house arrest”) or to enforce a curfew at the offender’s house when the offender is not working.

- ▶ **enhanced supervision and intensive supervision program:** These are programs that offer support, additional programming, and more supervision for offenders who need more structure or special programs.

**Discretionary Parole.** About one-third of imprisoned felony offenders are eligible to apply for discretionary parole. Some offenders become eligible to apply after serving one-fourth or one-third of their sentences; presumptively sentenced offenders become eligible only after they serve the full presumptive term. Offenders apply for parole based upon a good institutional record and plans for work and housing after release.

The parole board screens offenders carefully, rejecting many applications. The parole board looks at the risk the offender poses to the community, the recommendations of institutional officers, housing and employment plans for release, completion of treatment, and victim input. It also considers the amount of time the offender has spent in jail, compared to other similar offenders. If the board grants parole, it sets conditions to reduce risk to the public and to increase the parolee's chance for success. If an offender does not comply with the conditions of parole, the parole board can hold a revocation hearing. The offender has the right to an attorney and to due process at the hearing. If the offender is found to have committed violations, the board can set new restrictions or return the offender to prison.

**The parole board:** The governor appoints five citizens to the parole board. Eligible offenders apply to the board for release. The members use written guidelines to help them make their decisions. They balance the need for protection of the community, the victim’s needs, and the interests of the offender. Parole board members look for evidence of rehabilitation of the offender, ability to function in the community, and low risk to the public.

Victims have the right to comment in writing at parole hearings and to know when an offender will be released from prison. The Department of Corrections can give victims information on sentencing, probation conditions, parole hearings, release dates, collecting restitution, and victim rights.

**Mandatory parole or mandatory release.** Offenders earn early release from prison or jail by accumulating **good time**, days credited for good behavior while in prison. The law requires DOC to deduct good time from the sentence imposed, one day for every two days served. Offenders may lose their good time if they fail to follow prison rules or fail to complete court-ordered

treatment. Good time is an important prison management tool, since it gives offenders an incentive to cooperate with institutional rules.

Offenders serving sentences longer than two years must serve good time on mandatory parole, subject to conditions set by the parole board. Although the parole board cannot refuse to release offenders who have earned good time, it can impose release conditions designed to reduce risk to the public and increase the chance that the offender will not return to criminal behavior. The parole board holds revocation hearings if the offender does not comply with the conditions of mandatory parole.

**Unconditional Discharge.** Once an offender serves the sentence and completes all of the legal requirements of probation or parole, he or she is discharged from the criminal justice system. Felons who commit crimes of moral turpitude (most violent and property crimes) can not vote until they are unconditionally discharged. Some offenders receive a **suspended imposition of sentence** to see if they can straighten out their lives. If they successfully complete all of the sentence conditions, these offenders can have the conviction set aside. Otherwise, adult offenses remain a permanent part of the offender's criminal record, and can be used to increase a sentence if the offender commits a new crime.

## Institutions Run by the Alaska Department of Corrections

Institution	Location	Maximum Capacity	Description
Anchorage Annex (Sixth and C)	Anchorage	104	Men: pretrial & sentenced Women: pretrial only
Anvil Mountain	Nome	102	Men & Women: pretrial & sentenced
Cook Inlet Pretrial (CIPT)	Anchorage	397	Men only: pretrial
Fairbanks	Fairbanks	189	Men & Women: pretrial & sentenced
Meadow Creek Hiland Mountain	Eagle River Eagle River	62 225	Men: sentenced Women: sentenced
Ketchikan	Ketchikan	47	Men & Women: pretrial & sentenced
Lemon Creek	Juneau	164	Men & Women: pretrial & sentenced
Mat-Su Pretrial	Palmer	82	Men & Women: pretrial
Palmer	Palmer	341	Men only: sentenced
Spring Creek	Seward	466	Men only: sentenced Maximum security
Wildwood Wildwood Pretrial	Kenai Kenai	224 112	Men & Women: sentenced Men & Women: pretrial
Yukon-Kuskokwim	Bethel	88	Men: pretrial & sentenced Women: pretrial only

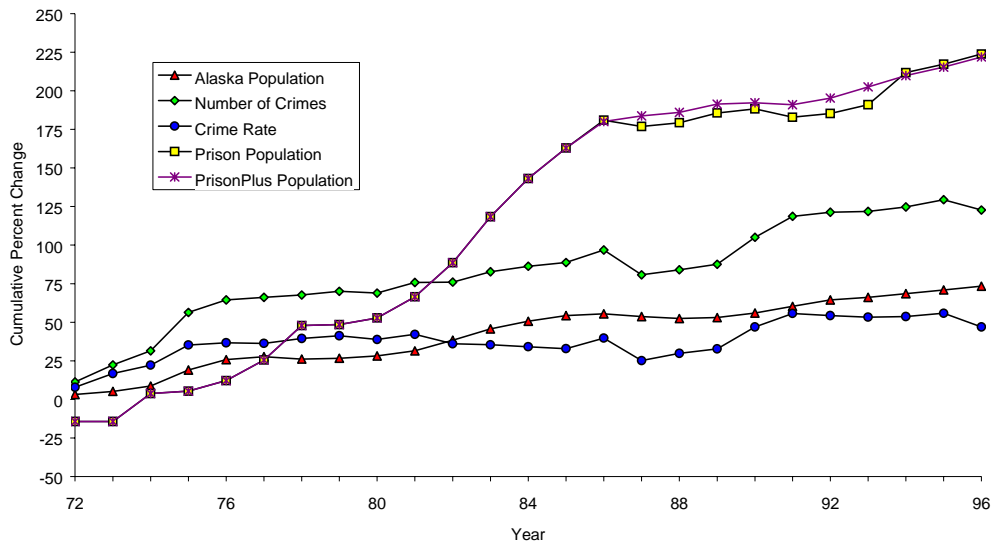
Offenders stay in pretrial facilities for relatively short periods of time, while waiting for trial and sentencing. Pretrial facilities offer a limited number of programs, like Adult Basic Education, GED preparation, stress and anger management, family counseling, Alcoholics Anonymous, suicide prevention, and substance abuse treatment. Sentenced institutions offer these courses plus vocational training, remedial reading, computer literacy, university courses, and planning for transition from prison. Meadow Creek provides a full treatment program for sex offenders. Institutions with a fair number of Alaska Native offenders have potlatches and programs of special interest to Natives. Not all programs are available in all prisons or to all inmates. The numbers of men and women inmates at the Hiland Mountain/Meadow Creek complex are in transition, but are expected to reach the numbers shown on this chart in late 1998.

In addition to the institutions run by the Department of Corrections, Alaska has fourteen jails run by local jurisdictions through a contract with the Department of Corrections. These jails are located in:

Barrow	Haines	Petersburg	Valdez
Cordova	Homer	Seward	Wrangell
Craig	Kodiak	Sitka	
Dillingham	Kotzebue	Unalaska	



## Alaska Crime and Prison Population Trends 1972-1996



The Department of Corrections provided the prison population figures on this chart for inmates housed in state prisons, plus inmates housed in community residential centers and out of state. The Department of Labor provided Alaska population numbers. The Department of Public Safety reported the statewide number of crimes. The crime rate was calculated by dividing the number of crimes in a year by the general population, to provide a rate of crimes per 100,000 population. The crime rates for 1995 and 1996 are approximate, because the City of Juneau did not report crimes to the state in 1995 and 1996, and the City of Bethel did not report its crimes in 1996.

### Prison overcrowding is a problem in Alaska

Overcrowding is a serious problem for prisons and jails across the country. Governments and citizens worry about the cost of corrections. Alaska's prison population has tripled in the last 15 years, rising from 1,069 in 1982 to 3,648 in 1996. The prison population expanded much faster than the general population or the crime rate, for several reasons. The state budget grew rapidly during the late 1970s and early 1980s, and Alaska greatly increased the number of police, prosecutors, judges, and prison beds. As police and prosecutors worked more professionally, the rate of conviction for serious offenses went up, resulting in longer sentences for many offenders. The state prosecuted sex offenses more vigorously, especially sexual abuse of a minor cases. Presumptive sentencing laws required longer sentences and restricted discretionary parole eligibility. The number of supervised probationers has been rising as well.

Alaska built many new jail and prison beds during the early 1980s, but has not keep up with the increase in prison population. Because of overcrowding and lack of rehabilitation opportunities, the state courts set a maximum number of prisoners for each institution. To keep under these population caps, the Department of Corrections moves prisoners between institutions and sometimes makes offenders wait to serve their time in jail. Overcrowding has led the state to explore other ways of housing offenders, such as greater use of halfway houses and sending prisoners to prisons in other states. Even so, inmate populations sometimes reach 119% of prison capacity.

## The Juvenile Justice Process

Alaska has a separate criminal justice system for most juveniles (those under 18). Juvenile court proceedings differ greatly from the system for adults. The juvenile justice system rests on the principle that many juveniles can be rehabilitated and can learn to act responsibly. The system is not as adversarial as the adult system, and uses different language. Most juvenile cases involve less serious crimes such as theft and burglary. For serious offenses, sixteen and seventeen year olds are sent automatically to adult court. The prosecutor may also request a waiver to adult court for some younger juveniles.

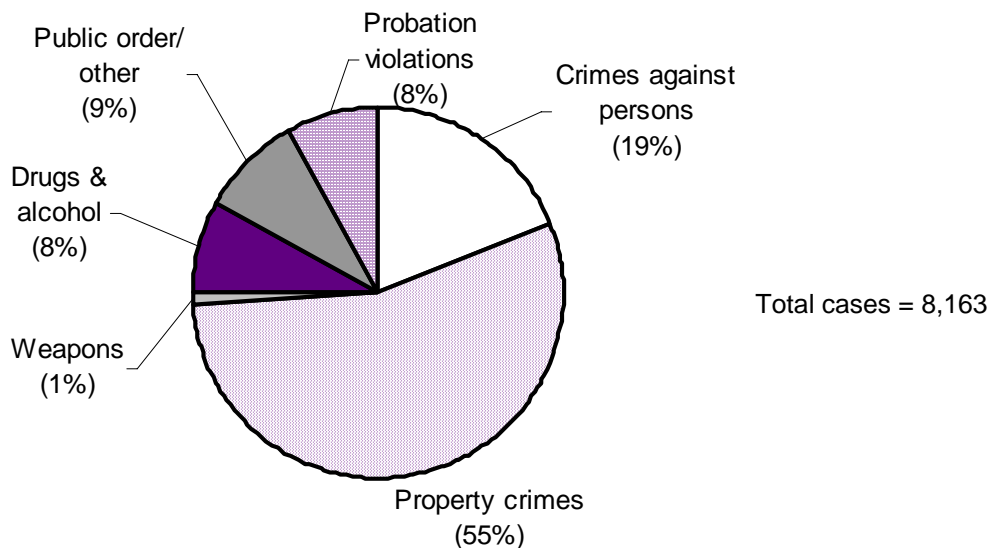
Because the juvenile system emphasizes rehabilitation, the proceedings for the most part are closed to the public. Victims of juvenile crime can attend all hearings that the juvenile may attend, but reporters and other citizens are generally not present. If juveniles later commit crimes as adults, their juvenile records may be used against them. Juveniles have the same constitutional rights as adults, including the right to remain silent and the right to an attorney.

Police refer juvenile cases to the Division of Family and Youth Services (DFYS), in the Department of Health and Social Services. Often juveniles come to the attention of the police or other officials for running away or being abused at home. In those cases, DFYS may file a civil petition asking the court to declare that the juvenile is a child in need of aid (CINA). If the juvenile has committed a crime, DFYS assigns a juvenile intake officer to the case. DFYS handles most juvenile crimes. However, state and local prosecutors handle traffic offenses, fish and game violations, parks and recreation violations, underage drinking, and underage purchase of tobacco.

The confidentiality of juvenile cases, combined with the emphasis on rehabilitation, sometimes leads to the impression that nothing happens to juvenile offenders. In fact, juvenile intake officers and courts have many choices for a proper **disposition**, or outcome, of the case.

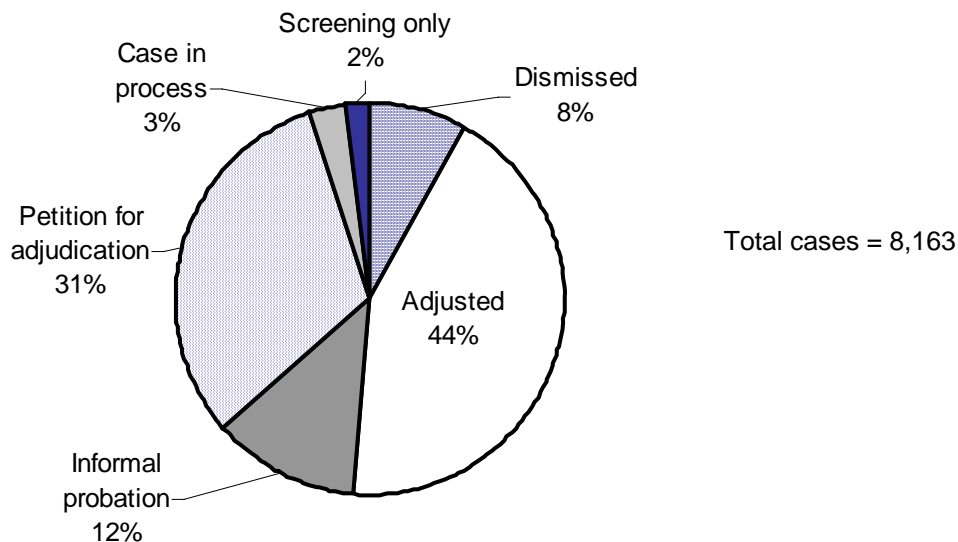
**Referral and intake.** A juvenile case usually begins when a police officer refers a case to a juvenile intake officer. The intake officer investigates the crime, and decides if there is probable cause to believe the juvenile committed the crime and if there is enough evidence to prove it (similar to the screening role of the prosecutor in adult crimes). If the evidence is insufficient, the officer **dismisses** the case.

## 1997 Juvenile Crime Referrals



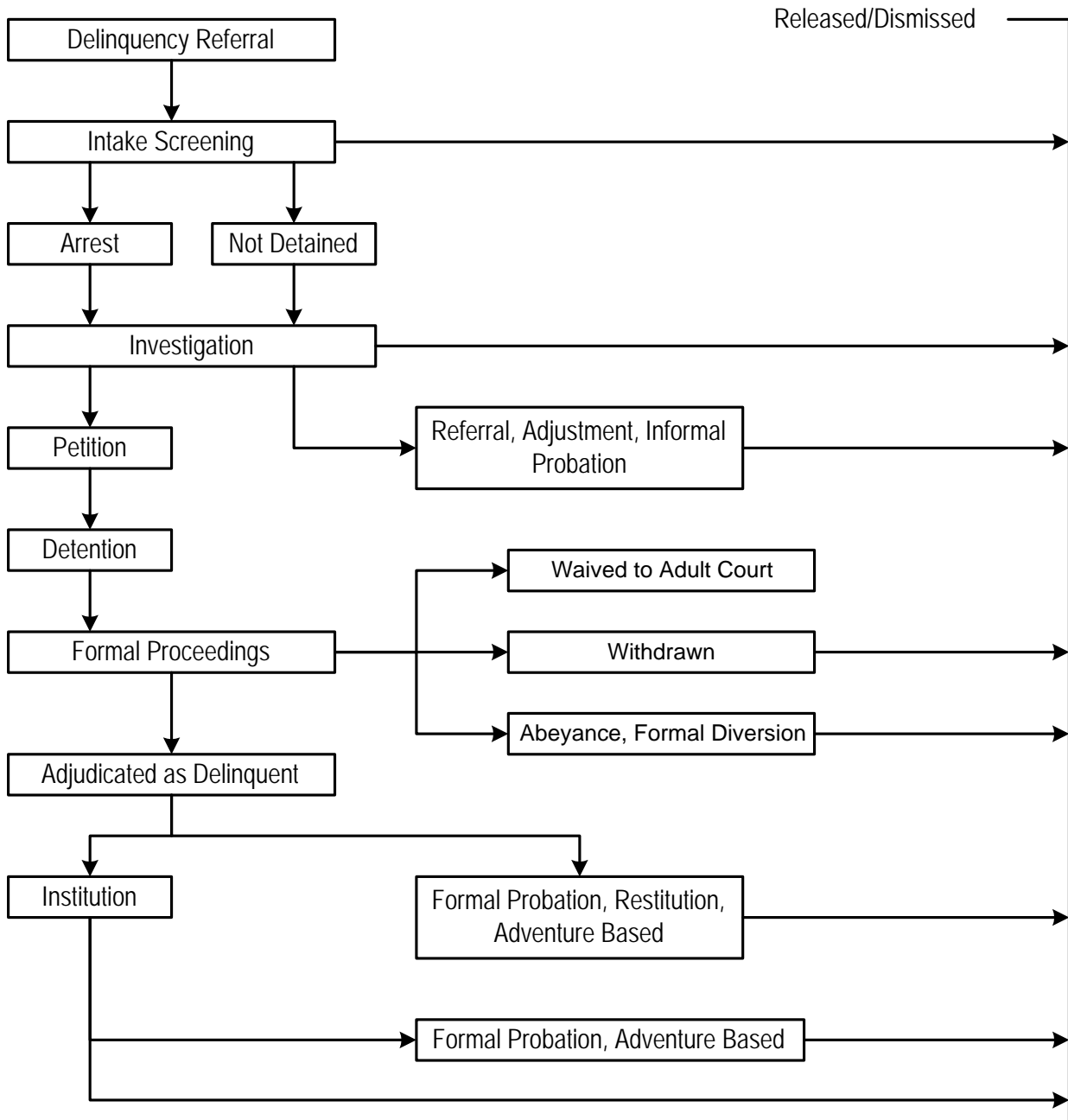
This chart shows the types of youth corrections cases referred to DFYS in FY 1997. Half of juvenile crimes are property offenses, often theft and burglary. Most juvenile crimes (73%) would be considered misdemeanors or violations if committed by an adult, although the number of felony referrals has doubled over the last nine years. The total number of delinquency referrals increased 35% from FY 1989 to FY 1995, while the youth population increased 23% during the same period.

## 1997 Outcomes of Juvenile Proceedings



This chart shows the outcome of all youth corrections referrals to DFYS in FY 1997. Half of juvenile crimes are handled through adjustment or informal probation, which may include payment of restitution, community work service, or participation in a diversion program. Data for these charts were provided by DFYS and by the DFYS Annual Report for FY 1994 and 1995, March 1996, pp. 24, 54.

## Stages of a Typical Juvenile Case



The juvenile intake officer handles most cases without referring the offender to court. The intake officer may warn the youth and his or her parents, require restitution, community work service, substance abuse treatment, or place other conditions on behavior. The intake officer may refer the offender and victim to voluntary victim-offender mediation, or may refer the case to youth court for a trial and sentence imposed by the youth's peers. If the case is adjudicated, the court may impose conditions of probation, may send the youth to an institution, or may send the youth to an "adventure-based" program, a short-term, intensive training and awareness program. Chart taken from DFYS Annual Report, March 1993, p. 32.

**Adjustment.** The intake officer may decide that there is enough evidence to prove the case, but it would serve the best interests of the community and the juvenile not to prosecute. The officer can **adjust** the case informally. He or she may meet with the offender and the offender's family and issue a warning. The intake officer can require payment of restitution, individual or family counseling, community work service, or completion of a diversion program, as a condition of the adjustment. The intake officer also can refer the case to youth court or to victim-offender mediation.

DFYS resolves most juvenile cases this way. A large majority of juveniles whose cases are adjusted do not return to the juvenile system.

**Juvenile intake and probation officers:** Police refer juvenile crimes to the Division of Family and Youth Services (DFYS), part of the state Department of Health and Social Services. The juvenile probation office plays two roles. Intake officers investigate the offense, decide how to proceed, and present the case to the court. Juvenile probation officers implement the sentence, supervise the terms of probation, and decide which juvenile facility is most appropriate.

**The guardian ad litem:** In some cases, juveniles accused of crimes have conflicts with their parents or have no adult who can help them protect their interests. The judge may appoint a guardian ad litem to represent the juvenile, in addition to the juvenile's lawyer. Guardians ad litem investigate the offense, determine the needs of the juvenile, try to resolve the problem, advise the juvenile, and advocate the juvenile's best interests to the juvenile probation officer and to the court. The Office of Public Advocacy hires some guardians ad litem; the court contracts with others.

#### **Informal probation.**

With the consent of the youth and the family, the intake officer may put the youth on informal probation for up to six months, without going to court. The parents and youth agree that if the youth violates the conditions of informal probation, the intake officer can take the original charges to court. The intake officer may require restitution, counseling, community work service, or completion of a diversion program.

**Petition for adjudication of delinquency.** The intake officer may decide that the case requires formal court intervention and an adjudication of delinquency. The adjudication process is designed to create a court record of the offense and to obtain greater control over the juvenile's behavior. The intake officer files a delinquency petition with the court. Intake officers must file petitions in serious felony cases and in cases where the victim has lost so much that the offender will need a long time to make restitution. In some cases, the intake officer also may petition the court to open the adjudication hearing to the public. The youth is entitled to an attorney once the petition for adjudication is filed. At adjudication, the state is represented by an attorney from the Department of Law, Health and Social Services section.

**Adjudication hearing.** Once a petition for adjudication is filed, the case proceeds to court and is heard by a superior court judge or **master**. Adjudication hearings are similar to adult trials, used to find out the facts of the case and decide whether the youth should be adjudicated **delinquent** (similar to a guilty verdict). The youth has a right to a jury trial. If the youth is found delinquent, the court has a number of choices for **disposition** (similar to sentencing). Adjudication hearings are the only juvenile proceedings that are open to the public. The disposition phase of the case may be held separately and is closed to the public.

**The master:** In juvenile cases, courts often appoint a special judicial officer called a master to hear evidence and make recommendations to a superior court judge. The judge may appoint someone to hear a single case or many cases. Masters hear most juvenile cases in Anchorage and Fairbanks.

**Abeyance and diversion.** Without adjudicating the juvenile delinquent, the court may hold the case in **abeyance** for up to a year, allowing the youth to fulfill conditions like paying restitution and staying out of trouble. If the youth satisfies the conditions, the court can dismiss the case or the court may place the juvenile in a formal **diversion program**, with the consent of the youth and the parents, again with conditions of probation.

**Probation without custody.** If the court adjudicates the juvenile delinquent, it can order probation without custody, releasing the youth to his or her parents or a suitable home. The court will impose conditions of probation. A juvenile probation officer (often not the same person as the intake officer) will design a case plan, monitor the home placement, provide counseling and other services, set restitution payments, and report violations to the court.

**Probation with custody.** If the court adjudicates the youth delinquent, it can order **probation with custody**, placing the youth in the custody of DFYS. DFYS still may release the youth to the home of a parent or guardian, or place the offender in a foster home, group home, or residential care facility. A DFYS probation officer monitors conditions of probation. The court may order the youth to participate in a short-term intensive training program called Adventure-Based Education, designed to change poor behavior and lack of responsibility.

**Institutionalization.** If the court believes that the juvenile needs greater restrictions, the judge can order commitment to a juvenile facility, commonly called institutionalization. DFYS decides if the youth should go to a correctional school, detention home, or a secure, long-term detention facility. Juvenile facilities provide secure custody, behavior management, education, health care, substance abuse and family counseling, and work opportunities. DFYS may retain custody of the youth only until the age of 20.

**Waiver to adult court.** Finally, the juvenile court may **waive** the case to adult court. Sixteen and seventeen year-olds who commit unclassified and Class A felonies automatically go to adult court. A prosecutor or intake officer also may request a waiver if a juvenile, even one under sixteen, has committed a particularly serious crime, if the juvenile has committed a number of crimes, or if it seems unlikely that the juvenile can be rehabilitated before age 20. The superior court will try the juvenile as an adult and, if convicted, the juvenile will serve time in an adult prison.

**Appeal.** A juvenile adjudicated delinquent has the right to appeal from the court's decision. Grounds for appeal include procedural error, violation of constitutional rights, and insufficient evidence presented at the hearing. If the juvenile's circumstances have changed since placement, he or she may request a review hearing to ask for a more suitable placement. The juvenile has a right to be present and to be represented by a lawyer. The court automatically holds review hearings once a year to review juvenile placements.

**Confidentiality.** In some cases, the court will seal juvenile records to keep them confidential. Police, military, and government officials may inspect them with consent of the court. If the juvenile successfully completes the terms of the sentence, and has no more trouble with the law, the adjudication of delinquency will remain confidential. In other cases, DFYS may disclose the offender's name, the parents' names, and a simple description of the crime committed. The decision to close depends on the age of the offender, the seriousness of the offense, the prior record, and history of compliance with conditions.

### Juvenile Institutions Run by the Department of Health and Social Services

<b>Institution</b>	<b>Description</b>
Fairbanks	20 short-term detention beds 20 long-term treatment beds
Bethel	20 short & long-term beds Alaska Native programs
McLaughlin (Anchorage)	35 short-term detention beds 70 open campus beds (least serious offenders) 45 secure treatment beds (more serious offenders)
Johnson (Juneau)	8 short-term detention beds

All juvenile facilities are coeducational, although they may have separate residential arrangements for young men and women. Juvenile facilities provide access to high school classes, diagnostic evaluation, special education services, behavior management, medical care, AIDS and substance abuse prevention, and crisis counseling. Long-term treatment facilities also offer individual and family counseling, recreation, voluntary religious services, and work opportunities. Substance abuse and sex offender treatment may also be available.



# Resources

## Government Agencies and Community Groups

### Lawyers for Defendants

Alaska Public Defender (court-appointed, adult and juvenile)  
907-264-4400  
Offices in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Juneau,  
Kenai, Ketchikan, Kodiak, Kotzebue, Nome, Palmer, and Sitka

Office of Public Advocacy (court-appointed, adult and juvenile)  
907-269-3500  
Offices in Anchorage, Fairbanks, and Juneau

Alaska Bar Association Lawyer Referral Service (private counsel)  
907-272-0352 or 1-800-770-9999

### Services for Victims

**STATEWIDE:** Alaska Council on Domestic Violence and Sexual Assault, Dept. of Public Safety  
907-465-4356  
Alaska Department of Corrections  
907-269-7370 for probation information  
907-465-3384 for parole information  
Alaska Network on Domestic Violence and Sexual Assault  
907-586-3650  
Alaska Women's Resource Cent  
907-276-0528  
Catholic Social Services Immigration & Refugee Project (deportation)  
907-276-5590  
Mothers Against Drunk Driving (MADD) (drunk driving crimes)  
907-522-6233  
National Domestic Violence Hotline  
1-800-799-7233  
Victims for Justice (violent crimes)  
907-278-0977  
Victim-Witness Coordinators: see District Attorney offices  
Violent Crimes Compensation Board, Department of Public Safety  
907-465-3040 or 1-800-764-3040

**ANCHORAGE:** Abused Women's Aid in Crisis (AWAIC) (domestic violence)  
907-272-0100 (Crisis Line), 907-279-9581 (Business)  
Chugachmuit (sexual assault of Alaska Natives)  
907-562-4155  
Community Dispute Resolution Center (victim-offender mediation for juvenile crimes)  
907-274-1542  
Standing Together Against Rape (STAR) (sexual assault, child sexual abuse)  
907-276-7273 or 1-800-478-8999 (Crisis Line), 907-276-7279 (Business)

**ANVIK:** Anvik Tribal Council/Tanana Chiefs Conference (domestic violence)  
907-663-6322

**BARROW:** Arctic Women in Crisis  
907-852-0267 or 1-800-478-0267 (Crisis Line), 907-852-0261 (Business)

**BETHEL:** Tundra Women’s Coalition  
907-543-3456 or 1-800-478-7799 (Crisis Line), 907-543-3455 (Business)

**CORDOVA:** Cordova Family Resource Center  
907-424-4357 (Crisis Line), 907-424-5674 (Business)

**DILLINGHAM:** Safe and Fear-Free Environment (SAFE)  
907-842-2316 or 1-800-478-2316(Crisis), 907-842-2320 (Business)

**EMMONAK:** Emmonak Women’s Shelter  
907-949-1434 or 1-800-478-1434 (Crisis), 907-949-1443 (Business)

**FAIRBANKS:** Women in Crisis-Counseling & Assistance (WICCA)  
907-452-7273 or 1-800-478-7273 (Crisis), 907-452-2293 (Business)

**HOMER:** South Peninsula Women’s Services  
907-235-7712 or 1-800-478-7712 (Crisis); 907-235-7713 (Business)

**JUNEAU:** Aiding Women from Abuse and Rape Emergencies (AWARE)  
907-586-1090 or 1-800-478-1090 (Crisis), 907-586-6623 (Business)  
Tongass Community Counseling Center  
907-586-3585

**KENAI:** Kenai/Soldotna Women Resource & Crisis Center  
907-283-7257 (Crisis), 907-283-9479 (Business)

**KETCHIKAN:** Women in Safe Homes (WISH)  
907-225-9474 or 1-800-478-9474 (Crisis), 907-225-0202 (Business)

**KODIAK:** Kodiak Women’s Resource & Crisis Center  
907-486-3625 (Crisis), 907-486-6171 (Business)

**KOTZEBUE:** Maniilaq Family Crisis Center  
907-442-7697 (Crisis), 907-442-3963 or 1-800-478-3312 (Business)

**PALMER:** Valley Women’s Resource Center  
907-746-4090 or 1-800-478-4090 (Crisis), 907-746-4080 (Business)

**NOME:** Bering Sea Women’s Group  
907-443-5444 or 1-800-570-5444 (Crisis), 907-443-5491 (Business)

**SEWARD:** Seward Life Action Council  
907-224-3027 (Crisis), 907-224-5257 (Business)

**SITKA:** Sitka Tribe of Alaska (tribal court)  
1-800-746-3207  
Sitkans Against Family Violence  
907-747-6511 or 1-800-478-6511 (Crisis), 907-747-3370 (Business)

**UNALASKA:** Unalaskans Against Sexual Assault and Family Violence  
907-581-1500 or 1-800-478-7238

**VALDEZ:** Advocates for Victims of Violence  
907-835-2999 or 1-800-835-4044 (Crisis), 907-835-2980 (Business)

## State Agencies

### District Attorneys, Department of Law

Anchorage	269-6300	Ketchikan	225-6128
Barrow	852-5297	Kodiak	495-5744
Bethel	543-2055	Kotzebue	442-3396
Dillingham	842-2482	Nome	443-2296
Fairbanks	452-5970	Palmer	745-5027
Juneau	465-3620	Sitka	747-5851
Kenai	283-3131		

### Alaska Court System

907-274-8611

Courts in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Homer, Juneau, Kenai, Ketchikan, Kodiak, Kotzebue, Nome, Palmer, Sitka, Valdez, and Wrangell-Petersburg

### Alaska Department of Corrections

907-269-7350 for probation information

907-465-3384 for parole information

### Division of Family and Youth Services, Department of Health and Social Services

907-465-3191 or 907-269-3900

Offices in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Juneau, Kenai, Ketchikan, Kodiak, Kotzebue, Nome, Palmer, and Sitka

### Division of Motor Vehicles, Department of Public Safety

907-269-5559

### Alaska State Troopers/Village Public Safety Officer Program

907-269-5641 (for information - not an emergency number)

detachments in Anchorage, Fairbanks, Ketchikan, Palmer and Soldotna; posts across the state

## Complaints

### Commission on Judicial Conduct (individual complaints about judges)

907-272-1033 or 1-800-478-1033

### Alaska Judicial Council (evaluation of judges for governor's selection and voters' retention)

907-279-2526

### State of Alaska Ombudsman (complaints about state agencies)

Anchorage 907-269-5290

Southcentral & Northern Alaska 1-800-478-2624

Interior Alaska 1-800-478-3257

Southeast Alaska 1-800-478-4970

Anchorage Municipal Ombudsman (complaints against Anchorage municipal agencies)  
907-343-4461

Alaska Bar Association (complaints about lawyers)  
907-272-7469; outside Anchorage 1-800-770-9999

### **Other Sources of Information**

Alaska Sentencing Commission (reports & recommendations on sentencing, 1990-1992)  
c/o Alaska Judicial Council, 907-279-2526

Anchorage Crime Prevention Committee (education and outreach)  
c/o Anchorage Chamber of Commerce, 907-272-2401

University of Alaska Justice Center (studies in criminal justice)  
907-786-1810

## Library Reference Materials

### Legal Research

This list of legal materials will help direct you to background information on criminal law and find some of the statutes and regulations that may affect a case. You should be aware that it is difficult to do your own legal research without training. Library staff can instruct you in the basic use of legal research materials, but they cannot perform legal research or give legal advice.

Most public libraries and all law libraries have books that provide a general overview of the criminal justice system, a set of Alaska statutes, the state and federal constitutions, and local municipal and borough codes. Larger public libraries and all law libraries will have state regulations and Alaska case law. Books can be sent to other libraries on interlibrary loan, and the Anchorage Law Library will send copies of cases to persons outside of Anchorage at no charge if given a complete citation. The state maintains a law library at each court location.

Much information is available on-line as well. The Alaska constitution, statutes and regulations can be found on the Alaska Legislature's home page at <http://www.legis.state.ak.us>. The Alaska Court System maintains a home page with Alaska legal information at <http://www.alaska.net/~akctlib/homepage.htm>. The State of Alaska maintains the a guide to Alaska library resources at <http://SLED.alaska.edu/index.html>. This booklet and a booklet for crime victims can be found on the Alaska Judicial Council home page at <http://www.ajc.state.ak.us>.

### Overview of Criminal Law

M. Belli, *Everybody's Guide to the Law*, chapter 18 (Harcourt Brace Jovanovich 1986)  
Reader's Digest, *You and the Law*, chapters 1 & 4 (Reader's Digest rev. ed. 1984)  
Alaska Judicial Council, *A Handbook for Victims of Crime in Alaska* (1998), provides an overview of the criminal justice system written specifically for victims.

### Alaska Constitution

Article I, § 1: equal protection  
Article I, § 7: due process  
Article I, § 8: grand jury  
Article I, § 9: double jeopardy, self-incrimination  
Article I, § 11: rights to speedy trial, jury, bail, counsel, subpoena, confront witnesses  
Article I, § 12: criminal administration  
Article I, § 14: search and seizure, warrants  
Article I, § 24: rights of crime victims  
Article II: legislature  
Article III: governor/executive branch  
Article IV: court system

### Alaska Statutes

Title 4: alcohol offenses  
Title 11: definitions of crimes and defenses  
Title 12: criminal procedure and sentencing, victims rights  
Title 16: fish & game offenses  
Title 22: court system  
Title 28: motor vehicle offenses  
Title 33: prison, probation, parole  
Title 47: juvenile justice system, alcohol, social services

### **Alaska Administrative Code**

Title 5: fish and game regulations

Title 7: juvenile justice regulations

Title 13: victims compensation board, motor vehicle regulations

Title 22: prison, probation, parole regulations

### **Municipal and Borough Codes**

Many municipalities and boroughs publish their local laws as a municipal or borough code, usually available at city hall and at the local public library. The Anchorage Law Library has codes from 23 Alaska communities.

### **Case Law**

West's Pacific Reporter publishes cases decided by the Alaska Supreme Court and Court of Appeals. Cases are printed in chronological order, which makes them hard to find. To research a topic, use West's Alaska Digest, the Alaska Law Review casenotes, or an on-line computer search service. Paralegal training or assistance is usually necessary to do case law research.

### **Pamphlets**

Pamphlets on sexual assault, domestic violence, safety planning, and victims' rights are available at most district attorney offices and domestic violence/sexual assault programs. Pamphlets on misdemeanor arraignments, minor offenses, court-appointed attorneys, appeals, guardians ad litem, and legal resources are available at most courthouses.

## Criminal Justice Terms

### A

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**ACCUSED:** the person charged with a crime; also known as the defendant.

**ACQUITTAL:** a release from a criminal charge by a court, usually when the jury or judge finds the defendant "not guilty" after a trial.

**ADJUDICATION:** a juvenile court proceeding at which a judge decides whether or not a juvenile is delinquent. If the judge finds a juvenile delinquent, the court decides whether the juvenile needs programming, supervision, or institutionalization.

**ADMISSIBLE EVIDENCE:** evidence the judge or jury can consider in deciding a case.

**AFFIDAVIT:** a written statement sworn before a notary or officer of the court.

**AFFIRMATIVE DEFENSE:** an explanation for a crime that makes the act noncriminal, such as duress, or that changes the sentence, such as heat of passion or insanity. The defendant has the burden of proving the defense by a preponderance of the evidence.

**AGGRAVATING FACTOR:** a fact about the crime or offender that lets the judge increase a presumptive sentence, such as a history of similar offenses or a particularly vulnerable victim.

**ALLEGATION:** a statement made by a person in the case who claims it can be proved as a fact.

**APPEAL:** the legal procedure by which a person asks a higher court to review the decision of a lower court.

**APPELLANT:** the person who appeals a decision of the lower court.

**APPELLATE COURT:** a court that reviews decisions made by a lower court on questions of law and procedure. The appellate court can affirm,

reverse, or remand the original decision for more proceedings.

**APPELLEE:** the person who won in the lower court.

**ARRAIGNMENT:** usually the first court proceeding in a criminal case. The judge tells the defendant what the alleged offenses are, and what rights defendants have. The judge asks the defendant to plead guilty, not guilty, or no contest.

**ARREST:** the legal restraint of a person for the purpose of charging the person with a crime. Police also can arrest a person for investigation in some circumstances, or for violation of a court order.

**ARREST WARRANT:** a legal document issued by the court or parole board authorizing the police to arrest someone.

**ARSON:** intentionally causing a fire or explosion in a building.

**ASSAULT:** causing or threatening physical harm to another person. Alaska has four degrees of assault, depending on the seriousness of the victim's injuries, the weapon used, and the offender's intent. Fourth degree assault is a misdemeanor; the more serious assaults are felonies.

**ATTORNEY:** a graduate of a law school, admitted to practice before the courts of a jurisdiction. The attorney advises, represents, and acts for the client or government.

## **B**

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**BAIL:** the release of a person who was arrested or imprisoned. The court can tell the defendant to pay a bond or deposit, require another person to take responsibility for the defendant, or let the defendant go on the defendant's promise to appear in court ("own recognizance"). Bail is intended to assure the defendant's presence in court and to protect the victim and the public.

**BAIL HEARING:** a proceeding at which a judge or magistrate decides whether to release a defendant before trial or pending appeal, and under what conditions. Defendants often must deposit a sum of money with the court to assure their appearance in court.

**BAIL BONDSMAN:** an individual who arranges with the court for a defendant's release from jail. The bail bondsman promises the court that he will pay the full bail if the defendant does not come to court when required. The defendant pays the bondsman a fee for this service.

**BAILIFF:** a person appointed by the court to keep order in the courtroom and to have custody of the jury.

**BENCH WARRANT:** an order issued by a judge for the arrest of a person--the defendant, a witness, or other participant in the judicial proceeding--who failed to appear in court as required. Judges also issue warrants for the arrest of defendants when charges or indictments are filed.

**BEYOND A REASONABLE DOUBT:** the degree which a juror must be sure of the facts in the case before finding the defendant guilty.

**BILL OF PARTICULARS:** a document that tells the defendant about the specific occurrences that the prosecution plans to prove during the trial. It limits the prosecution to asking about only those occurrences.

**BOOKING:** a police or jail action officially recording the arrest, person arrested, and reasons for arrest. Fingerprints and photographs are taken at booking.

**BOUND OVER:** a change of jurisdiction to another court, such as when a district court judge transfers a felony case to the superior court.

**BRIEF:** a written statement of the facts and legal arguments governing a case, presented from the perspective of one party.

**BURDEN OF PROOF:** the requirement of proving a fact or facts in dispute in a case. For instance, the prosecutor must produce enough evidence to prove "beyond a reasonable doubt" the guilt of the defendant in a criminal case.

**BURGLARY:** entering a building with intent to commit a crime in the building. It is first-degree burglary if the building is a dwelling, if the defendant carries a gun or uses a dangerous instrument, or if the defendant tries to hurt a person inside. Otherwise, the offense is second-degree burglary. Both crimes are felonies.

## **C**

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**CALENDAR:** a daily list of cases to appear before the court. Some courts call this list a docket. At "calendar call," the court sets trial dates for a large number of cases.

**CHAIN OF CUSTODY:** documentation of all persons who have had responsibility for a piece of evidence to prove that no one has damaged or tampered with it. The court often requires proof of custody for items stolen in a theft, drugs seized in a narcotics case, and so forth.

**CHANGE OF VENUE:** moving a case begun in one place to another location for trial. The court can change venue when the defendant cannot obtain a fair trial in the place where the crime was committed.

**CHARACTER EVIDENCE:** the prosecutor cannot use evidence about the defendant's character to show that the alleged crime was consistent with that character. The court may admit evidence about the defendant's character when it would help to prove some aspect of the offense such as intent, preparation, method, or motive.



**CHARGE:** an accusation briefly describing the crime or crimes the suspect allegedly committed. The police or prosecutor spell out the charges in an indictment, information, or complaint.

**CIRCUMSTANTIAL EVIDENCE:** indirect evidence that this person committed this crime. Examples of circumstantial evidence include finding the defendant's gun at the scene of the crime and testimony that someone saw the defendant near the scene shortly before the crime occurred.

**CITATION:** an order issued by police requiring a person to appear in court at a later date. Also, a reference to a legal authority such as a statute or court case.

**COMMON LAW:** the system of law that started in England and was later developed in the United States. Common law comes from customs and principles upheld by judicial decisions rather than from acts passed by legislatures. Also called "case law."

**COMMUNITY WORK SERVICE:** as part of a sentence, a judge may order a defendant to do a certain number of hours of volunteer work for a community or government organization.

**COMPLAINANT:** the victim of a crime who brings the facts to the attention of the authorities.

**COMPLAINT:** a written statement of the essential facts about the offense charged; usually filed at the beginning of the case.

**CONCURRENT SENTENCES:** a judge's decision to allow the defendant to serve more than one sentence at the same time.

**CONFESSION:** the defendant's oral or written admission of guilt. The state cannot use the confession against the defendant at trial unless the defendant confessed voluntarily.

**CONFRONTATION, RIGHT TO:** the U.S. and Alaska Constitutions give the defendant the right to confront the witnesses against him or her. This includes the defendant's right to be present at every important stage of the case,

the right to cross-examine adverse witnesses, and the right to subpoena witnesses.

**CONSECUTIVE SENTENCES:** a requirement by the judge that the defendant serve two or more sentences separately, one after the other. Judges can make sentences partially concurrent and partially consecutive.

**CONSOLIDATION:** the act of joining together two or more charges or defendants for a single trial.

**CONTEMPT OF COURT:** any act calculated to embarrass or obstruct a court in the administration of justice or calculated to lessen its authority or dignity.

**CONTINUANCE:** the postponement of legal proceedings until some future time or date.

**CONVICTION:** the court's judgment that the defendant is guilty of a criminal offense, based on the verdict of a judge or jury, or on the defendant's plea of guilty or no contest.

**CORRECTIONAL INSTITUTION:** a prison, jail, or other facility for imprisoning offenders.

**CORROBORATING EVIDENCE:** evidence that supplements evidence already given and tends to strengthen or confirm it.

**COUNT:** one of the parts of a complaint, indictment or information. Each count alleges a separate offense.

**COURT:** a chamber or other room where trials and other judicial hearings take place. A judge presides over the court. "The court" also refers to the judge rather than to the room or building.

**COURT CLERK:** an individual who keeps a record of court proceedings each day and records future dates for the judge's calendar. This person takes charge of all case files and paperwork for each day.

**CRIME:** any act that the legislature has decided to punish by imprisonment and to prosecute in a criminal proceeding.

**CRIMINAL JUSTICE SYSTEM:** the combination of police, courts and corrections agencies that operates collectively to prevent crime, enforce the criminal law, and punish, supervise, and rehabilitate offenders.

**CRIMINAL MISCHIEF:** the offense of intentionally damaging property. It can be a felony or a misdemeanor, depending upon the amount and type of damage.

**CROSS-EXAMINATION:** the questioning by a party or attorney of the opponent's witness, after the direct examination. The court usually limits cross-examination to the credibility of the witness and to matters raised on direct examination.

**CUSTODY:** detained by authority of the law; arrest and detention. The courts often release defendants to the custody of a responsible third person before trial. They also often let juveniles stay in the custody of a parent or guardian during proceedings and after disposition.

## **D**

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**DEFENDANT:** the person charged with a crime; also called the accused.

**DELINQUENCY:** a formal finding by a court that a juvenile has committed a crime and should be subject to state supervision.

**DE NOVO:** literally anew, as in trial de novo--the granting of a new trial.

**DETENTION:** the legal confinement of a person awaiting criminal or juvenile proceedings.

**DFYS:** the Division of Family and Youth Services, part of the Alaska Department of Health and Social Services. DFYS handles juvenile criminal cases, as well as foster care, Child In Need of Aid (CINA), and other services.

**DIRECT EVIDENCE:** proof of facts by witnesses who saw the acts done or heard the words

spoken, as distinguished from circumstantial or indirect evidence.

**DISCOVERY:** pre-trial procedures where the parties exchange information about evidence.

**DISMISSED WITH PREJUDICE:** when the judge dismisses the charges against the accused and does not let the government file the charges again.

**DISMISSED WITHOUT PREJUDICE:** when the judge dismisses one or more charges against the defendant, but lets the government refile the charges later.

**DISPOSITION:** the outcome of a case, which may include dismissal, conviction, or other action. In juvenile cases, disposition is similar to sentencing.

**DIVERSION:** the official suspension of criminal proceedings against an alleged offender. The person may go to a treatment or care program as a condition of the diversion.

**DOMESTIC VIOLENCE:** physical abuse, sexual abuse, threats, or stalking, done by a present or former spouse, sexual partner, household member, or relative.

**DOUBLE JEOPARDY:** a constitutional protection that keeps the government from prosecuting a person twice for the same charges.

**DUE PROCESS OF LAW:** the constitutional and common law principles that protect fairness and justice in the courts. The constitutional guarantee of due process requires that every person have the protection of a fair trial.

## **E**

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**EVIDENCE:** information offered to the court or jury to prove something.

**EXCLUSION OF WITNESSES:** an order requiring witnesses to stay out of the courtroom until the judge calls them to testify. The judge tells these witnesses not to discuss the case or their testimony with anyone except the attorneys in the case.

**EXHIBITS:** documents, charts, weapons, or other tangible evidence used in a court case.

**EX PARTE:** a judicial proceeding or action that involves only one of the parties in a case.

**EXPERT EVIDENCE:** testimony given in relation to some scientific, technical, or professional matter by a qualified person. Experts can testify only on matters that are beyond the experience of ordinary citizens.

**EXTRADITION:** the process of returning a fugitive from one state or country to another, usually so that the government can send the fugitive to trial.

## **F**

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**FELONY:** in Alaska any criminal offense that carries a possible sentence of one year or more in jail.

**FINE:** a sum of money paid as a form of punishment. A "day-fine" uses the defendant's ability to pay and the seriousness of the offense as factors in deciding the amount of the fine.

**FIRST OFFENDER:** a person committing a first adult felony offense, for purposes of applying presumptive sentencing laws. A first offender

may have a history of juvenile offenses or adult misdemeanors.

**FOUNDATION:** a party seeking to have evidence admitted often must first "lay a foundation" by showing preliminary facts related to the evidence. For example, before an eyewitness can testify about what happened during an alleged crime, someone must show that the witness actually saw the crime.

**FORFEITURE:** a court order requiring the defendant to give the government an item connected to the crime. Property commonly forfeited includes cars, planes, or weapons used in a crime, and money, animals, or goods gained by the crime.

**FORGERY:** counterfeiting or altering a document like a deed, a will, or a check, or knowingly using a forged document. Forgery can be a felony or misdemeanor.

**FURLOUGHS:** release of a prisoner into the community for education, employment, training, or treatment. Furloughs are granted to low-risk offenders and offenders making the transition from prison back to the community.

**FY 1997:** fiscal year 1997; in Alaska, from July 1, 1996, to June 30, 1997. State agencies receive their budgets and often issue reports to cover a fiscal year.

## **G**

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**GOOD TIME:** days credited to the offender's sentence for good behavior in prison. If the offender does not lose good time through misbehavior, he or she can be released after serving two-thirds of the sentence. Good time gives offenders an incentive to comply with prison rules.

**GRAND JURY:** a body of citizens that hears evidence against a person suspected of a crime and decides if there is probable cause to charge the suspect formally. In Alaska, the grand jury also can conduct its own investigations and issue reports.

**GUARDIAN AD LITEM:** a person appointed by the court to represent the rights of a child in a legal matter. The court also may appoint a guardian ad litem for a person who is legally incapable of managing his or her own affairs.

**GUILTY:** a plea accepting guilt, or a verdict from a judge or jury that the prosecution has met its burden of proof.

**GUILTY BUT MENTALLY ILL:** when the defendant committed the crime but, as a result of mental disease or defect, did not know it was wrong or could not control his or her conduct. The defendant is still subject to imprisonment combined with mental health treatment.

## **H**

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**HABEAS CORPUS:** an order to bring a person before the judge that issued the order. The court then decides whether the person has been held in custody without due process of law.

**HALFWAY HOUSE:** also called a community residential center (CRC). A residential facility for offenders on furlough, probation or parole. Offenders can leave the building by themselves to find or keep a job, go to school, or go to treatment programs. An offender must get permission to leave, and must be back by a set time.

**HEARSAY:** evidence not based upon a witness's personal knowledge, but on information the witness got from someone else. Hearsay evidence is admissible in very limited circumstances.

**HOMICIDE:** the killing of one human being by another. Homicide may be murder, manslaughter, or criminal negligence. It may even be non-criminal, as in self-defense.

**HUNG JURY:** a jury unable to agree unanimously on whether to convict or acquit a defendant.

## **I**

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**IMMUNITY:** protection from a duty or penalty. A witness may be granted immunity from prosecution to encourage the witness to answer questions. Otherwise, the witness might refuse to answer to avoid self-incrimination.

**IMPANELLING:** the process by which the court selects potential jurors and swears them in.

**IMPEACHMENT:** an attack on the credibility of a witness or the accuracy of the witness's testimony.

**INADMISSIBLE EVIDENCE:** evidence that cannot be used at a hearing or trial because it is irrelevant, misleading, improperly obtained, or for some other reason.

**INCARCERATED:** jailed, imprisoned.

**INCOMPETENT:** refers to persons whose testimony the court will not admit because of mental incapacity, immaturity, lack of proper qualifications, or similar reasons. This term also describes defendants, who, because of a physical or mental disorder, cannot help their lawyers prepare a defense or cannot understand the nature of proceedings against them.

**INDICTMENT:** a document prepared by a grand jury formally charging a person with a crime. Also called a true bill.

**INDIGENT:** a person who cannot afford an attorney.

**INFORMATION:** a sworn affidavit charging a person with a crime based on facts supplied to the prosecutor.

**INSANITY:** the degree of mental disorder, defect, or disease that relieves a person of criminal responsibility for his or her actions. The judge can send a defendant found not guilty by reason of insanity to prison, unless the defendant proves that he or she is no longer dangerous.

**INTAKE:** a process occurring early in juvenile criminal actions, when a DFYS intake officer decides how to proceed with the case.

## **J**

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**JAIL:** a facility for confining those convicted of a crime or those charged with a crime and awaiting trial. Jails are usually used for offenders awaiting trial or serving short sentences.

**JUDGE:** a public official appointed to hear and decide cases in a court of law.

**JUDGMENT:** the official decision of a court.

**JUDICIAL NOTICE:** a court finding that parties do not need to prove certain facts because most people know them or can find them from reliable sources. Examples include geographic facts, historical events, and weather information.

**JURISDICTION:** the legal authority of a court over the defendant or the subject matter of the dispute.

**JURY:** a panel of citizens who evaluate the evidence presented to them and decide the truth of the matter in dispute.

**JURY INSTRUCTIONS:** instructions that the judge gives to the jury. Jury instructions explain the principles of law that the jury should apply to the facts of the case to reach a verdict.

**JUVENILE:** a person who, because he or she is under 18 years old, is within the sole jurisdiction of the juvenile court unless bound over for adult processing.

## **K**

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**KIDNAPING:** restraining or hiding another person with the intent of holding the victim for ransom, using him or her as a shield or hostage, or injuring or sexually assaulting the victim. Kidnaping is among the most serious felonies.

## **L**

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**LEADING QUESTION:** a question asked in words that instruct or suggest to the witness what to

answer. This type of question is prohibited on direct examination.

## **M**

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**MAGISTRATE:** a judicial officer with less authority than a judge. Magistrates issue search and arrest warrants, try and sentence violations, try and sentence misdemeanor cases with the consent of the defendant, and conduct felony bail hearings.

**MANSLAUGHTER:** causing the death of another person under circumstances not amounting to murder in the first or second degree.

**MASTER:** an attorney appointed in juvenile or other proceedings to hear the facts of a case and make recommendations to the judge.

**MISCONDUCT INVOLVING CONTROLLED SUBSTANCES:** criminal drug possession, manufacture and sale. Alaska law sets out six degrees of this offense, ranging from major drug trafficking (an unclassified felony), to possession of marijuana (a Class B misdemeanor).

**MISCONDUCT INVOLVING WEAPONS:** prohibited possession, use or sale of firearms. First-degree misconduct (a Class C felony) includes gun possession by a felon and illegal weapon sales. Second-degree misconduct includes recklessly discharging a gun and carrying a gun while intoxicated. Third-degree misconduct includes carrying a concealed weapon and bringing a gun into a bar. The lesser degrees of misconduct are misdemeanors.

**MISDEMEANOR:** an offense that authorizes a sentence of imprisonment up to one year in jail.

**MISTRIAL:** a trial that the judge has ended and declared void before the verdict because of some extraordinary circumstance or some fundamental error that cannot be cured by appropriate instructions to the jury.

**MITIGATING FACTOR:** a fact about the crime or offender set out by law that lets the judge reduce a presumptive sentence.

**MOTION:** a request by a party in a case that the court make a certain ruling.

**MURDER:** first-degree murder includes killing another person with intent to kill, by forced suicide, or through torture. Second-degree murder includes killing another person with intent to cause serious physical injury, during another serious felony (felony-murder), or while acting in a way that shows extreme indifference to the value of human life.

## **N**

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**NOLO CONTENDERE OR NO CONTEST:** a plea in a criminal offense indicating that the defendant neither admits nor denies the charges, but does not contest the facts of the case. The criminal case proceeds as if the defendant pled guilty. A plea of no contest cannot be used against the defendant to decide liability in a separate civil case.

**NOT GUILTY:** a plea by a defendant denying guilt. Also, a verdict indicating that the prosecution failed to meet its burden of proof, also known as an acquittal.

## **O**

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**OBJECTION:** opposition to the form or content of a question asked by opposing counsel. The judge rules on the validity of the objection. Parties also can object to evidence or to the conduct of opposing counsel.

**OFFENDER:** a person convicted of a crime.

**OFFENSE:** the violation of any criminal law.

**OFFER OF PROOF:** when a judge excludes evidence, the party asking to have the evidence admitted makes an "offer of proof" to the court about what the evidence would have shown. For example, a party might state on the record what the witness would say if permitted to answer the question, and what the answer would prove. The offer of proof gives the trial court a chance to reconsider, and preserves the question for appeal.

**OPINION EVIDENCE:** evidence of what the witness thinks, believes, or infers about a fact in dispute, as distinguished from personal knowledge of the facts or observation. Opinion evidence is usually only admissible if the opinion comes from an expert witness.

**OPINION OF THE COURT:** a written or oral statement by a judge explaining the reasons for a decision.

**ORDINANCE:** a law passed by a local government.

**OVERRULE:** the term used when the judge denies a point raised by one of the parties, as in "objection overruled."

**OWN RECOGNIZANCE (OR):** the defendant's release from custody based on the defendant's promise to appear in court, without giving money or security for bail. Sometimes the court imposes special conditions such as remaining in the custody of another, following a curfew, or keeping a job.

## **P**

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**PARDON:** the power of the governor of a state to relieve a convicted person from the legal consequences of the conviction.

**PAROLE, DISCRETIONARY:** the release of an inmate from prison by the parole board, before the whole sentence is served, on conditions of supervision. A parole officer supervises the parolee until the term of the parole ends. Parole can reduce the costs of imprisonment and increase the chance of rehabilitation.

**PAROLE, MANDATORY:** the release of an inmate from prison after serving at least a two-year prison term minus good time. The Department of Corrections must release an inmate who has earned good time, but the parole board can set conditions of supervision if the sentence was over two years.

**PEREMPTORY CHALLENGE:** when choosing a jury, each side can reject a fixed number of potential jurors without giving any reason. In Alaska, each side also can peremptorily challenge the

judge assigned at the beginning of the case, without giving a reason.

**PERJURY:** the offense of giving false testimony under oath. It can be a felony or a misdemeanor.

**PETITION:** a document filed in juvenile court setting forth the facts that bring the youth within the jurisdiction of the court, and stating that the youth needs treatment, supervision or rehabilitation.

**PLEA:** the defendant's response to the prosecution's charges. A defendant may plead guilty, not guilty, no contest, or not guilty by reason of insanity.

**PLEA BARGAINING:** negotiations between the defense and the prosecution to resolve a criminal case without a full trial. For example, the prosecution can agree to dismiss some charges if the defendant pleads guilty to the other charges, or the defendant can agree to plead guilty to a lesser charge. The prosecutor also may agree to recommend a certain sentence to the court.

**POST-CONVICTION RELIEF:** a request to the trial judge to modify a sentence or overturn a conviction.

**PRELIMINARY EXAMINATION:** a district court hearing at which the judge decides whether probable cause exists to believe that a felony was committed and that the defendant committed it.

**PREPONDERANCE OF EVIDENCE:** proof that would lead the trier of fact (judge or jury) to find that the existence of the contested fact is more probable than not. Courts use this standard in criminal trials when the defendant asserts an affirmative defense. It is a lower burden of proof than proof beyond a reasonable doubt.

**PRESENTENCE REPORT:** a thorough background investigation ordered by the court in felony cases to help decide the appropriate sentence. A probation officer prepares the presentence report.

**PRETRIAL DETENTION:** custody awaiting trial or, on occasion, awaiting the filing of charges.

**PRIMA FACIE CASE:** evidence presented by the prosecution that, unless contradicted, would prove each element of the crime beyond a reasonable doubt. If the prosecution cannot make a prima facie case, the court will grant the defendant's motion for judgment of acquittal.

**PRISON:** a facility for confining someone convicted of a crime. Prisons are usually used by offenders serving longer sentences.

**PRO SE:** a Latin expression for a defendant who acts as his or her own attorney. Also known as "pro per."

**PROBABLE CAUSE:** facts and circumstances that would make a reasonable person believe that someone has committed a crime, or that property that the government can seize is at a designated location. Depending on the circumstances, a police officer, grand jury or judge may decide that probable cause exists.

**PROBATION:** release of a convicted defendant, either without imprisonment or after some imprisonment, subject to conditions imposed by the court. A probation officer may supervise the offender. If the offender violates the conditions of probation, the prosecutor or probation officer can ask the court to revoke probation. If the judge finds a violation, the judge can change the conditions or send the offender to jail.

**PROBATION MODIFICATION:** a formal court proceeding started by the defendant, the prosecutor, or the probation officer, to change the defendant's conditions of probation.

**PROSECUTOR:** a government attorney who represents the citizens' interests in criminal cases. The prosecutor charges crimes, takes cases to trial or negotiates pleas, makes recommendations at sentencing, and handles appeals.

**PROTECTIVE ORDER:** a court order in a domestic violence case, instructing a violent person to

stay away from a particular victim or victims. A protective order may be issued even before criminal charges are filed.

**PUBLIC ADVOCATE:** an attorney working for the Office of Public Advocacy who represents indigent adults and juveniles accused of crimes.

**PUBLIC DEFENDER:** an attorney working for the Public Defender Agency who represents indigent adults and juveniles accused of crimes.

## **Q**

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**QUESTION OF FACT:** a fact about which the parties disagree. The judge or jury decides whether the parties have proven the fact.

**QUESTION OF LAW:** a legal question about which the parties disagree. The judge decides the proper interpretation of the law in the case.

## **R**

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**RAP SHEET:** an adult offender's prior record of criminal arrests and dispositions. The law restricts general public access to the list.

**REASONABLE DOUBT:** a doubt about the defendant's guilt, based upon reason and common sense, arising from a fair consideration of all the evidence in the case. If a jury has a reasonable doubt about the truth of the charge, then it must give a verdict of not guilty.

**REBUTTAL:** evidence that explains away or contradicts the evidence of the other side. Generally refers to evidence that the prosecutor presents after the defense has completed its case.

**RECIDIVISM:** repeated criminal activity. A recidivist is a repeat criminal.

**REDIRECT EXAMINATION:** questions following cross-examination, asked by the party who first examined the witness.

**REHABILITATION OF OFFENDER:** an attempt to keep an offender from committing future crimes. Rehabilitation often includes drug and alcohol treatment, education, counseling, finding and keeping a job, and understanding the effect of the crime on the victim.

**REHABILITATION OF WITNESS:** an attempt to re-establish the credibility of a witness whose testimony has been attacked, or whose character has been discredited during cross-examination.

**REST:** a party "rests" when it has presented all the evidence it intends to offer.

**RESTITUTION:** to pay back, to make whole again. A judge can make the defendant pay the victim of the crime for any money spent or lost because of the crime, including medical and counseling costs, lost wages, and lost or damaged property.

**RESTRAINING ORDER:** a court order forbidding the defendant to do certain acts, or to approach or harass certain persons. Violation of a restraining order can lead to arrest.

**REVOCATION HEARING:** a court hearing requested by a probation officer or prosecutor to decide whether the offender violated the conditions of probation and what the consequences should be. The parole board holds similar hearings for parole violations.

**ROBBERY:** taking or attempting to take property by force from the presence of another person. It is first-degree robbery when the defendant uses or pretends to use a dangerous instrument (such as a gun or knife) or attempts to cause serious physical injury to the victim. It is second-degree robbery without these factors. Both are felonies.

## **S**

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**SEARCH AND SEIZURE:** the police practice of looking for and then taking evidence useful in the investigation and prosecution of a crime. The United States and Alaska Constitutions set limits on searches and seizures. Except in



certain urgent circumstances, police must get a search warrant prior to the search and seizure.

**SEARCH WARRANT:** an order issued by a judge that lets police officers look through certain premises, vehicles or containers for certain things or persons, and bring them before the court.

**SELF-DEFENSE:** protecting one's person or property against an immediate injury attempted by another. The state cannot punish a person criminally to the extent that he or she acted in justified self-defense.

**SELF-INCRIMINATION:** making a statement against one's own criminal interests. The Alaska and U.S. Constitutions provide that an accused person has a right to remain silent, and the right to the presence and advice of an attorney, before any police questioning while the accused is in custody. Statements and evidence obtained in violation of this rule cannot be used in the defendant's criminal trial. A defendant taken into custody must be notified of these rights (often referred to as *Miranda* warnings). The defendant can remain silent throughout the trial.

**SENTENCE:** the penalty imposed on a defendant after conviction for a crime. A sentence can include a combination of imprisonment, probation, restitution, community work service, treatment, fines, loss of license, or other restrictions and punishments.

**SEQUESTRATION:** keeping jurors together throughout the trial and deliberations (or just during deliberations), and guarding them from contact with other sources of information about the trial.

**SEVERANCE:** separation of the trials of two or more defendants, or separation of charges for the same defendant, to prevent prejudice that might arise if tried together.

**SEXUAL ABUSE OF A MINOR:** sexual conduct by an adult with a young person. First-degree sexual abuse of a minor includes sexual penetration with a person under 13 (with or without the victim's consent), or sexual penetration of a

person under 18 living with the defendant or in the defendant's care. Second-degree sexual abuse of a minor includes sexual contact with a person under 13, sexual penetration with a person 13-15 years old, or sexual contact with a young person living with the defendant or in the defendant's care. Both are felonies.

**SEXUAL ASSAULT:** also known as rape. First-degree sexual assault includes sexual penetration (of the genitals, anus or mouth) without consent of the victim. Second-degree sexual assault includes sexual contact (knowingly touching the victim's genitals, anus, or female breast) without consent. Both are felonies.

**SPEEDY TRIAL:** the constitutional right of an accused person to have a trial free from unreasonable delay.

**STATUTE:** a law passed by the state legislature.

**STATUTE OF LIMITATIONS:** the time limits within which the state must prosecute a defendant or else be barred from prosecuting the person for that particular crime.

**STIPULATION:** an agreement by attorneys on opposite sides of a case about facts or procedures. It does not bind the parties unless both agree and the judge approves it.

**SUBPOENA:** a court order requiring a witness to appear and give testimony before the judge.

**SUMMONS:** a written order from a judge telling a person to appear at a certain time and place to answer charges or questions.

**SUSPENDED IMPOSITION OF SENTENCE (SIS):** in some cases, the judge does not impose a sentence until after the defendant has completed certain conditions similar to probation, including jail time. If the defendant meets all conditions, the judge can set aside the conviction. If not, the judge can impose sentence. SIS is most often used for young, first offenders.

**SUSPENDED SENTENCE:** in some cases, the judge can suspend part or all of a sentence to imprisonment and give probation instead. If the

defendant fails to meet the conditions, the judge can impose the suspended time.

**SUSTAIN:** to support, as in "the judge sustained the objection because he found the question irrelevant."

## **T**

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**TESTIMONY:** evidence given by a witness who took an oath to tell the truth.

**THEFT:** taking the property of another with intent to deprive the person of it. Thefts are felonies or misdemeanors, depending on the amount and conditions of the crime.

**THREE-JUDGE PANEL:** if imposing a presumptive sentence would cause manifest injustice (obvious unfairness) after the sentence is adjusted for aggravating and mitigating factors, the trial judge can refer the case to a panel of three other trial judges. These judges can impose a different sentence if justified, from no time in prison up to the maximum sentence.

**TRANSCRIPT:** the official, word-for-word record of a trial or hearing.

**TRIAL:** a formal judicial proceeding through which courts decide criminal and civil disputes.

## **V**

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**VENUE:** place of trial.

**VERDICT:** the formal conclusion of a judge or jury, deciding whether the prosecution has proven that the defendant is guilty of the crime.

**VICTIM IMPACT STATEMENT:** the victim's account of the harm the victim suffered from the crime, to be considered by the judge at sentencing.

**VIOLATION:** an offense that carries no jail time but may be penalized by a fine not exceeding \$300. A violation is not considered a crime.

**VOIR DIRE:** the questions asked of potential jurors by the attorneys or judge to decide whether the jurors will serve on the jury.

## **W**

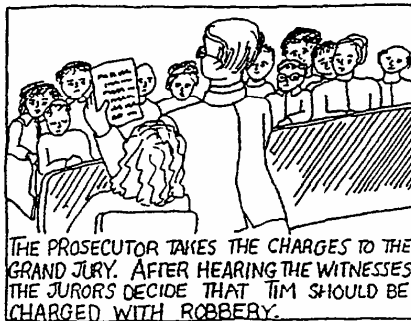
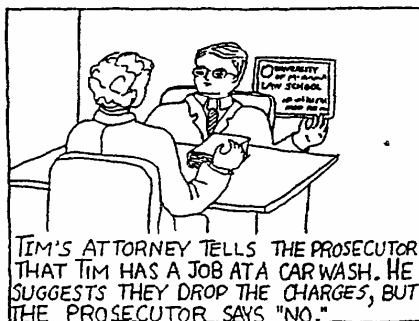
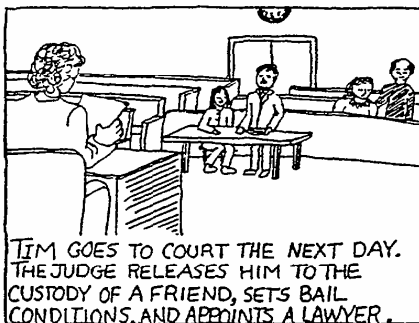
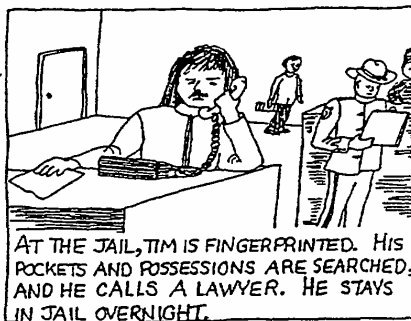
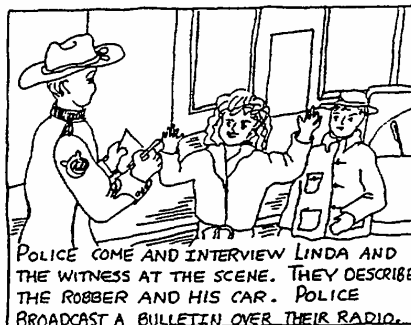
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**WAIVER:** the intentional and voluntary giving up of a known right. A person can waive a right by agreeing to give it up, or the judge can infer the waiver from circumstances. Examples: waive jury; waive speedy trial; waive presentence report.

**WARRANT:** a written order from a judge that authorizes a police officer to make an arrest or a search, or carry out a judgment.

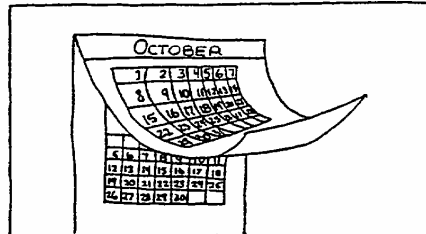
**WORK RELEASE:** a program that lets inmates leave a jail, prison, or halfway house during the day to work at a job.

## Picture Summary of a Criminal Case





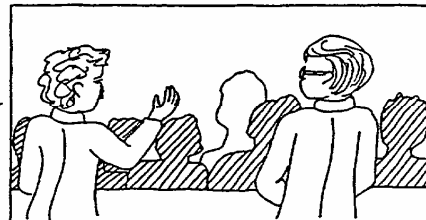
THE JUDGE ARRAIGNS TIM ON THE CHARGE AND ASKS HOW HE PLEADS. TIM SAYS "NOT GUILTY." THE JUDGE KEEPS HIS BAIL CONDITIONS THE SAME.



IN A FEW WEEKS, TIM AND HIS LAWYER COME TO COURT FOR A HEARING. AFTER DECIDING SEVERAL DISPUTES, THE JUDGE SETS A TRIAL DATE.



ALTHOUGH MOST DEFENDANTS PLEAD GUILTY, TIM DECIDES TO GO TO TRIAL. HIS ATTORNEY'S INVESTIGATOR TALKS TO WITNESSES AND LOOKS AT EVIDENCE.



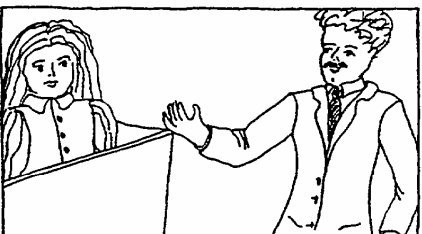
BEFORE TRIAL, THE LAWYERS ASK THE POTENTIAL JURORS ABOUT THEIR IDEAS AND BACKGROUNDS. THEY AGREE ON TWELVE PEOPLE TO HEAR THE CASE.



THE TRIAL STARTS WITH THE LAWYERS TELLING THE JURY AND JUDGE WHAT THEY THINK THE EVIDENCE SHOWS. THE PROSECUTOR TALKS FIRST.



THE PROSECUTOR CALLS WITNESSES AND PRESENTS EVIDENCE TO PROVE THAT TIM IS GUILTY BEYOND REASONABLE DOUBT. WITNESSES MUST COME TO COURT.



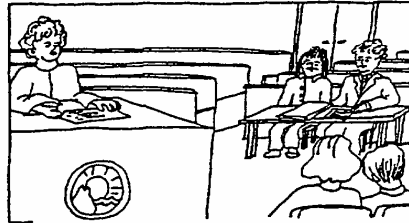
THE ATTORNEYS ASK QUESTIONS OF THE WITNESSES THEY CALL. THEY ALSO CAN CROSS-EXAMINE THE OTHER SIDE'S WITNESSES.



THE DEFENDANT CAN CHOOSE WHETHER TO TESTIFY. TIM DECIDES THAT HE WON'T. HIS ATTORNEY CALLS OTHER WITNESSES TO CAST DOUBT ON THE STATE'S CASE.



AFTER THE LAWYERS HAVE PRESENTED ALL THE EVIDENCE, THEY SUM UP THE CASE FOR THE JURY. THE PROSECUTOR GOES FIRST, THEN THE DEFENSE.



THE JUDGE TELLS THE JURY ABOUT THE LAWS THAT APPLY TO THE CASE, HOW TO CONSIDER THE EVIDENCE, AND HOW TO AGREE ON A VERDICT.



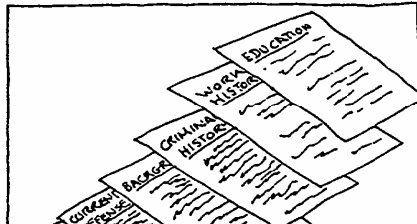
THE JURY MEETS PRIVATELY TO DECIDE IF THE PROSECUTOR HAS PROVEN TO THEM THAT TIM IS GUILTY. ALL MUST AGREE ON THE VERDICT.



THE JURORS FIND TIM GUILTY. THEY GO BACK TO THE COURTROOM TO DELIVER THEIR VERDICT. THE JUDGE SETS A DATE FOR SENTENCING.



FOR SEVERAL WEEKS BEFORE THE SENTENCING, TIM, THE LAWYERS, AND THE PROBATION OFFICER WORK ON A PRE-SENTENCE REPORT.



THE REPORT TELLS TIM'S PRIOR CRIMES, HIS WORK AND SCHOOL HISTORY, THE OFFENSE, AND OTHER FACTS FOR THE JUDGE TO CONSIDER.



AT SENTENCING, THE JUDGE HEARS FROM THE LAWYERS, TIM, THE VICTIM, AND OTHERS. THE JUDGE DECIDES TO IMPOSE THE PRESUMPTIVE SENTENCE.



TIM MUST GO TO JAIL FOR AT LEAST TWO-THIRDS OF THE TIME IMPOSED. THE JUDGE ALSO MAKES HIM REPAY THE VICTIM AND GO TO SCHOOL.

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