



# ALASKA JUSTICE FORUM

A PUBLICATION OF THE JUSTICE CENTER

Summer/Fall 2015

UNIVERSITY of ALASKA ANCHORAGE

Vol. 32, No. 2–3

## A Survey of Studies on Judicial Selection

*Ryan Fortson and Kristin S. Knudsen*

The Alaska legislature is considering a bill—Senate Joint Resolution 3—that would put before voters a state constitutional amendment to change the composition of the Alaska Judicial Council and the way its members are selected. The Alaska Judicial Council (council) functions as a judicial nominating commission (see Figures 1–2 on page 7 for the Alaska Judicial Council composition and selection process). The council plays a constitutionally-mandated role in the selection of Alaska’s judges: the council screens all applicants for judgeships at the district court level and higher. For each vacancy, the council sends the governor a list of at least two applicants that the council deems to be the most qualified of the applicants for the position. The governor must appoint a judge from this list and cannot appoint an applicant who has not been screened and approved by the council process. This type of process is frequently classified as a merit system of judicial selection. The council also makes recommendations to voters concerning retaining or not retaining judges as part of the judicial retention election process.

Currently, the council is composed of seven members—three non-attorney members chosen by the governor and confirmed

by the legislature, three attorney members chosen by the Alaska Bar Association, and the chief justice of the Alaska Supreme Court, who serves as an ex-officio member. (See “A Look at Judicial Selection in Alaska,” *Alaska Justice Forum* 21(3), Fall 2004, for a detailed overview of the selection process. See also the Alaska Judicial Council website for information on judicial performance evaluation in Alaska: [http://www.ajc.state.ak.us/retention/retproced.](http://www.ajc.state.ak.us/retention/retproced)) The proposed constitutional amendment would increase the number of non-attorney members on the council from three to six. It would also require the legislature to confirm attorney members, whereas now only the non-attorney members are subject to legislative confirmation.

There are many different ways to evaluate judicial selection and retention using a variety of metrics. This article reviews selected existing studies relevant to the potential effects that might be brought about by this proposed change to the council composition—studies that examined judicial effectiveness, responsiveness of judges to public opinion, and public perception of judges. We are not assessing the different evaluative criteria used by study designers. We also excluded studies of effects of changes in the

law regarding judicial election campaign financing. The studies discussed in this article are not exhaustive of the extensive number of studies conducted on judicial selection and retention; however, we believe these studies are sufficiently relevant and contain sufficient data about the issues raised in discussion of the proposed amendment, and are illustrative of the variety of approaches taken to evaluate the impact of selection methods on the quality of judicial performance.

Table 1 (page 8) outlines the variety of judicial selection processes for appellate and trial courts in the U.S. These processes generally fall under the following types: judicial nominating commission, gubernatorial/legislative/executive appointment, partisan election, and nonpartisan election.

### Studies on Nominating Commissions

A change similar to the proposed Alaska constitutional amendment took place in Florida in July 2001. Florida selects appellate judges and fills interim vacancies on trial courts through the use of a judicial nominating commission that sends a list of at least three nominees to the governor from which to choose. In Florida, instead of one statewide judicial nominating commission, each circuit

*Please see **Judicial selection**, page 7*

## UAA Justice Center 40th Anniversary 1975–2015

*Our vision: Leading Alaska toward a safer, healthier, and more just society.*

In this issue of the *Forum*, you will find a timeline of selected milestones from the Justice Center’s past 40 years (pages 2–3). The Justice Center continues to be a leader in civil and criminal justice education in Alaska, and in research on justice issues in rural and urban Alaska. Over the past four decades, our faculty and research staff have contributed to studies ranging from the revision of the Alaska Criminal Code to the development of the master plan for corrections. More recent research studies and Forum articles have focused on issues such as violence against women, policing, substance abuse, adverse childhood experiences (ACEs), the role of Village Public Safety Officers (VPSOs), corrections, and homelessness in Alaska. The Justice Center is in

the UAA College of Health, and as part of an interdisciplinary effort examines the nexus of crime and public health.

The Justice Center is also a teaching unit and offers courses in Justice and Legal Studies. A high number of our graduates go on to graduate school and law school. Justice and Legal Studies graduates are employed in federal, state, and government agencies; Native corporations; law firms; and nonprofits throughout Alaska and Outside. Many of our alumni have assumed positions of leadership in the justice community.

We appreciate the support over the years of our university and community partners in fulfilling our mission and look forward to continuing our work in the challenging years ahead.

## Research Note

# “Activating” Park Spaces in Anchorage’s Town Square Park

Troy C. Payne and Daniel Reinhard

Town Square Park is an urban park in Anchorage, Alaska. Designed as a meeting place and landscaped respite from the commotion of downtown Anchorage, Town Square Park has long been associated with crime and disorder. This brief research note describes an intervention meant to reduce disorder in the park, including an abbreviated evaluation of the intervention.

### Park Location and Description

Town Square Park is located in the center of downtown Anchorage, bordered by 5th Avenue, 6th Avenue, the Alaska Center for the Performing Arts, and E Street. Designed in 1988 as part of the Project 80s initiative to upgrade and renew infrastructure, the park was completed in 1991. In 1997 and 2008, improvements to the park were made. The park is roughly one city block in size and features paved sidewalks that meander through the landscape. Rolling landscape design and trees meant to provide relief from the hustle and bustle of city life obscure the interior of the park from 5th Avenue and 6th Avenue; there is no clear line of sight through most of the park. A high fountain with concrete walls occupies the center of the park and further obscures visibility. The fountain has been inoperable for at least two years.

### Problem Identification and the Intervention

Determining the nature of crime and disorder problems is often difficult, and determination of the problem to be solved has consequences for the effectiveness of interventions (Payne, Gallagher, Eck, & Frank, 2013). In this case, the Anchorage Downtown Partnership (a private nonprofit providing maintenance, snow removal, safety patrols, and other services in the Anchorage Downtown Improvement District), the Anchorage Police Department, and business leaders identified the problem as disorder in the park primarily caused by homeless persons and alcohol/drug users. These problems rarely resulted in daytime calls to the police, but caused considerable distress to local businesses and tourists.

The intervention was designed to increase activity in the park—to

“activate” the space—in an effort to attract park users who were less likely to engage in disorder in the park. To that end, the Anchorage Downtown Partnership facilitated several events during the summer of 2014, which included concerts, food vendors, and activities for children. These events were scheduled in the middle of the day, in the hours bracketing the lunch hour. The lack of available data which could be used to examine the effectiveness of the intervention prompted then Anchorage Police Department Chief Mark Mew to request assistance from the UAA Justice Center.

### Measurement and Methods

Measurement is critical to evaluation. However, creating objective measures of relevant park characteristics proved difficult. Many of the initial conversations with key stakeholders near the park focused on *undesirable persons*. However, as the UAA research team and stakeholders discussed exactly what made a person undesirable, it became clear that it was certain *behaviors* that were undesirable. These behaviors were used to define disorder. The research team then developed a plan to observe and document those behaviors in the park.

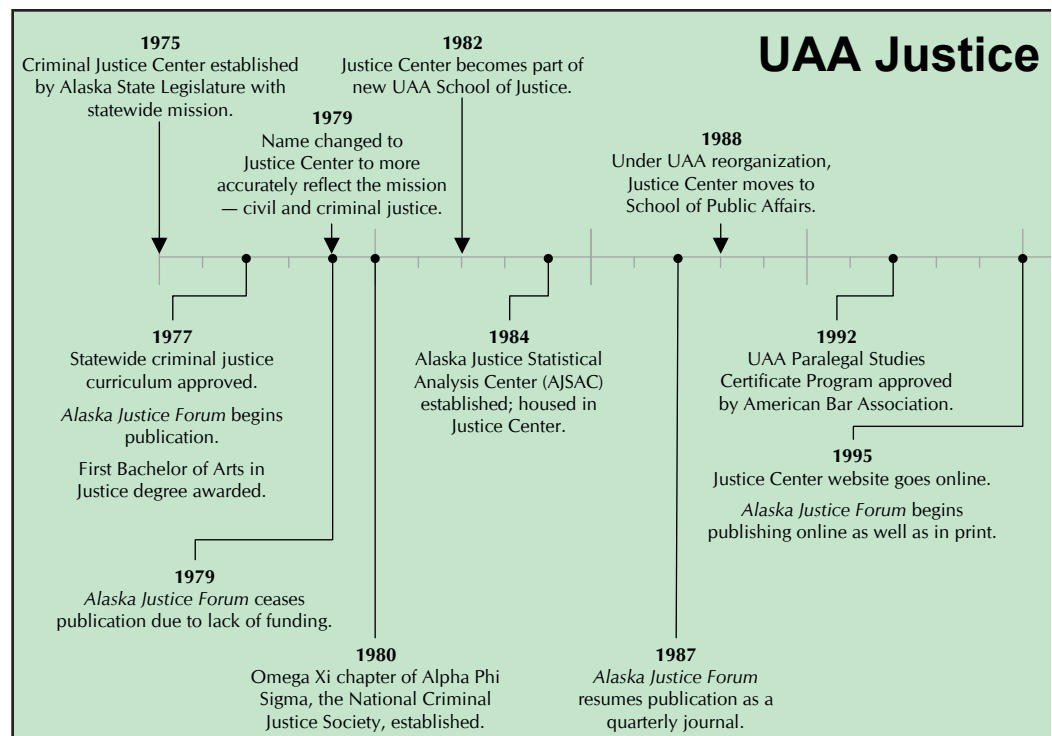
Due to the complex environment of Town Square Park, we divided the park into 12 different zones. These zones were based on informal observations of how people

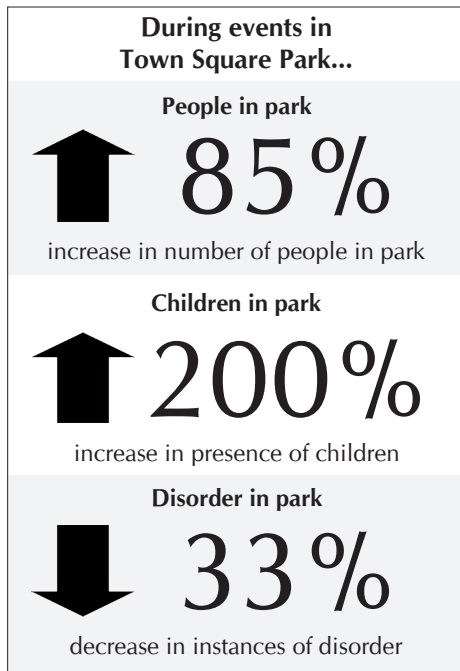
used the park. We observed these zones from the Alaska Center for the Performing Arts, which overlooks the park and provides a clear view of nine of the 12 areas. The research team walked through the three remaining areas to gather observations.

Each area was observed for three minutes. We recorded the maximum number of people in the area and whether any guardians were present (i.e., police, Parks and Recreation staff, Anchorage Downtown Partnership Ambassadors). We also recorded whether the following types of disorder were present: loud/disruptive people, people drinking alcohol, people smoking (tobacco and other substances), panhandling, skateboarding, drug dealing, and drug use. Each type of disorder was measured as *what it looked like*, with the idea of keeping our measurement as close to how a person casually walking through the park would interpret the actions of other people. Our measure of *drug use*, for example, did not require a field chemical test of the substance—if it looked like drug use, it was coded as drug use. We combined these measures into a single indicator of disorder for each three-minute period.

### Findings

We observed 571 three-minute periods across nine days between July 17 and 31, 2014, between the hours of 11:00 a.m. and





increased presence of children and families made a qualitative difference in the park atmosphere.

While we observed no serious crime in Town Square Park, we did observe disorder in 13 percent of our observations (77 of 571 observations). While not unusual, disorderly behavior was not the norm in the park during our observations. Disorder was less likely during events (10%) than when events were not occurring in the park (16%). This reduction in disorder was short-term, with disorder typically reappearing within two hours after the conclusion of the event in the park. The research team noticed the persons who often dealt drugs in the park would leave during events and return shortly after the event ended.

**Summary, Limitations, and Conclusion**

While far from a panacea, the effort to activate Town Square Park was successful in both increasing park usage and reducing disorder—at least during events. Park usage increased substantially while disorder was reduced. More than the quantitative measures, however, the overall *gestalt* of

the park changed during events. Put simply, Town Square Park was a better, nicer place to be when events were staged there.

This work has limitations. First, the evaluation design is a weak one-shot pre-post design. It is not feasible to do a random-controlled trial of interventions at urban parks in Anchorage; each urban park in the downtown area has a unique construction and context. Parks in other cities are in different social contexts as well. Second, our measures were less than perfect. The research team was brought in just shortly before the intervention was to be fielded. Being included earlier in the problem definition and intervention planning process of the project could have resulted in a stronger evaluation design. Even with these limitations, our work shows that a public-private partnership to reduce disorder in Town Square Park can be successful.

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4:00 p.m. This included two days before the intervention, two days after the intervention, and the five weekdays of the intervention, during which the Anchorage Downtown Partnership and its partners staged events in the park.

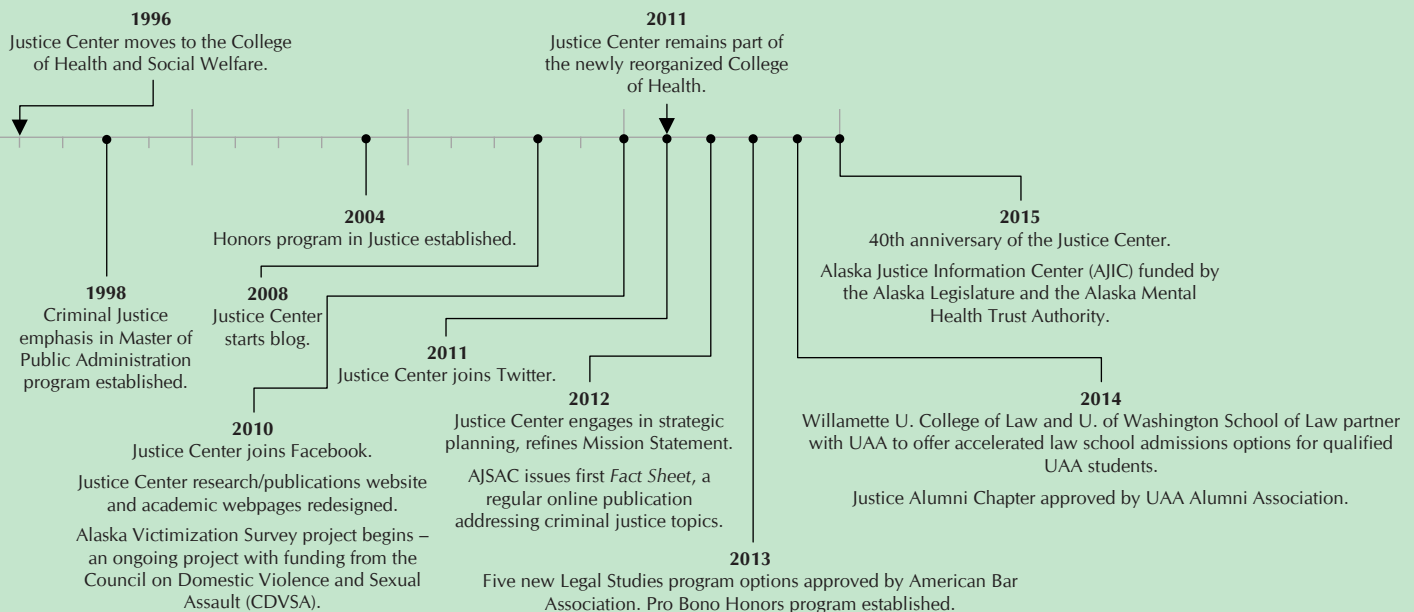
Park usage increased 84.6 percent during events, from an average of 3.9 to 7.2 persons per park area. The presence of children, a key success metric for some stakeholders, also increased during events—36 percent of observations included children during events, compared to 17 percent when events were not occurring in the park. The

**More on Solving Crime and Disorder Problems**

Hilborn, Jim. (2009). *Dealing with Crime and Disorder in Urban Parks*. Response Guide Series #9. Washington, DC: Center for Problem-Oriented Policing, U.S. Department of Justice. ([http://www.popcenter.org/responses/urban\\_parks/](http://www.popcenter.org/responses/urban_parks/)).

Payne, Troy C.; Gallagher, Kathleen; Eck, John E.; & Frank, James. (2013). "Problem Framing in Problem Solving: A Case Study." *Policing: An International Journal of Police Strategies & Management* 36(4): 670–682 (2013). (<http://dx.doi.org/10.1108/PIJPSM-01-2012-0081>).

**Center Selected Milestones, 1975–2015**



# 2014 Alaska Department of Corrections Institutional Population

This article looks at highlights from the *2014 Alaska Offender Profile (Offender Profile)* published by the Alaska Department of Corrections (DOC). All of the data in the report are point-in-time counts taken on either December 31 or June 30 of the year reported, as noted on the accompanying tables and figures. The focus here is on the 2014 *institutional population* (5,082 persons) defined as pretrial detainees, post-conviction inmates, and probation and/or parole violators housed in a correctional facility. (See “Alaska DOC: Unified Correctional System,” this page.) In 2014, 99.5 percent of Alaska’s institutional population were housed in Alaska, while the rest were housed in out-of-state facilities (Tables 1 and 2). From 2005 to 2014, the institutional population in the DOC system—housed in correctional facilities both in-state and out-of-state—increased by 20.1 percent.

## Demographic Characteristics

Males comprise the majority of the DOC institutional population; Table 3 illustrates selected demographic characteristics of individuals in this population. Of the 5,082 persons in the total institutional population in 2014, 4,489 were male and 593 were female. Almost one third of the institutional population (60.3%) was sentenced, and 39.7 percent was unsentenced in 2014.

With regard to offense level, over three-quarters (76.0%) of the institutional population were charged with, or convicted of, a felony, and about 24 percent of a misdemeanor. Over one-third (36.3%) of the institutional population was in the age range of 25–34 years of

## Alaska DOC: Unified Correctional System

Alaska is one of only six states with a *unified system of corrections*. The Alaska Department of Corrections (DOC) is responsible for providing supervision/custody for both *pretrial/pre-sentencing custody* and *post-sentencing incarceration*. In many other jurisdictions, pretrial/pre-sentencing populations are the responsibility of county jail systems. Typically, offenders in the pretrial/pre-sentencing population may remain in custody for much shorter time periods as compared to post-conviction sentenced offenders who are in continuing custody. In Alaska, it is not unusual to have pretrial detention, pre-sentencing custody, and post-sentencing custody occurring in the same facility—all of these populations comprise the DOC *institutional population*. DOC is also responsible for community supervision functions (community residential centers (CRCs) and electronic monitoring (EM)), and the Division of Probation and Parole is part of DOC.

All the above populations are part of the total correctional population under the authority of DOC, and each population has its own distinct characteristics and impact on growth and costs in the correctional system. According to the *2014 Alaska Offender Profile*, the populations under DOC authority in that year included the institutional population (5,082), as well as offenders in CRCs (675), in EM programs (390), and on probation and/or parole (5,981)—totaling 12,128 persons.

age. A little over 43 percent were in custody for 6 months or less between their admit date and June 30, 2014, and nearly 23 percent of the institutional population were in custody for 37 months or more (data not shown).

In terms of race/ethnicity, about 46 percent of the institutional population were White; nearly 37 percent were American Indian or Alaska Native; almost 10 percent were Black or African American; just over 4 percent were Asian/Native Hawaiian/Pacific Islander; and Hispanics/Latinos were just under 3 percent of this population (Table 3). Members of two minority groups, American Indian or Alaska Native and Black or African Americans, were in custody at levels disproportionate to their percentages in the general population. Ac-

ording to the 2010 U.S. Census, American Indians or Alaska Natives comprised about 15–19 percent of Alaska’s *general population*, and Black or African Americans were 3–5 percent. In contrast, almost 37 percent of the institutional population in 2014 was American Indian or Alaska Native, and nearly 10 percent was Black or African American.

## Offenders by Class of Offense

The *Offender Profile* reports the class of offense with which individuals in the institutional population have been charged or convicted. Table 4 shows the offense class, the number of persons in the institutional population charged with, or convicted of, each offense, and the change in the number of

**Table 1. Institutional Population under the Authority of the Alaska Department of Corrections, 2005–2014**

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

Row percentages.

	Housed in-state		Housed out-of-state		Total
	N	%	N	%	
2005 <sup>a</sup>	3,447	81.5 %	784	18.5 %	4,231
2006 <sup>a</sup>	3,359	76.9	1,010	23.1	4,369
2007 <sup>a</sup>	3,633	80.7	869	19.3	4,502
2008 <sup>a</sup>	3,377	79.0	897	21.0	4,274
2009 <sup>a</sup>	3,643	81.1	847	18.9	4,490
2010 <sup>a</sup>	3,680	78.8	991	21.2	4,671
2011 <sup>a</sup>	3,663	77.4	1,071	22.6	4,734
2012 <sup>a</sup>	3,800	78.3	1,051	21.7	4,851
2013 <sup>b</sup>	4,669	92.8	362	7.2	5,031
2014 <sup>b</sup>	5,058	99.5	24	0.5	5,082

a. 2005–2012 counts are as of December 31 of reporting year.

b. 2013–2014 counts are as of June 30 of reporting year.

**Source of data:** 2005–2014 *Offender Profiles*, Alaska Department of Corrections

**Table 2. Institutional Population under the Authority of the Alaska Department of Corrections, by Institution, June 30, 2014**

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

	Female	Male	Total
<b>In-state</b>	<b>590</b>	<b>4,468</b>	<b>5,058</b>
Anchorage Correctional Complex	30	820	850
Anvil Mountain Correctional Center (Nome)	12	103	115
Fairbanks Correctional Center	28	229	257
Goose Creek Correctional Center (Wasilla)	—	1,369	1,369
Hiland Mountain Correctional Center (Eagle River)	415	—	415
Ketchikan Correctional Center	17	54	71
Lemon Creek Correctional Center (Juneau)	34	214	248
Mat-Su Pretrial Facility (Palmer)	15	97	112
Palmer Correctional Center	—	492	492
Spring Creek Correctional Center (Seward)	—	525	525
Wildwood Correctional Center (Kenai)	28	381	409
Yukon-Kuskokwim Correctional Center (Bethel)	11	184	195
<b>Out -of-state</b>	<b>3</b>	<b>21</b>	<b>24</b>
Colorado State Prisons	1	4	5
Federal Bureau of Prisons	2	17	19
<b>Total</b>	<b>593</b>	<b>4,489</b>	<b>5,082</b>

**Source of data:** 2014 *Alaska Offender Profile*, Alaska Department of Corrections

**Table 3. Institutional Population under the Authority of the Alaska Department of Corrections, June 30, 2014: Demographic Characteristics**

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

Column percentages.

	Female (N = 593)		Male (N = 4,489)		Total (N = 5,082)	
	N	%	N	%	N	%
	<b>Offense level</b>					
Felony	376	63.4 %	3,486	77.7 %	<b>3,862</b>	<b>76.0 %</b>
Misdemeanor	215	36.3	999	22.3	<b>1,214</b>	<b>23.9</b>
Violation	2	0.3	4	0.1	<b>6</b>	<b>0.1</b>
<b>Legal status</b>						
Sentenced	301	50.8 %	2,763	61.6 %	<b>3,064</b>	<b>60.3 %</b>
Unsentenced	292	49.2	1,726	38.4	<b>2,018</b>	<b>39.7</b>
<b>Primary race/ethnicity</b>						
White	314	53.0 %	2,040	45.4 %	<b>2,354</b>	<b>46.3 %</b>
American Indian/ Alaska Native	220	37.1	1,657	36.9	<b>1,877</b>	<b>36.9</b>
Black/African American	35	5.9	469	10.4	<b>504</b>	<b>9.9</b>
Asian/Native Hawaiian/ Pacific Islander	19	3.2	195	4.3	<b>214</b>	<b>4.2</b>
Hispanic/Latino	5	0.8	128	2.9	<b>133</b>	<b>2.6</b>
<b>Age</b>						
19 years and under	6	1.0 %	60	1.3 %	<b>66</b>	<b>1.3 %</b>
20–24 years	88	14.8	616	13.7	<b>704</b>	<b>13.9</b>
25–29 years	142	23.9	808	18.0	<b>950</b>	<b>18.7</b>
30–34 years	130	21.9	761	17.0	<b>891</b>	<b>17.5</b>
35–39 years	73	12.3	505	11.2	<b>578</b>	<b>11.4</b>
40–44 years	62	10.5	461	10.3	<b>523</b>	<b>10.3</b>
45–49 years	40	6.7	429	9.6	<b>469</b>	<b>9.2</b>
50–54 years	35	5.9	379	8.4	<b>414</b>	<b>8.1</b>
55–59 years	9	1.5	247	5.5	<b>256</b>	<b>5.0</b>
60–64 years	4	0.7	121	2.7	<b>125</b>	<b>2.5</b>
65 years and over	4	0.7	102	2.3	<b>106</b>	<b>2.1</b>
Mean age	<b>37.42 years</b>		Median age		<b>34.53 years</b>	

Source of data: 2014 Alaska Offender Profile and additional data from the Alaska Department of Corrections

persons charged with, or convicted of, each offense class from 2005 to 2014.

By offense class, the largest increase in the institutional population over the period was for those charged with, or convicted of, sex offenses. There was a 54.6 percent increase in the institutional population charged with, or convicted of, sex offenses—from 353 persons in 2005 to 778 in 2014. The institutional population charged with, or convicted of, drug offenses rose 35.6 percent in 2014—increasing from 279 persons in 2005 to 433 in 2014. The next highest increases in the institutional population were for those charged with, or convicted of, property offenses (27.8%), person offenses (21.2%), and weapons offenses (21.2%). For public order/administration offenses, the institutional population increased 10.9 percent, while for probation/parole offenses, there was a slight increase of 1.9 percent in the institutional population over the period. The institutional population charged with, or convicted of, alcohol offenses decreased by 7.4 percent from 2005 to 2014—from 365 individuals to 340.

Figure 1 illustrates the proportion in the

institutional population by offense category in 2005 and 2014. The proportion of the institutional population in custody for sex offenses increased from 8.8 percent in 2005 to 15.3 percent in 2014. There were slight increases in the proportion of the institutional population charged with, or convicted of, drug crimes (increasing from 7.0% in 2005 to 8.5% in 2014) and for property crimes (increasing from 11.4% in 2005 to 12.4% in 2014). The proportion of the institutional population in custody for person crimes remained stable over the period at about 26 percent, while the proportion of the institutional population charged with, or convicted of, weapons offenses also stayed the same—at 1.3 percent. The proportion of the institutional population charged with, or convicted of, parole/probation offenses dropped from 20.2 percent in 2005 to 16.2 percent in 2014;

**Table 4. Institutional Population under the Authority of the Alaska Department of Corrections, by Offense Class, 2005 and 2014**

Custody count as of June 30 of reporting year.

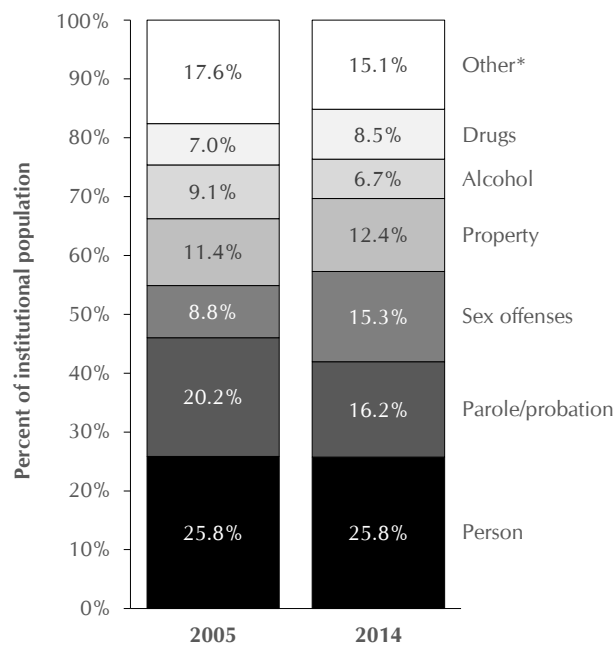
Column percentages.

Offense class (most serious offense)	2005	2014	% change 2005–2014
Person	1,032	1,309	21.2 %
Parole/probation	808	824	1.9
Sex offenses	353	778	54.6
Property	455	630	27.8
Public order/administration	480	539	10.9
Alcohol	365	340	-7.4
Drugs	279	433	35.6
Transportation (traffic/driving)	171	163	-4.9
Weapons	52	66	21.2
Fish & Game violation	1	—	—
<b>Total</b>	<b>3,996</b>	<b>5,082</b>	

Source of data: 2005 data from Alaska Department of Corrections; 2014 Alaska Offender Profile, Alaska Department of Corrections

**Figure 1. Proportion of Alaska Department of Corrections Institutional Population by Offense Class, 2005 and 2014**

Based on count of incarcerated population as of June 30 of reporting year.



\* Other offense classes include: public order/administration; transportation (traffic/driving); weapons; and Fish & Game violation.

Source of data: 2005 data from Alaska Department of Corrections; 2014 Alaska Offender Profile, Alaska Department of Corrections

the proportion charged with, or convicted of, alcohol offenses declined from 9.1 percent to 6.7 percent, while the proportion charged with, or convicted of, public order/administration offenses fell from 12 percent to 10.6 percent.

A copy of the full report is available at [http://www.correct.state.ak.us/admin/docs/Final\\_2014\\_Profile.pdf](http://www.correct.state.ak.us/admin/docs/Final_2014_Profile.pdf).

## Smart Justice in Alaska

Barbara Armstrong

*Smart on crime* and *smart justice* initiatives seek to reform criminal justice systems by reducing correctional populations and their recidivism rates while lowering costs, maintaining offender accountability, and ensuring public safety. There are two major smart justice initiatives underway in the state: “Results First” and “Justice Reinvestment”—both of which are responses by Alaska’s leaders to the need to examine criminal justice reform.

The Governor’s Office, the Alaska Court System, and the Alaska Legislature issued an invitation to the Pew Charitable Trusts (Pew)—a public policy research organization based in Washington, DC—to come to Alaska to provide technical assistance with this critical endeavor. (Pew has assisted a

number of other states in similar efforts.) Pew’s contribution involves working with the entities guiding these efforts, including state agencies and other critical stakeholders. While Justice Reinvestment and Results First have some overlap, they are unique in other ways, and each has a different focus and timeline. By relying on both these approaches, Alaska’s leaders ensure that the state is looking at the multiple components required for successful criminal justice reform.

The significant distinctions between the two projects are as follows. The **Justice Reinvestment Initiative (JRI)** is a short-term project which includes analyzing data to identify the drivers of prison growth such as sentencing practices, suggesting ways to control prison growth and costs, and drafting

legislative language to implement changes to the criminal justice system. The **Results First Initiative (RFI)**, on the other hand, is a longer-term project—a one to two-year capacity-building effort and ongoing benefit-cost analysis—which comprises collecting data on the costs and benefits of programs to reduce recidivism, determining and comparing the long-term return on investment achieved by these programs, and promoting evidence-based decision-making. Results First develops into a more consistent review of programs funded by the state. This work will also extend into other policy areas (e.g., juvenile justice, mental health, substance abuse). Table 1 outlines the major elements of each of these initiatives.

Across the nation, many states are engaged in justice reinvestment reforms,

**Table 1. Smart Justice Initiatives in Alaska**

	<b>Results First Initiative (RFI)</b>	<b>Justice Reinvestment Initiative (JRI)</b>
<b>Focus:</b>	<p>Providing benefit-cost analyses of state-funded adult criminal justice programs in Alaska (e.g., Batterer Intervention Programs).</p> <p>Collecting quantitative and qualitative data about these programs. Reviewing programs offered in the state and identifying state-specific cost and benefits associated with them.</p> <p>Helping the state research alternative programs not currently offered which should be considered.</p> <p>Assisting in presentation of information to state policymakers and other agencies. Assisting in implementation of evaluation process.</p>	<p>Identifying drivers of prison growth and costs, including sentencing practices and other associated issues.</p> <p>The goal is to identify savings and reinvest a portion of those dollars in evidence-based programs and services that will reduce recidivism and help keep communities safe.</p> <p>Developing recommendations for statutory and budgetary changes to impact these system-wide issues.</p>
<b>Guided by:</b>	The Alaska Justice Information Center (AJIC) and a steering committee of statewide stakeholders. AJIC research staff — housed at the UAA Justice Center — will analyze criminal justice program data and present reports to the legislature, courts, and criminal justice agencies. AJIC works closely with other state agencies during the process.	The Alaska Criminal Justice Commission (ACJC). The ACJC and its workgroups hear public testimony, make site visits around the state, and review data analysis and other information. ACJC will make recommendations to the Alaska legislature for statutory and budgetary changes. ACJC works closely with other state agencies during this process.
<b>Scope of analysis:</b>	Comparing current interventions against a nationwide inventory of evidence-based programs, and reviewing programs, their incremental costs, and their effectiveness in reducing recidivism.	Reviewing average costs in the justice system, analyzing offender population statistics and trends, and focusing on how prison growth drivers can be addressed. Developing legislative and budgetary recommendations to address these issues.
<b>Technical assistance:</b>	Provided by the Pew Charitable Trusts and the MacArthur Foundation at no charge to the state.	Provided by the Pew Charitable Trusts at no charge to the state. JRI is a private-public partnership with the U.S. Department of Justice, Bureau of Justice Assistance.
<b>Work plan:</b>	Initiated in July 2015. Implementation in Fall 2015. A 1–2 year capacity-building effort and ongoing benefit-cost analysis of public policy areas, e.g., juvenile justice, mental health, substance abuse. The initial focus will be on adult criminal justice.	Initiated June 2015. Short-term project to identify drivers of prison growth in the state and costs, and to develop recommendations for the Legislature, Governor, and the Courts to address those issues.
<b>Life of project:</b>	AJIC data analysis work will continue beyond the Results First work and explore other projects. AJIC is supported by general funds from the State of Alaska and the Alaska Mental Health Trust Authority. AJIC is the entity responsible for compiling, analyzing, and reporting justice data in Alaska. AJIC will continue to provide reports on criminal justice data to state agencies.	The Alaska Criminal Justice Commission will submit a report with recommendations to the Alaska Legislature. The Alaska Criminal Justice Commission was created in 2014 under S.B. 64 with the mandate to evaluate and make recommendations “for improving criminal sentencing practices and criminal justice practices, including rehabilitation and restitution.” The Commission sunsets June 30, 2017.

and a number of research organizations (in addition to Pew) are involved in these projects as well. The efforts now underway in Alaska hold the promise of decreasing criminal justice system costs during a time of severe budget constraints—as well as the possibility of reinvesting savings in the most effective programs and supervision strategies for reducing recidivism and improving public safety. These goals promote healthier and safer citizens and communities, and help control correctional population growth and costs.

*Barbara Armstrong is the editor of the Alaska Justice Forum.*

## Further Information on These Initiatives

Alaska Criminal Justice Commission

<http://www.ajc.state.ak.us/alaska-criminal-justice-commission>

Alaska Criminal Justice Commission Resource List

*Includes PowerPoint presentations on the Alaska Justice Reinvestment Initiative.*  
<http://www.ajc.state.ak.us/alaska-criminal-justice-commission/resource-list-compiled-by-commission-staff>

Alaska Justice Information Center

*Will guide work of Pew-MacArthur Results First Initiative in Alaska.*  
<http://uaajusticecenter.blogspot.com/2015/08/alaska-justice-information-center.html>

The Pew-MacArthur Results First Initiative in Alaska

<http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2015/07/the-pew-macarthur-results-first-initiative-in-alaska>

## Judicial selection

*(continued from page 1)*

and appellate court has its own commission, resulting in 26 total judicial nominating commissions. Each commission has nine commissioners. Before 2001, three commissioners were lawyers appointed by the Florida Bar, three were appointed by the governor (and could be either lawyers or nonlawyers), and the remaining three were nonlawyers selected by the other six commissioners. In 2001, in response to claims that the existing judicial selection process did not reflect the will of the people of Florida, state law was changed to give the governor substantially greater power in appointing members of the judicial nominating commissions. Under the new rules, the governor appoints four members from a list of names submitted by the Florida Bar but can reject the list and ask for a new one; the other five members are appointed entirely at the discretion of the governor, though at least two must be lawyers.

A study was subsequently conducted by Salokar, et al., of judicial appointments in Florida from 1999 to 2003 in an attempt to measure the effect of this change on the type of individuals applying for and appointed to judgeships. Published in 2006 in the *Justice System Journal*, the study also analyzed the composition of the judicial nominating commissions themselves using data from publicly available member applications for the different commissions. After the change in appointment procedures, nominating commissioners overwhelmingly identified with the political party of the governor (Republican at the time of the change in the law) and announced their alliance with, or intent to promote, conservative policies in their applications. This was true both of the applicants for the gubernatorial-appointed positions and of applicants recommended by the Florida Bar, suggesting a selection bias in who applied for the commissions. Indeed, there was a dramatic decrease in the number of attorneys willing to serve on the nominating commissions following the change in procedure.

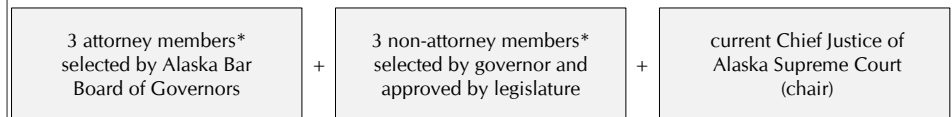
A party affiliation bias carried over to the judges selected as well. Not only did the number of judges registered as Republican (as opposed to Democrat) increase from 61 percent to 77 percent with the change in selection process (about 10% of the judges selected were unaffiliated), but judicial applicants in-

creasingly listed in their application prominent Republican politicians as personal references. Moreover, the change in the selection process brought an increase in the affiliation of judges with conservative and Christian Right social

*Please see Judicial selection, page 9*

**Figure 1. Selection of Alaska Judicial Council**

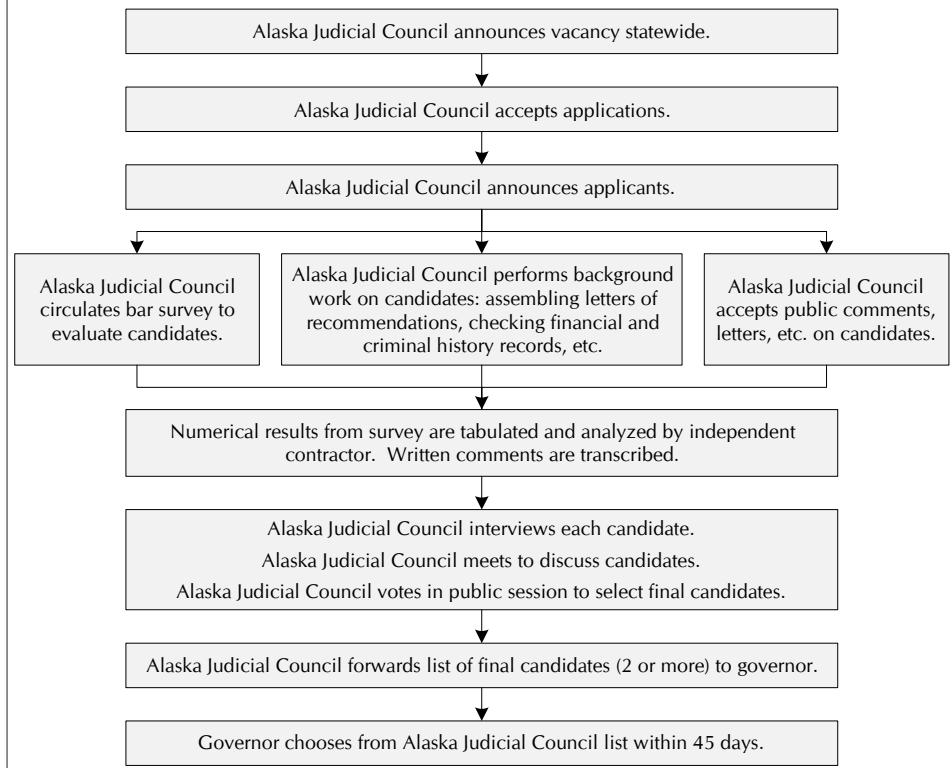
*Alaska Constitution, Article IV, Sections 8*



\* "Appointments shall be made with due consideration to area representation and without regard to political affiliation."

**Figure 2. Alaska Judicial Selection Process**

*Alaska Constitution, Article IV, Sections 5 and 8*



**Table 1. Judicial Selection in U.S. States and the District of Columbia, by Method of Selection**

Methods of judicial selection for *full terms*. (Methods used to fill interim vacancies may differ.)

Methods include: Judicial nominating commission (JNC), gubernatorial or legislative appointment, nonpartisan election, or partisan election.

	Appellate courts		Trial courts of general jurisdiction		Notes
	Supreme	Intermediate	JNC	partisan primary, nonpartisan general election	
Alaska	JNC	JNC	JNC		Gubernatorial appointment from nominating commission.
Colorado	JNC	JNC	JNC		Gubernatorial appointment from nominating commission.
Connecticut	JNC	JNC	JNC		Gubernatorial nomination from judicial selection commission; legislative appointment.
Delaware	JNC	JNC	JNC		Gubernatorial appointment from judicial nominating commission with senate consent.
District of Columbia	JNC	—	JNC		Presidential appointment from judicial nomination commission with senate confirmation.
Hawaii	JNC	JNC	JNC		Gubernatorial appointment from nominating commission with senate confirmation.
Iowa	JNC	JNC	JNC		Gubernatorial appointment through nominating commission.
Maryland	JNC	JNC	JNC		<i>Appellate</i> : Gubernatorial appointment from nominating commission.
Nebraska	JNC	JNC	JNC		<i>Circuit</i> : Gubernatorial appointment from nominating commission and/or nonpartisan election.
New Hampshire	JNC	—	JNC		Gubernatorial appointment from nominating commission.
Rhode Island	JNC	—	JNC		Gubernatorial nomination from selection commission recommendation; appointment by the executive council.
South Carolina	JNC	JNC	JNC		<i>Supreme</i> : Gubernatorial appointment from nominating commission with house and senate confirmation.
Utah	JNC	JNC	JNC		<i>Superior</i> : Gubernatorial appointment from nominating commission with senate confirmation.
Vermont	JNC	JNC	JNC		Legislative election from judicial merit selection commission (per <a href="http://www.judicialselection.us/judicial_selection/index.cfm?state=SC">http://www.judicialselection.us/judicial_selection/index.cfm?state=SC</a> ).
Wyoming	JNC	—	JNC		Gubernatorial appointment from nominating commission with senate confirmation.
Arizona	JNC	JNC	JNC	[depends on county] partisan primary, nonpartisan general election	<i>Appellate</i> : Gubernatorial appointment from nominating commission.
Florida	JNC	JNC	nonpartisan election		<i>Trial courts</i> : The Arizona Constitution provides for merit selection and retention of judges in counties with populations of 250,000 or greater. Currently, this includes Maricopa, Pima and Pinal Counties. Counties with populations less than 250,000 may adopt merit selection through ballot initiative. Otherwise, selection is by partisan primary/nonpartisan general election.
Indiana	JNC	JNC	partisan election		<i>Appellate</i> : Gubernatorial appointment from nominating commission.
Kansas	JNC	gubernatorial appointment	JNC	[depends on district] partisan election	<i>Appellate</i> : Gubernatorial appointment from nominating commission.
Massachusetts	gubernatorial appointment	JNC	JNC		<i>Supreme Court</i> : Gubernatorial appointment from nominating commission.
Missouri	JNC	JNC	JNC	[depends on county] partisan election	<i>Court of Appeals</i> : Gubernatorial appointment with senate confirmation.
New York	JNC	JNC	partisan election		<i>Trial courts</i> : Gubernatorial appointment from nominating commission (17 districts); partisan election (14 districts).
Oklahoma	JNC	JNC	nonpartisan election		<i>Supreme Judicial Court</i> : Gubernatorial appointment with approval of governor's council.
South Dakota	JNC	—	nonpartisan election		<i>Intermediate appellate and trial</i> : Gubernatorial appointment from nominating commission with approval of governor's council.
Tennessee	JNC	JNC	partisan election		<i>Appellate</i> : Gubernatorial appointment from nominating commission.
California	gubernatorial appointment	gubernatorial appointment	nonpartisan election		<i>Trial</i> : Partisan election for most circuit courts, except merit in St. Louis, Jackson County (Kansas City), Greene County (Springfield), Clay County, Platte County, and St. Louis County.
Maine	gubernatorial appointment	—	gubernatorial appointment		<i>Appellate</i> : Gubernatorial appointment; confirmation by commission on judicial appointments.
New Jersey	gubernatorial appointment	chief justice appoints	gubernatorial appointment		Gubernatorial appointment with senate confirmation.
Virginia	legislative election	legislative election	legislative election		<i>Intermediate appellate</i> : The chief justice of the supreme court assigns superior court judges to the appellate division. Such assignments are for fixed terms.
Arkansas	nonpartisan election	nonpartisan election	nonpartisan election		
Georgia	nonpartisan election	nonpartisan election	nonpartisan election		*
Idaho	nonpartisan election	nonpartisan election	nonpartisan election		*
Kentucky	nonpartisan election	nonpartisan election	nonpartisan election		*
Michigan	nonpartisan election	nonpartisan election	nonpartisan election		<i>Supreme</i> : Partisan nomination; nonpartisan election.
Minnesota	nonpartisan election	nonpartisan election	nonpartisan election		*
Mississippi	nonpartisan election	nonpartisan election	nonpartisan election		
Montana	nonpartisan election	—	nonpartisan election		*
Nevada	nonpartisan election	—	nonpartisan election		*
North Carolina	nonpartisan election	nonpartisan election	nonpartisan election		
North Dakota	nonpartisan election	3-judge panels by case	nonpartisan election		* <i>Intermediate appellate</i> : Cases assigned to the court of appeals by the supreme court are heard by three-judge panels; chosen from among active and retired district judges, retired supreme court justices, and attorneys.
Oregon	nonpartisan election	nonpartisan election	nonpartisan election		
Washington	nonpartisan election	nonpartisan election	nonpartisan election		
Wisconsin	nonpartisan election	nonpartisan election	nonpartisan election		
Alabama	partisan election	partisan election	partisan election		*
Illinois	partisan election	partisan election	partisan election		
Louisiana	partisan election	partisan election	partisan election		
New Mexico	partisan election	partisan election	partisan election		*
Ohio	partisan primary; nonpartisan general election	partisan primary; nonpartisan general election	partisan primary; nonpartisan general election		
Pennsylvania	partisan election	partisan election	partisan election		
Texas	partisan election	partisan election	partisan election		
West Virginia	partisan election	—	partisan election		*

\* Ten states use judicial nominating commissions (JNCs) to fill midterm vacancies only on some or all levels of court: Alabama, Georgia, Idaho, Kentucky, Minnesota, Montana, Nevada, New Mexico, North Dakota, and West Virginia.

Source of data: Judicial Selection in the States (<http://www.judicialselection.us/>), National Center for State Courts (accessed 27 Oct 2015)



## Judicial selection (continued from page 7)

organizations and a decrease in appointees with liberal affiliations. Although the authors of the study noted that more than half of post-reform applicants included unsolicited comments on their religious beliefs and activities, there was not a statistically significant change in the governor's appointees based on gender, race, or religion as between Catholic, Protestant, and Jewish appointees. The Florida change, the authors conclude, gave the executive branch greater latitude in selecting those who will nominate potential jurists, effectively redefining merit selection into a system closer to a direct gubernatorial selection system. If a hand-picked screening committee assists the governor, it is reasonable to conclude that it will select nominees first for compatibility with the administration's political, ideological, and religious views, then will narrow the pool based on merit and experience.

The conclusion that giving more power in the judicial selection process to politically elected actors results in an increasingly politicized judiciary is not by itself surprising. While on a theoretical level this undermines the ideas of separation of powers and an independent judiciary, it is also not necessarily a negative outcome unless one can point to an undesirable secondary effect from a more politicized judiciary. For this, one could look to measures of success of current judicial selection processes.

### Measures of Voter Satisfaction

As noted above, each state handles its judicial selection differently. This underscores the need to compare the different selection methods. One possible measure of the success of the judicial selection process is through voter satisfaction with judges as reflected in the vote in judicial retention elections. In the

2014 election, 14 Alaska judges were up for retention (a yes/no vote on whether the judge should stay in office)—all 14 were retained. In nearly every instance, with one exception, the percent voting to retain ranged from 62.3 percent to 74.0 percent. (As a point of comparison, 26 Alaska judges were up for retention in 2012—all were retained with at least 61.6% (and often much higher) of the vote with the exception of one judge retained with 55.1% of the vote and against whom a campaign opposing his retention had been directed.) These results are consistent with retention elections from other states—a 2007 study by Aspin of retention elections in ten states from 1964 to 2006, published in *Judicature*, showed the mean percentage of affirmative votes for retention is consistently in the high 60s to mid-70s. Alaska had the lowest mean affirmative percentage in the study in 2006 at 64.1 percent, and in general most states had a higher affirmative percentage than Alaska over the course of the study period. Nonetheless, the fact that over 60 percent of the electorate in Alaska consistently votes to retain judges suggests satisfaction with the current judicial selection process.

The one exception to the range discussed above for the 2014 judicial retention election was for a judge the Alaska Judicial Council recommended not be retained, and even that judge received 54.3 percent of the votes to retain. This result was unusual. Judicial nominating commissions that make recommendations in retention elections tend to have a significant effect on the outcome of those elections. Since 1982, Alaska voters have voted against retaining four out of the seven judges who have received a negative recommendation from the Alaska Judicial Council, though the three that were retained in spite of the non-retention recommendation all did so with measurably reduced affirma-

tive votes. In a 2007 study published by the National Center for State Courts, Aspin found comparable results for Arizona and Colorado, which have similar state commissions making recommendations on judicial retention elections. Perhaps more interestingly, of the many judges recommended by the commissions in these three states, only one judge was defeated in a retention election (and that by a count of 520 to 510 votes). Either voters were satisfied with the existing judiciary, or were heeding the recommendations of the commissions. If the former, then there may be no need to change the judicial selection process. If voters were heeding the commission recommendations, then changing the composition of a nominating commission to increase political influence would likely result in the politicization of the selection process and retention elections.

### Objective Measures of Judicial Performance

#### Complexity of Judicial Decisions

A comparison of elected and appointed judges in state supreme courts suggests that abandoning the nonpartisan appointment model would have consequences for the court's judicial decisions as measured by mathematical modeling. In a 2013 study in the *Journal of Public Economics*, Iaryczower, et al., used data from 5,958 criminal case decisions by 520 state supreme court justices sitting en banc (all members) to make a comparison between four groups of justices, where the group was defined by the judicial selection methods of their courts. The study authors found that differences in the method of selection and retention were associated with differences in voting patterns on decisions. In particular, they noted that elected justices, or those that

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## Resources on Judicial Selection

The Alaska Judicial Council's website ([www.ajc.state.ak.us](http://www.ajc.state.ak.us)) provides information about judicial selection and retention in Alaska, including announcements of current judicial vacancies and a historical log of judicial appointments since Alaska statehood in 1959. The website also makes available reports on Judicial Council research on justice administration in Alaska.

The National Center for State Courts (NCSC) collects statistics, conducts research and provides assistance to state courts, particularly in the area of administration. Its website ([www.ncsc.org](http://www.ncsc.org)) provides an extensive overview of its work and access to its research, publications and other projects and services. NCSC also maintains a website at [www.judicialselection.us](http://www.judicialselection.us) providing information on judicial selection processes throughout the nation.

The State Justice Institute (SJI), a federally-funded granting institute, conducts studies on a wide range of court-related issues. Its website ([www.sji.gov](http://www.sji.gov)) provides access to funded projects. The Alaska Court System has received funding from SJI for projects.

In addition, the following publications focus on judicial selection in Alaska:

"A Look at Judicial Selection in Alaska" by Antonia Moras. *Alaska Justice Forum* 21(3): 1, 7–9 (Fall 2004). ([http://justice.uaa.alaska.edu/forum/21/3fall2004/a\\_akjudicial.html](http://justice.uaa.alaska.edu/forum/21/3fall2004/a_akjudicial.html)).

An overview of the judicial selection and retention process in Alaska, the balance of interests in the formal structure of the appointment process, and opportunities provided for participation by all three branches of government as well as the public.

*Selecting and Evaluating Alaska's Judges: 1984–2012* by Teresa White Carns, Larry Cohn, and Susan McKelvie. Anchorage, AK: Alaska Judicial Council, Jul 2013. (<http://www.ajc.state.ak.us/reports/jgprofile13.pdf>). This report analyzes the characteristics of judicial applicants and the factors most closely associated with their nomination and appointment to the bench. It also examines the relationships between these characteristics and the performance of judges. It assists in assessing the Council's performance by providing information about the consistency and effectiveness with which the Council has applied its criteria for evaluating applicants' qualifications.

*Fostering Judicial Excellence: A Profile of Alaska's Judicial Applicants and Judges*. Anchorage, AK: Alaska Judicial Council, May 1999. (<http://www.ajc.state.ak.us/reports/jgprofile.pdf>). Results of the Judicial Council's study of the characteristics of attorneys who apply for and are appointed to the state court bench in Alaska.

## Judicial selection (continued from page 9)

are subject to retention elections, were more inclined to overturn a lower court decision than those who do not face retention election after gubernatorial appointment, although the effect is modest.

Measures of performance other than alignment with public sentiment or dominant legal reasoning were difficult to use in broad empirical studies until relatively new improvements in software applications. Studies based on anonymous surveys generally indicated that judges who have greater political accountability receive lower performance ratings from judges themselves and from attorneys, but such studies have their own limitations. Two recent studies based on written judicial decisions attempt to develop empirical evidence for the effect of selection methods on quality indicators of judicial work. A 2014 study by Goelzhauser and Cann in *State Politics & Policy Quarterly* examined the opinion clarity in judicial writing as an indicator of performance quality. Those authors chose opinion clarity because a number of state judicial performance commissions include it in evaluations and the National Center for State Courts urges state supreme courts to focus on producing clear opinions so

they can be understood by the parties, public, and policymakers. Drawing from a three-year period in appellate courts in all 50 states, the study included 400 salient cases (decisions that received front page coverage in the state's newspaper of greatest circulation) and a 5 percent random sample of other decisions in each state, for a total sample of 1,797 state supreme court majority decisions. The study authors coded each opinion for reading ease, grade level, and the percentage of passive sentences (as a measure of complexity).

The study authors found no statistically significant substantive variation in clarity measures across groups based on methods of retention. However, in high profile cases that received front page coverage, where elected judges might be expected to write most clearly in order to communicate to the electorate, an analysis of the opinions revealed no substantive increase in opinion clarity by elected judges, notwithstanding enhanced public scrutiny. The study authors pointed out that their study sample was limited to decisions written from 1995 to 1998; it is possible, they suggested, that incentives to produce clear opinions may have changed in light of recent increases in the political competitiveness of judicial elections following *Republican Party of Minnesota v. White*—a U.S. Supreme Court case from 2002 holding that candidates for judicial office could not be prohibited from publicly announcing their position on contentious political and legal issues. It is worth noting that this case does not apply to judicial retention elections such as exist in Alaska.

### *Judicial Productivity and Independence*

A different measure of output quality was used by Choi, et al., in a 2010 study in the *Journal of Laws, Economics, & Organization* of 408 state supreme court justices' opinions (totaling 27,596 majority opinion observations) from 50 states from 1998 to 2000. Judges, the study authors pointed out, expend unobservable effort to decide cases. The observable product of their efforts, at least of appellate justices, is opinions. Using written opinions, the study authors sought to measure judicial quality by productivity (the number of opinions written, including dissenting and concurring opinions), legal reasoning by citations (the frequency of citations of the opinion by other courts and law reviews), and independence of the opinion authors (writing opinions against judges of the same political party, either as a dissenter or authoring the majority opinion against dissenters of the same party). Findings were reported related to these categories as means across selection method groups, and not on a state-by-state level.

This study found that the mean number of opinions written was highest for judges selected in partisan election systems, but that the frequency of citations was higher for judges who were either directly appointed or selected via judicial nominating committees.

The results of the analysis were mixed.

Appointed judges were not, overall, more independent than those selected through partisan elected systems; but none of the differences in mean independence indicator levels were statistically significant. The authors found that judges selected in partisan elections dissent most frequently, judges selected via nominating commissions fall in the middle, and directly appointed judges write the fewest dissenting opinions. Dissent from fellow members of a political party, though, is not the only measure of independence, especially as dissents may occur for reasons unrelated to political alignment. However, further analysis indicated that elected judges are more likely to dissent when one party dominates state electoral politics, while appointed judges are more willing to dissent when there is no clear dominance by one party. And, while judges who write more dissents generally received a higher overall independence score, this relationship does not hold true for judges in partisan election states. Contrary to expectations, elected judges tend to write fewer opinions when there is no one dominant party in state politics.

The authors of this study suggest that the different selection systems attract different types of people to judgeships; politicians are attracted to overtly political election systems and professionals are attracted to appointment systems. Compared with appointed judges, partisan elected judges tend to make more campaign contributions, tend to attend an in-state law school, and tend to have attended lower-ranked law schools. Compared with nominating commission judges, appointed judges have less courtroom experience, are less likely to attend an in-state law school, are closer to retirement at appointment, and are more likely to have attended a higher-ranked law school. And, while partisan elected judges make significantly more political contributions to other campaigns than appointed or commission-nominated judges, they also make more political contributions than those chosen in nonpartisan elections. In short, the greater the role electoral politics plays in selection, the more likely that the people attracted to judicial vacancies will be locally connected, politically savvy people who will deliver adequate rather than great opinions (as determined by the frequency with which the opinion is cited), without much concern for their long-term reputation among other jurists.

Of course, most judges are not appellate court judges and justices, but trial court judges. The literature and most of the political debate has focused on appellate court judges and justices. Unfortunately, there have been few empirical studies of selection method effects on trial judges, who are usually selected to serve a small unit of a state's judicial system. Trial judges may produce few written opinions, or at least few published opinions. Depending on the size of their district, they may conduct only a few trials each year and few of their rulings may reach the appellate courts. Addressing the



## Alaska Justice Forum

Editor: Barbara Armstrong  
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Typesetting and Layout: Melissa Green

André Rosay, Director, Justice Center

Published quarterly by the

Justice Center  
College of Health  
University of Alaska Anchorage  
3211 Providence Drive  
Anchorage, AK 99508  
(907) 786-1810  
(907) 786-7777 fax  
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University of Alaska Anchorage  
ISSN 0893-8903

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lack of empirical studies on selection method effects at the trial judge level is one step that may help resolve the debate on selection.

### Politicization of Judicial Elections

One common critique of changing the judicial selection process to put more power over selection in the hands of elected officials is that this change will make the judicial selection process more politicized. Nonpartisan retention elections and selection processes represent an effort to balance the political aim of public accountability with the desire for judicial independence, which is associated with protection of civil liberties and economic opportunity. Partisan elections and selection, in comparison to nonpartisan retention elections and nominating commission selection, are assumed to lead to a judiciary whose decisions are responsive to the ideological leanings of a majority of the voters in the election. Voters select or retain judges whose ideological and philosophical leanings align with the majority because voters correlate the judge's ideology with the judge's partisan affiliation. However, as the role of interest groups in judicial selection has increased, even nonpartisan retention elections have seen an increase in informational activity by organized groups, increased campaign spending, political advertising, and media awareness of the importance of judicial decisions. So, would greater partisanship in the selection or retention process yield a judiciary more in line with the political majority?

A 2009 study by Canes-Wrone and Clark in the *Wisconsin Law Review* of the impact of nonpartisan elections on judicial decisions found that nonpartisan elections place unique political pressures on appellate judges and challenges the conventional wisdom that nonpartisan elections result in greater independence from majority ideology than partisan

elections. After the decision in *Republican Party of Minnesota v. White*, judicial elections of all kinds have seen a rise in issue-based judicial election campaigns, typically focusing voters' attention on a specific substantive issue and criticizing the judge's record. Related to this trend, judges face increased pressure to state their positions on issues of importance to interest groups. While the issues vary from social policies like abortion and criminal sentencing to economic issues like tax policy and eminent domain, the pressure on judicial candidates to "announce" their views on such disputed legal or political issues has markedly increased. The study authors proposed that, in the context of the "new-style" of judicial campaigns, judges in nonpartisan elections would be *more* responsive to majority opinion than those in partisan elections.

To test this proposition, the study examined abortion cases decided by state appellate courts of last resort (supreme courts) between 1980 and 2006 in a set of states that had partisan or nonpartisan statewide judicial elections. Within their dataset of cases, they identified each judge who sat and how each voted, yielding a total of 597 judicial votes across eighty-five cases in sixteen states. To test public opinion in each state, the authors used the responses to the CBS–*New York Times* poll's questions about abortion, which have been asked regularly since 1985. They controlled for factors such as the judge's partisan affiliation, proximity of the decision to a judicial election, and the type of case in which the issue of abortion was raised. A clear pattern emerged from the data. There was no strong relationship between a pro-life majority public opinion in a state and the probability of a pro-life court decision where that state has a partisan election system. However, perhaps contrary to expectations, there was a strong, positive relationship between public opinion and pro-life decisions in states with

nonpartisan elections. The raw data suggested that as public opinion in states with nonpartisan elections became increasingly pro-life, judges cast more votes in that direction, even among Democratic Party-affiliated judges.

This study's findings provided strong evidence for the counter-intuitive claim that judges in *nonpartisan selection systems are more responsive to public opinion* than judges in partisan systems, even after controlling for other factors that may affect judicial decisions. The study authors suggest that, even in nonpartisan, unopposed, retention elections, "new-style" issue-based campaigns attacking judges' decisions may produce similar paradoxical effects. Their study demonstrates that a system originally designed to insulate judges from direct partisan political pressure has its own set of political pressures; judges selected in nonpartisan elections do take majority sentiment into account. Not surprisingly, the authors urge further research on nonpartisan, unopposed, retention elections, where public opinion may also play an unexpected but significant role in judicial decisions.

### Conclusion

Many American believe that judges should be unbiased and nonpartisan, and not influenced by other branches of government in reaching legal decisions. This, though, can be in conflict with the desire that judges be publicly accountable and render decisions more in line with the values of the average citizen. How we choose our judges reflects this conflict. In other words, the debate about judicial selection is, as Professor Michael Gilbert recently said in a *Michigan Law Review* article, "largely a proxy for the independence debate." At least one study has shown that independence from partisanship in selection and retention tends

*Please see Judicial selection, page 12*

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### **Judicial selection** *(continued from page 11)*

to increase congruency in policy cases with the views of the average citizen. Selection methods also have an impact on performance.

What that impact would be under the proposed change to the membership of the Alaska Judicial Council cannot be confidently predicted with the information available. However, the studies to date suggest that the questions raised in the selection debate require a nu-

anced consideration of the evidence for and against change.

*Ryan Fortson, J.D., Ph.D., and Kristin Knudsen, J.D., M.J.S., are members of the Justice Center Legal Studies faculty.*

## **Faculty Notes**

Dr. Brad Myrstol and Prof. Kristin Knudsen, J.D., M.J.S., have been recognized for their outstanding contributions and exceptional service to the university and have received 2015 Chancellor's Awards for Excellence.

Dr. Myrstol, Justice faculty, Director of the Alaska Justice Statistical Analysis Center (AJSAC), and Director of the Alaska Justice Information Center (AJIC), received the Chancellor's Award for Excellence in Academic Research and Creative Activity.

Prof. Kristin Knudsen, J.D., M.J.S., Legal Studies faculty in the Justice Center, received the Chancellor's Award for Excellence in Teaching.

Prof. Deb Periman, J.D., Legal Studies Program Coordinator in the Justice Center, was recently promoted to Professor of Justice. Professor Periman is also the Legal Studies Program Coordinator. Her areas of focus are legal writing, regulation of nonlawyer professionals and unauthorized practice of law, and collateral consequences of criminal convictions/offender reentry.

Prof. Jason Brandeis, J.D., Legal Studies faculty in the Justice Center, recently received promotion to Associate Professor of Justice with tenure. His areas of focus are civil liberties, constitutional law, legal education, and marijuana law and policy.

## **Alaska Justice Information Center Welcomes Staff**

Araceli Valle, Ph.D., and Karin Thomas, M.S., have joined the staff of the Alaska Justice Information Center (AJIC) as Research Professionals.

Dr. Araceli Valle received her Ph.D. from the University of California, Santa Cruz in Developmental Psychology and her M.S. in E.E. Computer Engineering from Stanford University. She is a former faculty member of the UAF School of Education and is an adjunct faculty member of the UAA College Preparatory & Developmental Studies Department.

Karin Thomas received her M.S. in Criminology from the University of Pennsylvania and formerly worked for the New Mexico Statistical Analysis Center in the University of New Mexico Institute for Social Research. She has an intermediate proficiency in Russian, and has taught English as a second language (ESL) in Russia.

AJIC is jointly funded by the state of Alaska and the Alaska Mental Health Trust Authority and is housed within the Justice Center.

### **Early Online Copy of *Forum***

To receive an early online copy of the *Alaska Justice Forum*, please email editor@uaa.alaska.edu and put "Forum online" in the subject line. Visit our website to view all issues of the Forum (<http://justice.uaa.alaska.edu/forum/index.html>) or see our Facebook page (<https://www.facebook.com/uaajusticecenter>).