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## Felon Disenfranchisement and the Voting Rights Act — *Farrakhan v. Gregoire*: “A Crowd of One”

Deborah Periman

[B]ecause the holding of *Farrakhan I* places us in a crowd of one among the circuits, I believe we should be particularly mindful before reversing the district court and invalidating felon disenfranchisement in the State of Washington.

— Judge M. Margaret McKeown, dissenting, *Farrakhan v. Gregoire*, 590 F.3d 989, 1016 (9th Cir. 2010)

Early this year, the U.S. Court of Appeals for the Ninth Circuit issued its opinion in *Farrakhan v. Gregoire*, a challenge to

Washington State’s felon disenfranchisement law. The court’s decision stands alone among the circuits in holding that state law denying felons the right to vote is a violation of section 2 of the Voting Rights Act (VRA), where discrimination in the state’s criminal justice system results in race-based denial of the vote. Although there has been substantial speculation in the media over the implications of the decision, suggestions that the *Farrakhan* decision signals the demise of Alaska’s disenfranchisement law are overstated. Nevertheless, the case is noteworthy for reopening the conversation about why we deny certain offenders the right to vote, and whether these laws reflect

viable public policy or are simply relics of an era in which racial and class prejudices limited participation in the political process.

### Background: Felon Disenfranchisement and the Voting Rights Act

State laws throughout the country have traditionally barred those with certain types of criminal convictions from participating in the political process. Currently, 48 states and the District of Columbia have offender disenfranchisement statutes. These disenfranchisement laws are one component of the “civil death” once accorded criminal

Please see *Farrakhan*, page 11

## Further Background on Felon Disenfranchisement

### Scope of Analysis

This case summary of *Farrakhan* provides a basic, simplified overview. It does not address the distinction between vote denial and vote dilution claims under the Voting Rights Act, nor does it address the impact of changes in Washington’s disenfranchisement law over the course of the *Farrakhan* litigation, the various approaches taken by the courts in addressing Section 2’s “totality of the circumstances” standard, or *Senate Report 97-417*, which lists typical factors a court might consider in evaluating a challenged voting practice.

### Ethnic Disparity in Alaska

In 2004, the Alaska Judicial Council published a comprehensive summary of criminal justice processes in Alaska. *Alaska Felony Process: 1999* (February 2004) was commissioned, in part, to identify whether “disproportionate numbers of ethnic minorities at all points in Alaska’s criminal justice system” were the result of discrimination or of other legitimate factors. The Council reported that justice for felony defendants in Alaska after charges were filed was “in many respects substantially equal.” Presumptive sentences showed no disparities associated with ethnicity. With the exception of drug offenses, non-presumptive sentences were uniformly imposed among ethnic groups. Disparity in drug sentencing was limited to African-Americans in Anchorage and Natives outside Anchorage. The Council concluded in the Executive Summary that the “isolated nature

of these disparities appeared to be inconsistent with conscious discrimination.” However, phases of the felony process other than sentencing, specifically pre-disposition incarceration, charge reduction, and overall time of incarceration, did show disparities by ethnicity that could not be explained by legitimate criteria. For example, statewide African-Americans and Alaska Natives could expect to spend 7 days longer in predisposition incarceration than Caucasian defendants. Although this disparity could not be attributed to any factor measured in the study other than ethnicity, the Judicial Council noted that additional socioeconomic data might have explained some of the disparate outcomes.

### Preclearance under the Voting Rights Act

Alaska is one of nine states covered in its entirety by Section 5 of the Voting Rights Act, which prohibits changes in election practices without federal review and approval. This “preclearance” status is the result of a state’s historic use of tests or devices to restrict the opportunity to vote, or of statutorily defined underrepresentation in the voting process. In territorial Alaska, Natives faced a number of barriers to voting, among them a 1924 law requiring voters to read and write English. With the advent of statehood, Alaska’s Constitution similarly limited voter participation to those who could “read or speak the English language,” a limitation not repealed until 1970. These and myriad other factors led to less than 50 percent of Alaska’s voting age population participating in the voting process in 1964, a level of under-participation that brought Alaska within Section 5’s preclearance requirements.

## Alaska Offender Profile 2009

At year-end 2009, there were a total of 5,285 offenders under the supervision of the Alaska Department of Corrections (DOC). DOC recently released the “2009 Offender Profile” which shows 4,490 institutionalized offenders: 3,643 in Alaska facilities and 847 in out-of-state facilities. There are an additional 795 offenders in community residential centers (CRCs), treatment centers or offsite monitoring programs. The 2009 total represents a 5 percent increase in incarcerated offenders from 2008 (see Table 1 and Table 3). The state population as whole increased by about 2 percent during this same period.

Of the 4,490 offenders in correctional institutions, 90 percent were male, and felony offenders accounted for 86 percent of the population. Forty-seven percent of this offender population was Caucasian; Alaska Natives accounted for close to 36 percent, Blacks comprised over 10 percent, Hispanics about 3 percent, and Asian/Pacific Islanders just over 3 percent. The average

offender age was 37 years (see Table 2), and the average time of incarceration was just over two years.

Alaska Natives and Blacks, are incarcerated at levels disproportionate to their percentages in the general population. Although Alaska Natives comprise about 16 percent and Blacks close to 4 percent of the state’s population (based on 2008 population data from the Alaska Department of Labor), about 36 percent of the offender population in 2009 was Alaska Native, and just over 10 percent was Black.

The 795 offenders in community residential centers (CRCs), treatment centers, and offsite monitoring programs were 85 percent male, and the average age was just over 35 years. The average length of time in a CRC was 8 months. Alaska Natives made up 33 percent of this population and Blacks 7 percent; Hispanics and Asian/Pacific Is-

**Table 1. Prisoners under the Jurisdiction of the Alaska Department of Corrections, 1998–2009**

Includes both sentenced and unsentenced prisoners in both jails and prisons.

Row percentages.

	Housed in-state		Housed out-of-state		Total
	N	%	N	%	
1998	2,601	74.6 %	887	25.4 %	3,488
1999	2,529	73.8	899	26.2	3,428
2000	2,757	76.9	826	23.1	3,583
2001	2,933	78.5	805	21.5	3,738
2002	2,973	82.0	652	18.0	3,625
2003	3,062	80.8	727	19.2	3,789
2004	3,127	80.0	780	20.0	3,907
2005	3,447	81.5	784	18.5	4,231
2006	3,359	76.9	1,010	23.1	4,369
2007	3,633	80.7	869	19.3	4,502
2008	3,377	79.0	897	21.0	4,274
2009	3,643	81.1	847	18.9	4,490

Source of data: Alaska Department of Corrections

**Table 2. Prisoners under the Jurisdiction of the Alaska Department of Corrections, 2009: Demographic Characteristics**

Includes both sentenced and unsentenced prisoners in both jails and prisons.

Column percentages.

	Female (N = 471)		Male (N = 4,019)		Total (N = 4,490)	
	N	%	N	%	N	%
<b>Offense level</b>						
Felony	376	79.8 %	3,495	87.0 %	3,871	86.2 %
Misdemeanor	95	25.3	519	14.8	614	13.7
Violation	—	—	5	—	5	0.1
<b>Ethnicity</b>						
White	255	54.1 %	1,847	46.0 %	2,102	46.8 %
Alaska Native*	145	30.8	1,459	36.3	1,604	35.7
Black	38	8.1	453	11.3	491	10.9
Asian/Pacific Islander	15	3.2	134	3.3	149	3.3
Hispanic	12	2.5	100	2.5	112	2.5
Unknown	6	1.3	26	0.6	32	0.7
<b>Age</b>						
19 years and under	8	1.7 %	93	2.3 %	101	2.2 %
20–24 years	85	18.0	639	15.9	724	16.1
25–29 years	92	19.5	750	18.7	842	18.8
30–34 years	65	13.8	512	12.7	577	12.9
35–39 years	84	17.8	481	12.0	565	12.6
40–44 years	52	11.0	486	12.1	538	12.0
45–49 years	49	10.4	465	11.6	514	11.4
50–54 years	24	5.1	305	7.6	329	7.3
55–59 years	9	1.9	149	3.7	158	3.5
60–64 years	1	0.2	73	1.8	74	1.6
65 years and over	2	0.4	66	1.6	68	1.5
Mean age	34.84 years		36.79 years		36.59 years	
Median age	34.11 years		35.19 years		35.00 years	

\* Includes a small population of Native Americans not indigenous to Alaska.

Source of data: 2009 Offender Profile, Alaska Department of Corrections

land offenders each made up 2 percent. Offender Groups

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### Offender Groups

Juveniles (defined by DOC as offenders less than 20 years old) totaled 117 persons. All but one of these offenders were housed in Alaska. Alaska Natives accounted for 39 percent of this population, Blacks 20 per-

**Table 3. Prisoners under the Jurisdiction of the Alaska Department of Corrections, 2009: By Institution**

Includes both sentenced and unsentenced prisoners in both jails and prisons.

Column percentages.

	Female (N = 471)		Male (N = 4,019)		Total (N = 4,490)	
	N	%	N	%	N	%
<b>In-state</b>	<b>468</b>		<b>3,175</b>		<b>3,643</b>	
Anchorage Correctional Complex East	1		409		410	
Anchorage Correctional Complex West	0		447		447	
Anvil Mountain Correctional Center (Nome)	9		112		121	
Fairbanks Correctional Center	24		236		260	
Hiland Mountain Correctional Center (Eagle River)	379		—		379	
Ketchikan Correctional Center	5		60		65	
Lemon Creek Correctional Center (Juneau)	15		195		210	
Mat-Su Pretrial (Palmer)	8		89		97	
Palmer Medium Correctional Center	—		334		334	
Palmer Minimum Correctional Center	—		176		176	
Point Mackenzie Correctional Farm (Wasilla)	—		103		103	
Spring Creek Correctional Center (Seward)	—		554		554	
Wildwood Correctional Center (Kenai)	—		253		253	
Wildwood Pretrial (Kenai)	17		97		114	
Yukon-Kuskokwim Correctional Center (Bethel)	10		110		120	
<b>Out-of-state</b>	<b>3</b>		<b>844</b>		<b>847</b>	
Hudson Correctional Facility (Colorado)*	—		831		831	
Colorado State Prison	1		2		3	
Federal Bureau of Prisons	1		11		12	
Minnesota State Prison	1		—		1	

\* Hudson Correctional Facility is a private correctional facility operated by Cornell Companies, Inc.

Source of data: 2009 Offender Profile, Alaska Department of Corrections

cent, and Asian/Pacific Islanders 6 percent.

DOC had 601 sex offenders under its supervision at the end of 2009. Nearly all the offenders (99%) were male, and the average age was about 40 years. Of this population, 38 percent was Caucasian, 53 percent Alaska Native, 4 percent Black, and Hispanic and Asian/Pacific Islanders each made up about 2 percent.

There were also 5,848 probationers and parolees under DOC's supervising authority. Eighty percent of this population was male.

Twenty-six percent of probationers and parolees were Alaska Native, about 9 percent were Black, about 3 percent Hispanic, and 4 percent were Asian/Pacific Islander. The average age was about 37 years old. DOC reports that close to 100 percent of probationers and parolees are felony offenders.

According to the DOC Division of Probation & Parole, among the probationers/parolees population there are about 900 additional offenders called "absconders" who do not appear in the official statistics.

These are individuals on probation or parole who have fled the state or are unable to be located by law enforcement. However, these offenders are still in the system database.

The 2009 report also provides additional data on offender groups of particular interest including Alaska Natives, juveniles, seniors, sex offenders, substance abuse offenders, and long-term offenders. The full report is available at <http://www.correct.state.ak.us/corrections/admin/docs/profile2009final.pdf>.

## Correctional Populations 2008

Figures recently released by the U.S. Bureau of Justice Statistics show that prisoners under federal and state jurisdiction at year-end 2008 numbered 1,610,446. This was an increase of .08 percent from 2007 to 2008, and represents the slowest increase in federal and state prisoners since 2000.

Inmates under local jurisdiction represented an additional 785,556 individuals, for a combined total of 2,304,115 incarcerated individuals. This figure includes offenders in privately operated facilities and community corrections centers but excludes inmates held in U.S. territories, in military facilities, in U.S. Immigration and Customs (ICE) facilities, in jails in Indian country, and in juvenile facilities. There was a .03 percent increase in individuals in custody from 2007 to 2008. (See Table 1.)

In looking at state figures for this time period, 20 states showed a decline in the number of prisoners while 29 states showed an increase. Pennsylvania, Florida and Arizona had the highest increases.

The 2008 incarceration rate (which includes inmates in federal, state, and local custody) was 754 individuals for every 100,000 people in the general U.S. population. Although there was a slight decrease in the incarceration rate from 2007 to 2008 (from 756 per 100,000 to 754), the increase from 2000 (684 per 100,000) to 2008 was about 10 percent. Figure 1 shows the rise in U.S. corrections populations from 1980 to present.

### Prisoners and Imprisonment Rates

Males made up 93 percent of the prison population under state or federal jurisdiction with an imprisonment rate of 952 per 100,000 of the general population. The female imprisonment rate was 68 per 100,000 U.S. residents. Of those individuals sentenced to one year or more, the rates were 487 per 100,000 for Whites, 3,161 per 100,000 for Blacks, and 1,200 per 100,000 for Hispanics. (See Table 2.) The imprison-

**Table 1. Inmates in Custody in State or Federal Prisons or in Local Jails: 2000, 2007, and 2008**

	2000	2007	2008	Annual average change	Percent change 2007-2008
<b>Total inmates in custody<sup>a</sup></b>	<b>1,937,482</b>	<b>2,298,041</b>	<b>2,304,115</b>	<b>2.5 %</b>	<b>0.3 %</b>
<b>Federal prisoners<sup>b</sup></b>	<b>140,064</b>	<b>197,285</b>	<b>198,414</b>	<b>5.0 %</b>	<b>0.6 %</b>
Prisons	133,921	189,154	189,770	5.1	0.3
Federal facilities	124,540	165,975	165,252	4.2	-0.4
Privately operated facilities	9,381	23,179	24,518	13.8	5.8
Community corrections centers <sup>c</sup>	6,143	8,131	8,644	4.1	6.3
<b>State prisoners<sup>a</sup></b>	<b>1,176,269</b>	<b>1,320,582</b>	<b>1,320,145</b>	<b>1.7 %</b>	<b>0.0 %</b>
<b>Inmates held in local jails<sup>d</sup></b>	<b>621,149</b>	<b>780,174</b>	<b>785,556</b>	<b>3.3 %</b>	<b>0.7 %</b>
<b>Incarceration rate per 100,000 population<sup>a,e</sup></b>	<b>684</b>	<b>756</b>	<b>754</b>	<b>1.4 %</b>	<b>-0.3 %</b>

Note: Counts include all inmates held in public and private adult correctional facilities and local jails.

<sup>a</sup> Total includes all inmates held in state or federal prison facilities or in local jails. It does not include inmates held in U.S. territories, military facilities, U.S. Immigration and Customs Enforcement (ICE) facilities, jails in Indian country, and juvenile facilities.

<sup>b</sup> After 2001, the responsibility for sentenced felons from the District of Columbia was transferred to the Federal Bureau of Prisons.

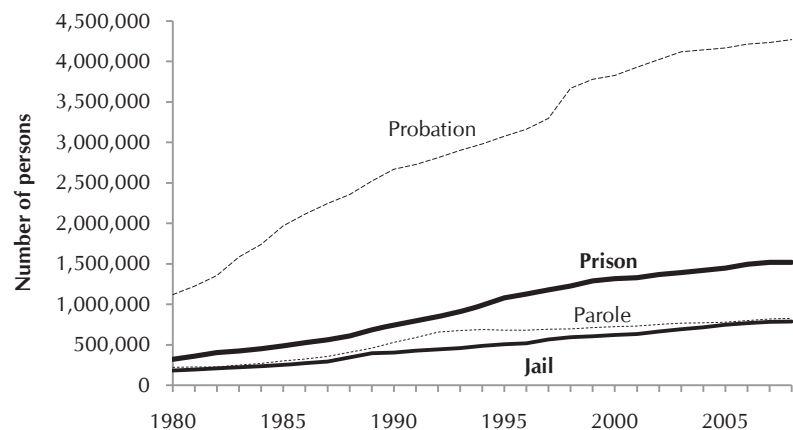
<sup>c</sup> Non-secure, privately operated community corrections centers.

<sup>d</sup> Counts for inmates held in local jails are for the last weekday of June each year. Counts were estimated from the Annual Survey of Jails.

<sup>e</sup> The total number in custody of state or federal prison facilities or local jails per 100,000 U.S. residents. Resident population estimates were as of January 1 of the following year for December 31 estimates.

Source: Bureau of Justice Statistics, "Prisoners in 2008," NCJ 228417.

**Figure 1. Correctional Populations in the United States, 1980-2008**



Source of data: Bureau of Justice Statistics

## Corrections

(continued from page 3)

ment rate for males was 15 times higher than for females, and 6.5 times higher for Black males than for White males.

### Alaska

Alaska has a combined state and local prison system. At year-end 2008, there were 5,014 offenders under the supervision of the Alaska Department of Corrections; this includes in-state and out-of-state facilities, as well community residential centers. From 2007 to 2008, Alaska reported a decline of 3 percent in the inmate population (but a 5 percent increase from 2008 to 2009).

### International Context

The United States continues to lead all other nations in the rate of reported incarceration of individuals per 100,000 of the general population. The U.S. rate of 754 inmates per 100,000 residents is 5 to 10 times higher than that of Canada and most of the industrialized democracies of Western Europe. (See Figures 2 and 3.)

The above article is based in part on the Bureau of Justice Statistics report "Prisoners in 2008," NCJ 228417, released December 2009.

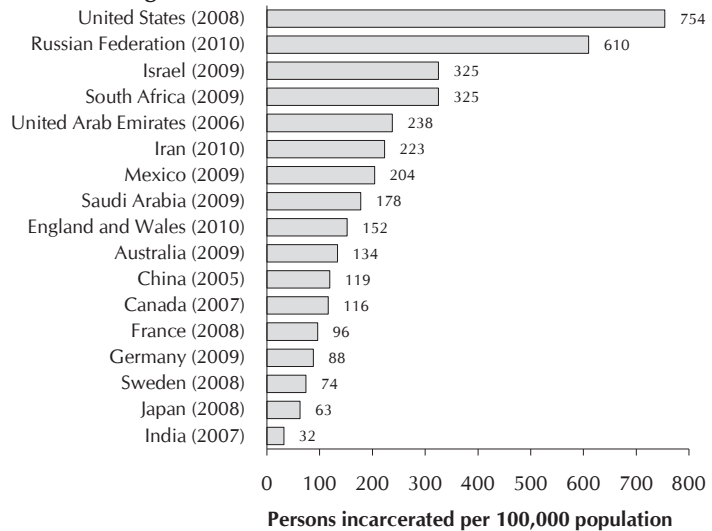
**Table 2. Number of Prisoners and Imprisonment Rate in the U.S. by Race, Hispanic Origin, and Gender, 2008**

	Male		Female		Total	
	N	Rate per 100,000 population <sup>a</sup>	N	Rate per 100,000 population <sup>a</sup>	N	Rate per 100,000 population <sup>a</sup>
<b>Total under jurisdiction<sup>b</sup></b>	<b>1,495,594</b>	<b>952</b>	<b>114,852</b>	<b>68</b>	<b>1,610,446</b>	<b>504</b>
<b>By race<sup>c</sup></b>						
White <sup>d</sup>	562,800	487	29,100	50	591,900	341 <sup>e</sup>
Black <sup>d</sup>	477,500	3,161	50,700	149	528,200	1,075 <sup>e</sup>
Hispanic	295,800	1,200	17,300	75	313,100	656 <sup>e</sup>

- a. Imprisonment rates are the number of prisoners under state or federal jurisdiction sentenced to more than 1 year per 100,000 persons in the U.S. resident population in the referenced population group.
- b. Total includes American Indians, Alaska Natives, Asians, Native Hawaiians, other Pacific Islanders, and persons identifying two or more races.
- c. Based on prisoners sentenced to more than 1 year. Excludes American Indians, Alaska Natives, Asians, Native Hawaiians, other Pacific Islanders, and persons identifying two or more races.
- d. Excludes persons of Hispanic or Latino origin.
- e. These rates estimated from male and female rates.

Source of data: Bureau of Justice Statistics, "Prisoners in 2008," NCJ 228417.

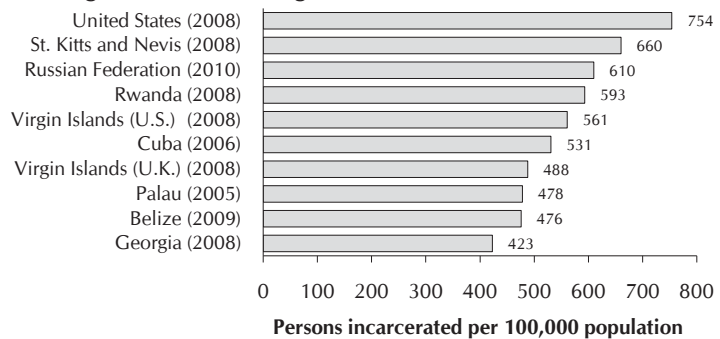
**Figure 2. Rate of Incarceration in Selected Nations**



Incarceration data were collected on the varying dates listed and are the most current data available as of February 2010.

Source of data: Bureau of Justice Statistics (for U.S.); World Prison Brief, International Centre for Prison Studies, King's College of London, <http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/>

**Figure 3. Ten Leading Nations in Incarceration Rates**



Incarceration data were collected on the varying dates listed and are the most current data available as of February 2010.

Source of data: Bureau of Justice Statistics (for U.S.); World Prison Brief, International Centre for Prison Studies, King's College of London, <http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/>



## Alaska Justice Forum

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## Criminal Justice Working Group Update

*Teresa White Carns*

The Criminal Justice Working Group (CJWG), coordinated and staffed by the Alaska Judicial Council, has focused recently on four main issues: (1) electronic exchange of discovery information among agencies, (2) offender re-entry programs, (3) Project HOPE (see sidebar), and (4) ongoing analysis of recidivism and program effectiveness. Supreme Court Chief Justice Walter Carpeneti and Attorney General Dan Sullivan are the co-chairs. Lt. Governor Sean Parnell, former co-chair, was sworn in as governor when former Governor Sarah Palin resigned and asked that Attorney General Dan Sullivan take his place as co-chair of the group.

The CJWG's Efficiencies Committee addressed the need for briefer presentence reports, and started a pilot project with a "short form" presentence report in the Kenai court. However, the committee directed most of its efforts during the last half of 2009 toward exploring the electronic exchange of discovery materials among law enforcement agencies, prosecutors, and defense attorneys. Parts of such a system are already in place in Fairbanks and Juneau and for the Anchorage municipal prosecutor's office. During the next six months, the committee will review systems provided by vendors, and will consider the standards for creating, storing,

and retrieving digital evidence, as well as exchanging it in criminal cases.

During the next six months, the CJWG's Prevention and Recidivism Committee will concentrate on:

**Re-entry:** Sixty-six percent of adult sentenced Alaska offenders are rearrested within three years after their release. To help reduce that percentage, the CJWG created the Alaska Prisoner Re-entry Task Force as a subcommittee of the Prevention and Recidivism Committee. The Task Force includes representatives of housing and labor programs, along with community members, victim representatives, and others who are not members of the CJWG. A senior staff person from the Department of Corrections was designated as head of the Task Force, and the CJWG will provide help in coordinating meetings, drafting a five-year strategic plan, and locating technical assistance resources.

**Probation monitoring with the Project HOPE model:** Anchorage probation officers file nearly one hundred petitions to revoke probation each month just for technical violations. Project HOPE in Hawaii is an evidence-based program that reduced revocation rates for offenders in the program to 5 percent, compared to 15 percent for a control group, and re-arrests to 21 percent, compared to 47 percent for the control group.

The Department of Corrections, collaborating with CJWG members, is moving forward to develop a pilot program in Anchorage based on this model. Initial contacts with all of the participating agencies have been made, and they are working to locate the resources needed to begin.

**Ongoing recidivism study:** Alaska has not had an ongoing process for monitoring recidivism of adult sentenced offenders or the effectiveness of programs designed to reduce recidivism. The CJWG members are cooperating in building a database and method of tracking released offenders in coming years. The database will look at recidivism of all released offenders, and of offenders participating in evidence-based programs, including institutional education and substance abuse treatment, reentry for offenders with mental health issues, therapeutic courts, and juvenile programs. Executive branch agencies and the courts will provide data; the Judicial Council and the Institute for Social and Economic Research at the University of Alaska Anchorage will create the database and conduct the analyses.

*Teri Carns is with the Alaska Judicial Council in Anchorage, with responsibility for research projects, report writing, and aspects of judicial selection and retention.*

### Project HOPE for Alaska

Every day, the Anchorage Superior Court handles five petitions to revoke probation for technical reasons—failed drug tests, missed appointments. That's 25 each week, more than a hundred every month, along with all of the other court work. Judges, probation officers, and attorneys agree that the burden is unsustainable. Offenders perceive that the process is meaningless—their chances of paying a price for violations are slim to none.

Judge Steven Alm in Honolulu in 2004 saw the same problem and responded by creating Project HOPE—Hawaii Opportunity Probation with Enforcement (<http://www.hopeprobation.org/>). The concept is simple—whenever a probationer in the program violates probation by testing positive for drugs or missing an appointment with the probation officer, the offender is arrested immediately. Within two business days, the offender is in court on a motion to modify probation and is sent to jail for a short time. Sanctions are swift and certain, and probationers respond. Within three months, the rate of positive drug tests for probationers in HOPE dropped by half. More than half of the probationers never missed a drug test or appointment after their first warning meeting with the judge, and of those who did miss, 40 percent missed only once. After a year, only 21 percent of the HOPE probationers had been rearrested, compared to 47 percent of the control group. The program started with high risk probationers, and continues to achieve its success with those same difficult offenders.

The success of the program relies on:

- Clear-cut warnings to probationers that the existing rules for probation will be enforced;
- Randomized frequent (weekly or more often, at the beginning) drug testing;
- Prompt service of warrants for arrest by local law enforcement, with immediate arrest when possible;
- Speedy appearances before judges so that sanctions are imposed within two to three days;
- Imposition of sanctions every time a probation condition is violated (with rare, well-justified exceptions);
- Recognition that brief periods of incarceration are effective, so that the system is not burdened with costly long-term incarceration;
- Resources for treatment of offenders whose substance abuse problems cannot be managed in Project HOPE.

Nevada is starting its own Project HOPE, and federal legislation to establish pilot projects around the country is being considered in Congress. Alaska's ability to succeed in a similar project is enhanced by two years of experience with criminal justice agencies collaborating in the Criminal Justice Working Group.

*More information about the pilot program is available from the Alaska Judicial Council. (E-mail [lcohn@ajc.state.ak.us](mailto:lcohn@ajc.state.ak.us). In Anchorage: 279-2526. Toll free in Alaska: 1-888-790-2526.)*

# Juvenile Probation Officer Workload and Caseload Study

André B. Rosay & Thomas S. Begich

A recent Justice Center study of juvenile probation officer (JPO) workloads and caseloads in the Alaska Division of Juvenile Justice examined the resources needed for the Division to meet its standards and goals. The study examined JPO workloads and caseloads to determine the resources required in both rural and urban Alaska to adequately meet minimum probation standards, to continue the development and enhancement of system improvements, and to fully implement the restorative justice field probation service delivery model. Restorative justice is a critical part of DJJ's mission and approach to fulfilling DJJ goals. Restorative justice focuses on accountability, competency development, and community prevention, with the aim of repairing the harm caused by the juvenile offender. The Alaska Division of Juvenile Justice is committed to restorative justice; the Division's mission is "[to] hold juvenile offenders accountable for their behavior, promote the safety and restoration of victims and communities, and assist offenders and their families in developing skills to prevent crime." In addition, Alaska Statutes specify that the goal for the Alaska Division of Juvenile Justice "is to promote a balanced juvenile justice system in the state to protect the community, impose accountability for vio-

lations of law, and equip juvenile offenders with the skills needed to live responsibly and productively" (§47.12.010). In this study, we identified the staffing levels necessary to fully implement the restorative justice field probation service delivery model, as specified by Alaska Statutes and DJJ field policies and procedures.

Workload determinations were estimated for each Alaska Division of Juvenile Justice office, and office specific workload determinations were then aggregated by region. All workload calculations were determined as (1) a function of the time available to provide direct (client) services in each office, (2) the number of cases in each office, and (3) the time required to handle each case in each office. The time available to provide direct (client) services was compared to the actual time needed to perform all the required activities in each case. This comparison allowed us to determine whether the available time was sufficient, and how much, if any, additional time was required to provide direct (client) services.

## Time Available

The time available to provide direct (client) services in each office was determined by the number of juvenile probation officer and social service associate positions in each office and took into account time for

**Table 1. Total Time Available by Office**

Office	Number of positions	Total hours available per year
Anchorage	29	36,593 hours
Barrow	3	3,003
Bethel	5	6,121
Craig	1	1,385
Dillingham	2.5	2,766
Fairbanks	11	14,728
Homer	1	1,385
Juneau	6	7,621
Kenai	6	7,531
Ketchikan	4	4,691
Kodiak	3	3,244
Kotzebue	3	2,980
Nome	4	4,499
Palmer	7	8,919
Sitka	2	1,498
Valdez	1	1,385
<b>Total</b>	<b>88.5</b>	<b>108,349 hours</b>

*Source of data:* Alaska Division of Juvenile Justice, August 2009; 2009 JPO Workload and Caseload Study

holiday and personal leave and for other required activities (training, community involvement, public relations, records and reports, supervision, and clerical support). The statewide total time available to provide direct (client) services was 108,349 hours. (See Table 1.) Each position provided an average of 1,224.3 hours per year of time available to provide direct (client) services.

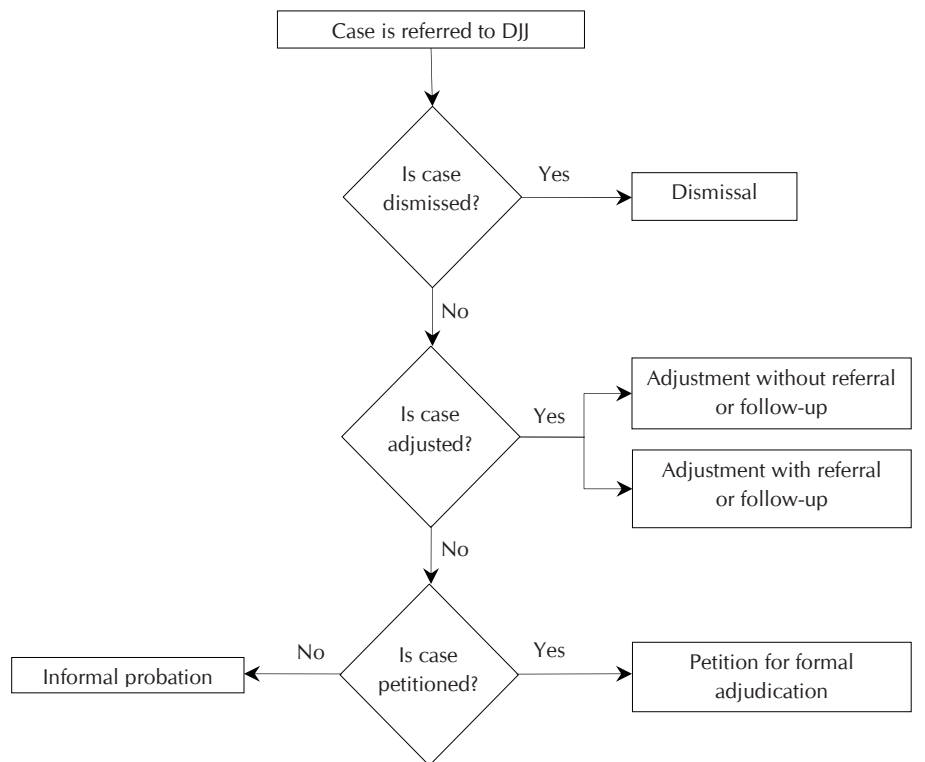
## Number of Cases

Law enforcement agencies make referrals to the Alaska Division of Juvenile Justice if there is probable cause that a youth committed an offense which would be criminal if committed by an adult, committed a felony traffic offense, or committed an alcohol offense after two prior convictions for minor consuming in District Court. Adults may be referred to the Alaska Division of Juvenile Justice if their offenses were committed as juveniles.

This study included five types of cases handled by juvenile probation officers and social service associates. Workload determinations were based on the depth of processing that each case received. New delinquency cases may result in one of five dispositions—(1) dismissal, (2) adjustment without referral/follow-up, (3) adjustment with referral/follow-up, (4) informal probation, and (5) petition for formal adjudication or formal diversion (See "Alaska Juvenile Justice Dispositions" on page 9). (See Figure 1.)

In addition to these five types of cases,

**Figure 1. Referrals for New Offenses, by Depth of Processing**



workload determinations took into account interstate-in and interstate-out cases, as well as workload differences in responsibility between ultimate and immediate probation officers. (The Alaska Division of Juvenile Justice belongs to the Interstate Compact on Juveniles (ICJ). *Interstate-in* cases are incoming out-of-state probation or parole cases that require courtesy supervision from the Alaska Division of Juvenile Justice. *Interstate-out* cases are outgoing Alaska probation cases that require courtesy supervision in another state.) Ultimate responsibility rests with the probation office nearest the court of jurisdiction where the case originated, whereas immediate responsibility rests with the probation office in the district where the juvenile resides. The annual number of cases in each office was calculated as a three-year average, from FY 2006 to FY 2008. In Table 2, we summarize the average caseloads by office and show the annual average number of cases under ultimate and immediate supervision in each office by type of case, from FY 2006 to FY 2008. On average, the Division of Juvenile Justice handled 5,675 cases per year from FY 2006 to FY 2008. Statewide, the most advanced disposition within each case was most likely to be a petition, followed by an adjustment without a follow-up, or a dismissal. Adjustments with follow-ups and informal probations were less common dispositions.

### Time Required

The time required to handle each case was calculated through discussions with eight focus groups of juvenile probation officers and social service associates (two groups in Anchorage, two in Fairbanks, one in Juneau, one in Palmer, one with rural offices with juvenile justice facilities, and one with rural offices without a juvenile justice facility). Focus group participants provided time estimates for 145 different activities in different types of cases. These included activities related to intake and assessment, detention, court, case management, and supervision.

The average dismissed case required 4.3 hours of staff time. The average case that was adjusted without a referral required 5.6 hours, while the average case adjusted with a referral required 7.2 hours. The average informal probation case required 13.6 hours, and the average petitioned case required 99.7 hours. Within each case type, estimates reflect the average case.

### Results

The total amount of time

**Table 2. Average Caseloads by Office: FY06–08**

Region/ location	Dismissed	Adjust without follow-up	Adjust with follow-up	Informal probation	Petition	Total
<b>Anchorage</b>	<b>351</b>	<b>701</b>	<b>429</b>	<b>62</b>	<b>821</b>	<b>2,364</b>
<b>Northern</b>	<b>285</b>	<b>449</b>	<b>90</b>	<b>51</b>	<b>403</b>	<b>1,278</b>
Barrow	23	25	0	4	16	68
Bethel	65	103	0	9	82	259
Fairbanks	141	177	83	32	207	640
Kotzebue	25	60	1	3	30	119
Nome	31	84	6	3	68	192
<b>Southcentral</b>	<b>235</b>	<b>372</b>	<b>169</b>	<b>96</b>	<b>356</b>	<b>1,228</b>
Dillingham	19	35	1	3	34	92
Homer	8	14	1	15	18	56
Kenai	109	139	26	33	104	411
Kodiak	19	10	11	23	54	117
Palmer	71	156	123	17	128	495
Valdez	9	18	7	5	18	57
<b>Southeast</b>	<b>150</b>	<b>275</b>	<b>32</b>	<b>11</b>	<b>337</b>	<b>805</b>
Craig	12	13	1	2	22	50
Juneau	65	173	16	4	188	446
Ketchikan	45	38	11	4	81	179
Sitka	28	51	4	1	46	130
<b>Total</b>	<b>1,021</b>	<b>1,797</b>	<b>720</b>	<b>220</b>	<b>1,917</b>	<b>5,675</b>

*Source of data:* Alaska Division of Juvenile Justice, FY06–08

required to handle the number of cases in each office varied from a low of 2,166 hours in Barrow to a high of 74,112 hours in Anchorage. On average, 89 percent of the total time required was attributed to petitioned cases (this percentage varied from a low of 83% in Kenai to a high of 94% in Craig and Juneau). This is an important result because it implies that the need in each office is primarily driven by the number of petitioned cases. Changes in the number of petitioned cases would dramatically alter the total hours needed in each office. This result is not surprising given that the average petitioned case required 7.3 times more hours than an informal probation case, 13.8 times more hours than a case adjusted with a follow-up, 17.8 times more hours than a case adjusted without a follow-up, and 23.2 times more hours than a dismissed case. (See Table 3.) Over half (53%) of the time required to handle petitioned cases is related to court activities, such as preparing

for court, writing court reports, traveling to court, being in court, and documenting court activities.

A comparison of the time needed to the time available in each office showed a variance from a low of -837 hours in Barrow (indicating that the total time available is sufficient to address the total time needed) to a high of 37,519 hours in Anchorage (indicating that the total time needed is 37,519 hours greater than the total time available).

Assuming that unmet needs would be fulfilled by new juvenile probation officers, each contributing 1,496 hours per year, we estimate that the Alaska Division of Juvenile Justice needs 59.6 additional JPOs to adequately meet minimum probation standards, to continue the development and enhancement of system improvement, and to fully implement the restorative justice field probation service delivery model. (See

*Please see JPO workload, page 8*

**Table 3. Summary Estimates for Hours Required per Type of Case**

Type of case	Anchorage	Fairbanks	Juneau	Palmer	Rural with facility	Rural without facility	Average
Dismissed	4.0	5.7	3.0	4.3	3.2	5.7	4.3
Adjusted without referral	5.9	9.0	4.3	4.4	4.1	5.7	5.6
Adjusted with referral	9.2	9.9	6.1	5.1	4.8	8.1	7.2
Informal probation	21.1	20.3	11.3	8.9	9.7	10.4	13.6
Petitioned	78.7	149.6	86.3	102.1	64.3	117.2	99.7

*Source of data:* Alaska Division of Juvenile Justice Focus Groups, Spring 2009

## JPO workload

(continued from page 7)

Table 4.) With these new positions, the Alaska Division of Juvenile Justice would have the capacity to wholly accomplish its mission, goals, and objectives.

Almost half (42%) of the new positions needed are in Anchorage, but Anchorage already has more Juvenile Probation Officers and Social Service Associates than any other office in the State. To examine the severity of unmet needs, the workload burden for each office was calculated. (See Table 5.) The workload burden is the ratio of time needed to time available. For example, a workload burden of 3.0 would indicate that the total amount of time needed is three times greater than the total amount of time available. Although Anchorage had the greatest need for additional positions, its workload burden was 2.0, far below Sitka's 3.6. Based on these ratios, the two offices with the greatest workload burdens were Sitka and Fairbanks, followed by Juneau, Kodiak, and Anchorage. Workload burdens are determined by the amount of time available and the amount of time needed. As previously explained, the amount of time needed is driven primarily by the number of petitioned cases. The amount of time available is primarily driven by the number of juvenile probation officers and social service associates in each office and by the amount of personal leave that they accrue. In some

offices, high rates of accrual for personal leave significantly lower the amount of time available and significantly increase workload burdens. When senior juvenile probation officers leave the division and new juvenile probation officers are hired who accrue less personal leave, the amount of time available will increase and workload burdens will decrease.

This analysis examined the time that would be required to handle each case under a fully implemented restorative justice field probation service delivery model. An important limitation of this analysis is that it did not examine how case dispositions should be distributed. Instead, this analysis relied on local averages from the last three fiscal years. Within any office, increasing the number of petitions will dramatically increase both need and workload burden. As a result, one office's unmet need may simply be due to a higher proportion of petitions. This study did not determine why differences between time available and time needed existed. These differences may exist

**Table 5. Workload Burdens**

Office	Time available	Time needed	Workload burden
Sitka	1,498 hours	5,341 hours	3.6
Fairbanks	14,728	34,736	2.4
Juneau	7,621	17,011	2.2
Kodiak	3,244	7,065	2.2
Anchorage	36,593	74,112	2.0
Craig	1,385	2,754	2.0
Valdez	1,385	2,420	1.7
Homer	1,385	2,394	1.7
Palmer	8,919	14,962	1.7
Dillingham	2,766	4,631	1.7
Kotzebue	2,980	4,215	1.4
Ketchikan	4,691	5,584	1.2
Nome	4,499	5,195	1.2
Kenai	7,531	8,572	1.1
Bethel	6,121	6,272	1.0
Barrow	3,003	2,166	0.7

Source of data: 2009 JPO Workload and Caseload Study

because of shortages in staffing levels, system inefficiencies, or case dispositions. In particular, it is possible that offices with large unmet needs simply petition too many cases. Similarly, it is possible that offices with no unmet needs simply petition too few cases. These offices may be too understaffed to adequately meet minimum probation standards. Although this study identified

**Table 4. Final Results**

Region/location	Current positions	Total positions needed	New positions needed
<b>Anchorage</b>	<b>29</b>	<b>54.1</b>	<b>25.1</b>
<b>Northern</b>	<b>26</b>	<b>40.2</b>	<b>14.2</b>
Barrow	3	2.4	-0.6
Bethel	5	5.1	0.1
Fairbanks	11	24.4	13.4
Kotzebue	3	3.8	0.8
Nome	4	4.5	0.5
<b>Southcentral</b>	<b>20.5</b>	<b>30.4</b>	<b>9.9</b>
Dillingham	2.5	3.7	1.2
Homer	1	1.7	0.7
Kenai	6	6.7	0.7
Kodiak	3	5.6	2.6
Palmer	7	11.0	4.0
Valdez	1	1.7	0.7
<b>Southeast</b>	<b>13</b>	<b>23.4</b>	<b>10.4</b>
Craig	1	1.9	0.9
Juneau	6	12.3	6.3
Ketchikan	4	4.6	0.6
Sitka	2	4.6	2.6
<b>Total</b>	<b>88.5</b>	<b>148.1</b>	<b>59.6</b>

Source of data: 2009 JPO Workload and Caseload Study

**Table 6. Time Study Comparisons**

Region/location	2000 time study			2009 time study		
	Current positions	Total positions needed	New positions needed	Current positions	Total positions needed	New positions needed
<b>Anchorage</b>	<b>20</b>	<b>56</b>	<b>36</b>	<b>29</b>	<b>54.1</b>	<b>25.1</b>
<b>Northern</b>	<b>17</b>	<b>32</b>	<b>17</b>	<b>26</b>	<b>40.2</b>	<b>14.2</b>
Barrow	1	3	3	3	2.4	-0.6
Bethel	3	8	5	5	5.1	0.1
Fairbanks	9	14	5	11	24.4	13.4
Kotzebue	1	2	1	3	3.8	0.8
Nome	3	6	4	4	4.5	0.5
<b>Southcentral</b>	<b>10</b>	<b>30</b>	<b>22</b>	<b>20.5</b>	<b>30.4</b>	<b>9.9</b>
Dillingham	1	4	3	2.5	3.7	1.2
Homer	1	4	3	1	1.7	0.7
Kenai	2	8	6	6	6.7	0.7
Kodiak	1	4	3	3	5.6	2.6
Palmer	4	9	5	7	11.0	4.0
Valdez	1	4	3	1	1.7	0.7
<b>Southeast</b>	<b>10</b>	<b>19</b>	<b>9</b>	<b>13</b>	<b>23.4</b>	<b>10.4</b>
Craig	1	2	1	1	1.9	0.9
Juneau	5	7	2	6	12.3	6.3
Ketchikan	3	7	5	4	4.6	0.6
Sitka	1	2	1	2	4.6	2.6
<b>Total</b>	<b>57</b>	<b>133</b>	<b>83</b>	<b>88.5</b>	<b>148.1</b>	<b>59.6</b>

Note: Discrepancies in 2000 time study totals are due to rounding.

Source of data: 2000 Juvenile Probation Field Services Resource Needs Time Study; 2009 JPO Workload and Caseload Study



how unmet needs could be fulfilled with new positions, it is important to emphasize that unmet needs may also be fulfilled by reducing the time required to handle each case (e.g., by increasing system efficiency or reducing the severity of dispositions).

### Comparison with Previous Time Study

A previous time study was conducted in 2000 by the Alaska Division of Juvenile Justice. In Table 6, we compare the results from the 2000 study to the results of this study. In 2000, the Alaska Division of Juvenile Justice had 57 positions that provided direct services to offenders, victims, and community justice partners. These 57 positions handled almost 7,500 cases per year. At that time, the Division estimated that an additional 83 positions were needed for a total of 133 positions. In 2009, the Alaska Division of Juvenile

Justice had 88.5 positions (a 55% increase since 2000) and handled almost 4,700 cases (a 37% decrease since 2000). Despite the increase in the number of positions and the decrease in the number of cases, we estimated that the Division still needs an additional 59.6 positions for a total of 148.1 positions. The 2000 study estimated that 43 percent of the new positions were needed in Anchorage. Similarly, we estimated that 42 percent of the new positions were needed in Anchorage. Over this nine year period, the total number of needed positions increased by 11 percent while the number of current positions (included in the study) increased by 55 percent. As a result, the number of new positions needed decreased by 28 percent.

*André B. Rosay is the Director of the Justice Center and Thomas S. Begich is a*

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## Alaska Juvenile Justice Dispositions

As defined in this study, dispositions within the Alaska juvenile justice system include dismissals, adjustments without referral or follow-up, adjustments with referral or follow-up, informal probation, and petitions or formal diversions. A brief explanation of each disposition follows.

### Dismissal

A case is dismissed when probable cause does not exist to believe that a crime has been committed or that the juvenile committed the offense. In addition, a case is dismissed if there is not sufficient admissible evidence to support a formal adjudication of delinquency. Finally, a case is dismissed (without prejudice) if the juvenile or parent cannot be interviewed and the offense is of a minor nature.

If a case is not dismissed, it may be adjusted when it is in the best interest of the juvenile and the community to not pursue the matter through formal court action. Cases may be adjusted with or without referrals for services and follow-ups.

### Adjustment without referral/follow-up

Cases are adjusted *without* a referral or follow-up when neither formal court action nor non-judicial supervision is necessary to achieve the goals and purposes of Alaska's restorative juvenile justice system—to hold juveniles accountable for their behaviors, to promote the safety and restoration of victims and communities, and to assist offenders and their families in developing skills to prevent crime.

### Adjustment with referral/follow-up

Cases are adjusted *with* a referral or follow-up when neither formal court action nor non-judicial supervision is necessary to achieve the goals and purposes of Alaska's restorative juvenile justice system, but participation in a diversion program (e.g., counseling) is determined to be essential. In these cases, juvenile probation officers may refer the youth and/or family to specific diversion programs, may maintain a level of diversion supervision while the juvenile completes the diversion requirements, and

may adjust the matter when the goals and purposes of Alaska's restorative juvenile justice system have been met.

If the goals and purposes of Alaska's restorative juvenile justice system cannot be met without non-judicial supervision, juvenile probation officers may use informal probation.

### Informal probation

Informal probation is a voluntary contract with the juvenile and parents/guardians. Informal probation may include, for example, referrals to other agencies for services, restitution and/or community work service requirements, and voluntary use of urinalysis testing. In addition to providing low levels of supervision, juvenile probation officers are required to document the informal supervision plan, including justifications for informal intervention.

If the goals and purposes of Alaska's restorative juvenile justice system cannot be met without formal court action, juvenile probation officers may petition for formal adjudication or use formal diversion.

### Petition for formal adjudication or formal diversion

In some cases, if it appears that the juvenile would be amenable to a period of court-imposed participation in a diversion program (and the juvenile meets specific diversion criteria), the juvenile probation officer may recommend formal diversion. Formal diversion agreements must be voluntary and may include restitution, juvenile court, victim-offender dialogue, community work service, short-term counseling, and other programs. Juvenile probation officers are responsible for providing direct supervision, while monitoring compliance with diversion requirements. Alternatively, the juvenile probation officer may petition for formal adjudication. A petition for formal adjudication may be filed with the court if the probation officer determines that there is probable cause to support an adjudication of delinquency (i.e., a finding of guilt) and that the matter requires formal court intervention in order to assure an adequate plan of supervision.

# The Language Interpreter Center and Interpretation in Alaska

The Language Interpreter Center (LIC), an Alaska multi-agency collaboration, now has a pool of 115 trained interpreters speaking 36 languages (see Table 1). Established in 2007 and under the auspices of the Alaska Immigration Justice Project, the Language Interpreter Center has partnered with the Alaska Court System, the Anchorage School District, government agencies, non-profits, and private entities to provide services statewide. The LIC is unique in being one of the few interpreter organizations in the nation that serves a variety of community and statewide groups and individuals, rather than only one segment, such as the courts. (Federal courts, including those in Alaska, have their own certified court interpreter service.)

The mission of the LIC focuses on providing qualified interpreters through training and certification, educating clients about the use of interpreters, and connecting clients and their interpretation needs with interpreters of the appropriate skill level. Interpreters are needed in legal, medical, social services, and educational settings statewide. In addition to interpreting spoken language, the LIC provides translating services for written materials.

The LIC responded to over 600 requests for interpreters in calendar year 2009. Spanish is the most often requested language, but a crisis in a given language community can suddenly increase the demand for interpreters in that language. The highest number of requests in 2009 was from public agen-

cies such as the public defender agency, state court system, social services agencies, and the Anchorage School District (see Table 2). The need for interpreters is impacted also under Title VI of the Civil Rights Act, "Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" and Executive Order 13166. Agencies receiving federal funds are obligated to examine and work toward providing interpreters for limited English proficient (LEP) persons to ensure these persons have "meaningful access" to services. (*Limited English proficient* is defined by the U.S. Department of Justice as "limited ability to read, write, speak, or understand English.")

Interpreters for the LIC are given a background check and receive basic overview training on responsibilities and ethical rules of interpreting. Professor Holly Mikkelsen of the Monterey Institute of International Studies, a state and federally certified interpreter and a national consultant, conducts the LIC interpreter trainings. There are several legal certification programs nationwide including those by the federal courts and the Consortium for Language Access in the

**Table 1. Language Interpretation Services Provided by the Language Interpreter Center of the Alaska Immigration Justice Project**

Interpreter services provided in the following languages:

Albanian	Gujarati	Samoan
Arabic	Hindi	Serbian
Bosnian	Hmong	Slovak
Cebuano	Ilocano	Somali
Chinese (Cantonese)	Inupiaq	Spanish
Chinese (Mandarin)	Japanese	Swahili
Croatian	Korean	Tagalog
Czech	Lao	Thai
Danish	Malaysian	Ukrainian
Farsi	Nuer	Vietnamese
French	Portuguese	Yup'ik
German	Russian	

**Source of data:** Language Interpreter Center, Alaska Immigration Justice Project

Courts (the Consortium). Alaska is participating in this multi-part certification testing by the Consortium. However, there are only a limited number of languages available for certification, and there are no tests currently for Alaska's indigenous languages.

The unique interpreting challenges in Alaska include its diversity of languages and geographic distances. Telephonic interpretation is often used when appropriate. For telephonic interpretation, the Alaska Court System currently utilizes a private company, LanguageLine based in Monterey, California, which is available 24 hours per day. The court system made close to 200 requests for interpreters in over 20 languages during 2008 (most recent data available). The top languages requested were Spanish (84 requests), Korean (20), Tagalog (17), Russian (15), Laotian (13), and Hmong and Vietnamese with 10 requests each. The LIC can also provide telephonic interpreters upon request, but is more focused on in-person interpreting.

The Alaska Court System has developed a statewide Language Access Plan to insure that LEP individuals accessing the justice system have trained and qualified interpreters. Ultimately, each judicial district will have its own plan based on the language needs of that district and the most current census information. This plan will address statewide language needs, interpreter training, and court staff training on the use of interpreters. The Alaska Court System is a significant partner with LIC, and the LIC is an important part of the court's plan to meet the increasing need for interpreters in legal proceedings.

Recruitment for bilingual individuals interested in participating in the LIC's interpreter training program is ongoing;

**Table 2. Language Interpreter Center Interpretation and Translation Requests, 2009**

Agency	Interpretation request	Translation request (written)	Total
Alaska Public Defender	109	1	110
Alaska Network on Domestic Violence and Sexual Assault (ANDVSA)	101	8	109
Nonprofit social services	47	24	71
Alaska Court System	33	10	43
Anchorage Neighborhood Health Center	41	4	45
Anchorage School District	34	1	35
Businesses/individuals	33	0	33
General Legal - law offices	30	1	31
Alaska Dept. of Transportation Civil Rights Office	17	1	18
Alaska Office of Children's Services	15	0	15
Alaska Dept. of Juvenile Justice	7	0	7
Alaska Legal Services	2	0	2
Sitka Family Justice Center	1	0	1
Other misc agencies/individuals	91	0	91
<b>Total</b>	<b>561</b>	<b>50</b>	<b>611</b>

**Source of data:** Language Interpreter Center, Alaska Immigration Justice Project

the Alaska Court System website links the individuals to the LIC training programs, and the LIC works to get the word out to the statewide community. The LIC roster of interpreters is made up of trained, bilingual individuals, some of whom are “heritage speakers”—people who speak English fluently, but grew up in a home where English was not the dominant language. In addition to the overview trainings which are presented regularly, the LIC has also held training for interpreters in Barrow through Ilisagvik College, and has met with interpreters and

service providers in Bethel and Juneau to learn more about interpreter needs in those areas.

Costs for interpreting services vary depending on the type of interpreting requested by agencies, but the range is from \$30 to \$80 per hour. Who pays for the interpreter depends on the type of service needed and agency requirements.

The LIC is developing its central registry of interpreters and working on implementing certification testing and standards for interpreters in legal, medical, and social services

settings. The program was highlighted in a National Center for State Courts report, *Future Trends in State Courts, 2008*: “... language centers such as the one created in Alaska may be the wave of the future.”

For more information on the LIC go to their website [www.akijp.org/interpreter.html](http://www.akijp.org/interpreter.html) or contact Barbara Jacobs, Program Manager, 907-279-2457. Additional tables including languages represented in Anchorage schools are on the Justice Center website at [http://justice.uaa.alaska.edu/forum/26/4winter2010/f\\_legalinterp.html](http://justice.uaa.alaska.edu/forum/26/4winter2010/f_legalinterp.html).

## Farrakhan

(continued from page 1)

offenders. The concept of civil death dates back to ancient Athens and Rome, where those convicted of certain crimes entered a state of infamy marked by civic penalties such as the inability to vote, hold public office, and speak publicly on political issues. In medieval Europe and England, similar laws caused forfeiture of property and political rights for crimes punishable by death or life imprisonment. Laws disenfranchising felons were received into the American colonies as part of the general reception of the laws of England. Following the Revolution, in the allocation of power between the states and the federal government under the Constitution of 1787, the states retained control over access to the ballot. Almost immediately, the newly formed states adopted felon disenfranchisement laws, either constitutionally or through codification.

State control over access to the ballot was limited with ratification of the 15th Amendment, which prohibits states from abridging the right to vote “on account of race” and grants enforcement powers to Congress. Pursuant to the enforcement clause, and in conjunction with the mid-twentieth century civil rights movement, Congress enacted the Voting Rights Act of 1965. Its explicit purpose is to eliminate racial discrimination in voting throughout the United States in accordance with the mandate of the 15th Amendment. Section 2 of the Act provides that no prerequisite to voting shall be imposed in a manner that results in a denial of the right to vote on account of race or color (42 U.S.C. § 1973(a) (2010)). This standard is violated where, “based on the totality of the circumstances,” it is shown that political processes in a state are not equally open to members of a class, in that such members “have less opportunity than other members of the electorate to participate in the political process...” (42 U.S.C. § 1973(b)).

Section 2 challenges to felon disenfranchisement laws are not new. Broadly

speaking, these challenges assert that disproportionate numbers of minorities in the criminal justice system, and the concomitant denial of the vote to this class of citizens, result in *de facto* race-based exclusion of class members from the political process. To date the Courts of Appeals for the First, Second, Ninth, and Eleventh Circuits have analyzed the validity of such claims. Among the circuits, only the Ninth has held that challenges to felon disenfranchisement statutes raise valid Section 2 claims. The First, Second, and Eleventh Circuits are in accord (the latter two circuits sitting *en banc* as full courts rather than three judge panels) that such challenges fall outside the purview of the Voting Rights Act. These courts have concluded that Congress never intended the Act to deprive the states of their right to disenfranchise felons; such a result would impermissibly alter the balance of power between the federal government and the states, impinging on the states’ traditional right to establish voter qualifications.

### The Farrakhan Opinion

In a departure from this majority view, two members of the three judge panel in *Farrakhan v. Gregoire* held that the discriminatory impact of Washington state’s disenfranchisement law stems from racial discrimination in the state’s criminal justice system; the resulting denial of the vote is, therefore, a violation of section 2. At the trial court level, the plaintiffs, minority citizens of Washington who lost their right to vote under the state felon disenfranchisement statute, presented reports of expert witnesses on racial disparities in all levels of Washington’s criminal justice system. The reports highlighted studies showing that these disparities could not be explained by legitimate factors such as minorities’ higher levels of criminal activity. Notably, one study found that “substantially more than one half of Washington State’s racial disproportionality cannot be explained by higher levels of criminal involvement” (*Farrakhan*, 2010, n. 5).

These reports led the trial court to enter findings that racial discrimination exists in Washington’s criminal justice system and that this discrimination “hinders the ability of racial minorities to participate effectively in the political process, as disenfranchisement is automatic” (*Farrakhan*, 2010, 995). Nevertheless, the lower court held that plaintiffs failed to establish a Voting Rights Act violation because it was discrimination in the justice system, and not the disenfranchisement statute itself, that caused the loss of voting rights. Following an initial appeal, remand to the trial court, and second appeal, Ninth Circuit Judge Tashima, writing for himself and Judge Reinhardt (with Judge McKeown dissenting), held that Section 2 of the Voting Rights Act “demands that... racial discrimination not spread to the ballot box.” Thus, based on the “uncontroverted record” of discrimination in the justice system, Washington’s disenfranchisement law violates federal civil rights law (*Farrakhan*, 2010, 1015). (See “Further Background: Scope of Analysis,” page 1.)

### Felon Disenfranchisement in Alaska

Disenfranchisement of felons in Alaska is rooted in the Alaska Constitution, which provides “No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored” (Alaska Const. art V, § 2). The right to vote remains suspended from the date of conviction through the date of release from all conviction-related disability, including probation and parole (AS 15.05.030; AS 15.60.010(39)). According to the Alaska Department of Corrections Offender Profile, in 2009 more than 10,000 Alaskans were ineligible to vote pursuant to this provision.

There is no question that in Alaska, as elsewhere, racial minorities are disproportionately represented in the criminal justice system. For example, Department of Corrections figures show that in 2009 Alaska Natives comprised over 35 percent of total

Please see *Farrakhan*, page 12



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## **Farrakhan**

(continued from page 11)

offenders in institutions, yet Alaska Department of Labor 2008 population figures estimated that Alaska Natives comprised about 16 percent of the total population in Alaska. African-Americans, estimated to have comprised just over 4 percent of Alaska's population, represented over 10 percent of offenders in Alaska correctional institutions. (See "Alaska Offender Profile 2009" in this issue.) Despite this well-known disparity, Alaska lacks an extensive body of empirical data establishing conclusively that the overrepresentation of minority groups in Alaska's criminal justice system is attributable solely to systemic racial discrimination. This is the critical distinction between Alaska and Washington. As noted above, the Farrakhan opinion rests on a finding of fact by the trial judge that "there is discrimination in Washington's criminal justice system on account of race"; in reaching this finding the court relied on "extensive," unrefuted studies showing that over half of Washington's racial disproportionality could not be explained by legitimate factors (Farrakhan, 2010, 994–995). It is unlikely a trial judge would find the existing data in Alaska a sufficient evidentiary foundation to support a similar finding of fact here. This does not imply that racial bias is absent from Alaska's criminal justice system, merely that widespread empirical studies have not unequivocally ruled out all other explanations

for disparity in the system. (See "Further Background: Ethnic Disparity in Alaska," page 1.)

### **Shifting Policy**

Although Alaska's disenfranchisement statute does not appear vulnerable to an immediate Farrakhan challenge, the essential holding of the case suggests that state policymakers may wish to consider limiting the reach of the current statute, or proposing a Constitutional amendment to eliminate the voting prohibition entirely. (Senate Bill 68, currently pending in the Alaska Legislature, would limit disenfranchisement to those incarcerated, and restore voting rights upon release.) Academic literature makes clear that for generations disenfranchisement laws throughout the country have excluded minority citizens from the vote in overwhelmingly greater percentages than Caucasian, and that the rates of minority exclusion are growing. Moreover, there is evidence that dilution of minority voting attributable to disenfranchisement statutes has affected the outcome of elections in a number of jurisdictions. In this state, the disproportionate number of Alaska Natives excluded from the political process under the disenfranchisement statute is particularly troubling given Alaska's history of discrimination in voting practices. (See "Further Background: Preclearance under the Voting Rights Act," page 1.)

At an even more basic level, however, the

right to vote is the hallmark of participatory democracy. It affirms our membership in the social compact. Exclusion of criminal offenders from this process, and from one of the most fundamental rituals of community involvement, does nothing to promote public safety and can only serve to impede social reintegration of these citizens.

In his February 2010 State of the Judiciary address, Chief Justice Carpeneti observed, "Probably no problem is of greater concern to us at this time than the alarmingly high rates of recidivism in our state." The recently established Alaska Prisoner Re-Entry Task Force was created to examine how the state might better assist offenders to make a successful transition from incarceration back into their communities. Voting is an integral part of this process; studies suggest that civic reintegration facilitates successful reentry and reduces the risk of recidivism.

For all of these reasons, there is growing recognition that felon disenfranchisement statutes rest on outdated retributory practices antithetical to contemporary standards of equal representation in the political process, standards explicitly stated in the Voting Rights Act. Farrakhan, though out of step with the weight of authority in its statutory interpretation, gives effect to the spirit of inclusion that lies at the core of the Voting Rights Act.

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## Alaska Offender Profile 2009: Supplemental Table

This table was prepared for the Winter 2010 issue of the *Alaska Justice Forum*, but could not be included in the print edition for reasons of space.

**Table 4. Probationers/Parolees Under Supervision of the Alaska Department of Corrections, 2009**

Column percentages.

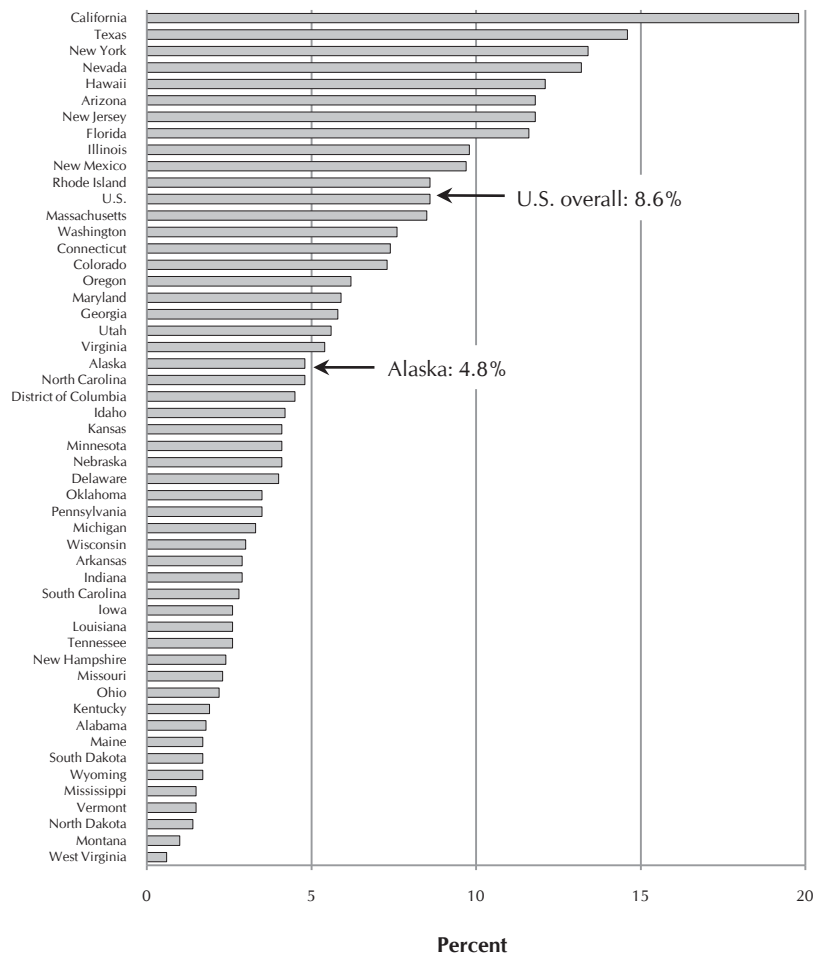
	Female		Male		Total	
	N	%	N	%	N	%
<b>Total prisoners</b>	<b>1,195</b>		<b>4,653</b>		<b>5,848</b>	
<b>Ethnicity</b>						
White	717	60.0 %	2,621	56.3 %	3,338	57.1 %
Alaska Native/ American Indian	297	24.9	1,200	25.8	1,497	25.6
Black	81	6.8	433	9.3	514	8.8
Asian/Pacific Islander	46	3.8	204	4.4	250	4.3
Hispanic	28	2.3	143	3.1	171	2.9
Unknown	26	2.2	52	1.1	78	1.3
<b>Age</b>	<b>1,195</b>		<b>4,653</b>		<b>5,848</b>	
19 years and under	9	0.8 %	78	1.7 %	87	1.5 %
20–24 years	193	16.2	763	16.4	956	16.3
25–29 years	245	20.5	889	19.1	1,134	19.4
30–34 years	174	14.6	594	12.8	768	13.1
35–39 years	170	14.2	552	11.9	722	12.3
40–44 years	129	10.8	528	11.3	657	11.2
45–49 years	130	10.9	479	10.3	609	10.4
50–54 years	89	7.4	365	7.8	454	7.8
55–59 years	38	3.2	221	4.7	259	4.4
60–64 years	13	1.1	106	2.3	119	2.0
65 years and over	5	0.4	78	1.7	83	1.4
Mean age	35.90 years		37.02 years		36.79 years	
Median age	34.30 years		35.02 years		34.83 years	
<b>Supervising probation/ parole office</b>						
	<b>1,195</b>		<b>4,653</b>		<b>5,848</b>	
Anchorage	599	50.1 %	2,255	48.5 %	2,854	48.8 %
Barrow	—	—	—	—	—	—
Bethel	22	1.8	244	5.2	266	4.5
Dillingham	18	1.5	47	1.0	65	1.1
Fairbanks	132	11.0	596	12.8	728	12.4
Juneau	50	4.2	196	4.2	246	4.2
Kenai	118	9.9	367	7.9	485	8.3
Ketchikan	35	2.9	120	2.6	155	2.7
Kodiak	13	1.1	82	1.8	95	1.6
Kotzebue	15	1.3	78	1.7	93	1.6
Nome	8	0.7	47	1.0	55	0.9
Palmer	171	14.3	581	12.5	752	12.9
Sitka	14	1.2	40	0.9	54	0.9

**Source of data:** *2009 Offender Profile*, Alaska Department of Corrections

# The Language Interpreter Center and Interpretation in Alaska: Supplementary Figure and Table

This figure was prepared for the Winter 2010 issue of the *Alaska Justice Forum*, but could not be included in the print edition for reasons of space.

**Figure 1. Percent of People 5 Years and Over Who Speak English Less Than "Very Well," 2008**



Note: The percentage of persons who speak English less than "very well" in the U.S. territory of Puerto Rico is 81.1%.

Source of data: 2008 American Community Survey, U.S. Census Bureau

This table was prepared for the Winter 2010 issue of the *Alaska Justice Forum*, but could not be included in the print edition for reasons of space.

**Table 3. Languages Reported as "Home" Languages by Students in Anchorage Schools, 2009–2010**

Number of speakers and language.

N = 49,517

42,421	English	24	Somali	6	Macedonian	2	Owan
1,721	Spanish	20	Nepali	6	Norwegian	2	Slovak
1,513	Hmong	20	Polish	6	Siberian Yupik	2	Telugu
904	Filipino	19	Portuguese	5	Bosnian	2	Tlingit
717	Samoaan	18	French	5	Czech	1	Afrikaans
397	Korean	16	Punjabi	5	Hebrew	1	Armenian
211	Lao	15	Bengali	5	Mandinka	1	Bulgarian
178	Yupik	15	Wolof	5	Rumanian	1	Burmese
176	Nuer	12	Turkish	4	Indonesian	1	Denaina
143	Russian	11	Creole	4	Pashto	1	Gaelic
103	Mien	11	East Indian	4	Swedish	1	Han
78	Thai	11	Palau	4	Yapese	1	Hungarian
75	Albanian	11	Ukrainian	3	Cantonese	1	Ibo
71	Tongan	10	Mandarin	3	Danish	1	Kosraean
69	Chinese	9	Greek	3	Finnish	1	Latvian
56	Vietnamese	9	Hindi	3	Romany	1	Malinke
55	Japanese	9	Kiswahili	3	Serbo Croatian	1	Marshallese
45	Inupiaq	8	Italian	3	Twi	1	Navajo
41	Arabic	7	Aleut	3	Yoruba	1	Patois
41	German	7	Athabaskan	2	Amharic	1	Sinhalese
38	Khmer Cambodian	7	Cupik	2	Dutch	1	Sioux
34	Urdu	7	Dinka	2	Georgian	1	Tadzhik
32	Sign	7	Hawaiian	2	Gujariti	1	Trukese

*Source of data:* Anchorage School District