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Alaska Pretrial Intervention Found Successful

- *N.E. Schafer*

From 1983 to 1986, the Alaska Pretrial Intervention (PTI) program provided diversion services in thirteen locations throughout the state. The program operated under the aegis of the Alaska Department of Law, a state agency headed by the Attorney General, which has as one of its primary responsibilities the prosecution of persons accused of criminal behavior in the state.

A recent study completed by the Alaska Justice Statistical Analysis Unit at the Justice Center indicates the program functioned successfully according to several factors: it met its own objectives, it lived up to the expectations of community groups, and it successfully intervened in the potential criminal behavior of a large portion of its clients.

The PTI program was intended to provide an alternative to full prosecution in cases where the nature of the offense behavior did not appear to warrant such prosecution. The objectives of the program were: (1) to provide prosecuting attorneys with a viable alternative to formal processing within defined criteria and guidelines; (2) to provide rehabilitative services to Alaska residents charged with essentially non-serious first offenses; and (3) to provide restitution either to the victim through reimbursements for monetary damages or to society through performance of community service. Program guidelines stipulated that non-prosecutable cases could not be referred to the program.

The Department of Law built an evaluation component into the

HIGHLIGHTS INSIDE THIS ISSUE

- The Bureau of Justice Statistics examines data on indigent defense services throughout the country (p. 4).
- The absence of tribes as formal political structures has contributed to a loss of self-determination among Alaska Natives (p. 3).

PTI program in order to assure that it was operating in the best interest of the community, the victim and the defendant. While internal program evaluations are often geared toward self-perpetuation, the Alaska Department of Law was committed to the accumulation of information to be used for program improvement and hence, at program initiation, incorporated ongoing program evaluation by an independent agency. This evaluation effort involved the Justice Center of the University of Alaska Anchorage from the beginning. As part of its evaluation of a pilot PTI program in Anchorage the Justice Center had identified the types of data needed for statewide evaluation, designed data collection instruments, and formulated the processes and procedures necessary for the generation of program evaluation information.

Data Base Directory Available

The Justice Center at the University of Alaska Anchorage has released the *Justice Data Base Directory*, a research catalogue of data banks maintained by Alaska justice system agencies. The directory, which will be updated regularly, describes each data base in detail and provides summary background information on the controlling agencies. The work represents the first effort in the country to collect such information on a statewide basis.

Agencies and institutions covered

in this first edition include the Alaska Department of Law, the Department of Corrections, the Department of Public Safety, the Division of Family and Youth Services (Department of Health and Social Services), the Alaska Judicial Council, the Alaska Justice Statistical Analysis Unit, the Alaska Court System, and the Alaska Bar Association.

Copies of the Justice Data Base Directory may be obtained for \$35 plus \$5 postage and handling through the Justice Center at the University of Alaska Anchorage.

Please turn to *PRETRIAL*, Page 2

PRETRIAL*(continued from page 1)*

PTI personnel worked with Center researchers to develop standardized data forms and design a structure for continuous data collection, verification, and computer storage and processing. As a result of its involvement throughout the life of the pretrial program in Alaska the Justice Center accumulated a complete computerized data base for the program, which included extensive client and program information.

While the data were used to generate annual aggregate information for the use of PTI staff, the Department of Law, and policymakers, no analysis of the complete data set was completed until 1988. At that time, a grant from the Bureau of Justice Statistics provided funds for the merging of yearly data files and the addition of new data.

With the assistance and cooperation of the Alaska Department of Public Safety, criminal history data were added to the data base so that recidivism factors could be included in the evaluation.

The primary goal of the PTI program was to provide an alternative to full prosecution in cases where the offense behavior seemed to warrant it. Pretrial diversion programs in other states have frequently been found to result in "net widening"; i.e., these programs did not remove offenders from the system but added offenders to it by referring to the program individuals who would not have been prosecuted, usually because of inadequate evidence, even if there had been no diversion program. With the exception of one offense category, the Alaska PTI program did not appear to result in net widening. Three variables underscore this conclusion: the percentage of clients charged with felonies (39.9% of all clients), the percentage of clients with prior records (36.3%), and the types of offenses for which clients were referred.

Although the PTI program was intended for those charged with non-serious first offenses, program guidelines permitted referrals of defendants with prior records and/or defendants charged with felonies rather than misdemeanors. That prosecutors chose to refer a substantial number of people from both these groups to the diversion program suggests that PTI was used to provide a genuine alternative to further processing, thus reducing the burden on the Alaska criminal justice system.

Five offense categories accounted for nearly 75 per cent of all PTI intake offenses: theft (N=530), drug offenses (N=227), burglary/trespass (N=206), assault (N=205), and underage drinking (N=204). The offenses were categorized for easier presentation of the data. Within these categories are several degrees of seriousness. The burglary/ trespass category included 15 charges of burglary in the first degree, a Class B felony; 112 charges of burglary in the second degree, a Class C felony; and 79 counts of criminal trespass, a misdemeanor. Referral decisions were made on a case-by-case basis. Of particular interest is the large number of clients charged with underage drinking, which has been a Class A misdemeanor in Alaska since 1983. Since these offenders have traditionally been treated with a warning or a summons to appear rather than with arrest, the appearance of this charge among the top five in the data set suggests net widening, for this offense. If this is so, it is true at only one PTI location, since 88.0 per cent of the PTI clients charged with underage drinking were in the Fairbanks PTI office. Although pretrial diversion in Alaska operated under a state agency and standard guidelines, local policies and concerns necessarily colored some referral decisions.

Since successful completion of the program results in dropped charges and no conviction record, pretrial diversion is viewed as a lenient disposition for those charged with

Pretrial Intervention Program Client Profiles

Age	Mean	26.05	
	Median	23.0	
	Range	17-66	
Sex		#	%
	Male	1402	75.2
	Female	463	24.8
	Total	1865	100.0
Race	White	1297	69.5
	Black	94	5.0
	Native	398	21.3
	Other	76	4.1
	Total	1865	99.9
Marital Status	Single	1024	54.9
	Married	538	28.8
	Divorced	230	12.3
	Separated	52	2.8
	Widowed	19	1.0
	Unknown	2	.2
	Total	1865	100.0
Education	No High School	468	25.1
	GED	224	12.0
	H S Diploma	719	38.6
	Some College	345	18.5
	AA Degree	43	2.3
	BA Degree	32	1.7
	Graduate work	34	1.9
Total	1865	100.1	
Employment	Full-time	763	40.9
	Part-time	257	13.8
	Unemployed	595	31.8
	Other (student homemaker, retired, etc.)	250	13.5
	Total	1865	100.0
	Offense Type	Felony	688
Misdemeanor		1177	63.1
Total		1865	100.0
Record	Prior	677	36.3
	None	1188	63.6
	Total	1865	99.9
Type of Attorney	None	517	27.7
	Private	463	24.8
	Public defender	767	41.1
	Court appointed	114	6.1
	Unknown	4	.3
	Total	1865	100.0

A Perspective**The Illusion of Choice: Why Tribes Are Needed**

- Stephen Conn

The tribe as a unit of government has been perceived as a lingering fixture of the past whose continuing worth is questionable or even counterproductive to the real needs of Alaska Native peoples. The model for Native self-determination in Alaska, developed by Congress and the state, differs from the tribal arrangements characterizing the relationship of other Native American groups to the federal government. However, the weakening of Native control over village life and resources, which has resulted from the Alaska model, suggests that in fact a formal tribal government may be necessary to survival of the groups.

Historically, the policy generated for Alaska Natives – Indians, Yupik and Inupiat Eskimo and Aleut peoples – has sought to replace a tribal model of governance with a body of legislation which confirms land rights and the federal preference without the direct political involvement of Alaska Native villages. While the Alaska Native Claims Settlement Act ceded a land base to Alaska Natives equal to the entire reserved tribal land base of other American Indians, the problematic model of management by tribal governments was avoided through its replacement with corporations based in villages and in the regions. Alaska Natives then alive were shareholders to the corporations, with an ultimate promised right to transform their birthrights into cash if they desired. Natives born later were omitted. Tribal ownership or governmental control of the land was not included in the Act. Tribes (assuming they legally exist in Alaska) were in fact bypassed by the Act and were not even parties to its negotiations. Tribal government was also ignored as a fundamental unit of social service delivery.

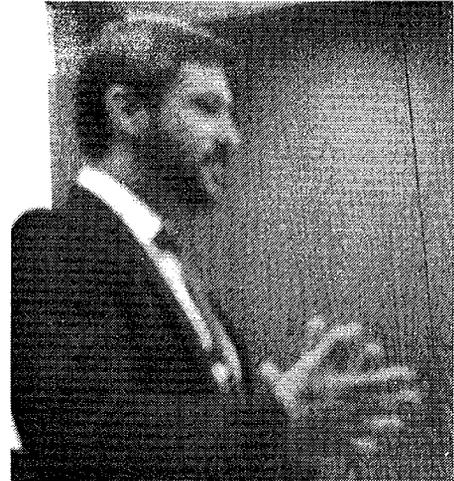
The Alaska model has been an experiment in Indian policy which, in ignoring the tribe as a unit of government, has had serious negative effects on Native village life. There are several reasons why this model was selected.

First, village survival was viewed by early Native leadership and later generations as dependent on the economic survival of rural peoples. Survival was to be achieved through subsistence and by participation in the larger Alaska resource economy. In the 1950s and 1960s it was envisioned that Natives would participate as construction workers and technicians, and then, in the 1970s, as shareholders and managers, controlling the land base and resident population through local self-government. The Native authority through which these goals were pursued, however, evolved in the direction of a more regional and statewide orientation, and the originally intended enhancement of local authority never materialized.

Second, the overall governmental interests of Alaska and its economic destiny were viewed as coinciding with those of Native Alaskans. For a time, this was true.

Third, a shared administrative perspective, especially in the 1970s, dominated the thinking of all major players – federal, state and Native – a perspective that over time transformed village Alaskans into clients and recipients of benefits and services. This approach eroded local control both as a basis for decision-making and as a tool for management of the necessities of daily village life. Villagers became an increasingly bothersome constituency of rural poor and not a source of leadership. Ultimately, village problems and needs outran

Please turn to TRIBES, Page 6



Fred Cotton, SEARCH training manager at UAA seminar

SEARCH Seminar Held

The Justice Center and SEARCH Group, Inc. co-sponsored a seminar on microcomputer technology for justice system personnel from throughout Alaska September 21 through September 23 on the University of Alaska Anchorage campus. Representatives from the Alaska State Troopers, the Anchorage Police Department, the Soldotna Police Department, the Alaska Department of Law, the Alaska Department of Corrections, the Alaska Parole Board, and the Alaska Court System participated. Fred Cotton, Training Manager, SEARCH Systems and Technology Program, and Sue Palm, Training Coordinator, served as instructors.

The seminar examined concepts of data processing and issues surrounding the planning, acquisition, operations and maintenance of computer systems in criminal justice agencies.

SEARCH Group, Inc. is a non-profit organization, based in Sacramento, California, which focuses on improving the justice system through the effective use of technology. Funding for the seminar was provided by a grant from the U.S. Department of Justice, Bureau of Justice Assistance.

A BJS Report**Criminal Defense for the Poor**

In 1986, almost \$1 billion was spent by state, county, and other local sources to provide legal representation for indigent criminal defendants nationwide, an increase of 60 per cent from the \$625 million reported in 1982. There were an estimated 4.5 million cases involving the appointment of counsel for indigent defendants in 1986 nationwide, an increase of 40 per cent from the nearly 3.2 million cases reported in 1982. These and other findings are based on a 1986 survey of criminal defense programs for the poor, which was conducted by the Bureau of Justice Statistics, U.S. Department of Justice.

There are three basic program types used throughout the country to provide defense services to the poor:

- **Assigned counsel programs** – In these programs counsel who are local members of the private bar are appointed on a case-by-case basis.
- **Contract attorney programs** – In these programs the funding source contracts with individual private attorneys, private law firms, or local bar associations to provide representation to indigent defendants for a given period of time.
- **Public defender programs** – In these programs a salaried staff of full-time or part-time attorneys is organized to provide defense services to indigent defendants. The organization may be a public agency, that is, part of state or local government, or a private, nonprofit corporation which contracts with state or local governments to provide indigent defense services.

More counties (52%) used assigned counsel than any other system of indigent defense, but the

percentage has dropped since 1982 when it was 60 per cent. The number of counties using public defender programs increased during this same period, from 34 per cent to 37 per cent. Contract defense programs also increased, from almost 7 per cent to about 11 per cent of all counties. (Alaska utilizes a public defender program.)

Average costs for each indigent criminal defense case nationwide increased from \$196 in 1982 to \$223 in 1986. Average costs per case in 1986 ranged from a low of \$63 in Arkansas to a high of \$540 in New Jersey.

Nationwide annual per capita expenses for criminal defense for the poor increased over the 4-year period, from \$2.76 to \$4.11. Per capita expenditures for 1986 ranged from \$.69 in Arkansas to \$29 in the District of Columbia.

In 1986, Alaska ranked second nationally for both per capita cost and average cost per case for indigent defense. Alaska averaged \$468 per case, with \$12.91 expended per capita. (See table, page 5.)

The two primary financial sources for providing legal counsel to poor persons charged with a criminal offense were state and county governments. Twenty states, including Alaska, funded their indigent defense system with state dollars; programs in 10 states were county-funded; and the remaining states funded programs through a combination of state and county expenditures.

(This article was based on the Bureau of Justice Statistics report NCJ-112919, "Criminal Defense for the Poor, 1986." Copies of the report are available through the Alaska Justice Statistical Analysis Unit, Justice Center, University of Alaska Anchorage.)

Recent BJS Reports

In addition to the report summarized in the preceding article, the following recent studies and reports from the Bureau of Justice Statistics are available from the Alaska Justice Statistical Analysis Unit:

"Survey of Youth in Custody, 1987," an examination of youth confined in long-term, state-operated institutions, NCJ-113365.

"Criminal Victimization, 1987," preliminary results from the 1987 National Crime Survey, NCJ-113587.

Justice Center Advisory Board Meets

The advisory board of the Justice Center met with the faculty and staff on October 14 to discuss possible future projects for the unit. Among possible projects discussed were an examination of minority hiring practices in state justice agencies and a study of the effects of the Alaska DWI law. The runaway problem and rural access to the justice and social service systems were other areas suggested as topics needing study.

Board members attending the meeting included Julie Kitka, Executive Vice President of the Alaska Federation of Natives; Susan Humphrey-Barnett, Commissioner of Corrections; Dwayne McConnell, Anchorage District Attorney; John Salemi,

Please turn to BOARD, Page 6

TABLE 1. Per capita and average cost per indigent defense, by state, 1986

State	Total expenditures	Per capita cost		Caseload Estimates	Average cost per case	
		Amount	Ranking		Burglary	Ranking
Total	\$991,047,250	\$4.11		\$4,441,000	\$223	
Alabama	6,153,292	1.52	44	32,000	192	29
Alaska	6,892,400	12.91	2	15,000	468	2
Arizona	16,240,654	4.89	10	71,000	230	20
Arkansas	1,636,500	.69	51	26,000	63	51
California	251,504,768	9.32	3	886,000	284	10
Colorado	12,126,270	3.71	21	53,000	229	21
Connecticut	9,251,316	2.90	25	67,000	138	45
Delaware	2,750,000	4.34	14	18,000	153	40
District of Columbia	18,089,976	28.90	1	54,000	334	7
Florida	82,133,008	7.03	5	307,000	268	13
Georgia	8,318,500	1.36	47	60,000	138	44
Hawaii	4,382,609	4.13	18	20,000	219	22
Idaho	2,622,000	2.62	28	16,000	164	35
Illinois	33,101,784	2.87	26	255,000	130	46
Indiana	10,966,497	1.99	37	68,000	162	36
Iowa	11,536,008	4.05	20	42,000	274	11
Kansas	4,262,333	1.73	41	26,000	165	34
Kentucky	7,664,000	2.06	36	65,000	118	47
Louisiana	10,842,017	2.41	34	69,000	158	38
Maine	1,962,694	1.67	42	10,000	187	31
Maryland	20,042,024	4.49	13	102,000	196	27
Massachusetts	20,761,822	3.56	22	145,000	143	43
Michigan	43,612,176	4.77	11	138,000	316	8
Minnesota	14,165,242	3.36	24	54,000	261	14
Mississippi	2,912,000	1.11	50	27,000	107	49
Missouri	6,746,272	1.33	49	37,000	183	32
Montana	4,220,507	5.15	8	10,000	413	4
Nebraska	4,335,000	2.71	27	29,000	152	42
Nevada	6,382,795	6.63	6	22,000	291	9
New Hampshire	4,329,960	4.22	16	11,000	402	5
New Jersey	31,025,000	4.07	19	57,000	540	1
New Mexico	6,283,700	4.25	15	23,000	269	12
New York	111,671,160	6.28	7	457,000	244	17
North Carolina	16,480,870	2.60	29	70,000	235	19
North Dakota	1,225,963	1.81	39	6,000	198	26
Ohio	26,518,090	2.47	32	141,000	188	30
Oklahoma	4,496,538	1.36	48	44,000	102	50
Oregon	22,432,300	8.31	4	141,000	160	37
Pennsylvania	28,636,000	2.41	33	148,000	193	28
Rhode Island	2,083,091	2.14	35	8,000	254	16
South Carolina	4,699,868	1.39	46	31,000	152	41
South Dakota	1,781,804	2.52	31	5,000	367	6
Tennessee	7,792,823	1.62	43	38,000	206	24
Texas	32,897,000	1.97	38	213,000	154	39
Utah	2,327,765	1.40	45	12,000	198	25
Vermont	2,777,798	5.13	9	16,000	177	33
Virginia	10,122,671	1.75	40	87,000	116	48
Washington	21,190,420	4.75	12	101,000	209	23
West Virginia	4,848,921	2.53	30	20,000	242	18
Wisconsin	20,061,508	4.19	17	77,000	261	15
Wyoming	1,749,543	3.45	23	4,000	431	3

Note: Sampling error may affect the precision of the ranking of states in this table. Per capita estimates based on 1986 population data are from the *Statistical Abstract of the United States, 1988*, table 26. Caseload estimates include the following casetypes: felony, misdemeanor, juvenile, appeals, mental commitments, probation/parole revocations, post-conviction relief, and other criminal matters.

* Average calculated on unrounded data.

Source of table: Bureau of Justice Statistics.

BOARD

(continued from page 4)

Acting Public Defender; William Cotton, representing the Supreme Court Chief Justice, Warren Matthews; George Novaky, representing the Anchorage Police Chief, Kevin O'Leary; Terry McConnaughey, representing the Commissioner of Public Safety, Arthur English; and Marla Greenstein, representing the Executive Director of the Judicial Council, Harold Brown.

The advisory board also includes Dana Fabe, Superior Court Judge, Third Judicial District, and Myra Munson, Commissioner of the Department of Health and Social Services.

Dr. Donald Behrend, Chancellor of the University of Alaska Anchorage, and Dr. Beverly Beeton, Vice Chancellor for Academic Affairs, also attended the meeting.

TRIBES

(continued from page 3)

the capacities of both state government and non-profit administrators to address them from distant places.

Fourth, by the time that a solution for village frustration with lack of Native job opportunity and concern for protection of their lands was discovered in revitalization of Native tribes, this solution had become a threat to Alaska's ultimate governance and management of its natural resources. For Native leadership as well, support for any new Congressional reading of Native land and stock protections was contingent upon avoidance of the issue of tribal sovereignty.

A new rationale for village and tribal dissolution has recently emerged, particularly in the Alaska press, to explain the failure of expectations which arose from this model. At its core is the individual Native. If he chooses to drink, to be a poor parent, to make his village

Alaska Department of Corrections Profile of Population					
As of September 1988 Department of Corrections had jurisdiction over 5,479 persons. This number includes:					
2,258	persons in Alaska institutions				
96	persons in the Federal Bureau of Prisons				
4	persons in Minnesota state institutions				
176	persons in community residential centers (furlougees)				
30	persons in community residential centers (prob-parolees)				
446	persons on parole				
2,469	persons on probation				
Since September 1984, the following increases have occurred:					
Persons in Alaska's institutions	up	39%	(1,623-2,258)		
Persons in federal and Minnesota prisons	down	47%	(187-100)		
Persons in community residential centers	up	96%	(105-206)		
Persons on parole	up	99%	(224-446)		
Persons on probation	up	33%	(1,859-2,469)		
The makeup of the population incarcerated in Alaska's institutions, the Federal Bureau of Prisons, and Minnesota state prisons has changed during these four years.					
		09/84	09/87	09/88	84-88 87-88 Change Change
Felons-sentenced		1,135	1,597	1,680	+48% + 5%
Misdemeanants-sentenced		186	90	106	- 43% +18%
Felons-unsentenced		380	471	443	+177% - 6%
Misdemeanants-unsentenced		109	137	129	+18% - 6%
Totals		1,810	2,295	2,358	+30% + 3%

unlivable or to flee the village to a city or regional center, this is his allegedly "free choice." If his poverty or loss of connection to the village or regional corporation causes him to petition, with no Congressional mandate to do so, to make claims stock saleable this, also, is his free choice. If he places the Native land base at risk through pledges, subdivision or development, as is possible under the recent amendments to ANSCA, this also is his choice.

Can tribes protect Alaska Natives? Against whom will they be protecting their tribal members? Tribal authority may or may not have made villages more habitable. It most certainly would limit the right of individual Natives to make economic choices which influence so

directly their futures as discrete Native peoples, and it would limit the influence of state and federal governments on purportedly free choices of Native individuals: where they choose to live and how they choose to survive. Tribes would constitute a third order of government prepared to participate in tripartite negotiations with these other governments.

(The preceding article is extracted from "Smooth the Dying Pillow: Alaska Natives and Their Destruction," presented at the Vth Congress of the Commission on Folk Law and Legal Pluralism in Zagreb, Yugoslavia in July, 1988. Copies of the entire paper are available from the Justice Center at nominal cost.)

PRETRIAL

(continued from page 2)

with crimes. In some programs in other states this option is offered more often to erring middle class offenders than to minority or poor offenders. In Alaska the Advisory Committee on Minority Sentencing Practices (1980) urged increased use of diversion to alleviate discrimination in sentencing. Several variables lead to the conclusion that pretrial diversion fulfilled this goal. Its services were made available to a broad spectrum of Alaska residents: to the young, the old, the unemployed and underemployed, high school dropouts, etc. Alaska Natives were represented among PTI clients in greater numbers than their proportion in the general population (16.9%). Since they are also disproportionately represented within the Alaska Department of Corrections, it can be inferred that Alaska Natives were referred to the PTI program to avoid further processing which would have resulted in probation or incarceration.

A variable which can be used to measure either net widening or restricted access to a lenient option is type of attorney. The data on this variable suggest that PTI referrals were made for unrepresented clients and for clients of both private attorneys and public defenders. Neither legal characteristics nor social or demographic characteristics appeared to have played a role in prosecutors' decisions to refer defendants to the program.

The Pretrial Intervention program met the needs of crime victims by overseeing the payment of \$435,081 in restitution. It met community needs by enabling breadwinners to remain employed and by providing more than 65,000 hours of community service activities to public and/or nonprofit agencies whose needs would otherwise have gone unmet.

The PTI program met the needs of offenders both by offering a chance to avoid the stigma of a criminal conviction and by providing access to a variety of treatment programs. As part of their PTI contract, 1,233 clients (66.1%) were required to participate in treatment programs. Half were assigned to alcohol counseling programs. Because alcohol abuse is a major social problem in Alaska, this percentage is not unexpected. The remainder were assigned to drug programs, domestic violence counseling, psychological counseling and career counseling. Their progress in these treatment programs played a role in whether or not they were favorably or unfavorably terminated from the PTI program.

Successful completion of the conditions of their PTI contracts did not necessarily mean that participants remained free of criminal involvement after program termination. The addition of criminal histories to the PTI data file facilitated a look at rearrest as a measure of client "success." In order to assure a follow-up period of more than one year all clients whose intake year was 1986 were eliminated from the recidivism sample. Of the 1,753 clients remaining, more than two-thirds had not recidivated (N=1,179). The recidivism rate of 32.7 per cent is slightly higher than that reported in many studies of pretrial diversion programs elsewhere, but it should be noted that the Alaska policy of referring only prosecutable cases probably contributed to the likelihood of recidivism. Most studies with which it might be compared measured recidivism after a follow-up period of fewer than two years. Since 67.3 per cent of PTI clients remained crime-free in the community for 2 1/2 to 5 years after referral, the program in Alaska can be deemed as effective on this measure as other programs reported in the literature.

Certain factors which characterized the Alaska program might prove instructive in the development of other pretrial diversion programs. Primary among these were its inclusion of an external evaluation component from the outset and its location under a state prosecutorial agency. Placement under a state prosecutor, with carefully articulated referral guidelines, forestalled net widening. The evaluation component permitted the accumulation of data necessary for program monitoring, assessment and policy decisions.

(The complete study, "Evaluation of the Alaska Pretrial Intervention Program," from which this article is adapted, are available at nominal cost through the Justice Center, University of Alaska Anchorage.)



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