ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 21, 2001
1:13 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Scott Ogan, Vice Chair
Representative Jeannette James
Representative Kevin Meyer
Representative Albert Kookesh

MEMBERS ABSENT

Representative John Coghill
Representative Ethan Berkowitz

COMMITTEE CALENDAR

HOUSE BILL NO. 172
"An Act relating to therapeutic courts for offenders and to the authorized number of superior court judges."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 172
SHORT TITLE:THERAPEUTIC DRUG AND ALCOHOL COURTS
SPONSOR(S): REPRESENTATIVE(S)PORTER

Jrn-Date	Jrn-Page		Action
03/09/01	0521	(H)	READ THE FIRST TIME - REFERRALS
03/09/01	0521	(H)	JUD, FIN
03/21/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE BRIAN PORTER
Alaska State Legislature
Capitol Building, Room
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 172.

DEAN J. GUANELI, Chief Assistant Attorney General

Legal Services Section-Juneau
Criminal Division
Department of Law
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: Assisted with the presentation of HB 172 and answered questions.

DOUG WOOLIVER, Administrative Attorney
Administrative Staff
Office of the Administrative Director
Alaska Court System
820 West 4th Avenue
Anchorage, Alaska 99501-2005
POSITION STATEMENT: Assisted with the presentation of HB 172 and answered questions.

BLAIR McCUNE, Deputy Director
Public Defender Agency
Department of Administration
900 West 5th Avenue, Suite 200
Anchorage, Alaska 99501-2090
POSITION STATEMENT: Expressed support for the concept of therapeutic courts, brought up concerns regarding HB 172, and answered questions.

MARY MARSHBURN, Director
Division of Motor Vehicles
Department of Administration
3300B Fairbanks Street
Anchorage, Alaska 99503
POSITION STATEMENT: Expressed support of HB 172 and noted it had no direct impact on the division.

CANDACE BROWER, Program Coordinator/Legislative Liaison
Office of the Commissioner - Juneau
Department of Corrections
431 North Franklin Street, Suite 203
Juneau, Alaska 99801
POSITION STATEMENT: Assisted with the presentation of HB 172 and answered questions.

JAMES WANAMAKER, Judge
Third Judicial District Anchorage
District Court
Alaska Court System
825 West 4th Avenue

Anchorage, Alaska 99501-2004
POSITION STATEMENT: During hearing on HB 172, provided comments and answered questions regarding the existing wellness court.

MARY UNDERWOOD
5141 Spruce Creek Circle
Anchorage, Alaska 99516
POSITION STATEMENT: Testified in support of HB 172, but expressed the need to extend the program to the felons.

ERNIE TURNER, Director
Division of Alcoholism & Drug Abuse
Department of Health & Social Services (DHSS)
PO Box 110607
Juneau, Alaska 99811-0607
POSITION STATEMENT: During hearing on HB 172, testified in support of therapeutic courts.

LOREN JONES, Director
CMH/API Replacement Project
Division of Mental Health and Developmental Disabilities
Department of Health & Social Services (DHSS)
PO Box 110620
Juneau, Alaska 99811-0620
POSITION STATEMENT: During hearing on HB 172, provided information on DHSS's fiscal note.

JOHN M. RICHARD, Municipal Prosecutor
Criminal Division,
Municipality of Anchorage Department of Law
420 L Street, Suite 100
Anchorage, Alaska 99501
POSITION STATEMENT: Testified in support of [therapeutic courts and HB 172].

CARMEN CLARKWEEKS, Private Criminal Defense Attorney
3101 C Street, Suite 200
Anchorage, Alaska 99501
POSITION STATEMENT: Offered suggestions regarding HB 172.

JULIE KITKA, President
Alaska Federation of Natives
1594 C Street, Suite 300
Anchorage, Alaska 99501
POSITION STATEMENT: During hearing on HB 172, testified in support of alternative opportunities [to address alcohol and substance abuse].

JANET McCABE, Chair
Board of Directors
Partners for Downtown Progress
1320 K Street
Anchorage, Alaska 99501
POSITION STATEMENT: Offered suggestions regarding HB 172.

PATRICK JAMES, Attorney
1500 West 33rd, Suite 100
Anchorage, Alaska 99503
POSITION STATEMENT: Offered suggestions regarding HB 172.

JIM HENKELMAN, Statewide Outreach Coordinator
Outreach Program
Yukon-Kuskokwim Health Corporation
700 Chief Eddie Hoffman Highway
Bethel, Alaska 99559
POSITION STATEMENT: During hearing on HB 172, testified in support of the therapeutic court concept, but noted some concerns.

RUDOLPH NEWMAN, Graduate
Wellness Court
3253 Carriage Drive
Anchorage, Alaska 99501
POSITION STATEMENT: During hearing on HB 172, related his experience with wellness court.

ACTION NARRATIVE

TAPE 01-37, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:13 p.m. Representatives Rokeberg, James, Meyer, and Kookesh were present at the call to order. Representative Ogan arrived as the meeting was in progress.

HB 172 - THERAPEUTIC DRUG AND ALCOHOL COURTS

[Contains discussion HB 4.]

Number 0040

CHAIR ROKEBERG announced that the committee would hear HOUSE BILL NO. 172, "An Act relating to therapeutic courts for offenders and to the authorized number of superior court judges."

Number 0069

REPRESENTATIVE BRIAN PORTER, Alaska State Legislature, sponsor, explained that crimes relating to alcohol and other drugs have been a significant problem in Alaska. Driving while intoxicated (DWI) is arguably the most dangerous of the state's alcohol-related offenses. Consequently, legislatures over the years have developed dramatic penalties for DWI offenses. He noted that first-time DWI offenders have the smallest rate of recidivism; four out of five DWI offenders do not repeat the offense. After losing three days in confinement, paying substantial fines, and losing driving privileges for over 90 days, many first-time offenders get the message. In the process, more information has been developed about persons who continue to offend. Representative Porter referred to past legislation he had sponsored, which created the first felony DWI statute in Alaska. He said the intent of that prior legislation, in addition to getting DWI offenders out from behind the wheel of a car for a longer period of time, was to allow the court a longer period of time to work towards the constitutionally required goal of offender rehabilitation.

REPRESENTATIVE PORTER offered that HB 172 was a giant step in the direction of offender rehabilitation. He said that HB 172 is intended, with the recent advancements in psychological and medical treatment, to dramatically reduce addictions, thus changing the headlines which relate that another Alaskan has lost his or her life to a driver with three, four, and even ten prior DWI convictions. Representative Porter explained that the program [encompassed in HB 172] is intended to provide an up-to-date, systematic approach to an extremely important area of Alaskan law. He remarked that he had developed HB 172 with the assistance of all the agencies that will be involved in the implementation of this coordinated approach.

Number 0406

REPRESENTATIVE MEYER asked why Anchorage and Bethel were chosen as sites.

REPRESENTATIVE PORTER explained that Anchorage was chosen because it is a significant urban area with a problem, and it

already has, at the district-court level, a therapeutic court program in progress. Bethel was chosen because it is a hub that serves a lot of neighboring rural areas and therefore offered a rural approach to implementation of the program. He added that HB 172 has provisions that ask the various agencies to coordinate with the local residents in rehabilitation efforts. Representative Porter explained that HB 172 creates a pilot program and, if successful, would be expanded to other areas of the state.

Number 0561

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law, said he has oftentimes stressed the importance of treatment for DWI offenders. Jail terms serve a purpose, but at some point offenders are released from jail; unless some form of treatment has been provided, either while in jail or as a follow-up afterwards, there is a likelihood that offenders will re-offend. [The department] supports the provisions of HB 172 as they are written. He said he thought it was important both to rely on standard treatment programs, which involve inpatient [services] and counseling, and to try innovative therapies, particularly those that involve drugs [that help to combat cravings]. He also said he was encouraged by results shown in other states that have instituted programs [similar to that created by HB 172].

MR. GUANELI referred to provisions in HB 172 that he said [the department] felt were important. One important provision is that defendants, at an early point in time, get into the therapeutic court program, that they request to get into the program soon after arraignment, and that they enter a plea at an early point in time. There are time limits within HB 172 that are designed to ensure that defendants entering the program are motivated to cure their alcohol problem. He added that he thought that motivation was a key element to success. If too much time is spent in legal maneuvering and filing motions, it signals to prosecutors that the defendant is not serious about addressing the root cause of the problem. He noted that another problem when the legal process delays treatment is that the window of opportunity is lost during which treatment can take hold.

Number 0789

MR. GUANELI said that it is also important to realize that while people are going through the criminal justice process, they may not necessarily need to be in jail. Other options such as house arrest (HA) and electronic monitoring (EM) exist. He said he thought that in appropriate cases, courts should have the latitude to use the options of HA and EM. Another important provision of HB 172 is that while a person is serving HA or on EM, the time served does not count against any jail sentence imposed. He said that because of the delays that sometimes occur during the criminal justice process, it is important that a person not be able to argue that the time served during HA or on EM enables him or her to avoid participating in a treatment program. He had concern that the normal legal provisions, which might give credit for time served during HA or on EM, would be abused in the instance of DWI defendants. He said if a defendant is really motivated to participate in the program, then that person should go into the program without being concerned about time already served during HA or on EM; the person should just be devoted to completing the program and getting on with life.

Number 0959

CHAIR ROKEBERG inquired about discretion of the judge with regard to the EM provision in HB 172. He offered that there might be circumstances in which the discretion of the judge should take precedence over statute. He suggested that perhaps a change could be made to allow for judicial discretion, rather than strictly deny credit for EM.

MR. GUANELI argued that there should be a hard-and-fast rule about whether someone does or does not get credit. He added that the judge's discretion comes into play during sentence imposition. If a judge were to ordinarily impose an eight-month sentence but a defendant has already served some very strict time under HA, then the judge could choose to impose a six-month sentence instead. Judicial discretion is based on how much of a sentence gets imposed; it is not based on a calculation of how much time has been served under what conditions. The latter calculation would only cause unnecessary litigation during a time that could be better spent completing a treatment program. He said that it seems [to the department] that the issue of credit given for HA or EM should be either black or white; either a person gets credit or does not get credit.

Number 1075

CHAIR ROKEBERG referred to HB 4, which has an increased third-time-offender felony-category DWI offense. He said he thought that the provision in HB 172 regarding credit for HA or EM would take away a main tool that a judge has to provide appropriate monitoring, as well as restricting a person's ability to be productive. He said that part of the wellness court provisions was to modify the offender's behavior so he or she would not have to serve as much time in a correctional institution.

Number 1134

MR. GUANELI said [the department] believes that the offender's incentive is provided for in HB 172 by stipulating that the judge, despite any mandatory sentencing provisions, may suspend the entire sentence if the court-ordered conditions for treatment are complied with. The offender may very well have to be on EM or serve HA, but the incentive for participating in the treatment program is the possibility of avoiding some of the strict mandatory sentencing provisions currently in statute.

CHAIR ROKEBERG sought clarification. He gave as an example a judge who required HA for 240 days with EM provisions; then it would be up to the judge's discretion that that could constitute the sentence because of the waiver of the other mandatory provisions, and it would be up to the judge's discretion whether to give or include "good time" because it would be part of his order if the judge chose to use that device. He inquired if that was what Mr. Guaneli meant.

MR. GUANELI attempted to clarify what he meant. He said if the judge chooses, in imposing sentence, to give a lesser sentence because of other criteria that the defendant has had to comply with, it is the judge's choice. But also, it is a much simpler process to look only at whether a defendant complied with the conditions imposed. He said that the problem faced by [the department] is that a defendant who is on EM builds up "credit," and if enough credit is built up by the time of sentencing, the defendant can just walk away from any further sentence impositions; thus it creates a situation that [the department] wants to avoid.

Number 1296

CHAIR ROKEBERG said he understood that Mr. Guaneli did not want the public defender claiming the defendant had already spent 240 days on EM and therefore had met the statutory requirement for sentencing. Chair Rokeberg said he was attempting to point out,

however, that if the judge decided to let the defendant meet the statutory requirement of sentence imposition while on EM, then the judge had full discretion to do so under HB 172.

MR. GUANELI responded that if the judge was going to allow that scenario, then that was up to the judge. He said he would rather have the judge make that decision at the time of sentence imposition instead of being forced into that situation because time elapsed while the defendant was under HA. Mr. Guaneli further clarified that the time for discretion by a judge is while imposing a sentence and in deciding how much [time] to suspend. He did not want to allow for possible manipulation of the [judicial] process.

Number 1349

CHAIR ROKEBERG noted there were concerns about the "gate keeping" provisions of HB 172. He said he would describe the problem as an historic reluctance on the part of the district attorney to participate in the existing program. There had been criticism of the provision that has the prosecuting attorney act as the gatekeeper in determining who could enter into the program.

MR. GUANELI explained that the current Naltrexone program in the district court has had just a small number of cases. [The department] has been reluctant to participate for a couple of reasons. One reason is that there are not any structured provisions in the existing program such as can be found in HB 172. It is important that all parties know what the rules are. The second reason is that the existing program is in district court, and he said [the department] feels that felony drunk driving cases should be handled in superior court. He added that HB 172 cures a number of what [the department] considers shortcomings of the existing program. One, [the program in HB 172] continues to be at the superior court level, and two, it requires that at least the restitution and other portions of a sentence be imposed at an early point in time, thus enabling the victim to begin collecting restitution. Another point Mr. Guaneli made was that [the department] was involved in developing the program encompassed in HB 172; [the department] believes in the program and is very willing to participate in it.

Number 1517

CHAIR ROKEBERG asked Mr. Guaneli to comment on some of the problems that revolved around timelines. He said he had heard of cases where there was a failure to enter into a judgment and/or suspended imposition of sentence (SIS), or restitution orders in a timely manner.

Number 1540

MR. GUANELI said that the specific provisions regarding timelines are that defendants have to request to get into the program within 45 days, and once accepted, defendants have to enter a plea within 45 days. He said [the department] thinks those are appropriate provisions that will enable the process to move along in a timely manner, and will ensure that defendants who are accepted into the program are ones who are highly motivated to participate. He noted that last year the legislature had passed a bill that said a defendant who pleads guilty within 30 days of arraignment gets a mitigating factor against the sentence, thereby showing that the defendant is remorseful and really wants to make amends for his or her conduct. That statute gives the defendant a 30-day window, whereas HB 172 gives the defendant up to 90 days to enter a plea and then an additional 30 days before sentence is imposed, a total of four months, which Mr. Guaneli said he thought was plenty of time for an offender to take stock of the situation and make the decision to get on with the program.

CHAIR ROKEBERG asked if there would be any misdemeanants before this court [that is created by HB 172], or if it is only going to involve felony cases.

MR. GUANELI said that the program [created by HB 172] is set up at the superior court level. The superior court in Alaska is called the "court of general jurisdiction" and as such has jurisdiction over all cases. Misdemeanor drunk driving cases can be filed in the superior court, and can proceed through the superior court. As an example, if [the department] has a case wherein the "look-back" provisions cause the defendant to be treated legally as a second offender, but [the department] knows that the defendant has third and fourth convictions far in the past, [the department] can choose to have the offender go to the superior court and participate in the program. He added that the program is intended to focus on felony cases because most everyone feels that that is where most of the problems are, but the latitude is there to send other types of cases to the court [created by HB 172].

Number 1702

MR. GUANELI, in response to questions posed by Chair Rokeberg, said that the role of the gatekeeper - that being the prosecutor - is to set guidelines and choose the appropriate "second offenders" who are not really second offenders but third and fourth offenders. He said that the court could not accept someone into the program without the agreement of the prosecutor; the prosecutor, the defense, and the court all have an integral role in the program, and also have a stake in the success of the offender. It takes an enormous amount of time to bring each offender back for periodic review hearings, to offer encouragement when needed, and to discourage inappropriate behavior before it gets out of hand. Getting agreement from all parties involved that any given case is an appropriate one for the program, and worth the resources expended, is an important part of the process.

MR. GUANELI also responded that nothing in HB 172 is designed to interfere with existing programs, and it was his understanding that there might be amendments offered later that will make that absolutely clear. With regard to the provisions in HB 172 that are not consistent with current practices, Mr. Guaneli said that if the district court wishes to maintain those practices they now indulge in, they are free to do so; the program in HB 172 is designed to be at the superior court level and funded thus. If the court system wants to have other types of programs at other levels and is willing to fund them, it can.

Number 1865

REPRESENTATIVE OGAN referred to page 4, line 2, regarding the 30-day provision, and asked what the current standard of practice was.

MR. GUANELI said that generally in felony cases, the amount of time that elapses between entering a plea and sentencing usually depends on how much time the probation office needs to write a pre-sentence report for the judge. In other words, it is the time needed to investigate the person's background, write a report, and make a recommendation. He said he believed that felony drunk driving cases have a shortened process and therefore do not take as long as murder cases or rape cases. He added that by the time most of [the drunk driving] cases have gotten to the point of entering a judgment, enough is known about the offender, as well as what the appropriate action to take is, that 30 days is plenty of time in which to allow the

probation office to write a report. He noted, however, that in serious felony cases in Anchorage it often takes six weeks to get a pre-sentence report written, and then a sentencing hearing must be scheduled, so in the most serious of felony cases it would ordinarily take longer than 30 days.

Number 1959

MR. GUANELI, in response to questions by Representative Ogan, said that the 30-day time limit would not have a fiscal impact on the Department of Law. With regard to a presumptive or mandatory sentence being suspended, he said that even looking only at the impact on the Department of Corrections (DOC), if an offender did not set foot in a DOC facility, it would create savings. The average sentence for a felony drunk driver in Anchorage is a period of several months, and if an offender successfully completes the long period of probation, it means that the DOC won't have to deal with that offender and will therefore experience less impact.

REPRESENTATIVE OGAN mentioned he had questions regarding the handout provided by the Alaska Judicial Council.

CHAIR ROKEBERG suggested deferring those questions to the representative from the Alaska Court System (ACS).

Number 2088

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS or the "court"), said the court supports the idea of therapeutic courts, and is encouraged by the legislature's support of them. Currently, there are three therapeutic courts in Alaska: a mental health court that treats criminal defendants with significant mental health problems; a soon-to-be-operational therapeutic court for felony-drug offenders; and the wellness court, started by Judge Wanamaker, that treats alcohol-related offenders with a Naltrexone-based therapy. He said that because these types of programs are new, the court felt that it was wise to start off with pilot projects so that data can be developed in order to determine effectiveness. He noted that the anecdotal evidence from Judge Wanamaker's court was thus far very encouraging.

MR. WOOLIVER explained that both HB 4 and HB 172 generate a superior-court-judge position. However, only one position is needed. If the position is created through passage of HB 172,

then another position will not be necessary under HB 4, or visa versa. He added that the fiscal note in HB 172 includes a range-10 clerk, who will do all the scheduling and paperwork associated with the therapeutic courts.

CHAIR ROKEBERG mentioned details of the fiscal notes for HB 172 as they compared with the fiscal notes for HB 4.

MR. WOOLIVER admitted that the fiscal note for HB 4 mistakenly did not reflect the appropriate amount for equipment expenditures. Mr. Wooliver, in response to Representative Rokeberg, agreed that the proposed amendments to the "purpose" language clarified that HB 172 would not affect the existing programs. The provisions of HB 172 only applied to the pilot program that it created.

Number 2315

BLAIR McCUNE, Deputy Director, Public Defender Agency (PDA), Department of Administration, testified via teleconference. He said that he supported the therapeutic court concept. He acknowledged that the agencies involved had done a lot of work in creating HB 172. He added, however, that [the PDA] had concern over the credit-for-time-served issue. He said that [the PDA] has participated in the existing therapeutic courts in good faith; a lot of work goes into ensuring that specific programs are deserving of credit for time served, and [the PDA] does not see a need for the provision eliminating credit for time served. He added that contrary to comments made by Mr. Guaneli, [the PDA] did not think there were many cases of credit given for EM or HA. Mr. McCune noted that other states sometimes use diversion programs without having judgments or convictions, though he acknowledged that the DOL did not favor those types of programs.

CHAIR ROKEBERG mentioned that the fiscal note reflected 2.75 people providing service for 95 people.

MR. McCUNE explained that typically it takes four attorneys to handle the caseload of a superior court judge. The personnel component reflected in HB 172 is a decrease from the norm. In response to questions by Chair Rokeberg, Mr. McCune said that the PDA's fiscal note for HB 172 would not impact the fiscal note for HB 4. The two pieces of legislation have separate fiscal impacts with regard to the PDA; HB 4 would extend statewide .... [Tape changed sides mid-sentence.]

TAPE 01-37, SIDE B
Number 2480

CHAIR ROKEBERG noted that "the credibility gap's got to kind of narrow up a little bit."

MR. McCUNE agreed to look as closely as possible at [the fiscal impact] of both pieces of legislation.

Number 2467

MARY MARSHBURN, Director, Division of Motor Vehicles, Department of Administration, testified via teleconference. She said simply that HB 172 did not directly affect the division. She did, however, want to express support of HB 172 from the general standpoint of the problem with alcohol as it relates to driving. She said [the division] thinks that HB 172 coupled with treatment programs will provide more effective ways of dealing with offenders.

Number 2448

CANDACE BROWER, Program Coordinator/Legislative Liaison, Office of the Commissioner - Juneau, Department of Corrections (DOC), offered that anytime someone can be diverted from the DOC there would be a cost savings to the state. She said she thinks that the program [created by HB 172] is a tremendous idea, and [the DOC] is hoping that treating offenders will create not only short-term cost savings, but long-term cost savings as well because, as the report by the Alaska Judicial Council highlighted, recidivism will be reduced. She noted that prior testimony reflected that if someone can successfully complete treatment, the savings, both monetarily and in terms of human resources, are tremendous. She said the DOC fully supports HB 172; [the DOC] thinks that it is the key to helping defer costs in the DOC, and in keeping people out of jail. She explained, in response to questions from Representative Ogan, that part of the wellness court is a compliance component, which creates a necessity for the department to monitor offenders and assist them in staying in compliance; that necessity is the reason for the positive fiscal note. She also said that if the program is successful, she would like to see (although could not guarantee) a decrease in future funding requests. She noted that another item the DOC has been looking at, and working on, was one of the fiscal notes for HB 4; if some people can be diverted through the therapeutic court, those people would not require treatment within the DOC.

CHAIR ROKEBERG agreed that if HB 172 passes, there should be savings. He noted that probation officers (PO) would provide follow-up, and acknowledged that perhaps not enough resources were being directed toward POs to ensure proper follow-up for offenders.

Number 2310

REPRESENTATIVE JAMES commented that although she agreed that passage of HB 172 would create savings, she did not see any way to calculate what those savings would be. In addition, she noted that there is always a cost associated with implementing a new program. She said it seemed to her that the whole theory behind the concept of therapeutic courts was to keep drunks off the road, and that would certainly generate private savings, both in lives and property.

MS. BROWER, in response to questions from Representative Ogan, said that the fiscal note for HB 172 was based on existing substance-abuse statutes, and not on any other proposed legislation. And regardless of other legislation that might pass, the programs created by HB 172 would only serve a specific number of offenders.

Number 2178

JAMES WANAMAKER, Judge, Third Judicial District Anchorage, District Court, Alaska Court System, testified via teleconference and noted that he was speaking as an individual judge who runs the wellness court, and not on behalf of the entire ACS. He said the statements of Mr. Guaneli and others reassured him that HB 172 could be crafted so that the existing wellness court would not be placed in the same regulatory structure as the pilot felony court program. He also said that there were only three prosecutors in Alaska: one in the DOL, another in the Municipality of Anchorage, and the third in the City and Borough of Juneau. Retaining a diversity of approaches was healthy and was preserved [by HB 172], he opined, thus a large part of his concerns had been taken care of.

JUDGE WANAMAKER noted that HB 172 contained two tools. One tool, the provision for suspending mandatory sentences when a defendant has completed a therapeutic program, works very well with the therapeutic-court concept, and he hoped that that tool would be made available to the existing therapeutic courts. The second tool is credit for time served. Currently, credit for

time served is done by judicial decision; it is an area warranting serious scrutiny if the intent is to change the current procedures. As a final point, Judge Wanamaker said it would be nice if there were some legislative recognition of the existing wellness court program at the municipal district court level, along with some additional funds. He noted that he had recently had a philosophical discussion with Chief Monagan (ph) of the Anchorage Police Department regarding the point at which the municipality steps in and takes care of what would otherwise be the state's business in taking care of drunk drivers, and to what extent state funds should flow.

CHAIR ROKEBERG said he wanted to applaud Judge Wanamaker's work with the wellness court. He affirmed that there were proposed amendments that would ensure that the existing therapeutic courts were allowed to continue. He noted, however, that he could not make any promises about additional funding but would work on that issue. Chair Rokeberg asked if Judge Wanamaker had regained access to electronic monitoring (EM).

JUDGE WANAMAKER said yes and no. In the application for bail it had been done in one case, and proved to be a successful vehicle. A judge worries, when putting an alcoholic defendant out on bail, about whether he or she will kill someone while driving and about the safety of the public. In the aforementioned case, the wellness court had the cooperation of the DOC; the defendant took Naltrexone in jail for three weeks and then, in addition to continuing Naltrexone, went on to house arrest (HA) with electronic monitoring (EM), as a condition of bail. This particular case made use of a bail plan combined with a treatment plan. He said he felt very safe with that defendant being out on those conditions. Further, those conditions allowed for a flow right into treatment; the defendant has been in the program without any "slips" for many months.

CHAIR ROKEBERG requested that Judge Wanamaker speak to the provisions regarding the deadlines for imposing the entering a plea and a judgment of conviction. He acknowledged that there have been difficulties in [the wellness court] and thus he inquired as to how those [deadlines] would work in [the wellness court].

Number 1873

JUDGE WANAMAKER specified that the [goal] of therapeutic court is to situate the defendant such that the defendant can succeed.

Above all, there must be cooperation from the prosecutor because without it nothing is possible. Judge Wanamaker said that he is following a "free-form" manner, and therefore he felt that the bill is too restrictive in the timelines and the manner in which cases come forward. He pointed out, "Nothing gets in the wellness court or stays in there without the prosecutor's say-so." Therefore, the prosecutor has control and doesn't need the restrictions in the bill. In further response to Chair Rokeberg, Judge Wanamaker noted that a prosecutor can, case by case, work out the restitution and insurance claims in the Rule 11 agreements.

CHAIR ROKEBERG asked that Judge Wanamaker review for the committee, what happens when a typical client comes before the wellness court, specifically as it relates to the plea, the timing, and the conviction. He asked if, ultimately, suspended impositions are done. He also inquired as to how the individual typically pleas.

JUDGE WANAMAKER answered that there would always be a guilty plea or a no-contest plea. He explained that typically there is an agreement with the prosecutor that if the individual completes the treatment, some charge will be dismissed or some minimum jail time will be imposed. Therefore, the agreement includes a benefit to the defendant if the defendant completes treatment. Typically, if the defendant doesn't complete the treatment, the defendant faces open sentencing by the judge. In further response to Chair Rokeberg, Judge Wanamaker specified that the agreed-upon period of time a client is before the [wellness court] is 18 months. He pointed out that it takes at least 18 months to rid a person's system of the effects of alcohol, though in some cases, the prosecutor and the defense will settle on a shorter time, such as nine months. In regard to the dismissal of other charges, Judge Wanamaker noted that almost every DWI [which he sees] has an associated crime of driving with a revoked license, which has mandatory penalties. In such a case, the prosecution will typically dismiss the charge of driving with a revoked license.

Number 1661

MARY UNDERWOOD, testifying via teleconference, informed the committee that she had a daughter who was in the wellness program. Ms. Underwood noted her support of HB 172. She related her belief that alcoholism is a disease and should be treated as such. "Ninety-eight percent of the country is

affected by someone with an addiction," she said. Therefore, everyone knows someone who is affected by this disease.

MS. UNDERWOOD expressed the need for HB 172 to apply to felons at the state level. "If this is kept at a misdemeanor level, the courts will be overrun with these cases," she predicted. She also predicted that most of these individuals would become repeat offenders until they reach the felon level, at which time the individual will leave the wellness program. Putting these individuals in jail is not the answer because they won't receive the necessary help or treatment. Ms. Underwood said that she has witnessed, firsthand, the improvement of the individuals in the program.

Number 1479

ERNIE TURNER, Director, Division of Alcoholism & Drug Abuse, Department of Health & Social Services (DHSS), testified in support of therapeutic courts, wellness courts, drug courts, and other similar courts. He informed the committee that for a time, he worked for a state that had deferred prosecution for all DWIs. In that program, there was a 69 percent success rate after two years. Therefore, those 69 percent weren't prosecuted. One of those individuals is Mr. Turner's daughter. Mr. Turner related the [department's] belief that the pilot projects would work on an outpatient basis with the Naltrexone and the EM. He expressed his hope that the norm in all courts will be deferred sentencing or prosecution as well as a treatment program that treats the disease rather than the symptoms/problems of the disease.

CHAIR ROKEBERG inquired as to the fiscal note prepared by the division. Chair Rokeberg said that he was unclear how the $501.3 [thousand] in total operating costs for FY 2002 was determined in light of the $6,821 per patient in the Anchorage program.

Number 1310

LOREN JONES, Director, CMH/API Replacement Project, Division of Mental Health and Developmental Disabilities, Department of Health & Social Services, informed the committee that the parties involved in drafting this legislation agreed that an intensive outpatient program for one year would be appropriate. Therefore, the total program is based on an intensive basis, which would be more intensive at the beginning and dwindle through the year. He specified that [the cost] includes

urinalyses (URs), Naltrexone, physical exams, and administrative costs for developing reports for the court. Furthermore, all of this was based on the current Medicaid regulations and the amount paid for this service under the Medicaid program, which amounted to $6,821 per person. That per-person Medicaid amount was multiplied by the 80 people in the Anchorage court and the 15 people in the Bethel court, for a total of $545,000. Furthermore, it was computed that about 25 percent of the cost would be covered by the 80 individuals paying for that portion of their treatment on a sliding-fee scale. Therefore, the net cost to the state is $409,000 in Anchorage. For the cost in Bethel, only 10 percent was subtracted because the area has fewer people that have the income to contribute. Thus, the net cost to the state is $92,081 in Bethel. Adding the totals of $409,000 and $92,081 results in the $501.3 [thousand] fiscal note.

Number 1183

CHAIR ROKEBERG commented that the ASAP (Alcohol Safety Action Program) had been missed and probably should be placed in the fiscal note too.

MR. JONES pointed out that the probation officer who would oversee the treatment and the court is included in the Department of Corrections' fiscal note. He specified, "These persons would not be part of the ASAP program."

CHAIR ROKEBERG asked if the individual would have to have been referred to the ASAP in order to enter the [therapeutic court] program.

MR. JONES related his understanding that generally, the ASAP referral occurs after sentencing. In this bill, once an individual is accepted in the [therapeutic court] program, the individual would enter a plea. Upon sentencing, all of the conditions would then take place. Normally, in other courts this would be the point at which an individual would be referred to the ASAP. However, [under HB 172] these individuals will be kept within the wellness [court] program and will continue to return to court. The probation officer would perform the oversight. Therefore, [the DHSS's fiscal note] reports the cost of the treatment.

CHAIR ROKEBERG said he thought that after there was a charge, prior to the conviction, the ASAP would enter in.

MR. JONES specified that it is normally after a conviction. He said, "Generally, the court order reads that you will report to [the] ASAP and follow the conditions thereof." In some cases, the individual, the defense attorneys, or the court will seek treatment prior to going to court. However, normally the official assignment to the ASAP occurs upon sentencing.

Number 1051

CHAIR ROKEBERG related the current situation in [Judge Wanamaker's court] in which the $100 for ASAP and the $50 for Naltrexone are paid, and the individual is sent out the door.

MR. JONES pointed out that "we" were specific in that "we" felt that with all the timelines set by the court and the voluntary nature of this [program], the treatment had to be available and effective. There couldn't be a waitlist. He expressed the need for the treatment to be tied to the actions of the court, the judge, and the probation officer. Therefore, the treatment needs to be dedicated to these individuals and thus it is different from Judge Wanamaker's court.

MR. JONES, in further response to Chair Rokeberg, agreed that some of the waitlist could be overcome with the funding, specifically for those on an outpatient basis in Anchorage. Mr. Jones reiterated that this program would be an intensive outpatient program. However, if this bill was passed, it would take some of the pressure off the outpatient waitlists in Anchorage and Bethel. After the assessment, if there is the need for residential monitoring, then they would try to place the person in residential care. That cost was not included in the fiscal note and thus would be absorbed [by the department]. He related the department's belief that most persons could be maintained in an intensive outpatient program due to the enhanced monitoring and intensiveness of the outpatient program.

MR. TURNER interjected that he has spoken with some people who have taken Naltrexone who say that it has completely eliminated their compulsion to drink. Therefore, the hope is that with Naltrexone and EM, the individual can comply with the outpatient program and not need to enter an inpatient program. He highlighted that this could result in a cost savings if this program works.

CHAIR ROKEBERG mentioned that there is another drug, Bufano (ph), which has experienced some efficacy in Europe and Canada.

Number 0856

REPRESENTATIVE MEYER asked if everyone can use Naltrexone.

MR. TURNER explained that Naltrexone has to be prescribed by a physician. There could be some side effects to Naltrexone. As with any drug that a person has to metabolize, Naltrexone would probably not be prescribed to a person with a severely damaged liver. Therefore, the use of Naltrexone will occur on a case-by-case basis.

REPRESENTATIVE MEYER expressed his hope that these therapeutic courts will become common [before] the end of the trial period, which he hopes will only last six months to a year. Representative Meyer inquired as to the success rate in regard to residential versus outpatient treatment.

MR. TURNER pointed out that the two are very different. Individuals in outpatient treatment are assessed in the earlier stages of the disease and their problems are a lot less severe than those in inpatient [facilities]. He also noted that the earlier a disease is identified, the better chance there is for recovery. Mr. Turner surmised that in therapeutic court some of these individuals will be assessed as needing inpatient treatment. However, EM and Naltrexone would end the need for inpatient [treatment].

Number 0695

JOHN M. RICHARD, Municipal Prosecutor, Criminal Division, Municipality of Anchorage Department of Law, testified via teleconference. Mr. Richard stated his support of [HB 172]. He reviewed the chronology of the mental health court and Judge Wanamaker's wellness court, which he believes to be an extraordinary accomplishment. Furthermore, he expressed his pleasure in seeing the adequate funding and forethought by the legislature in ratcheting this up a notch to the superior court. However, Mr. Richard expressed concern about the 12,000 cases handled in district court because that is a lot of people that need help. He estimated that below 10 percent or perhaps even below 5 percent of the people in district court have felony records and almost all felony offenders have misdemeanor records. In regard to addressing the disease in its early stages in the criminal justice system, that would mean addressing it in district court because people go to district court before going to superior court.

CHAIR ROKEBERG requested that Mr. Richard review the difference in the percentage of DWIs handled by the Municipality of Anchorage versus the state. He also requested Mr. Richard's analysis of the state's position regarding wellness court to this point.

MR. RICHARD informed the committee that the Municipality of Anchorage's jurisdiction is limited to misdemeanor offenses. The municipal prosecutor's office began in approximately 1975 when a couple of positions were authorized by the assembly in order to help out the [state] District Attorneys office with some traffic cases, which he recalled were "fined" as DWIs. The municipal prosecutor's office has expanded to employ about 35 people, of which a bit fewer than half are lawyers. This office handles about 12,000 new misdemeanor filings a year and 1,500 petitions for revoked probation. Also, in recent years this office has reassumed responsibility for about 10,000 contested traffic cases a year. The state, on the other hand, can handle all the misdemeanors that it wants to, although the state's role in misdemeanors has diminished, as has its ability to devote resources to misdemeanors. Therefore, it has been "a good thing" that the municipality has been able to pick up the slack so far.

MR. RICHARD also informed the committee that when the city assumed responsibility for practically all the driving-while-license-suspended (DWLS) cases, it amounted to about 40 percent of the [state] District Attorneys office's misdemeanor caseload. The District Attorneys office still handles violations for domestic violence restraining orders, which are not on the [Municipality of] Anchorage books. He said he thinks the violations for domestic violence restraining orders and the felony DWIs are the major mission of the misdemeanor section of the Anchorage [prosecutor's] office. This approach is fairly consistent because the district court handles all the felony DWIs. He clarified that the district court judges act as superior court judges pro tem when handling the felony DWIs.

CHAIR ROKEBERG surmised that could be due to the caseload at that level.

MR. RICHARD answered, "I suppose." He said that it would be "a good thing" if adding a superior court judge in Anchorage allowed a district court judge to do district court work.

Number 0105

MR. RICHARD turned to the state's position on the time sequence, which he says he understands and agrees with. If all those days are added, the sum is 120 days. Mr. Richard pointed out that until after an individual is sentenced, the individual can move to withdraw the plea for any fair and just reason, which has been liberally interpreted in this jurisdiction. After sentencing, a plea may be withdrawn to correct a manifest injustice, which is a more difficult situation. Mr. Richard said he believes that to be the basis for the state's position, and he agrees with it. However, he emphasized that sometimes prosecutors and judges have to take chances on people. He said, "The way we handle the case doesn't involve taking a plea and ...." [Tape ended mid-sentence.]

TAPE 01-38, SIDE A
Number 0016

MR. RICHARD referred to [the program at] Akeela House, Inc. (Akeela), which is for 18 months. He noted that the Salvation Army Adult Rehabilitation Program is used. That program is between 12 and 18 months, and is not state approved. Sometimes, all that time is necessary. He informed the committee of one of his larger successes, which involved a young woman who had been abused as a young child. This young woman was on the streets as a teen and became a cocaine addict and prostitute. This young woman was in court on about a dozen DWLS cases for which he threatened the maximum time on all those cases. This young woman ended up successfully completing [the program at] Akeela and having a normal adult life. This illustrates that sometimes it is necessary to use more time than the structure of this bill would allow.

Number 0242

CARMEN CLARKWEEKS, Private Criminal Defense Attorney, testified via teleconference. She informed the committee that she is a former prosecutor for the State of Alaska, and worked for the Appellate Union Division for the [Municipality] of Anchorage; she also was the Deputy Chief Prosecutor and the Chief Prosecutor for the [Municipality] of Anchorage. She related her experience with drafting legislation for the Municipality of Anchorage. She informed the committee that four of her drafted pieces of criminal legislation are currently at the National Model Law Institute for suggested model law for other jurisdictions. Ms. Clarkweeks related her belief that she is probably the only attorney who has appeared in wellness court, mental health court, and "overall attorney court" as both the

prosecutor and defense attorney. Therefore, she felt that she had some special insight.

MS. CLARKWEEKS remarked that HB 172 is, in theory, a good piece of legislation, and she said that she would share her view on ways to address some of the aforementioned concerns. She directed the committee to page 4, line 21, subsection (k), which has two conditions for bail or probation. She suggested moving subsection (m) to be a third condition for bail or probation in order to solve potential problems or conflicts with the U.S. Supreme Court cases that discuss forcibly requiring people to submit to medication between a change of plea and sentencing. Additionally, she suggested that by adding a fourth condition, which would require an individual to pay restitution as a condition of bail, then Mr. Guaneli's fear that victims will be left without restitution for a long time can be avoided. Ms. Clarkweeks agreed with Mr. Guaneli regarding the importance of victim satisfaction. However, she said, when victims come to wellness and mental health court, they become supportive of the recovery of the offender 99 percent of the time.

Number 0492

MS. CLARKWEEKS informed the committee that she taught a seminar regarding [restitution] in Nygren v. State, which is the decision that discusses receiving credit for time [served] under electronic monitoring (EM). Her experience with this case has led to her suggestion to delete subsection (l) entirely. She explained that the Nygren decision says that "as a constitutional rule, based on both the due process clause and the equal protection clause, an individual who on bail is subject to restrictions that are substantial restraint on liberty, the equivalent of incarceration, (indisc.) entitles credit."

MS. CLARKWEEKS said she was not sure that the legislature could change constitutional law in this way. In the past there was not legislative authority for EM as a condition of bail or sentence and thus those requesting credit for time spent on EM as a condition of bail have been denied. Ms. Clarkweeks also informed the committee of an unpublished [Alaska] Court of Appeals decision regarding the case of Jeffrey Jack McCraken (ph), who requested credit for time he spent on electronic monitoring between his conviction and the time his appeal was decided. This unpublished decision said that "relief of electronic monitoring was not the same as a substantial restriction on incarceration, that it was similar to jail."

MS. CLARKWEEKS said that decision and the "Laws v. Gunter (ph)" decision took place before the DOC had a program that released people for EM. Now that the DOC allows EM to be credit towards jail time, it will be interesting to say that EM as bail isn't the same as what the DOC does. Ms. Clarkweeks expressed the need for that to be decided in the courts rather than to hinder this legislation, particularly when the judge has the power to decide the sentence as he or she so chooses.

Number 0700

MS. CLARKWEEKS noted that as a criminal defense attorney, she represents people currently in wellness court, who she said are motivated, although they can't get their presumptive sentencing taken away. Therefore, she said, "My clients, who are on electronic monitoring for six or seven months, who are coming into court once every three weeks to meet with the judge, are doing all those things in recognition that in the end, they are going to get little or no consideration for it. They are motivated simply by the fear that if they don't change their life now, they are going to hurt someone badly ... or that they're going to die or they're going to rot in jail." She mentioned that prosecutors have said to her that wellness court is an "easy out" for the defendant, but that isn't so, because the defendant receives almost no benefit. Furthermore, wellness court is "hard work."

MS. CLARKWEEKS informed the committee that people who are currently in a wellness court with a presumptive (indisc.) are people with DWIs, for the most part, and the [state] District Attorneys office has objected to every person being admitted into that program. When people do get into the program, [the District Attorneys office] has insisted that they leave wellness court as a condition of getting charges dismissed. Therefore, one could not continue in wellness court and receive the same rules and agreements that would be afforded in criminal court. She indicated that the same situation occurs in the mental health court. Ms. Clarkweeks pointed out that the Municipality of Anchorage has 95 percent of the people who are in wellness court, while the State of Alaska has about 5 percent. She said, "I have been told to my face, both as a prosecutor and as a defense attorney, 'We don't want to be probation officers; it's a waste of our time to sit there in court and have to hear how these people are doing.'"

Number 0902

MS. CLARKWEEKS predicted that this attitude, coupled with the provisions in HB 172, which provides people with more credit than they currently receive, will cause the [state] District Attorneys office to have more resistance. She related her belief that the District Attorneys office will only agree to utilize wellness court in cases in which [the District Attorneys office] has weak proof of the offense. She emphasized, "Weak cases legally, as opposed to offenders who are best suited to be in the program, is a bad standard." She said such a standard will likely lead to the program's failure.

MS. CLARKWEEKS, for the foregoing reasons, suggested that the committee change subsection (e) on page 3 so that it would read as follows:

> "A criminal case may be referred to a therapeutic court upon the request of the prosecutor, the defendant, or the court if the defendant's request is made within 45 days of arraignment. The court may accept a defendant into the therapeutic court if the defendant is not charged with an unclassified felony, a class A felony, or an offense under AS 11.41.410 - 11.41.470, so long as the defendant is appropriate for the therapeutic model and meets the standards of the court."

This language would allow a presumably neutral fact finder, the judge, to determine whether the defendant's background is suitable for the program versus whether there is a weak case. Ms. Clarkweeks related her belief that requiring the consent of the prosecutor is a bad idea.

Number 1101

MS. CLARKWEEKS turned to the timeline and noted her agreement that people should be allowed to opt in to the program. She explained that her objection to the 45 days specified in subsection (e) is because there isn't discovery at that point. She said, "It isn't fair to make a criminal defense attorney give advice to a client before they've had a chance to review the tape recording, read the file, look at the photographs." Therefore, she indicated the need to change that provision to refer to 45 days to completion of discovery.

MS. CLARKWEEKS agreed that there should be early plea once an individual is in the program. However, she disagreed with the

fast sentencing for the following reasons. First, she believes that there will be more startup difficulties in obtaining treatment than the DOC recognizes. Second, Ms. Clarkweeks disagreed with the 120 days. She emphasized the need to remove the 45 days [the time from which the defendant's arraignment occurs] from the 120 days. Upon the defendant's entrance into therapeutic court, there would be 45 days in which the defendant would need to enter a plea. After the entry of the plea, there would be 30 days for the court to enter a judgment of conviction. Therefore, there would possibly be 75 days, assuming the individual starts treatment when the plea is changed, which will be difficult.

MS. CLARKWEEKS informed the committee that in wellness court Judge Wanamaker requires the individual to do (indisc.) meetings in 90 days as a function of enforcing the [use of] Naltrexone, which an individual has to take for a certain period of time before knowing if it's working. The individual only has 75 days, which doesn't work practically to provide the amount of time to know if the treatment is working. That 75 days also doesn't work for Ms. Clarkweeks, as a sentencing judge, because she would want to know that these people can be sober longer than 75 days before sentencing. She emphasized, "Seventy-five days doesn't do it if you're talking about reducing a ten-year presumptive term to zero." In conclusion, Ms. Clarkweeks suggested that the committee could add the quick sentencing, restitution, and victim's statement as a condition of bail rather than "speed up the sentencing."

CHAIR ROKEBERG requested that Ms. Clarkweeks mark up the bill and write a short memorandum [regarding her suggestions] to send to the committee.

Number 1321

JULIE KITKA, President, Alaska Federation of Natives (AFN), testified via teleconference. Ms. Kitka related that there are still many questions regarding how this would work. She questioned whether the court in Anchorage and the court in Bethel would develop separately, one as an urban model and the other as a rural model. Furthermore, there are concerns regarding whether this would be adequately funded as well as having the memoranda of agreement worked out with the various parties involved. In regard to the Bethel court, she said, there is no knowledge of the views of those in Western Alaska regarding whether this model would be used as a mechanism to resolve these issues. However, Ms. Kitka complimented the

sponsor's attempt to look at alternatives to the current system, which AFN is very interested in. She noted that AFN is also interested in ways to reduce recidivism and deal with alcohol and drug abuse.

MS. KITKA informed the committee that AFN had a number of meetings this past year with the [U.S.] Department of Justice regarding alcohol and substance abuse. She expressed pleasure in the fact that [former] U.S. Attorney General Janet Reno began a directive to identify the best practices and strategies to reduce alcohol and substance abuse among American Indians and Alaska Natives. A report on these best practices was produced in August 2000 by the Department of Justice. One of the promising practices that is particularly relevant to Native Americans is the Pueblo Zuni Recovery Center in New Mexico. This recovery center takes a holistic approach to the different segments of the community that are affected by substance abuse. This recovery center has three primary programs: the comprehensive day treatment program, the DWI school, and an underage drinking initiative.

MS. KITKA further explained that although these programs focus on different populations, the underlying core mission of reducing the incidence of chemical dependency is [present in all]. This underlying mission is achieved by helping the clients to address their underlying issues with dependency and to embrace a healthier lifestyle. The clients of this recovery center are received from the tribal court that orders these people to this recovery center. Ms. Kitka remarked that the Pueblo Zuni Recovery Center is a model worthy of review. She also suggested that this legislation could be modified such that the Bethel therapeutic court could use a holistic approach. In conclusion, Ms. Kitka informed the committee that AFN is working on alcohol control and ways to promote sobriety. The holistic approach is being reviewed as well as restorative justice. Therefore, AFN does support the legislature in creating alternative opportunities.

CHAIR ROKEBERG related his belief that this legislation is intentionally drafted as uncodified state law in order to provide flexibility to the judge. Therefore, presumably the judge assigned to Bethel will have that ability. Chair Rokeberg said, "I think that there is, clearly, the flexibility involved in this bill to do precisely what you're endeavoring to do out there in terms of the holistic or restorative justice approach."

MS. KITKA announced that AFN will follow this closely and will attempt to provide the committee with some specific written amendments and comments. She reiterated her hope to continue to work with the legislature in developing alternative opportunities that would address the root of the problem.

Number 1771

JANET McCABE, Chair, Board of Directors, Partners for Downtown Progress, testified via teleconference. She explained that Partners for Downtown Progress is a nonprofit corporation that addresses social problems in the community. Specifically, Partners for Downtown Progress has worked with Judge Wanamaker to support the wellness court. Partners for Downtown Progress has applied for and obtained funding from the Department of Justice; this funding has paid for some of the noncourt costs of the program. Ms. McCabe said that Partners for Downtown Progress strongly supports the therapeutic court approach. Ms. McCabe noted that she had submitted her suggestions to the committee. The first suggestion is to add a new subsection (b) that reads as follows:

> It is the intent of the legislature to recognize and continue the Anchorage Wellness Court as a separate Therapeutic Court which has already demonstrated the success of the therapeutic court approach and passed beyond the pilot project stage. It is the intent of the legislature that the Wellness Court continue to be made available to municipal defendants charged with misdemeanor crimes arising from addiction to or abuse of alcohol, including misdemeanor charges for driving under the influence of alcohol (DUI), but that it not be bound by operating procedures set out for the felony Therapeutic Court."

CHAIR ROKEBERG interjected that he believes that would be dealt with in an amendment that the committee has.

Number 1848

MS. McCABE pointed out that the Department of Justice funding that supports the extra court costs related to the wellness court is going expire December 2001. Without a fiscal note or federal funds supporting the wellness court, there will be no funding for it. Therefore, she emphasized the importance of the fiscal note [for HB 172] to include funding for the wellness court. She specified that the best way to handle the funding

would be for it to go directly to the municipality. Partners for Downtown Progress would like to participate as a nonprofit and "lend what remaining money we have from our grant." However, she expressed the need to have the legislature's partnership.

CHAIR ROKEBERG asked if the grant was for $150,000 over a one-year period.

MS. McCABE indicated that the grant is getting extended. She explained that Partners for Downtown Progress supports individuals up to $1,000 for their treatment and for the first doses of Naltrexone as well as some scholarships for group therapy. Ms. McCabe said that she felt that [using therapeutic courts] is a good approach and cost-effective.

CHAIR ROKEBERG inquired as to the annualized budget.

MS. McCABE reiterated that the annualized budget was $150,000, but the Partners for Downtown Progress is attempting to stretch that amount [over] 18 months, which will barely cover 40 participants. [This program] has relied on the friendship and goodwill of the prosecutor, defender, and court system. "We can't keep costing them money and not pay for it," she said. She specified the need for more money for the defender side of the municipality as well as for the ability to cover more people. Ms. McCabe stated that this program needs between $300,000 and $400,000 annually in order to serve 40-70 people. That money should go [directly] to the municipality and the court system.

Number 1970

MS. McCABE continued her testimony and noted her strong support of Ms. Clarkweeks' testimony regarding relying too heavily on the DOL to support this program. In the past the DOL has not indicated its support of the therapeutic court approach, Ms. McCabe said; therefore, she was in support of modifying page 3, lines 23-27, as suggested by Ms. Clarkweeks. Ms. McCabe also urged the committee to delete the time deadline for entering a plea and for entering a judgment of conviction. She said:

> These provisions do not recognize that each case must be handled individually in a therapeutic court. And this is one of the critical elements to making the process work. We would note that judges are selected for their good judgment, and state law ... is not

needed to override their judgment ... by imposing a specific time deadline.

The therapeutic judges are trained in this process, and one of the items emphasized is the rapid timing involved in getting people into treatment. She remarked that Mr. Guaneli is mistaken in claiming that treatment will be delayed without deadlines.

MS. McCABE turned to the issue of EM and urged the committee to delete subsection (l) on page 4, line 26. She said:

> The HAP/EM program, authorized by the legislature in 1998, has proved to be a highly effective therapeutic treatment for addicted offenders. Defendants are strictly constrained and monitored. Their activities are highly limited, and sobriety is strictly enforced. However, they are able to pay for the cost of their own treatment. It really is at no cost to the state.

Furthermore, she said, HAP/EM makes it possible for the defendant to earn money to pay restitution, which would be difficult to do in jail. Ms. McCabe directed the committee's attention to the law it passed in 1998, which she read as clearly saying that HAP/EM is the equivalent of jail and that there is no effective difference in the way that the program works for sentenced and unsentenced prisoners.

CHAIR ROKEBERG requested that Ms. McCabe discuss the "grubstake program."

MS. McCABE explained that participants sign a plan in which the participant agrees to pay for half the cost of treatment. [Partners for Downtown Progress] pays up to $800 or half the cost of treatment, whichever is less. [Partners for Downtown Progress] also pays for the first month of Naltrexone because often these individuals are in a halfway house where they can't obtain it. [Partners for Downtown Progress] also provides scholarships for group programs that the judge includes in the court order. Ms. McCabe said, "It has worked very well."

Number 2176

PATRICK JAMES, Attorney, began by saying that an armed robber doesn't start off as an armed robber but rather as a petty thief. Generally, this individual is going to be present in juvenile court or district court, which is an appropriate time

for intervention. However, superior court deals with individuals who have a long history of criminal activity. From the defender's point of view, if an individual can enter treatment prior to entering a plea and be given Nygren credit, then it is a win-win situation. In such a situation, the individual has tried to rectify the situation and the DOC's burden of housing the individual has been relieved. Furthermore, the individual is paying for this, which is an incentive.

MR. JAMES said that currently the following two programs are available: Lacosta (ph) and Nygren. Although some insurance covers these, most of the cost is paid by the individual. Mr. James informed the committee that he has never been able to get the [state] District Attorneys office to agree to the modification of a bail condition in order that the defendant enter treatment and receive the Nygren credit. He related the District Attorneys office's view as, "Lets have our pound of flesh and then you can go into treatment."

MR. JAMES emphasized that with treatment, one must be self-motivated. Obviously, one good reason to be self-motivated is to stay out of jail. Mr. James informed the committee that he has been doing defense regarding DWIs for about 20 years. In his personal experience, first-time offenders who have attended the Lacosta and Genesis House (ph) [programs] have low recidivism rates. There is a high success rate because the intervention occurs when the person wants it, and the individual is looking at 72 hours versus a substantial amount of time. He reiterated the need to start this in district court versus superior court where there isn't time or where the individual is already a hardened criminal. He mentioned that the [Partners for Downtown Progress] is a good idea.

Number 2341

MR. JAMES pointed out that during the meetings used to set up the wellness court, no one from the [state] District Attorneys office was present. Furthermore, when in wellness court Judge Wanamaker has requested that everyone applaud the individual for his or her efforts, the only person not applauding is the district attorney. Mr. James said, "If you think these people [the District Attorneys office] are going to cooperate with the court system, you're very much mistaken. They've got their own agenda." With regard to the DOC, he explained that Lacosta and Genesis House don't want to deal with the DOC because of the control factors. With regard to the [deadlines for filing]

motions, Mr. James indicated support of Ms. Clarkweeks' testimony on that issue.

MR. JAMES turned to the issue of credit for EM, which he viewed as a ploy by the District Attorneys Office to obtain "their pound of flesh." He reiterated that the District Attorneys Office should not be trusted. Furthermore, he wasn't sure that the legislature could saddle Bethel Superior Court with these added responsibilities. In conclusion, Mr. James reiterated the need to begin this process in juvenile court or district court.

TAPE 01-38, SIDE B

CHAIR ROKEBERG mentioned Ms. Clarkweeks' suggestion to change the 45 days to discovery [rather than to arraignment].

MR. JAMES explained that the state doesn't start giving discovery until the arraignment occurs, even though everything is not complete at the time of arraignment. Therefore, 45 days is an unrealistic timeframe. Mr. James agreed with Ms. Clarkweeks in regard to the defendant opting in, once the defendant is accepted into drug court. However, he said, "what the state is trying to do here is, they will give you the carrot if you're caught, but you're going to have to give up all that stuff. And that'll never fly." Furthermore, he predicted that the supreme court will object because it violates state and constitutional rights.

Number 2412

MR. JAMES informed the committee that last summer Judge Wanamaker put on a presentation in which it was brought out that there are no treatment facilities for drug or alcohol abuse available to a female through the DOC unless that female had at least six months to serve. Currently, Lacosta is the only facility that a female can go to for Nygren credit.

CHAIR ROKEBERG returned to Mr. James' discussion of the 45 days and requested clarification.

MR. JAMES clarified that he believes an individual, after entering a program, should have to do something in less than 45 days. He pointed out that this program is not for people who don't accept their first responsibility, which is that they did something wrong and need help.

CHAIR ROKEBERG related his understanding that currently the bill is drafted such that the acceptance in the court is made within 45 days of arraignment. He asked if that is problematic.

MR. JAMES replied yes.

CHAIR ROKEBERG inquired as to where the line will be drawn because [per Mr. James' testimony] discovery is never complete.

MR. JAMES reiterated that first an individual must admit that there is a problem and commit to doing something about the problem. Therefore, he said he believes that the individual must commit himself to the jurisdiction by entering a no-contest or guilty plea to the underlying charge shortly after acceptance in the wellness program and before the actual treatment happens.

CHAIR ROKEBERG said, "Well, that's 45 days."

Number 2307

MR. JAMES clarified, "That's not 45 days from arraignment. Arraignment is during the regular court. I'm talking from the time of wellness court, not from the initial arraignment, which happens 24 hours after arrest."

CHAIR ROKEBERG reiterated, "The bill says that you've got 45 days from arraignment to get accepted into the [wellness] court and then you've got 45 days from the first appearance in the court to make your plea."

MR. JAMES specified that the problem lies with the 45 days to get accepted into the [wellness] court. He said he doesn't believe that "we" are set up to handle it within that timeframe, given the delays in the discovery and processing that are inherent in this type of acceptance program. With such a timeline, once the program has been entered into, the individual accepts the fact that the legal issues involving his/her arrest will not be litigated. In response to Chair Rokeberg, Mr. James offered to provide further suggestions in writing.

Number 2188

JIM HENKELMAN, Statewide Outreach Coordinator, Outreach Program, Yukon-Kuskokwim Health Corporation (YKHC), informed the committee that he has been working for the YKHC in a number of capacities over the past few years. He mentioned that Ms. Kitka may not be aware of the extent to which YKHC has been involved

in the development of this bill. The YKHC strongly supports the therapeutic court concept. However, Mr. Henkelman expressed concern with the fiscal note that removes a district court judge position in Bethel and replaces it with a superior court judge position. He didn't see how that would significantly reduce the overwhelming workload.

CHAIR ROKEBERG related his understanding that replacing a district court judge position with a superior court judge position was due to the difficulty in recruiting a district court judge for the open seat.

MR. WOOLIVER agreed that there has been difficulty in recruiting a district court judge for the open seat in Bethel. However, he pointed out that "it's also a felony jurisdiction versus a misdemeanor jurisdiction."

MR. HENKELMAN maintained that the huge caseload will remain. He related his belief that the alcohol problem is serious and could be significantly helped with the therapeutic court process. Mr. Henkelman expressed his optimism for the benefits produced by using the therapeutic court process, although it will take some time before the benefits are evident.

MR. HENKELMAN, in response to Chair Rokeberg, said that he has not been personally involved in this [therapeutic court] issue, although he noted he has had a discussion with Orie Williams (ph) and Sandra Mearnoff (ph) regarding this issue.

CHAIR ROKEBERG related his belief that this is an excellent opportunity to provide for additional funding and work into a more holistic approach. He requested that Mr. Henkelman speak to the holistic approach.

MR. HENKELMAN remarked that he liked the language of HB 172 that read, "Each therapeutic court shall be adapted to fit the available local resources and cultural traditions." There are many programs around the country that use traditional approaches, he noted, as is the case with the YKHC treatment programs for inhalants. To be able to utilize traditional cultural values and traditional teachings in a therapeutic process will make the treatment more successful for people in the [rural] region in particular. Such an approach makes the chances of long-term success much greater than with the Western approach.

Number 1973

REPRESENTATIVE MEYER returned to the issue of the district court judge position in Bethel. He asked if the district court position is being changed to a superior court judge position or if a judge is being added for six months.

MR. WOOLIVER explained that currently there is funding for a district court judge, and there is an acting district court judge in Bethel. However, that position has not been filled with a full-time judge. Therefore, this bill pushes the current district court judge position to that of a superior court judge. In further response to Representative Meyer, Mr. Wooliver clarified that a superior court judge would be added; there will be two judges there. He specified that rather than having a superior court judge and a district court judge, there will be two superior court judges.

REPRESENTATIVE MEYER asked Mr. Henkelman if he felt that having two superior court judges on a full-time basis would be helpful.

MR. HENKELMAN said he hears that the number of cases that a superior court judge handles in Bethel is far more than any other judge handles in the state. Therefore, there is a critical need. He related his understanding that there are so many cases that the court is run on a plea-bargain system in order to go through as many cases as they can, as fast as they can, which causes him some serious concerns.

Number 1885

RUDOLPH NEWAN, Graduate, Wellness Court, thanked Judge Wanamaker for giving him the opportunity to turn his life around. His past life was lost in the disease of alcoholism. He shared with the committee that he was locked up 46 times in his life. The wellness court works, and it would be great to expand it. Mr. Newman informed the committee of a Newsweek article he read that discussed a monthly shot for alcoholism. Mr. Newman reviewed the changes in his life [since wellness court], changes that have placed him back in society. He praised Naltrexone in helping him stay sober, which has taken him 41 years to achieve. Mr. Newman, a former Bethel resident, said that [the therapeutic court] would be wonderful in Bethel. In conclusion, Mr. Newman said, "It's not the carpenter building the house; it's the house building the carpenter."

MR. NEWMAN, in response to Chair Rokeberg, informed the committee that he graduated from the wellness court three years

ago, and he has not been taking Naltrexone for over three months. He explained the process, which included Alcoholics Anonymous (AA) meetings and Naltrexone-user meetings. The meetings discuss what is going on in an individual's personal life and how that individual makes it on a daily basis. Mr. Newman specified that he took Naltrexone for six months, which was his choice. At the same time, he was working on the 12 steps of AA.

Number 1529

REPRESENTATIVE MEYER inquired as to the possible side effects of Naltrexone.

MR. NEWMAN answered that in his personal experience, Naltrexone made him drowsy and made his stomach feel as if it were in knots. He noted that the side effects are different for different people. However, Naltrexone took the craving [for alcohol] away so that he could focus on himself. He noted that he did have nightmares. Mr. Newman also noted that he has an excellent support system. In response to Representative Meyer, Mr. Newman said he has been sober about ten months.

CHAIR ROKEBERG announced that the public hearing on HB 172 would be held open. He noted his intention to hear HB 172 and its amendments on Friday, at which time HB 4 and its amendment will also be heard. [HB 172 was held over.]

ADJOURNMENT

Number 1322

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:01 p.m.