

HOUSE FINANCE COMMITTEE  
March 30, 2001  
1:43 PM

TAPE HFC 01 - 68, Side A  
TAPE HFC 01 - 68, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 1:43 PM.

MEMBERS PRESENT

Representative Eldon Mulder, Co-Chair  
Representative Bill Williams, Co-Chair  
Representative Con Bunde, Vice-Chair  
Representative Eric Croft  
Representative John Davies  
Representative Richard Foster  
Representative Carl Moses  
Representative Bill Hudson  
Representative Ken Lancaster

MEMBERS ABSENT

Representative John Harris  
Representative Jim Whitaker

ALSO PRESENT

Representative Brian Porter; Dean Guaneli, Chief Assistant Attorney General, Criminal Division, Department of Law; Doug Wooliver, Administrative Attorney, Alaska Court System; Loren Jones, Community Mental Health/API Replacement Project Director, Department of Health and Social Services.

PRESENT VIA TELECONFERENCE

Janet McCabe, Partners for Downtown Progress; Kac'e McDowell, Cabaret Hotel and Restaurant Retail Association; Blair McCune, Deputy Director, Alaska Public Defenders Agency.

SUMMARY

HB 172 "An Act relating to therapeutic courts for offenders and to the authorized number of superior court judges."

HB 172 was heard and HELD in Committee for further consideration.

#hb172

HOUSE BILL NO. 172

"An Act relating to therapeutic courts for offenders and to the authorized number of superior court judges."

REPRESENTATIVE BRIAN PORTER, SPONSOR spoke in support of HB 172. The legislation aims, through a specialized court and a specialized process, to deal with the most dangerous of alcohol cases: DWI's and specifically multiple DWI offenders. The Legislature recognizing the seriousness of the offense has balanced crimes with treatment and jails. Four of five first time offenders do not re-offend. Serious sanctions for first time offenses are successful as deterrents. The bill is aimed at the one of five that does re-offend. Seventy-five percent of those arrested on felony DWI's re-offend. The thesis of the legislation is that the missing ingredient is the acknowledgment that treatment is necessary to change an addiction behavior. He noted that recent alcohol related traffic fatalities have focused the fact that a treatment approach is necessary. Therapeutic court has been successful in Anchorage at the district court level. He pointed out that an additional pharmaceutical approach is now available to counter addictive behavior. He acknowledged that the legislation has significant fiscal notes attached, but emphasized that a serious problem needs serious resources.

Vice-Chair Bunde questioned if the program exists in Anchorage. Representative Porter noted that there is a Wellness Court in the District Court that deals with multiple offenders and some felonies. The legislation would direct the therapeutic court at felonies and would reside in the Superior Court. There is also a drug court in the Superior Court that is aimed at narcotics and dangerous drug offenders. The Anchorage court is funded through a federal grant.

Representative John Davies expressed support for the legislation and questioned if it is a pilot program and if it would be available in other places in the state in the future.

Representative Porter responded that the legislation would establish a court in Anchorage. A court would be established in Bethel after six months. The delay is designed to allow Bethel to benefit from the establishment of the Anchorage court and give time to involve the local community.

Vice-Chair Bunde noted that there is a 75 percent recidivism rate among felony offenders. He asked if the therapeutic courts reduce the recidivism rate. Representative Porter did not have statistics, but emphasized that studies have shown them to be successful in reducing the recidivism rate of those treated.

Representative Lancaster questioned if there would be future evaluations on the program. Representative Porter noted that there is a provision to evaluate the success of the program.

Representative Hudson noted that the fiscal cost is \$2 million general fund dollars and questioned if participants would be required to partially pay. Representative Porter affirmed that participants would share in the cost. He observed that the program would allow participants to stay out of jail and remain working. The goal of the legislation is to not only pay for the cost treatment, but to also setup a program to compensate victims for the original offense. The defense, prosecution and court would evaluate each DWI offender. All parties have to agree to participation in the program. The participating defendants would plead guilty. The court would then suspend sentencing until the end of the treatment program. The legislation currently includes timelines from arrest to sentencing. He observed that the timelines restrict the courts flexibility and noted that he would offer an amendment to delete them.

Representative Lancaster questioned if "drug" is broad enough to encompass prescription drugs. Representative Porter thought that prescription drugs would be covered. He emphasized that he did not want to limit the inclusion of drugs.

Representative John Davies spoke to the fiscal impact. He asked if there would be reductions in other places in the budget to compensate for the fiscal notes. Representative Porter noted that it would be more appropriate for the agencies to respond to the question.

DOUG WOOLIVER, ADMINISTRATIVE ATTORNEY, ALASKA COURT SYSTEM spoke in support of the legislation. He noted that a felony Drug Court in Anchorage, supported by federal grants, would begin operations in a month. A Mental Health Court has operated for the last two years. The Wellness Court is aimed at municipal alcohol abusers, especially misdemeanor multiple DWI offenders. The Wellness Court is successful but suffers from the fact that it operates through the will of a single judge. He stressed that therapeutic courts, which utilize naltrexone are very successful. He emphasized the need for studies. The Alaska Court System fiscal note calls for two new Superior Court Justices. The legislation focus on felony DWI's which are heard in Superior Court. The Superior Court already has more cases than it can hear. Therapeutic courts take more effort per defendant. Defendants return to the court for multiple hearings. The increase in workload triggers the need for an extra judge in Anchorage. The felony caseload has doubled since the last superior court judge was added in 1985.

Mr. Wooliver discussed the need for a superior court judge in Bethel. The Bethel court has twice the workload as other areas. A new district court judge was funded in the previous fiscal year. The legislation would turn this position into a superior court judge. The fiscal note reflects the difference.

Co-Chair Williams referred to suspended sentencing. Mr. Wooliver explained that when the court, prosecution and defense agree that a person is a candidate for the program the candidate would plead guilty. Defendants are apprised of the sentencing benefit from their participation in the program. If the candidate is successful in completing the program they would receive the agreed upon reduction in sentencing. If they drop out of the program the judge would sentence them under whatever terms are appropriate at that time. He acknowledged that relapses occur. The program generally lasts a year or more. The legislation anticipates 80 participants a year in Anchorage. The Bethel program anticipates serving 15 people in the first half-year and 45 per year in the following full year.

Vice-Chair Bunde questioned if the new judges would have duties in addition to their work with the therapeutic court.

Mr. Wooliver affirmed that judges would have other duties. He explained that other felony DWI cases, which are being handled in District Court, would be transferred to the Superior Court where they belong. The additional judges would also handle increases in workload, which would be generated by the passage of HB 4. The Alaska Court System cannot do more without an additional judge, however, once a judge is added more can be done. Additional court proceedings would offset reductions in recidivism. The exact amount of savings is unknown.

Vice-Chair Bunde stressed the benefit of keeping people off the road and emphasized that if the fiscal cost is comparable that the program would be a win/win situation.

In response to a question by Representative Hudson, Mr. Wooliver noted that there are an average of 100 DWI felonies a year in Anchorage. The number could increase if legislation before the Legislature is adopted.

LOREN JONES, COMMUNITY MENTAL HEALTH/API REPLACEMENT PROJECT DIRECTOR, DEPARTMENT OF HEALTH AND SOCIAL SERVICES testified in support of the legislation. He noted that the department has submitted an additional \$55 thousand dollar fiscal note in response to an amendment in the House Judiciary Committee. The amendment added a responsibility to establish infrastructure to support advancements to defendants for the cost of treatment.

Mr. Jones observed that 56 percent of the individuals in out patient treatment were abstinent for a year; 47 percent of residential patients were abstinent after a year. He pointed out that residential patients have a higher level of impairment. Those that received the greatest number of contact hours in treatment did better than the group as a whole. An independent group conducted the study on rural and urban areas for out patients and residential patients several years ago. The fiscal note does not anticipate the use of residential treatment. The Division would provide grant funds to local nonprofit organizations in Anchorage and Bethel. The fiscal note would assure that treatment is immediately available. There are wait lists for services in Anchorage and Fairbanks. Treatment must be immediately available when they enter the therapeutic court. He noted that up to 10 hours of direct services a week are received in the first 6 - 8 weeks. By the end of the program they receive services once a month. They would also get naltrexone services if appropriate. The judge would check on progress and receive reports from counselors.

Co-Chair Williams questioned if the grants would be available each year. Mr. Jones noted that the department's fiscal note for grants is \$501 thousand dollars: \$409 thousand dollars for Anchorage and \$92 thousand dollars for Bethel during the first year. The second year cost in Bethel would be \$276 thousand dollars. This is 75 percent of the total costs; defendants are expected to pay at least 25 percent of the cost in Anchorage and 10 percent in Bethel.

Vice-Chair Bunde questioned how naltrexone affects people. Mr. Jones explained that naltrexone is an alcohol antagonist that reduces the cravings to take the first drink. Naltrexone does not make people sick. The only counter indication is severe liver disease. Chronic alcoholics that take naltrexone tend to stay in treatment longer and report significant reductions in cravings. It is an expensive drug.

Co-Chair Mulder referred to the pool of eligibility. He noted that the legislation states that the court may accept a defendant that is not charged with an unclassified felony, a class A felony, or an offense under AS 11.41.410 - 11.41.470 and will focus on defendants charged with multiple driving while intoxicated offenses.

Mr. Jones observed that there are 100 felony DWI offenders in Anchorage. There are defendants with multiple offenses that could still be misdemeanors due to the length between offenses. The decision was made to limit the court to 80 in Anchorage, 15 for the first half-year in Bethel and 45 in Bethel the next full year. The pool of people that could self-select would be larger. The Division's fiscal note is \$400 thousand dollars. The court would be established for a three-year period.

Co-Chair Mulder noted that there would be an annual \$2 million dollar fiscal note. Representative Croft observed that the fiscal cost in the year 2003 would be \$2.5 million dollars (the cost per defendant would be \$20,000). He stressed that 100 people in jail would cost \$2.5 million dollars. If 100 people were kept out of prison the fiscal cost would be even. He pointed out that 75 percent of felony DWI offenders re-offend. He suggested that the recidivism rate would be lowered from 75 to 50. He stressed that there would be collateral benefits from reducing DWI offences.

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Mr. Jones explained that after arrest a person enters the court. If they are found guilty the court places felony offenders in jail. Misdemeanor offenders may be placed in jail or referred to alcohol safety action programs for assessment and treatment. Treatment providers try to engage the person. In therapeutic courts the judge, prosecutor, public defender, probation officer and the treatment counselor come together as a team. The team puts more focus on the individual in order to keep them out of jail, prevent them from driving while intoxicated and encourage sobriety and long-term recovery so that they can be productive and not repeat their offense. The legislation provides funding specifically for repeat offenders, which desperately need to be targeted, without impacting scarce resources, for which there are wait lists. The ultimate goal is to stop the behavior and reduce deaths from drunk drivers.

Representative Hudson agreed that it is not just a matter of reducing expenses. He emphasized the value of prevention versus incarceration.

DEAN GUANELI, CHIEF ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW spoke in support of the legislation. He noted that the Legislature's attention over the last 7 years has focused on increasing jail sentencing for alcohol related offenses. He questioned if longer sentencing is working. He acknowledged that defendants are not driving while in jail, but noted that recidivism rates are high. He stressed that the therapeutic court program seems to be working and is worth a try. The pilot program allows judges flexibility. Suspension of sentencing provides an incentive. He maintained that the program should be done on a limited and controlled basis to see if it works. There is a requirement for a follow-up evaluation. The department feels that the legislation contains sufficient safe guards.

Mr. Guaneli acknowledged the fiscal cost, but stressed that the cost of incarceration is also expensive. He observed that the average time served by repeat DWI offenders is 9 - 10 months. Third time offenses receive 6 - 8 months. Fourth

time offenders receive 10 - 13 and 5th time offenders receive up to 18 months. There is a population of hard-core drinkers that are difficult to crack. He acknowledged that there would be relapses. He stressed that there are economies of scale. He thought that in comparison to the cost of incarceration the program would break even.

Co-Chair Mulder questioned if the number of potential applicants is accurate. Mr. Guaneli noted that the unclassified felony, class A offenses and sex offenders that are being excluded make a relatively small percentage of the felony offenders. There are approximately 100 cases a year in Anchorage. In Bethel, some drug-addicted offenders would also benefit. There are over 1,000 cases of serious offenses as the result of alcohol that could benefit from a similar program.

Co-Chair Mulder questioned if the assumption is that 80 cases would plead guilty to take advantage of the program. Mr. Guaneli stressed that there are sufficient incentives to encourage people to enter the program. The target of 80 was chosen to limit the program.

Co-Chair Mulder questioned the measurement of success and asked what is being used as a baseline comparison. He maintained that without a baseline the department is going to come back and claim that the program was an unqualified success. Mr. Guaneli noted that the rate of success is based on recidivism. Mr. Jones noted that the Alaska Judicial Council would evaluate the program.

Co-Chair Mulder recommended a letter of intent, to outline baseline criteria.

Representative Croft observed that the recidivism rate and sobriety over consecutive periods such as 6 months and a year would be a baseline.

Mr. Guaneli spoke in support of a long-term follow-up and acknowledged the need for baseline information.

Representative John Davies noted that page 3, line 19 calls for collection of data about and evaluation of the effectiveness of the program and maintained that a letter of intent to clarify would be out of order. He stressed that the baseline needs to be the total population.

Representative Foster noted that jail is not a deterrent. He felt that the program would be beneficial.

JANET MCCABE, PARTNERS FOR DOWNTOWN PROGRESS testified via teleconference in support of the legislation. Partners for Downtown Progress is the local nonprofit organization that worked with Judge Wanamaker to developed and implement the

Wellness Court. Federal funding supports treatment and case coordination. She pointed to the success of the Wellness Court. She spoke in support of allowing flexible timelines. She noted that the Wellness Court is funded by a one-time federal grant that will be depleted January 1, 2002. She spoke in support of continuing the District Court program. The majority of DWI cases are on the municipal level in Anchorage. She stated that they have language that they would like to recommend for the criteria of selection. She observed that defendants have nominated themselves after seeing video footage on naltrexone. She stressed the need to choose persons that are going to succeed. She observed that the pilot programs would be in accordance with a mutually agreed-upon plan. She suggested that there be a leader and recommended that "under the leadership of the therapeutic court judges" be added. She reiterated that funding for the Wellness Court would end.

Representative John Davies asked the amount of the federal grant for the Wellness Court. Ms. McCabe responded that the federal grant is \$150 thousand dollars. Treatment for 40 people was covered with the grant. The goal is to get the defendant started. The program pays for the first month or 2 of naltrexone, and funds a case coordinator hired by the municipality to work with the defendants and help identify candidates. There is also a community liaison. The administration of the program is on a volunteer basis.

Representative John Davies questioned if the clientele of the Wellness Court is different from the clientele that would be served by the legislation. Ms. McCabe noted that the Wellness Court serves municipal cases that are predominately misdemeanants.

Representative John Davies asked if it is the same form of treatment and how often they are back before the court. Ms. McCabe noted that clients are brought back to court once a month and sent back to jail if they have relapsed. Out patient treatment is used. Naltrexone is also used. Offenders are supervised for a year to 18 months.

BLAIR MCCUNE, DEPUTY DIRECTOR, ALASKA PUBLIC DEFENDERS AGENCY testified via teleconference in support of the legislation. He noted that the Alaska Public Defenders Agency's inability to follow up on their clients. They participate with Anchorage in the Mental Health court, which has been successful. He acknowledged that the Mental Health Court is more resource intensive, but emphasized their success rate. He spoke in support of allowing credit for time served.

Co-Chair Mulder noted that a defendant referred to a court shall enter a plea of guilty or no contest within 45 days after the defendant's first appearance before the

therapeutic court. Representative Porter interjected that he would not propose an amendment to address this section.

Co-Chair Mulder questioned the need for 5 more public defenders if the clients are pleading guilty. Mr. McCune noted that the success of the court is based on a team approach. He observed that defendants will discuss things with the public defenders under attorney/client privileges and emphasized that the defense attorney has a strong role to play in assisting counselors and determining the direction of treatment. He observed that there would be an added superior court judge. It takes four lawyers to handle the work before each superior court judge. Cases before the therapeutic courts require additional work and take more time than other cases. He felt that the fiscal note was justified.

Representative Porter pointed out that there would be a diminishment of the superior court judge's activity since he would be involved with therapeutic courts, which require more time per case. He maintained that there would not be additional DWI arrests as the result of the legislation. If anything there would be less.

Vice-Chair Bunde noted that the superior court judges would not be 100 percent focused on therapeutic court cases. He questioned if the public defenders added would be also working on other cases. Mr. McCune acknowledged that the additional public defenders would also be working on other cases.

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ADJOURNMENT

The meeting was adjourned at 3:45 p.m.