



# ALASKA JUSTICE FORUM

A PUBLICATION OF THE JUSTICE CENTER

Winter 2007

UNIVERSITY of ALASKA ANCHORAGE

Vol. 23, No. 4

## Justice System Operating Expenditures

**Table 1. Alaska Justice Agency Budgets as Percentage of Total State Budget, FY 1984 and FY 2006**

	FY 1984		FY 2006*	
	Operating budget	% of total state budget	Operating budget	% of total state budget
<b>Total justice budget</b>	<b>\$195,741,100</b>	<b>7.3 %</b>	<b>\$478,829,000</b>	<b>6.9 %</b>
Department of Corrections	\$57,798,500	2.1	\$195,809,700	2.8
Department of Public Safety	\$76,658,000	2.8	\$126,029,400	1.8
Department of Law	\$19,015,800	0.7	\$61,012,600	0.9
Alaska Court System	\$37,448,500	1.4	\$66,415,500	1.0
Public Defender Agency/ Office of Public Advocacy	\$4,820,300	0.2	\$29,561,800	0.4
<b>Other state agencies</b>	<b>\$2,494,771,300</b>	<b>92.7 %</b>	<b>\$6,487,666,000</b>	<b>93.1 %</b>
<b>Total actual operating budget</b>	<b>\$2,690,512,400</b>		<b>\$6,966,495,000</b>	

\* FY06 figures given represent appropriated operating budget.

Source of data: Alaska Legislative Finance Division

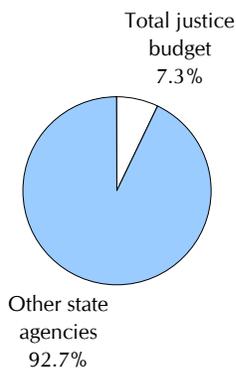
Alaska justice system operating expenditures grew by 145 percent between FY 1984 and FY 2006, rising from slightly under \$196 million to almost \$479 million. Over the same period the total state operating budget grew by 160 percent (Tables 1 and 2). (The total state operating budget grew by 62 percent in the five years from FY 2001 to FY 2006.) In FY 1984 the operating expenses of the major justice system agencies (Department of Law, Court System, Department of Corrections, Public Defender Agency and Office of Public Advocacy, Department of Public Safety) formed 7.3 percent of the total state operating budget and in FY 2006, 6.9 percent, (Figure 1). These figures are state operating expenses only; they do not include capital expenditures or local costs, such as for city police departments; they do not include the costs of those divisions that handle juvenile justice administration; nor do they include federal justice system costs in Alaska.

While the portion of the state total that the justice system budget occupied remained almost the same over the twenty-two years, within the justice slice, the proportions held by different agencies changed markedly. The Department of Corrections constituted a much bigger share in FY 2006 than in FY 1984—41 percent vs. 30 percent (Figure 3). As Tables 1 and 2 show, over this period the

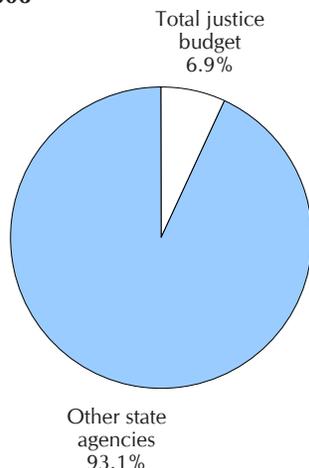
**Figure 1. Alaska Justice Agency Budgets as Percentage of Total State Budget, FY 1984 and FY 2006**

From FY 1984 to FY 2006, the operating budget for the State of Alaska increased by 160.2% and the overall justice agency budget increased by 144.6%.

FY 1984



FY 2006\*



\* FY06 data based on appropriated operating budget.

Source of data: Alaska Legislative Finance Division

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### HIGHLIGHTS INSIDE THIS ISSUE

- A detailed review of a book on terrorism and the U.S. Constitution in the era of the war on terror (page 2).
- Results of the first general study on offender recidivism in Alaska (page 5).
- A look at incarceration rates in the U.S. as a whole and in Alaska, with a comparison of U.S. rates with rates of other nations (page 7).

## Review Essay

## Terrorism and the Constitution: Security, Civil Rights, and the War on Terror

John Riley

*Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security*, 3rd ed.

David Cole and James X. Dempsey  
New York: The New Press 2006.  
302 pages.

Justice is a balancing act. Those who follow criminal justice issues are well-aware that debates on justice policy often reflect fundamental disagreements about the extent to which we should emphasize either the rights guaranteed in the U.S. Constitution or the crime-fighting mission of some of our justice agencies. In general, and particularly in the academic world, the American system's historic emphasis on civil liberties, the presumption of innocence, and our traditional respect for the rights of the accused have been regarded as essential features of our democratic society. At the same time, it is widely recognized that law enforcement agencies, which operate in a world that is often both complicated and very dangerous, must confront threats that can seem more immediate and more consequential than those associated with abstractions like restricted civil rights. For some, striking the right balance between civil rights and effective crime control may seem to be more a matter of limiting rights and empowering law enforcement. Out of this concern for an approach that balances civil liberties and the practical requirements of law enforcement come such well-known legal innovations as the public safety exception to the exclusionary rule, the "plain-view" search, and the "Terry" stop. Finding the right balance between civil rights and efficient crime control is, and will doubtless continue to be, a central preoccupation of the criminal justice system.

*Terrorism and the Constitution*, by David Cole and James X. Dempsey is a book about the balance between civil rights and public safety. It is a critical account of our increasing willingness to trade civil rights for an enhanced sense of security, a trade that the authors argue will ultimately leave us both unsafe and unsatisfied. Cole and Dempsey believe that the federal government, and particularly the Federal Bureau of Investigation, have used America's fear of terrorism to justify broad increases in government power while simultaneously undercutting

important civil liberties. For Cole and Dempsey, some of our most important legal and political traditions are now challenged by new government policies associated with the war on terrorism. These include such fundamental ideas as the presumption of innocence, the right to counsel, the right to confront witnesses, the right of access to the courts, and privacy rights.

There can be no question that the changes that have characterized the last few years have involved a radical reinterpretation of the rights and responsibilities of the executive branch and the law enforcement organizations under its control. Arguing that these measures are justified by the demands of a global war on terror, the parameters of which are ill-defined, supporters of an increased emphasis on effective crime control have adopted policies that would have seemed shocking even at the height of the communist threat during America's Cold War. The government has openly asserted the right to arrest suspects without judicial review, to impose lengthy incarceration without a trial or even any access to the courts, and to order investigation of political groups by criminal justice agencies without any evidence of criminal wrongdoing. Privacy rights have also been called into question as the executive branch claimed the right to engage in controversial practices that would make it easier for government agencies to track library use and credit information, to monitor mail and electronic communications, and to search private homes without first serving the kind of traditional warrants described in the Fourth Amendment. The use of secret evidence and witnesses to justify detention of suspected terrorists, clearly prohibited by the Constitution, is now regarded by those in power in Washington as a justifiable wartime exception to traditional standards. Coercive interrogation practices and suspension of *habeas corpus* for suspected terrorists, while not entirely novel even in America, are perhaps the most radical of the many departures from conventional American legal practices defended by the executive branch in the last few years. Taken as a whole, these policies and practices have dramatically altered the balance between civil rights and effective crime control in post 9/11 America.

Cole and Dempsey are not newcomers to public debate on constitutional issues. Their names are particularly well-known to those who follow the debates on limits

to the power and discretion of federal law enforcement. David Cole is a Professor of Law at Georgetown University and a regular contributor to *The Nation*. James X. Dempsey is a Director of the Center for Democracy and Technology and a former assistant counsel to the U.S. House of Representatives Judiciary Committee on Civil and Constitutional Rights.

The first edition of *Terrorism and the Constitution* was published in 1999. A second edition appeared in 2002 soon after the 9/11 attacks. The third and current edition, substantially revised since 2002, was published in 2006 by The New Press in New York. This third edition includes valuable new materials on the Patriot Act, and it includes discussion of National Security Letters, "sneak and peak" searches, "data mining" practices, and the recent court challenges to government practices involving immigrants and detainees. In brief, the authors are concerned that fear of terrorism has encouraged the federal law enforcement community to move away from appropriate constitutional restraint in the direction of highly politicized practices that have a chilling effect on freedom of speech and association and target people based on political ideology rather than on evidence of criminal behavior. While some may see the legacy of 9/11 as an increasingly efficient crime control effort, Cole and Dempsey see this legacy in terms of guilt by association, ethnic profiling, data mining programs that erode personal privacy, and investigations lacking a solid criminal predicate.

*Terrorism and the Constitution* is organized in four parts. The first provides an historical account of federal investigations of First Amendment activities, focusing on the FBI's investigative activities prior to 9/11. The authors make a persuasive case that the FBI's investigative power has frequently been used to harass those involved in controversial political activities, and to disrupt controversial social movements, even where no evidence of illegal activity has been noted. To do this, the authors begin the book with five stories, examples of "the recurring nature of the government's misguided response to ideological threats." The stories begin in the years of the Cold War and end in an account of law enforcement since 2001.

The first of these stories is that of Frank Wilkinson, whose advocacy of racial inte-

gration in public housing in Los Angeles brought him to the attention of the FBI. This is a truly tragic account of McCarthyism in the 1950s and the continuing resistance to civil rights activities even into the next decade. According to Cole and Dempsey, FBI tactics in the case included a policy of deliberate “neutralization” of Wilkinson’s political activities, which involved using “disruptive tactics” during Wilkinson’s speaking engagements. The FBI surveillance and investigation in this case went on for thirty-eight years and cost several million dollars. In the end, with the exception of a contempt citation issued when he refused to “name names” for a Congressional investigation, the government concluded that Wilkinson had not engaged in any illegal activities.

The other four stories develop similar themes. In their discussion of the 1960s and 1970s, the authors focus on the FBI’s embarrassing COINTELPRO operation, which targeted the civil rights movement, anti-war organizers, environmentalists, and other political activists. For Cole and Dempsey, whether judged from the standpoint of civil libertarians or from the perspective of those advocating more efficient law enforcement, COINTELPRO

was, like the Wilkinson case, an unmitigated failure.

At the peak of its efforts the FBI was investigating all major protest movements, from civil rights activists to Vietnam War protesters to women’s liberation advocates. Standard FBI methodology included bugging of homes and offices, wiretapping, break-ins, and informants. In addition, the FBI sought to spread misinformation, foment internal dissension, and even provoke illegal activity. The effort consumed tremendous resources and sowed distrust and fear among many seeking peaceful change in government policies, but it produced little evidence of criminal conduct.

The government’s investigation in the 1980s of members of the Committee in Solidarity with the People of El Salvador (CISPES) provides Cole and Dempsey with another example of what they take to be law enforcement’s elevation of political priorities over civil rights. The authors indicate that while the FBI initially denied that the organization was investigating CISPES members at a hearing in 1985, subsequent Freedom of Information Act filings revealed that they were, in fact, doing just that. Cole and Dempsey point out that again, in spite of extraordinary efforts that clearly had implications for First Amendment activities, the FBI was unable to produce any evidence of the alleged terrorist activity that justified the investigation.

Not surprisingly, the more recent cases focus on Palestinians, Muslims, and America’s newfound fear of terrorism. Cole and Dempsey’s last two stories highlight the vulnerability of immigrants and minority group members in a society where fear of violent victimization makes it increasingly hard for many Americans to appreciate the importance of constitutionally protected rights to free speech and association. The fourth case involves Khader Musa Hamide, a Palestinian activist and political organizer who immigrated to the U.S. in 1971. Cole and Dempsey indicate that after a three-year investigation of Hamide produced no evidence of criminal behavior, the FBI sought to interfere with Hamide’s political activity by asking the Immigration and Naturalization Service to deport him under “long-unused provisions of the McCarran-Walter Act.” The Justice Department appealed the case to the Supreme Court after lower courts initially blocked what they described as the prosecution’s attempt to show “guilt by association.” When this edition of *Terrorism and the Constitution*

went to press, the case was still in the courts, an eighteen-year ordeal for Hamide, who has never been shown to have committed or advocated any terrorist act.

The last of the five stories, that of Sami al-Hussayen, is not well known. Al-Hussayen was a student in Idaho when he came to the attention of the federal government. The government indicted al-Hussayen for his alleged part in anti-American terrorism. He was accused of posting links on his website to other websites that presented speeches by Muslim clerics advocating jihad against America. Under the Patriot Act, the government claimed that his links constituted illegal support for terrorist organizations. The government never claimed that al-Hussayen had ever advocated, planned, or participated in terrorism. It simply indicted him for posting links on a website, using a theory that would apparently make universities, television stations, and newspapers vulnerable to future prosecution. While al-Hussayen was eventually acquitted on all charges of terrorism, he spent almost a year and a half in jail before being released.

In the discussion of these five cases in Part One, Cole and Dempsey make a convincing case that at least some misuse of federal investigative power has happened for decades in America, and that this problem continues.

In Part Two, they examine legal restrictions on FBI authority, including the role of the judiciary in enforcing constitutional limits on law enforcement power. The history of the FBI has been characterized by a struggle to expand its powers of investigation in the face of periodic reform efforts intended to set limits on official discretion and demand increased accountability. Cole and Dempsey trace a pattern of episodic abuses of power followed by periods of reform, beginning with Attorney General Harlan Stone’s efforts to set limits on the bureau’s activities following the notorious Palmer Raids in 1920. During these raids, the Bureau of Investigation, the organizational forerunner of our current FBI, arrested approximately 10,000 persons suspected of being revolutionaries bent on the destruction of American democracy. Stone assumed control of a bureau that he believed had become a “lawless” organization and he promised to set limits on investigations. His reforms remained in place until the 1930s, when executive orders from President Franklin D. Roosevelt encouraged the new Federal Bureau of Investigation to begin a series of investigations focused on “subversive activities” and “potential crimes” in a variety of organizations. Investigations targeted many

Please see *Terrorism*, page 4



## Alaska Justice Forum

Editor: Antonia Moras  
Editorial Board: Allan Barnes, Sharon Chamard,  
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Typesetting and Layout: Melissa Green

Justice Center, Robert Langworthy, Director

Published quarterly by the

Justice Center  
University of Alaska Anchorage  
3211 Providence Drive  
Anchorage, AK 99508  
(907) 786-1810  
(907) 786-7777 fax  
ayjust@uaa.alaska.edu  
<http://www.uaa.alaska.edu/just/>

© 2007 Justice Center,  
University of Alaska Anchorage  
ISSN 0893-8903

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## Terrorism (continued from page 3)

groups, including unions, youth groups, educational organizations, and even the coal, steel, and automobile industries. This pattern, involving repeating cycles of excess and reform, remained a feature of American law enforcement through the twentieth century.

Cole and Dempsey believe that the power to investigate has been used to limit protected First Amendment activities. And they call for restrictions on law enforcement agencies that would require evidence of criminal behavior to justify criminal investigation. For Cole and Dempsey, law enforcement's efforts to monitor political dissent are misguided for at least two reasons. First, investigation has a chilling effect on free speech and on our freedom of association. Second, these efforts are misguided because long and expensive investigations focused on political dissidents distract agencies from the more important work of real crime fighting.

In Part Three, Cole and Dempsey focus on the Anti-Terrorism Act of 1996, a forerunner to the Patriot Act that helped to establish the legal framework for today's domestic war on terror. The act allows the State Department to designate Foreign Terrorist Organizations in a process that is highly politicized and lacking sufficient objective criteria. It also makes it possible for government prosecutors to bring cases against individuals without proof that they have engaged in terrorism, aided or abetted terrorists, or planned to commit terrorism. Under the 1996 act, the government may freeze the assets of designated terrorist groups and use secret witnesses against those suspected of having links to terrorists.

The Anti-Terrorism Act of 1996 had particularly troubling implications for America's resident aliens and also for those who wish to meet and talk with foreign visitors who bring alternative perspectives to American public policy debates. For many years U.S. Immigration policy was characterized by explicit legislative provisions allowing exclusion on ideological grounds. The McCarran-Walter Act of 1952 allowed the government to deny entry to foreign visitors who were suspected communists or thought to be critical of U.S. policy. This required no overtly criminal action on the part of those excluded. Those who disagreed with the political views of those in power were subject to exclusion simply on the basis of the beliefs they expressed. The exclusion provisions of our immigration law were eventually found to be inconsistent with our desire for an open society characterized

by wide debate, and in 1990 provisions allowing ideological exclusion of immigrants were finally repealed. The Anti-Terrorism Act of 1996 reinstated provisions allowing ideological exclusion and made it possible once again to bar entry to those whose ideas are regarded as threatening. Such exclusionary provisions could have been used to deny entry to the U.S. to individuals such as Nelson Mandela, a leading figure in the fight against apartheid in South Africa, or Hanan Ashrawi, an advocate of non-violent conflict resolution in the Middle East. In addition to possibly barring those interested in promoting peaceful resolution of international conflicts, these laws also have an *ex-post-facto* quality that many will find disturbing. As Cole and Dempsey point out, foreign nationals can be excluded for activities that actually predate the laws used to exclude them. Laws allowing ideological exclusion of immigrants prevent all Americans from fully exercising their First Amendment rights by limiting face-to-face exchange of ideas in policy debates, at professional conferences, and in other public arenas.

In Part Four, the authors focus on legislative and law enforcement efforts to fight terrorism since 2001. As the centerpiece of these efforts, the USA Patriot Act has done even more to alter the balance between civil rights and the crime control powers of government agencies than the Anti-Terrorism Act of 1996. For Cole and Dempsey, the Patriot Act is a product of an aggressive and opportunistic executive branch acting in the face of weak and ineffectual congressional oversight.

The USA PATRIOT ACT (abbreviated from Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001) was passed just six weeks after 9/11. Congress acted under extraordinary pressure from Attorney General John Ashcroft, who essentially threatened Congress that the blood of the victims of future terrorist attacks would be on its hands if it did not swiftly adopt the administration's proposals.... The bill passed the Senate on October 11 by a vote of 98 to 1, following a brief debate that made it clear that even supporters of the bill had not read it and did not understand its provisions.

According to Cole and Dempsey, the Patriot Act has made it easier to exclude non-citizens or to detain them for suspected humanitarian aid to illegal organizations. It has expanded the government's authority to conduct searches and wiretaps without

showing probable cause. It authorizes secret searches even in cases not involving suspected terrorism and gives the CIA access to the power of criminal grand juries. Grand juries, because they have the power to compel witnesses to answer questions under oath, have long been the not-so-secret weapon of law enforcement investigation. Cole and Dempsey express several concerns about the use of grand jury power:

One of the most powerful tools of the criminal justice system is the grand jury – an institution originally designed to protect against prosecutorial abuse but since turned into an investigative tool. Through the grand jury, prosecutors can compel anyone to testify under oath. Anyone who refuses to testify can be sent to jail. A witness who lies can be prosecuted for perjury. The grand jury can also compel anyone with a record or tangible thing to produce it, irrespective of probable cause, again with the threat of jail time for those who refuse. Neither the Fourth nor the Fifth Amendments generally protect against the compelled disclosure of records. Witnesses before a grand jury are not entitled to have a lawyer with them in the room while they testify. In practice, the grand jury operates as the arm of the prosecutor who convenes it. While technically subject to the oversight of a judge, the prosecutor issues subpoenas without the prior approval of the judge. In fact, the subpoenas are often issued in blank to FBI agents, who fill them in to serve them, and collect the records.

The tremendous power of the grand jury is usually balanced by careful judicial review, by the protection guaranteed by the Confrontation Clause of the Constitution, and by the requirement that evidence not eventually used in open court be kept secret. Now, under the provisions of the Patriot Act, information gathered through grand jury hearings may be shared with the CIA and other intelligence agencies without prior judicial approval and without accounting for the ways in which information is eventually used or shared. Cole and Dempsey suggest that a better approach would require judicial approval before information can be shared with intelligence agencies. Given the potential harm that could arise from dissemination of the kind of unsubstantiated allegations that may emerge in grand jury proceedings, this seems like a modest suggestion.

According to Cole and Dempsey, the Patriot Act has had a major impact on ju-

dicial oversight of information-gathering activities. In brief, the Patriot Act vastly increases the powers of law enforcement and intelligence agencies and decreases judicial oversight and protection of the public.

Since the attacks of 9/11, many Americans seem untroubled by proposals to increase the power of law enforcement and intelligence agencies. Cole and Dempsey have not ignored this perspective. They acknowledge that some of the changes advocated by the law enforcement community have merit. They are concerned, however, that much of what has been done involves the sacrifice of liberties for government powers that cannot make America safer. In *Terrorism and the Constitution*, they argue that policies based on ethnic profiling, guilt by association, secret accusations and detention, coercive interrogation, and data mining have weakened confidence in government and raised serious civil rights issues at home while increasing anti-Americanism abroad. In spite of these changes in American law, and in spite of increases in the powers of law enforcement agencies, relatively few alleged terrorists have been successfully prosecuted since September 11. And most of those who have been prosecuted have not been accused of actual involvement in terrorism but of

providing aid to proscribed organizations.

Does the American government now need special powers to fight terrorism, powers that were apparently not needed to fight the Cold War against international communism? Cole and Dempsey make the case that recent efforts to increase government power are not only unnecessary but, because they divert us from effective criminal investigations and may push more uncommitted Arabs and Muslims into the enemy camp, can actually be counterproductive. Their solution is simple: a return to a more traditional understanding of the rule of law, one that better balances civil rights and government power.

All antiterrorism investigations in the United States, whether of foreign or domestic groups, should be conducted pursuant to criminal rules, with the goals of arresting people who are planning, supporting, or carrying out violent activities and convicting them in a court of law. Law enforcement must stop framing terrorism investigations in political, religious, or ethnic terms. The FBI still classifies its investigations as “environmental terrorism” (“eco-terrorism”) or “Islamic

fundamentalist terrorism” or “Puerto Rican terrorism.” This only reinforces the notion that the Bureau’s role is to monitor politics or to target its efforts based on religion or ethnicity rather than to investigate crime.

Should we, as Cole and Dempsey suggest, temper the current aggressive focus on crime control and security with more emphasis on constitutionally-guaranteed civil rights? It is difficult to imagine a more articulate or thoughtful critique of the recent tendencies than readers will find in this third edition of *Terrorism and the Constitution*. While not all readers are likely to agree that FBI investigations of terrorism be limited to cases where evidence that criminal behavior is found, many will perhaps concede that Cole and Dempsey have made a compelling case for the civil rights side of this debate—as good a case as one is likely to find anywhere today. A first-rate rejoinder, written by a proponent of the effective crime control position, would make great reading—if it is forthcoming. In this debate, Cole and Dempsey have set the bar high.

*John Riley is an associate professor with the Justice Center.*

## Offender Recidivism Figures

In the first general study of offender recidivism in Alaska, the Judicial Council has found that two-thirds of the offenders in the study sample had been re-incarcerated at least once in the first three years after their release from custody for a former conviction. The re-incarceration was for either a new offense or a probation or parole violation. Overall, 55 percent had a new conviction within the three years.

The Judicial Council study looked at 1,934 offenders, all of whom had been charged with a felony in 1999 and convicted of either a felony or misdemeanor. Of these, 1,798 had been out of custody for at least three years since the 1999 case. The remaining 135 offenders—7 percent of the total—were still incarcerated (N=48) or had not been out of custody long enough to be included in the study (N=87).

The study looked at four measures of recidivism:

- rearrests, using Department of Public Safety data;
- new court cases, using Alaska Court System data;
- new convictions, using Department of Public Safety data;

- remands to incarceration of the offender—either for new arrests or for probation or parole violations—using Department of Corrections data.

These are measures commonly used in recidivism studies in other states and for the country as a whole. As indicators, they overlap somewhat in what they cover, but they reference different levels of seriousness in the recidivism and different levels

of involvement of justice system resources. Only a new conviction can be considered proven criminal behavior, but rearrests, new court filings, and remands to custody also draw upon justice system resources in varying degrees. For example, a remand to custody solely for a probation violation involving alcohol use may require the action of a probation officer; an appearance before

*Please see Recidivism, page 6*

**Table 1. Recidivism Rate by Type of Offense**

Recidivism rate during three-year period  
out of custody following 1999 conviction.  
N = 1,798

Type of 1999 offense	Re-arrested (DPS)	New case filed (court)	Re-convicted (DPS)	Remands to custody (DOC)
Violent offenses	60 %	59 %	56 %	65 %
Property offenses	67	65	61	70
Sexual offenses	39	36	35	63
Drug offenses	52	48	48	57
Driving offenses	61	59	56	73
Other offenses	62	63	57	66
<b>Overall</b>	<b>59 %</b>	<b>57 %</b>	<b>55 %</b>	<b>66 %</b>

## Recidivism (continued from page 5)

a judge but not a full trial; and incarceration for a period. It would not involve filing new charges. A fresh arrest for an alleged new offense would usually consume more resources because the different components of the process would be involved to a greater extent.

Table 1 presents the percentages of each type of offender—as classified by the 1999 case—who recidivated according to each of the four measures. For each measure, property offenders were the group who recidivated the most, sexual offenders and drug offenders the least.

### Factors Related to More Recidivism

A multivariate analysis—that is, one that distinguished the effects of several factors—revealed that, among the factors examined, an offender's age and economic status were most closely associated with the likelihood of coming back into contact with the justice system.

Economic status was determined by whether or not an offender had been able to afford a private attorney with the original 1999 case. Indigent offenders were about 50 percent more likely to be remanded to custody, rearrested, have a new conviction or have a new case filed.

Younger offenders were more likely to show recidivism. Those between 17 and 24 had the highest rates of recidivism; those 45 and older showed markedly lower rates. Eighteen-year-olds were 81 percent more likely to recidivate based on all four measures than 45-year-olds.

Other factors associated with higher recidivism were evidence of a mental health, drug or alcohol problem; a criminal history prior to the 1999 case; and Alaska Native ethnicity.

### Factors Related to Less Recidivism

The multivariate analysis also revealed some information on what is associated with less recidivism. Offenders in the study whose 1999 convictions were more serious were less likely to return to the justice system. Seriousness was defined by class of offense: Unclassified felonies (the most serious under Alaska law); Class A, B and C felonies; and Class A and B misdemeanors. (There were no offenders convicted of Unclassified felonies among the 1,798 analyzed in this study.)

Further findings were that offenders whose 1999 case conviction was for a sexual offense were among the least likely

**Table 2. Timing of Recidivism**

Cumulative percentages of released prisoners who recidivated during three-year period out of custody following 1999 conviction.  
N = 1,798

Time after release	Re-arrested (DPS)	New case filed (court)	Re- convicted (DPS)	Remands to custody (DOC)
One month	6 %	5 %	2 %	8 %
Six months	26	24	13	34
One year	38	37	28	48
Two years	52	50	46	60
Three years	59	57	55	66

to recidivate, and offenders convicted of a drug offense were also less likely to have a new case filed or be remanded to custody. In addition, Asian-Pacific Islander ethnicity was associated with less recidivism for three of the measures (rearrest, new case filing, or new conviction).

### Timing of Recidivism

The longer an offender was out of custody without being rearrested, the less likely that the offender would be rearrested during the three-year period examined (Table 2). These findings are consistent with national studies that show that offenders are most likely to be rearrested soon after their release from a previous incarceration. Twenty-six percent of the offenders were rearrested at least once within six months after their release. This represents 43 percent of all rearrests that occurred during the three-year period.

The pattern of timing on recidivism on the other measures similarly showed that re-involvement with the justice system declined in frequency over the three-year period. In other words, recidivism was more likely to occur in the first months after release from custody.

### Types and Seriousness of New Convictions

Within the first three years of their release, 864 offenders of the 1,798 were convicted of new offenses. The study compared the type of the new offense with the 1999 case conviction offense to see how often repeat offenders committed the same type of offense:

- 28 percent of the persons who were convicted of a driving offense in a 1999 case had at least one new driving conviction during the first three years after their release on the 1999 offense;

- 23 percent of the persons who were convicted of an "other" offense in a 1999

case had at least one new "other" conviction. New offenses in the "other" category included escape, perjury, alcohol-related offenses (e.g., bootlegging), prostitution, obstruction of justice, and weapons offenses;

- 23 percent of the persons who were convicted of a property offense in a 1999 case had at least one new property conviction;

- 22 percent of the persons who were convicted of a violent offense in a 1999 case had at least one new violent conviction;

- 7 percent of the persons who were convicted of a drug offense in a 1999 case had at least one new drug conviction;

- 3 percent of the persons who were convicted of a sexual offense in a 1999 case had at least one new sexual conviction.

These figures show that:

- sexual offenders were the group least likely to be convicted of the same type of offense;

- driving offenders were the group most likely to be convicted of the same type of offense;

- most offenders—no matter what the original conviction offense—were more likely to be convicted of a new driving offense than any other type of offense.

In addition, most offenders who were convicted of a new offense were convicted for one that was less serious, or of the same seriousness as their earlier offense.

The findings of the Judicial Council study may serve as a baseline for future general recidivism studies and also for comparison in studying the outcomes of programs such as therapeutic courts and various treatment programs. Further, they provide some guidance for decisions on how to allocate resources.

*The above article was based on **Criminal Recidivism in Alaska** (Anchorage: Alaska Judicial Council, 2007).*

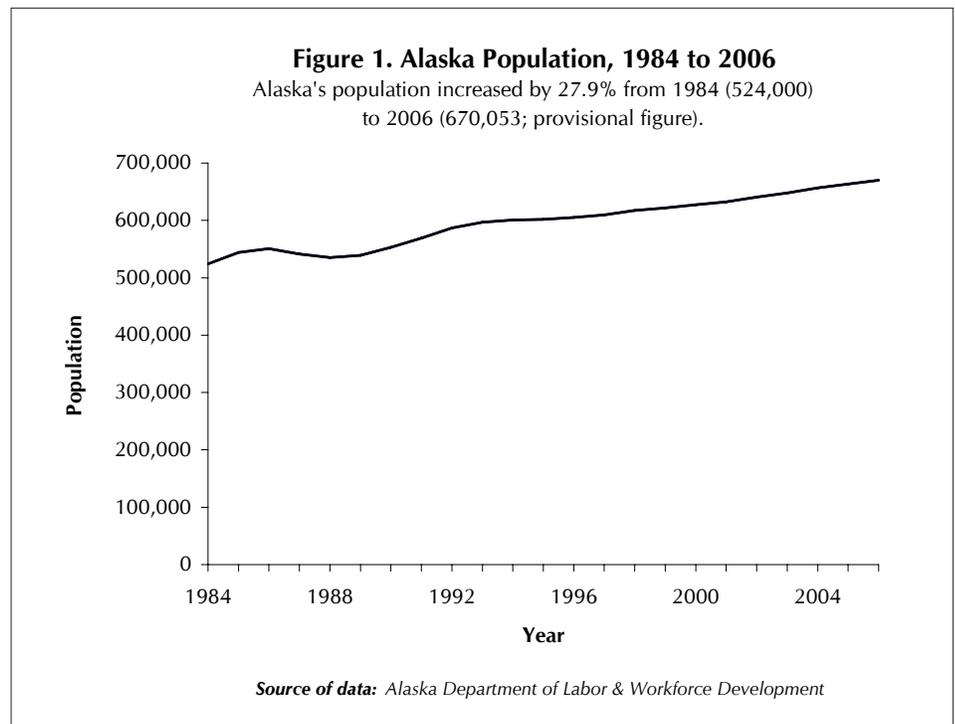
## U.S. and Alaska Incarceration Rates: Prisoners in 2005

At the end of 2005, the total number of individuals incarcerated in the country's prisons and jails stood at 2,193,798, according to figures recently released by the Bureau of Justice Statistics. This represents an incarceration rate of 737 people for every 100,000 people in the general population—the highest rate of incarceration in the world.

Between 1995 and 2005, the population of the nation's prisons alone—which, in general, contain those sentenced to more than one year—grew from 1,085,022 to 1,461,132—a 35 percent increase. The rate of incarceration for prisons alone (in other words, excluding those held in jails) was 491 per 100,000.

Table 1 presents incarceration totals and rates for the state and federal prison systems for 1995, 2004, and 2005. The largest state prison systems were those in California, Texas, New York and Florida. In general, the highest rates of prison incarceration were in southern states, with Louisiana showing a prison incarceration rate of 797 per 100,000.

The Alaska Department of Corrections reports a total incarcerated population of 3,385 on January 3, 2007 (Table 2). The Alaska incarcerated population has grown



by almost 70 percent since 1984. According to the *Sourcebook of Criminal Justice Statistics—1985*, at the end of 1984 Alaska had a total incarcerated population—both

sentenced and unsentenced prisoners—of 1,995. (“Justice System Operating Expen-

*Please see Incarceration rates, page 9*

**Table 2. Alaska Correctional Populations, January 3, 2007**

	Sentenced			Unsentenced			Total
	Men	Women	Total	Men	Women	Total	
<b>Alaska Department of Corrections facilities</b>							
Anchorage Jail	132	0	132	364	10	374	506
Anvil Mountain Correctional Center (Nome)	45	5	50	44	5	49	99
Cook Inlet Pretrial Facility (Anchorage)	140	0	140	339	0	339	479
Fairbanks Correctional Center	63	9	72	184	16	200	272
Hiland Mountain Correctional Center (Eagle River)	0	165	165	0	146	146	311
Ketchikan Correctional Center	27	1	28	19	6	25	53
Lemon Creek Correctional Center (Juneau)	121	5	126	61	4	65	191
MatSu Pretrial Facility (Palmer)	15	0	15	81	9	90	105
Palmer Correctional Center - Medium	171	0	171	53	0	53	224
Palmer Correctional Center - Minimum	124	0	124	0	0	0	124
Point MacKenzie Correctional Farm (Wasilla)	109	0	109	0	0	0	109
Spring Creek Correctional Center (Seward)	448	0	448	5	0	5	453
Wildwood Correctional Center (Kenai)	162	0	162	62	0	62	224
Wildwood Pretrial Facility (Kenai)	20	0	20	95	19	114	134
Yukon Kuskokwim Correctional Center (Bethel)	23	1	24	73	4	77	101
<b>Total in-state</b>	<b>1,600</b>	<b>186</b>	<b>1,786</b>	<b>1,380</b>	<b>219</b>	<b>1,599</b>	<b>3,385</b>
<b>Out-of-state facilities</b>							
Contractual facility, Red Rock, Arizona	—	—	993	—	—	—	993
Other out-of-state facilities	—	—	17	—	—	—	17
<b>Total out-of-state</b>			<b>1,010</b>				<b>1,010</b>
<b>Total</b>			<b>2,796</b>			<b>1,599</b>	<b>4,395</b>

**Source of data:** Alaska Department of Corrections

**Table 1. Sentenced Prisoners Under the Jurisdiction of State or Federal Correctional Authorities, yearend 1995, 2004, and 2005**

	Total			Per cent change from --		Incarceration rate per 100,000 U.S. residents, 2005
	12/31/05	12/31/04	12/31/95	2004 to 2005	Average change, 1995-2005 <sup>a</sup>	
<b>U.S. total</b>	<b>1,461,132</b>	<b>1,433,728</b>	<b>1,085,022</b>	<b>1.9 %</b>	<b>3.0 %</b>	<b>491</b>
Federal	166,173	159,137	83,663	4.4	7.1	56
State	1,294,959	1,274,591	1,001,359	1.6	2.6	435
<b>Northeast</b>	<b>162,641</b>	<b>161,121</b>	<b>155,030</b>	<b>0.9 %</b>	<b>0.5 %</b>	<b>298</b>
Connecticut <sup>b</sup>	13,121	13,240	10,419	-0.9	2.3	373
Maine	1,905	1,961	1,326	-2.9	3.7	144
Massachusetts <sup>c</sup>	9,081	8,688	10,427	4.5	-1.4	239
New Hampshire	2,520	2,448	2,015	2.9	2.3	192
New Jersey <sup>d</sup>	27,359	26,757	27,066	2.2	0.1	313
New York	62,743	63,751	68,486	-1.6	-0.9	326
Pennsylvania	42,345	40,931	32,410	3.5	2.7	340
Rhode Island <sup>b</sup>	2,025	1,894	1,833	6.9	1.0	189
Vermont <sup>b</sup>	1,542	1,451	1,048	6.3	3.9	247
<b>Midwest</b>	<b>252,845</b>	<b>249,545</b>	<b>192,177</b>	<b>1.3 %</b>	<b>2.8 %</b>	<b>383</b>
Illinois <sup>d</sup>	44,919	44,054	37,658	2.0	1.8	351
Indiana	24,416	23,939	16,046	2.0	4.3	388
Iowa <sup>d</sup>	8,737	8,525	5,906	2.5	4.0	294
Kansas <sup>d</sup>	9,068	8,966	7,054	1.1	2.5	330
Michigan	49,546	48,883	41,112	1.4	1.9	489
Minnesota	9,281	8,758	4,846	6.0	6.7	180
Missouri <sup>d</sup>	30,803	31,061	19,134	-0.8	4.9	529
Nebraska	4,330	4,038	3,006	7.2	3.7	245
North Dakota	1,327	1,238	544	7.2	9.3	208
Ohio <sup>d</sup>	45,854	44,806	44,663	2.3	0.3	400
South Dakota	3,454	3,088	1,871	11.9	6.3	443
Wisconsin	21,110	22,189	10,337	-4.9	7.4	380
<b>South</b>	<b>583,132</b>	<b>576,292</b>	<b>446,491 *</b>	<b>1.2 %</b>	<b>2.7 %</b>	<b>539</b>
Alabama	27,003	25,257	20,130	6.9	3.0	591
Arkansas	13,383	13,668	8,520	-2.1	4.6	479
Delaware <sup>b</sup>	3,972	4,087	3,014	-2.8	2.8	467
Florida	89,766	85,530	63,866	5.0	3.5	499
Georgia <sup>e</sup>	48,741	51,089	34,168	-4.6	3.6	533
Kentucky	19,215	17,140	12,060	12.1	4.8	459
Louisiana	36,083	36,939	25,195	-2.3	3.7	797
Maryland	22,143	22,696	20,450	-2.4	0.8	394
Mississippi	19,335	19,469	12,251	-0.7	4.7	560
North Carolina	31,522	30,683	27,914	2.7	1.2	360
Oklahoma <sup>d</sup>	23,245	22,913	18,151	1.4	2.5	652
South Carolina	22,464	22,730	19,015	-1.2	1.7	525
Tennessee <sup>d</sup>	26,369	25,884	15,206	1.9	5.7	440
Texas	159,255	157,617	127,766	1.0	2.2	691
Virginia	35,344	35,564	27,260	-0.6	2.6	464
West Virginia	5,292	5,026	2,483	5.3	7.9	291
<b>West</b>	<b>296,341</b>	<b>287,633</b>	<b>207,661</b>	<b>3.0 %</b>	<b>3.6 %</b>	<b>431</b>
Alaska <sup>b</sup>	2,781	2,632	2,042	5.7	3.1	414
Arizona <sup>e</sup>	31,411	31,106	20,291	1.0	4.5	521
California	168,982	164,933	131,745	2.5	2.5	466
Colorado <sup>d</sup>	21,456	20,293	11,063	5.7	6.8	457
Hawaii <sup>b</sup>	4,422	4,174	2,590	5.9	5.5	340
Idaho	6,818	6,375	3,328	6.9	7.4	472
Montana	3,509	3,164	1,999	10.9	5.8	373
Nevada	11,644	11,280	7,713	3.2	4.2	474
New Mexico	6,292	6,111	3,925	3.0	4.8	323
Oregon	13,390	13,167	6,515	1.7	7.5	365
Utah	6,269	5,915	3,447	6.0	6.2	252
Washington	17,320	16,503	11,608	5.0	4.1	273
Wyoming	2,047	1,980	1,395	3.4	3.9	400

\* Detail for 12/31/95 for South does not add to total; apparent error in source data.

<sup>a</sup> The average annual percentage increase from 1995 to 2005.

<sup>b</sup> Prisons and jails form one integrated system. Data include total jail and prison population.

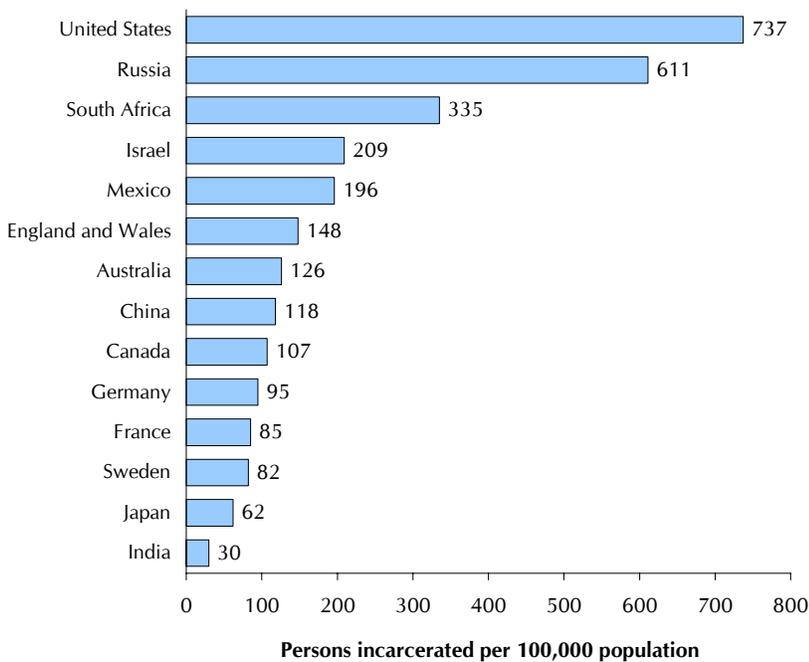
<sup>c</sup> The incarceration rate includes an estimated 6,200 inmates sentenced to more than one year, but held in local jails or houses of correction.

<sup>d</sup> Includes some inmates sentenced to one year or less.

<sup>e</sup> Population figures are based on custody counts.

Source: Bureau of Justice Statistics

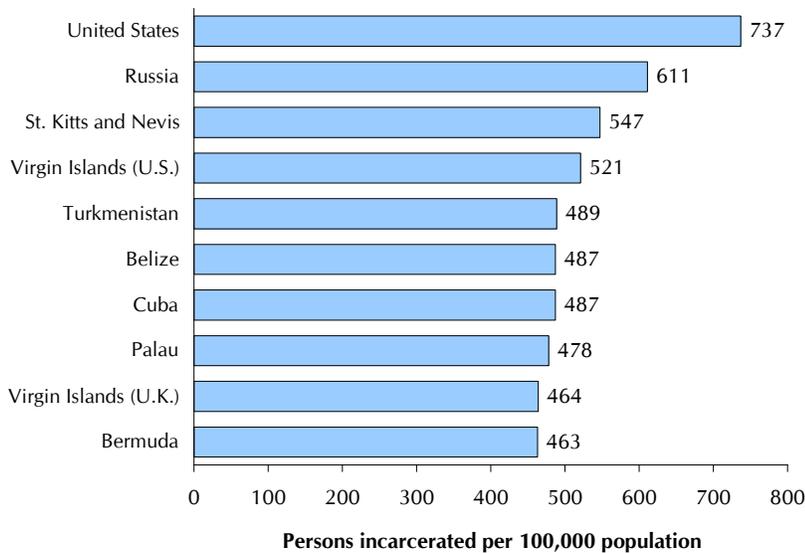
**Figure 2. Rate of Incarceration in Selected Nations**



Rate for the U.S. from *Prisoners in 2005* (Bureau of Justice Statistics); for all other nations, International Centre for Prison Studies, [www.prisonstudies.org](http://www.prisonstudies.org). Incarceration data were collected on varying dates and are the most current data available as of 2006.

Source: *The Sentencing Project*

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



Rate for the U.S. from *Prisoners in 2005* (Bureau of Justice Statistics); for all other nations, International Centre for Prison Studies, [www.prisonstudies.org](http://www.prisonstudies.org). Incarceration data were collected on varying dates and are the most current data available as of 2006.

Source: *The Sentencing Project*

**Incarceration rates**  
(continued from page 7)

ditures” in this issue of the *Alaska Justice Forum* presents expenditures for state justice system agencies since 1984, including the Department of Corrections.)

The percentage increase in Alaska’s prison population is much higher than the percentage increase in the state’s population as a whole. From 1984 through 2006, the state’s population grew by only 28 percent.

At the end of 2005, there were 4,812 persons incarcerated under the jurisdiction of the state of Alaska. The figures for Alaska reveal that the number of incarcerated *sentenced* prisoners under the jurisdiction of the state grew by 36 percent from 1995 through 2005, from 2,042 to 2,781. Alaska’s rate of incarceration for sentenced prisoners (414) was lower than the average national rate (491).

The number of those under state or federal jurisdiction who were incarcerated in private (for-profit)—facilities grew over 74 percent between 2000 and 2005. At the end of 2005, the state and federal governments housed a total 107,447 prisoners in private facilities—7 percent of the total number in prison. Alaska had 1,365 prisoners—slightly over 28 percent of the state’s total number of incarcerated—held in a private facility in Arizona.

To a great extent, the use of private facilities is a reflection of the continued growth in the number of people being imprisoned and the resultant crowding in existing state and federal facilities. The prisons located in Alaska were operating at 111 percent capacity at the end of 2005.

Figures 1 and 2 show comparative world incarceration rates. The U.S. rate of incarceration was much higher than that of other industrialized democracies, such as Canada, Germany and France.

*The above article is based in part on the Bureau of Justice Statistics report “Prisoners in 2005,” NCJ-215092.*

**Forum Correction**

The article “Juvenile Detention in Alaska,” which appeared in the Summer 2006 issue of the *Forum*, cited inaccurate numbers for the number of juveniles held at McLaughlin Youth Center in Anchorage at the end of June 2006. The correct figures are: 84 juveniles in the treatment program and 37 in the detention facility.

**Expenditures**  
(continued from page 1)

DOC budget grew from almost \$58 million to just under \$196 million—more than tripling. (For a discussion of the increase in the Alaska prison population, see “U.S.

and Alaska Incarceration Rates: Prisoners in 2005” in this issue of the *Forum*.)

The portions held by the Public Defender Agency and the Office of Public Advocacy and the Department of Law also increased over the same period, while those of the Alaska Court System and the Department

of Public Safety declined. DPS, in particular, held a much smaller slice of the total in FY 2006, declining from 39 percent to 26 percent.

(These budget figures, published by the Legislative Finance Division, have not been adjusted for inflation.)

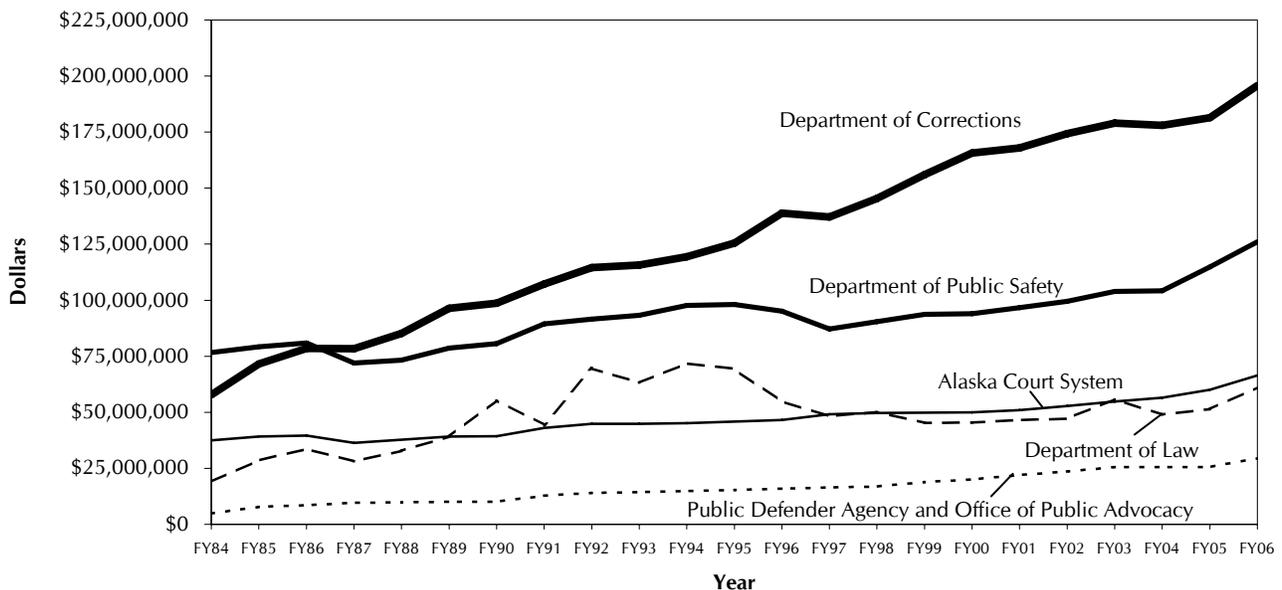
**Table 2. Alaska Justice Agencies, Operating Budgets, FY 1984 to FY 2006**

	Department of Corrections	Department of Public Safety	Department of Law	Alaska Court System	Public Defender Agency/Office of Public Advocacy
FY84	\$57,798,500	\$76,658,000	\$19,015,800	\$37,448,500	\$4,820,300
FY85	\$71,497,200	\$79,154,300	\$28,533,300	\$39,206,800	\$7,864,600
FY86	\$78,470,600	\$80,935,000	\$33,648,400	\$39,541,000	\$8,560,400
FY87	\$78,291,400	\$71,918,100	\$28,050,400	\$36,349,400	\$9,672,200
FY88	\$85,152,700	\$73,299,700	\$32,735,000	\$37,779,400	\$9,782,100
FY89	\$96,364,700	\$78,592,800	\$39,192,500	\$39,148,500	\$10,069,100
FY90	\$98,693,900	\$80,587,400	\$55,431,900	\$39,348,300	\$10,095,500
FY91	\$107,138,800	\$89,470,100	\$44,401,900	\$43,024,200	\$12,758,100
FY92	\$114,592,100	\$91,541,100	\$69,530,900	\$44,885,500	\$14,040,400
FY93	\$115,740,200	\$93,241,700	\$63,220,100	\$44,897,200	\$14,290,000
FY94	\$119,359,000	\$97,634,000	\$71,814,300	\$45,128,600	\$14,867,800
FY95	\$125,531,500	\$98,109,900	\$69,447,900	\$45,856,300	\$15,330,300
FY96	\$138,823,000	\$95,147,500	\$54,862,600	\$46,560,500	\$15,868,000
FY97	\$137,121,300	\$87,128,300	\$48,281,500	\$49,124,700	\$16,521,500
FY98	\$145,295,000	\$90,452,200	\$50,149,300	\$49,699,500	\$16,843,400
FY99	\$156,023,300	\$93,736,100	\$45,325,900	\$49,871,100	\$18,939,400
FY00	\$165,615,500	\$93,957,500	\$45,447,300	\$49,960,400	\$20,002,800
FY01	\$167,928,500	\$96,667,400	\$46,522,500	\$50,918,800	\$22,041,900
FY02	\$174,253,200	\$99,490,900	\$47,082,300	\$52,740,700	\$23,501,200
FY03	\$179,002,400	\$103,939,600	\$55,809,200	\$54,776,500	\$25,497,100
FY04	\$177,967,900	\$104,140,200	\$48,967,800	\$56,460,000	\$25,603,700
FY05*	\$181,459,700	\$114,816,600	\$51,326,800	\$60,108,300	\$25,574,600
FY06*	\$195,809,700	\$126,029,400	\$61,012,600	\$66,415,500	\$29,561,800

\* FY05 and FY06 figures given represent enacted operating budgets and do not include supplemental appropriations.

Source of data: Alaska Legislative Finance Division

**Figure 2. Alaska Justice Agencies, Operating Budgets, FY 1990 to FY 2006**



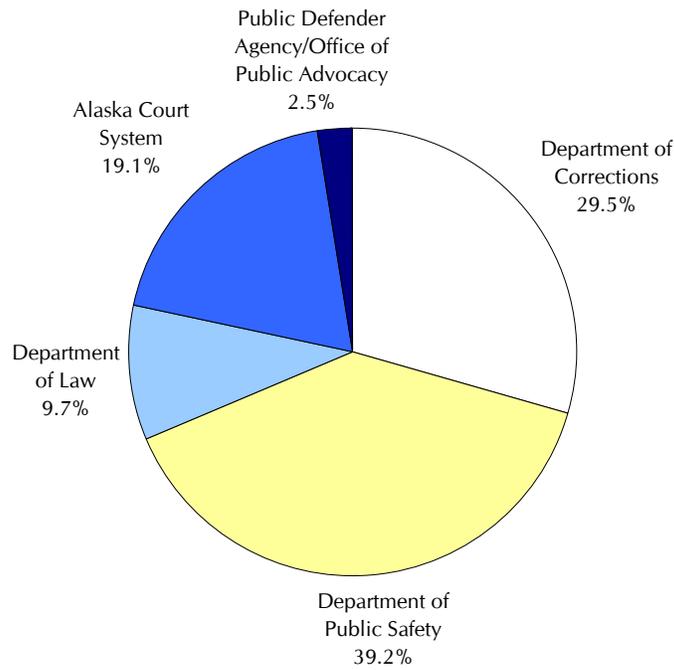
Note: Figures given for FY84–FY04 are for actual operating budgets; for FY05–FY06, figures given represent appropriated operating budgets.

Source of data: Alaska Legislative Finance Division

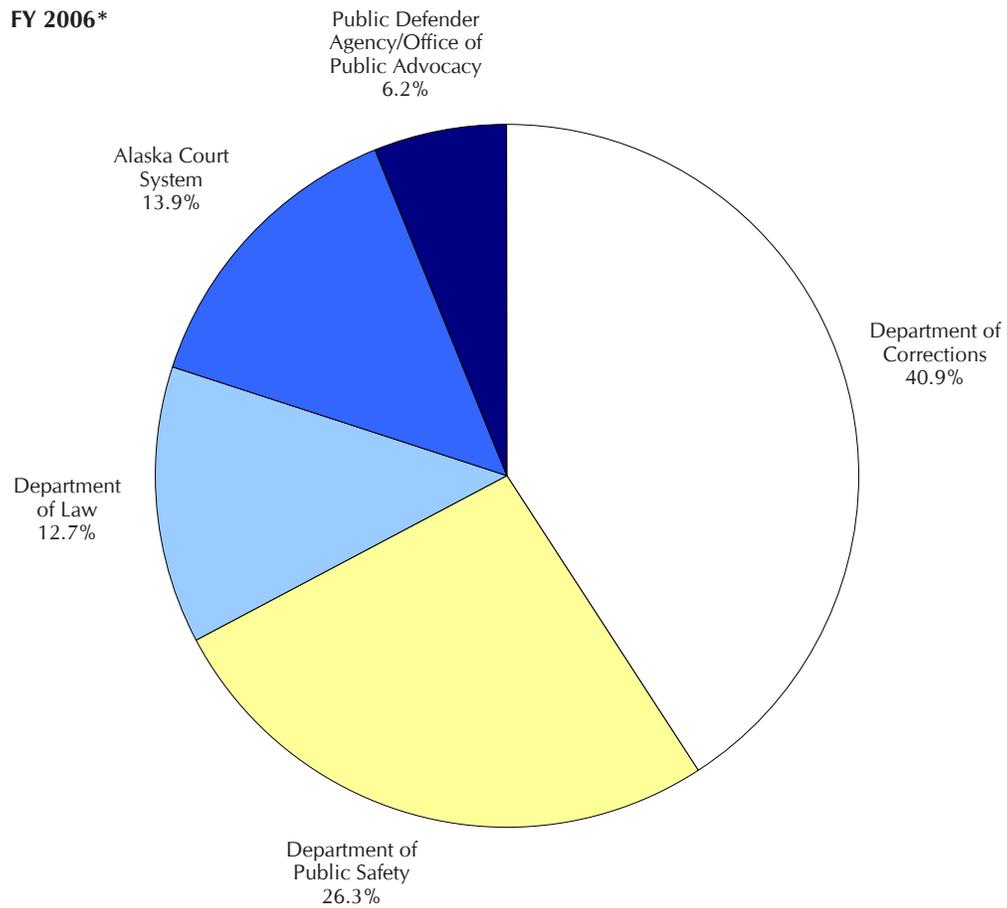
**Figure 3. Alaska Justice Agencies, Operating Budgets, FY 1984 and FY 2006**

The overall justice agency budget increased by 144.6% from FY 1984 to FY 2006.

**FY 1984**

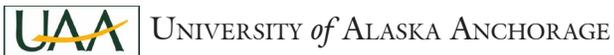


**FY 2006\***



\* FY06 data based on appropriated operating budget.

**Source of data:** Alaska Legislative Finance Division



**Alaska Justice Forum  
Justice Center  
University of Alaska Anchorage  
3211 Providence Drive  
Anchorage, AK 99508**

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