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SENATE CS FOR CS FOR HOUSE BILL NO. 172(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/7/01
Referred: Rules

Sponsor(s): REPRESENTATIVES PORTER, Murkowski, Rokeberg, Foster, Halcro, McGuire, Hayes, James, Meyer, Croft, Williams, Cissna, Kapsner, Kerttula, Mulder

SENATORS Lincoln, Halford, Elton, Austerman, Hoffman, Ellis, Cowdery

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to therapeutic courts for offenders; to the authorized number of**
2 **superior court judges; amending Rule 35, Alaska Rules of Criminal Procedure; and**
3 **providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 LEGISLATIVE PURPOSE; THERAPEUTIC COURTS FOR ALCOHOL- AND
8 DRUG-ADDICTED OFFENDERS. (a) The purposes of therapeutic courts are lasting
9 sobriety of offenders, protection of society from alcohol-related and drug-related crime,
10 prompt payment of restitution to victims of crimes, effective interaction and use of resources
11 among criminal justice and community agencies, and long-term reduction of costs relating to
12 arrest, trial, and incarceration. The pilot therapeutic courts established in (b) of this section
13 will focus on defendants charged with multiple driving while intoxicated offenses and shall
14 serve as working models for the development of other similar courts in other areas of the

1 state. It is the intent of the legislature that the additional superior court judge authorized for
2 the Fourth Judicial District by sec. 2 of this Act be assigned to Bethel and that the additional
3 superior court judge authorized for the Third Judicial District be assigned to Anchorage. In
4 addition, the legislature recognizes that district courts are currently experimenting with and
5 using therapeutic concepts such as those contained in this Act. The legislature acknowledges
6 these efforts, encourages their continuation in the district courts, and does not intend by this
7 Act the extinguishment of these efforts.

8 (b) The Alaska Court System shall establish two pilot sites for therapeutic courts for
9 alcohol- and drug-addicted offenders in Anchorage and Bethel; the Anchorage therapeutic
10 court shall commence on the effective date of this Act; the Bethel therapeutic court shall
11 commence on January 2, 2002; the pilot programs shall end three years after the date each
12 court commences. The Alaska Court System will designate one superior court judge in
13 Anchorage and one superior court judge in Bethel to preside over the therapeutic courts.
14 Under the leadership of these judges, all parties involved in the implementation of the
15 therapeutic court process shall regularly meet to consult about the conduct and improvement
16 of the process. The pilot programs shall be implemented by the joint efforts of the Alaska
17 Court System, the Department of Law, the Public Defender Agency, the Department of
18 Corrections, the Department of Health and Social Services, and other agencies in accordance
19 with a mutually agreed-upon plan. To the extent feasible, the therapeutic courts shall use
20 existing public agencies, medical and treatment services, housing, and other public, private,
21 and nonprofit community services; the pilot program in Bethel shall also consult and
22 coordinate services with municipal and other local entities to facilitate the successful
23 reintegration of offenders into municipalities and other locales outside of Bethel. Each
24 therapeutic court shall be adapted to fit the available local resources and cultural traditions.

25 (c) Nothing in this Act is intended to place additional requirements on or make
26 changes to other existing specialized or general state courts.

27 (d) In addition to any authorized sentence under AS 12.55, a therapeutic court shall,
28 to the extent feasible, consider or require

29 (1) early intervention to plan and begin treatment for recovery from alcohol or
30 drug addiction;

31 (2) emphasis on personal responsibility;

1 (3) frequent appearances before the same judge to provide in-court recognition
2 of progress and quick sanctions for relapses;

3 (4) in-court recognition of progress and quick sanctions for relapses;

4 (5) if the offender is living in a municipality or an area of the state without a
5 judge, frequent appearances before a person or persons designated by the judge who will
6 report progress and relapses to the judge;

7 (6) prompt payment of restitution for victims;

8 (7) completion of community work service as appropriate for restoration of
9 the community;

10 (8) pharmaceutical treatment of the physical addiction to alcohol or drugs, as
11 approved and prescribed by a physician;

12 (9) treatment addressing the psychosocial bases of the addiction;

13 (10) a strong monitoring program to enforce long-term abstinence;

14 (11) appropriate physical placement or housing;

15 (12) assistance in obtaining a constructive alcohol- and drug-free occupation
16 and lifestyle;

17 (13) assistance from supportive friends and relatives;

18 (14) payment for all or a portion of treatment costs;

19 (15) adherence to all probation conditions;

20 (16) collection of data about and evaluation of the effectiveness of the
21 program;

22 (17) the defendant to execute releases to provide information and reports to
23 the court, the prosecutor, and all agencies involved in the defendant's therapeutic court plan;
24 and

25 (18) case coordination in planning for and assisting offenders in
26 accomplishing the conditions set out in (1) - (17) of this subsection.

27 (e) The state, publicly appointed counsel, and court shall develop a list of sanctions to
28 be imposed in the event that a defendant violates conditions imposed by a therapeutic court.
29 This list shall be provided to all defendants who request referral to a therapeutic court.

30 (f) With the consent of the state and the defendant, a criminal case, including the case
31 of a defendant charged with violating the terms of probation, may be referred to a therapeutic

1 court upon the request of the prosecutor, the defendant, or the court. The state may not
2 consent to a referral under this subsection unless the state has consulted with the victim and
3 explained the process and consequences of the referral to the victim. A case may not be
4 referred to the Anchorage court unless the situs of the alleged crime is within the Anchorage
5 venue district under Rule 18, Alaska Rules of Criminal Procedure. A case may not be
6 referred to the Bethel court unless the situs of the alleged crime is within the Bethel venue
7 district under Rule 18, Alaska Rules of Criminal Procedure. The court may accept a
8 defendant into the therapeutic court if the defendant is not charged with an unclassified
9 felony, a class A felony, an offense under AS 11.41.130, or an offense under AS 11.41.410 -
10 11.41.470, or with violating probation for one of those offenses.

11 (g) Upon acceptance into the therapeutic court, the defendant shall enter a no contest
12 or guilty plea to an offense or shall admit to a probation violation, as appropriate. The state
13 and the defendant may enter into a plea agreement to determine the offense or offenses to
14 which the defendant is required to plead. If the court accepts the agreement, the court shall
15 enforce the terms of the agreement.

16 (h) The court shall enter a judgment of conviction for the offense or offenses for
17 which the defendant has pleaded or an order finding that the defendant has violated probation,
18 as appropriate. A judgment of conviction or an order finding a probation violation must set a
19 schedule for payment of restitution owed by the defendant. In a judgment of conviction and
20 upon probation conditions that the court considers appropriate, the court may withhold
21 pronouncement of a period of imprisonment or a fine to provide an incentive for the defendant
22 to complete recommended treatment successfully. Imprisonment or a fine imposed by a
23 therapeutic court shall comply with AS 12.55 or any mandatory minimum or other sentencing
24 provision applicable to the offense. However, notwithstanding Rule 35, Alaska Rules of
25 Criminal Procedure, and any other provision of law, the court, at any time after the period
26 when a reduction of sentence is normally available, may consider and reduce the defendant's
27 sentence based upon the defendant's compliance with the treatment plan; when reducing a
28 sentence, the court (1) may not reduce the sentence below the mandatory minimum sentence
29 for the offense unless the court finds that the defendant has successfully complied with and
30 completed the treatment plan and that treatment plan approximated the severity of the
31 minimum period of imprisonment, and (2) may consider the defendant's compliance with the

1 treatment plan as a mitigating factor allowing a reduction of a sentence pursuant to
2 AS 12.55.155(a). A court entering an order finding the defendant has violated probation may
3 withhold pronouncement of disposition to provide an incentive for the defendant to complete
4 recommended treatment successfully.

5 (i) If the defendant is terminated from therapeutic court, the defendant's no contest or
6 guilty plea or admission to a probation violation to the court shall stand, and the sentence
7 previously imposed shall be executed or, if sentence has not yet been imposed, imposition of
8 sentence shall be scheduled in a nontherapeutic court.

9 (j) Notwithstanding any other provision of law to the contrary, the judge, the state, the
10 defendant, and the agencies involved in the defendant's treatment plan are entitled to
11 information and reports bearing on the defendant's assessment, treatment, and progress. The
12 victim is entitled to periodic reports on the defendant's progress and participation.

13 (k) The Alaska Judicial Council will develop a uniform data collection form for use
14 by the therapeutic courts. The Council shall evaluate the effectiveness of the pilot therapeutic
15 court programs by developing baseline information and comparing that data with ongoing
16 program results as reported by the therapeutic courts and prepare a report to the legislature,
17 courts, and affected agencies. The report shall be disseminated no later than July 1, 2005.

18 (l) In addition to other conditions authorized under AS 12.30 or AS 12.55, a
19 therapeutic court may impose the following conditions of bail or probation:

20 (1) require the defendant to submit to electronic monitoring if the
21 commissioner of corrections agrees to this condition;

22 (2) require the defendant to submit to house arrest.

23 (m) A defendant who is subject to a condition set out in (l) of this section is not
24 entitled to credit for time served.

25 (n) In addition to other conditions authorized under AS 12.30, a therapeutic court may
26 require the defendant to take a drug or combination of drugs intended to prevent the
27 consumption of alcoholic beverages.

28 (o) The Department of Health and Social Services may require treatment providers to
29 make advances to a defendant accepted to the therapeutic court to cover the initial costs
30 related to the use of Naltrexone if the defendant is otherwise without resources to pay those
31 costs. The court shall require as a condition of probation that the defendant repay the

1 treatment provider.

2 (p) In this section, "sentence" or "sentencing" includes a suspended imposition of
3 sentence as authorized under AS 12.55.085.

4 * **Sec. 2.** AS 22.10.120 is amended to read:

5 **Sec. 22.10.120. Number of judges.** The superior court consists of 34 [32]
6 judges, five of whom shall be judges in the first judicial district, three of whom shall
7 be judges in the second judicial district, 19 [18] of whom shall be judges in the third
8 judicial district, and seven [SIX] of whom shall be judges in the fourth judicial
9 district. At the time of submitting the names of nominees to the governor to fill a
10 vacancy on the superior court bench, the judicial council shall also designate the
11 district in which the appointee is to reside and serve.

12 * **Sec. 3.** AS 22.10.120 is amended to read:

13 **Sec. 22.10.120. Number of judges.** The superior court consists of 33 [34]
14 judges, five of whom shall be judges in the first judicial district, three of whom shall
15 be judges in the second judicial district, 18 [19] of whom shall be judges in the third
16 judicial district, and seven of whom shall be judges in the fourth judicial district. At
17 the time of submitting the names of nominees to the governor to fill a vacancy on the
18 superior court bench, the judicial council shall also designate the district in which the
19 appointee is to reside and serve.

20 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 COURT RULE AMENDMENT. Section 1(h) of this Act has the effect of amending
23 Rule 35, Alaska Rules of Criminal Procedure, by allowing a court to consider and reduce a
24 criminal sentence outside of the time periods currently provided in that rule.

25 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 APPLICABILITY OF SECTIONS 2 AND 3. (a) Notwithstanding the effective date
28 of AS 22.10.120, as amended by sec. 2 of this Act, the additional superior court judge for the
29 fourth judicial district may not be appointed or otherwise take office or commence official
30 duties before January 1, 2002.

31 (b) Notwithstanding the effective date of sec. 3 of this Act, amending AS 22.10.120,

1 the additional superior court judge for the third judicial district, authorized in sec. 2 of this
2 Act, may continue to serve except as otherwise provided by law. However, if that judge is
3 serving when the next superior court vacancy in the third judicial district occurs, that vacancy
4 may not be filled.

5 * **Sec. 6.** Section 3 of this Act takes effect June 30, 2004.

6 * **Sec. 7.** Except as provided in sec. 6 of this Act, this Act takes effect July 1, 2001.