

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 5, 2003

1:32 p.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Scott Ogan
Senator Gene Therriault
Senator Johnny Ellis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

Alaska Court System Overview

TAPES

03-02, SIDES A & B [SENATE JUD TAPE]

CHAIR RALPH SEEKINS convened the meeting of the Senate Judiciary Standing Committee at 1:32 p.m. The quorum present included Senator French, Senator Therriault and Chair Seekins. Senator Ellis arrived at 1:32 and Senator Ogan arrived at 1:40.

CHAIR SEEKINS introduced Chris Christensen, Deputy Administrative Director, and Doug Wooliver, Administrative Attorney of the Alaska Court System and invited them to proceed with the Alaska Court System Overview.

MR. CHRIS CHRISTENSEN, Deputy Administrative Director of the Alaska Court System, said legislative members would see Mr. Wooliver and himself frequently during the course of the legislative session and they were pleased to be presenting the overview.

The framers of the U.S. Constitution wanted to put together a system of government that protected individual liberty by preventing the government from becoming too powerful. They looked to the writings of an 18th century French political philosopher named Montesquieu. He was a gentleman who came up with all

kinds of [indis.] separation of powers. He identified three specific types of governmental powers: legislative, executive and judicial. And he theorized that if you put government into three separate entities, gave each one of them a separate power that each would jealously safeguard its own turf. Government wouldn't become all-powerful and the liberty of the individual would be protected. So our federal government and the governments of all 50 states have been organized on this model.

I think what's interesting about Alaska is that constitutional scholars generally agree that the Alaska Constitution has created the purest separation of powers of any of the 50 states. And that's really not surprising if you think about it. The framers of our constitution got together in Fairbanks back in the mid-50s, called themselves Democrats and they called themselves Republicans but the kind of folks who lived in Alaska back then were very much Libertarians. They were trying to break the shackles that the federal government had placed on the territory. They wanted a system that maximized individual liberty and minimized the ability of the new state to restrict that liberty. So in Alaska we have three branches plus the University. And just as an aside, there has always been a debate as to what the University actually is. Some say it is part of the executive branch and say it's an entity outside the three branch structure. Not surprisingly, the University says the latter as the executive branch that says the former.

The legislature and the judiciary together are very tiny. Together we make up less than two percent of the state budget, the executive branch is 87 percent, the University is 11 percent. Other than size, the judiciary is similar to the legislature in another important way; the executive is headed by one person, everyone works for that person, power flows down from the top. The legislature on the other hand has 60 officers, each with an independent face with constitutional power. The judiciary has 59 officers, each with a face of constitutional power. So that's how the judiciary and the legislature are alike.

Maybe more important is how and why our branches are different. The judiciary is generally considered by

political scientists to be the least powerful of the three branches. At the federal level the Constitution was drafted so that Congress was most powerful, then the executive, then the judiciary. And of course that power structure has shifted over the last two hundred years as a lot of power has moved from Congress to the executive. The framers of our constitution drafted a constitution so that the executive would be the most powerful then the legislature then the judiciary. Power has also shifted in Alaska again from the legislature to the executive, making the executive even more powerful than it was at the time of statehood. I think one example of this, maybe the best example, is the 120 day session limit, which keeps the legislature out of - out of session longer than it used to be. And when the legislature is out of session it increases the governor's power because there are many things you can't do to restrict it.

The primary reason that the judiciary has less power than the other two branches is because the supreme court is almost purely reactive. It generally can't initiate the use of its most significant power and it generally can't act quickly. Someone has to file a case, the case has to proceed through the trial courts, someone then has to appeal the case and only then does the supreme court get to exercise its power and this might be several years down the road.

The other major difference between the judiciary and the legislature goes to the heart of the system that the framers were trying to set up to insure that liberty was protected. In our society the legislature is the majoritarian institution. Its members were elected and thus its focus is on implementing the perceived will of the majority. The courts are not a majoritarian institution and this was very intentional but people frequently ask why is it. In a democracy, you have an institution that is not majoritarian in any [indisc.]. I think the answer is pretty simple, you look to the writings of James Madison, the man we call the father of the constitution, the man who had the greatest role in drafting our Bill of Rights, he said that the majority in a democracy was capable of behaving just as tyrannically as the worst dictator. He thought that you needed to check the majority with a written Bill of Rights, which is of course very

different from our mother country England and have an independent judiciary to enforce the Bill of Rights. Now when I say minority, Mr. Chairman of course I am not just referring to groups, I am also talking about the ultimate minority, which is the individual. So this is why you will occasionally find the legislature at odds with the courts. If you look back over the decades since statehood it doesn't matter who has been in control of the legislature, sometimes it's been Democrats, sometimes Republican, sometimes it's been coalitions lead by rural interests or by urban interests, sometimes by liberals and sometimes conservatives. And one thing all those groups had in common is that when they are in power they occasionally get frustrated with the courts because it responds to a lawsuit. Very occasionally, not often but occasionally, the courts will tell whoever is in power; "No you can't do that."

Mr. Chairman this is, this is a lot of very dry political theory so let's maybe talk about some more practical stuff. In our dealings with the legislature you will note two major differences in your dealings with the executive branch. First, more pieces of legislation affect us than any other entity. That's why you will see - see me and see Doug as often as you will. Unlike the executive, we almost invariably take no position on that legislation. The supreme court believes that this is your forum, you're here to set the public policy in this forum and it's inappropriate for it to tell you that something is good or bad. The only time we'll take a position on legislation is if it's a bill that directly impacts the internal operation of the judicial branch. [Indisc.] sessions without seeing anything like that. What we will do is tell you what something will cost and suggest ways that you can accomplish your goals more cheaply and look through writes of legislation for technical problems. The other major difference you'll see in your dealings with us is that we don't have the veto to threaten you with. The judiciary is the branch that says please when it deals with the legislature.

Mr. Chairman, civil and criminal justice is a core governmental function. It's not something that government does because it wants to do, it's something that it does because it has to do. I mean you can't

think of many reasons for government to exist if not to provide for a criminal justice system to protect the public and a civil justice system to allow people to settle their disputes without engaging in self-help.

Now while this is not the Finance Committee, all of you will deal with fiscal issues during the course of this session either in caucus or in your finance subcommittees or as you look at the fiscal notes that are attached to pieces of legislation in this committee. I think it is important therefore, to point out one major difference between us and most other governmental entities and that is we have a complete inability to control our workload. Our function is constitutionally mandated; cases are filed by individuals, by businesses, by for-profit and non-profit organizations, by municipal government, by state and federal government, by residents and nonresidents. We have to take every single case that comes through the door. We do not have the legal ability to say no. For many governmental agencies, if they stop providing a service the workload simply goes away. At the courts it's not like that, we could shut a courthouse in a certain community that doesn't mean that people are going to stop committing crime in the community or they're going to stop wanting to get divorced or they're going to stop causing traffic accidents or having disputes over contracts, children are not going to stop being abused. The work is all still there, it just moves to the next nearest courthouse.

Right now, we have a total of about 720 permanent employees in 43 locations. While the Alaska Court System is almost the entire judicial branch, we are about 99 percent of the judicial branch; we are actually smaller than many executive branch departments. About 77 percent of our budget [is] personnel costs, which is a very, very high percentage and 70 percent of our employees are paid at a range 15 or less. This is not a high paid operation. To put this in perspective, the Department of Public Safety has almost the exact same number of employees that we do but their budget is almost, is more than twice as big. This is because they have very expensive equipment needs for cars and airplanes, radio

equipment, they operate the crime lab. They are not just personnel costs. And, again, about one third of their employees are state troopers who, because of the nature of their function and the training they receive, are compensated, have to be compensated at a much higher level than clerical employees.

In Alaska, we have what's called a unified judiciary. This is very rare; only eight states have a unified judiciary. By unified I mean that there is only one court system here. Most states, they have a state court, they'll have county courts, they'll have municipal courts and they divide up the caseload.

In Alaska the entire budget of the court system is provided from one source, the legislature appropriates it. This is also very unusual; there are only five states in which the legislature provides the entire budget. In many other places, in places with multiple courts, of course perhaps the county will pay for the county court system or they will force the county to provide buildings for the state court system.

We also have one other very unusual feature and that is the director of the court system is a constitutional officer. We - this court system unlike many outside is run by what you might call the strong city manager. You have a supreme court, which is made up of very bright attorneys who set general policy guidelines. And the day-to-day operation of the institution is conducted by a court professional, someone who has been trained and experienced at actually managing a court, a court system.

Now if you take these three factors together, the unified judiciary, the single source of funding and the professional management, Alaska is unique. We're the only state that combines all three of those factors.

For jurisdictional purposes, we are divided into four judicial districts.

- The first judicial district is Southeast Alaska.
- The second district is the North Slope and the western coastal area.

- The third district is Southcentral Alaska. This of course, is the largest district that makes up about 60 percent of the population and 60 percent of the caseload.
- And the fourth, of course, is the Interior from the Canadian border through Fairbanks and on out to Bethel.

We have four levels of courts in this state. The highest court is the supreme court. It has five members. It is headquartered in Anchorage although it meets generally every four or five weeks in Fairbanks and several times a year in Juneau. The court, it has the local attorneys or governmental entities who want to argue before the supreme court, saves those up in Fairbanks and Juneau and then regularly appears so those folks don't have to make a special trip to Anchorage. One thing that you should be aware of about our supreme court, it is not for purposes of its civil caseload, it is not a cert. [certiorari] court. What does that mean. The U.S. Supreme Court is a cert. court. That means they don't have to take and hear every case that they get. The U.S. Supreme Court right now only actually hears about one out of every hundred cases that are appealed to it. Our court has to hear every single civil case that's appealed to it. Sometimes you hear criticism of our court being a little bit slow in getting its cases out and part of this is simply because it has to hear everything. You may have read in the newspaper last year about a case that came out of Fairbanks. It involved a divorced couple who were arguing over the custody of their chocolate Labrador Retriever. The trial judge was forced to make best interest of the dog findings. They appealed it to the supreme court and the supreme court actually had to hear the case and write an opinion. Now most of us would not think this a good use of state resources but under our constitution, that's what the court has to do. Most state supreme courts are cert. courts. They have an ability to manage their caseload by rejecting cases that they think are not of general interest such as the dog case. ...The supreme court by the way is created by the constitution.

The second level of court is the court of criminal appeals, which is not a constitutional court it was

actually created by the legislature in the early 1980s. This is a court to which you can appeal criminal convictions. This is the final court for criminal purposes although you can appeal a case from this court to the supreme court but the supreme court doesn't have to take it. They only take cases that they think are especially important or they think the court of appeals may have been incorrect in its decision. The reason the legislature created this court is because back by the early 1980s the supreme court was really experiencing [indis.] so many cases it was really slowing things down. There was a proposal in the legislature to increase the size of the court to give it more members, perhaps seven, so there'd be more members to share the workload and write the opinions. We had done some work with the National Center of State Boards and suggested that creating a different court might be an option, a lower level of court of appeals. The reason for this is that the larger you make a state supreme court the more inefficient you make it. One person writes an opinion but everybody has to sign off on the opinion, they have to agree to every last word of it. That opinion would then be circulated to six other members instead of four other members. You agreed with this analysis and created this court of appeals and I would note that there've been several states since then, states the legislatures have gone to the Alaska model. They've actually made their supreme courts smaller and created a court of intermediate appeals as a more efficient way of managing the workload. The court of appeals is also headquartered in Anchorage.

SENATOR SCOTT OGAN said he was not aware the supreme court could deny criminal cases. He asked if there was some "wobble room" for that in the constitution because the supreme court is constitutionally created and the court of criminal appeals is created by statute.

MR. CHRISTENSEN explained the constitution says everyone has the right to appeal his or her case from the trial court. If there was only a supreme court that is the only place he or she could appeal it. When the legislature created the court of criminal appeals that met the constitutional mandate. It only applies to criminal cases because the legislature limited the court of appeals jurisdiction to criminal cases.

MR. CHRISTENSEN explained the constitution created the supreme court and the superior court and said the legislature had the authority to create other courts by statute. Immediately after statehood, the legislature created the district court, which is the lowest level of court. It hears misdemeanors and civil cases under \$50,000 of value. Then in the early 1980s, the legislature created the court of criminal appeals.

SENATOR JOHNNY ELLIS asked what the prerogative of the court is in scheduling cases they are required to hear as the last appeal. He said it wasn't that long ago Senator Donley was sitting there demanding more timely decisions and threatening people's salaries and other sanctions. The Judiciary Committee went through many discussions about that. He asked what kind of leeway the court has on when they schedule cases they must hear and the time frame for rendering opinions.

MR. CHRISTENSEN answered that since the court cannot just turn cases away a lack of resources means delay.

Now back about the time of statehood the legislature passed a statute which said that in order to get his paycheck every two weeks a judge has to certify under oath that nothing before him that's ready for a decision to be made has sat there for longer than six months. Our judges, our 59 judges and our 39 magistrates are the only governmental employees who have to swear under oath every two weeks that they're caught up on their work or their paycheck is withheld.

MR. CHRISTENSEN reported there are about eight other states that withhold salaries. It has been challenged several times and each time that state supreme court has thrown it out for reasons which apply here. The constitution says a judge's salary cannot be reduced while he or she is in office. The Declaration of Independence listed about 27 different things that proved King George was a tyrant. He withheld the salary of judges in order to bend them to his will. Therefore, the U.S. Constitution and the constitution of most states say the legislature cannot reduce a salary. Money has a time value so when a judge's paycheck is withheld it is essentially reducing the value of his or her salary. Mr. Christensen's opinion, as the chief attorney for the court, is that this is very clearly unconstitutional. No judge since the time of statehood has challenged it. He thought there has been a feeling that judges do need to keep caught up on their workload and this is actually a fairly good

management tool. Judges have had their paychecks withheld for as long as four months.

MR. CHRISTENSEN said the bill Senator Ellis referred to would have reduced the time courts had to make decisions to four months and would have applied to the supreme court. The supreme court assigns one member to write the opinion after the oral argument. The member has six months to write the opinion and then the opinion is circulated and the clock stops. Under this proposed legislation, if one supreme court justice wasn't caught up on his work all five would lose their paychecks. The legislature decided not to pass that legislation and make the law even more unconstitutional.

SENATOR OGAN said, currently in the constitution, judges are not subject to confirmation by the legislature. He asked how many states don't require legislative confirmation.

MR. CHRISTENSEN said he did not know but would provide the committee with the number.

MR. CHRISTENSEN explained at the time the United States became a nation the judges in most states were appointed by the governor for life. Over the next 50 years, people wanted their state courts to be majoritarian institutions and to issue decisions based on the will of the people. "Which I supposed is just fine unless you are the one in front of the judge and you're advocating an unpopular opinion." Many states have switched to a contested election system. A campaign for the supreme court costs over a million dollars in the contested election system of Texas. About half of the money comes from the insurance industry, which had figured out that donating money to supreme court candidates is a good way to get Tort Reform. The other half comes from lawyers who argue in front of the supreme court. In the 1940s a backlash against the contested election system began. Missouri and then Alaska adopted what is called the Missouri Plan. The Missouri Plan is a midway system where judges are appointed based on merit and do not stand in contested elections. These judges come before voters on a regular bases and the voters can vote up or down. Some Missouri Plan states have legislative confirmation and some do not. Alaska's system was adopted without confirmation because the goal of the framers was to keep Alaska's judiciary as non-political as possible. He said when an article are written about controversial things done by federal judges it always identifies the judge as a Republican or a Democrat and points out who appointed them.

2:00 p.m.

MR. CHRISTENSEN proceeded with his overview presentation.

Our next level of court, the court of general jurisdiction is the superior court. Right now the superior court, this is a constitutional court, right now it has 32 members who are in 13 locations around the state; Anchorage, Fairbanks, Kenai, Palmer, Juneau, Ketchikan, Sitka, Barrow, Kotzebue, Bethel, Nome, Dillingham, Kodiak. There are three other sites, Wrangell, Petersburg and Valdez, which are designated as superior court sites, but they don't have a resident superior court judge, they are served by traveling judges. The superior court has exclusive jurisdiction over [indis.], which is about 20 percent of its caseload over juvenile delinquency matters. It has exclusive jurisdiction over the family law cases, the divorces, child support, child custody, child visitation, which right now makes up close to 40 percent of their caseload and this is probably the most traumatic part of the caseload. This is a part of the caseload which nationwide... results in the most violence in courtrooms. The worst thing you can do to a lot of people is not put them in jail, is to take their kids away.

...We are a service entity, we exist merely to provide service to the public and to government agencies and to businesses, but at the court system the customer isn't always right. Nearly 85 percent of the people who are brought in on criminal matters get a conviction and 50 percent of all the people who come in on civil matters lose. And these are people who leave very, very unhappy and you, your offices hear from many of them.

Now the court of limited jurisdiction is the district court. This was created, as I noted, created by the legislature right after the time of statehood. There are two kinds of judicial officers in the district court.

- First are the district judges who are appointed by the governor. They have 17 of those in seven locations. They hear cases under \$50,000 in value or misdemeanors.

- The other type is the magistrate. We have 39 of those many of them in small communities in rural Alaska. They're not appointed by the governor they are appointed by the four presiding judges of each of the four judicial districts. They can be hired and fired by the presiding judge at will. There are many locations in rural Alaska where the local trooper and the local part-time magistrate are really the only major presence of state government.

Now last year our court system, all these judges, heard 141,000 cases in trial courts. That was about a nine percent decrease from the year before. The problem now, a decrease sounds good, the problem is that the decrease was made up almost entirely of traffic tickets and other minor offenses, which are the kind of cases which take the least effort to hear. There were a number of categories of complex cases that actually had major increases, that's the bad news. Felony cases statewide were up six percent from the previous years' level. At a number of court locations the increase of felony filings were even more dramatic.

- Kenai - 14 percent
- Bethel and Ketchikan - 16 percent
- Barrow - 21 percent
- Sitka - 46 percent
- Kotzebue actually had a 62 percent increase in felony filings.

Now this is bad news because felony cases take a tremendous amount of resources. Not just time for clerks and time for judges but when they go to trial we have to pay juries of 12 persons and several alternates. These cases - this is also very deceptive because when I tell you we had 141,000 cases last year we only count the case the year it's filed. Many of the cases keep coming back time and time again. When the convicted felon gets out of prison and he engages in probation violations on several occasions, when he comes back and tries to petition for post conviction relief. We are still expending lots of resources to hear cases which only showed up in my statistics back in 1980 or 1990 so that is a little bit deceptive.

We also had a ten percent increase in misdemeanor cases. We had a five percent increase in the domestic

relations cases the divorces and child custody. This is a problem because these cases, like felony cases, keep coming back year after year even though they don't show up in our statistics. A couple will get divorced and then every year or every other year for the next fifteen years they will be back in court arguing over child support, arguing over visitation, and these don't show up in our statistics so any increase is bad news.

Now Mr. Chairman, in addition to the appellate courts and the trial courts, there is one other entity in the Alaska Court System, that is the administrative office. The administrative office are the bureaucrats like Doug and myself who actually provide the support services for judges. We run the personnel office, we handle the procurement, the technology shop, which handles the courts computers and other systems is all in the administrative office. This is also headquartered in Anchorage.

Now the trial courts, the appellate courts and the administrative office make up the entire court system, which is 99 percent of the judicial branch. The remaining one percent of the judicial branch is composed of two very tiny constitutional entities. The first is the Judicial Conduct Commission. This has a staff of two. This is the ethics committee for judges made up of nine members, three judges, three public members and three lawyers with at least ten years experience. Its primary function is to investigate complaints that have been filed against judicial officers. It has the power to recommend that the supreme court sanction or remove a judge. Suspension, removal, forced retirement or public or private censure are also among its options.

The other tiny constitutionality is the Alaska Judicial Council; this is the entity you will deal with a lot more than you will deal with the conduct commission. It has three major functions. The first is to conduct research to improve the administration of justice. Much of this research is made up of projects that you have statutorily ordered the council to engage in. For example when you passed tort reform legislation a few years back you ordered the council to start surveying attorneys who settle complex tort

cases to find out what the case is actually settled for, if there were punitive damages. You also passed therapeutics courts legislation relating to DWI several years ago. You ordered the judicial council to keep track of recidivism for those people who pass through this special therapeutic court. The second thing that this judicial council does is it solicits, screens, and nominates applications for appointments to vacant judgeships. And finally it evaluates judges standing for retention and makes information on those judges available to the voters so that the voters can make an informed decision. I would note that of all the Missouri Plan states, the Alaska Judicial Council makes substantially more information available to the voters than the other Missouri Plan states. They for example, they don't just survey the lawyers who appear in front of a judge, they also survey every police officer, probation officer, corrections officer in the jurisdiction to see what they think of the judge. They survey every juror who has been in that judge's courtroom. So the voters have a good deal of information made available to them.

Mr. Chairman, I think I'd like to make one last point and that is the importance of the legislature and this committee in the criminal justice system. You are the entity that sets public policy through the statutes that you pass. And you most of the time provide funding to implement that policy. As you consider legislation I would ask that you always keep in mind the need to view the criminal justice system as an integrated whole rather than just individual parts. The system includes not just the courts it also includes the prosecutor's office, the public defender, the office of public advocacy, corrections, DFYS (Division of Family and Youth Services) and the Department of Public Safety in the executive branch. But it also includes the municipal prosecutors in Anchorage and Juneau, the municipal public defenders in Anchorage and Juneau as well as the police departments in all the municipalities around the state. Things that you do to one entity generally have an effect on the others. We will frequently see budget increments or we will see legislation or fiscal notes that appear to affect only one entity but there's always a carry over effect. For example if you give a small budget increment to the troopers to

increase the number of troopers in one community there is inevitably going to be more arrests which means the prosecutor has more work, it means we get more work. If 85 percent of all those people who are arrested for crimes are legally indigent and thus the... constitution entitles them to a public defender. Once a judge has made the decision after viewing someone's financial records that they're indigent and the judge appoints the public defender, the public defender has to take the job, they can't say no we're too busy. If a judge sentences someone to jail the Department of Corrections can't say, you know, sorry we're full. They have to find a way to handle things.

So I guess my point is simply that please view the system as a system and not merely as a collection of individual agencies. Always keep in mind that anything you do to one entity probably affects the others.

SENATOR OGAN asked what percentage of expenses came from municipal issued citations and crimes. Alaska is the only state in the nation where the state adjudicates citations issued by municipal officers and provides the defense and the prosecution.

MR. CHRISTENSEN explained that presently a lot of police departments write traffic tickets or cite people for minor offenses they cannot be jailed for so these people do not get a public defender. He thought only Anchorage and Juneau have the equivalent of misdemeanors on their criminal code and actually do prosecutions. Fairbanks used to do prosecutions but repealed most of their criminal code because of budget problems some years ago.

Up until the late 1970s there was a statute that required the court system to calculate the percentage of its operations being affected by municipal prosecutions and bill the municipalities. The Alaska Court System had tremendous problems with Anchorage because Anchorage did not want to pay. Alaska sued the City of Anchorage in state court and entered into a settlement. Jurors are not paid much in Alaska and it is very difficult and expensive to find parking in downtown Anchorage. The settlement involved about eight years of free parking for jurors in the municipal garage seven blocks from the courthouse among other things.

MR. CHRISTENSEN noted the legislature repealed that statute when the state was flush with oil money. The argument frequently made against bringing back this legislation is that while Anchorage, Juneau and the police departments in the other cities cause expense to the state they also relieve the state of a tremendous burden. Anchorage has DWI laws that parallel the states and have domestic violence statutes and assault statutes. Anchorage pays for the prosecutor and public defender when they charge people under their own law. Anchorage contracts with a private law firm to act as their public defender. Mr. Christensen believed Anchorage has to reimburse the Department of Corrections for housing in the jail. The state would assume that expense if these people were arrested and charged under state law. He said the court computer system is currently so inadequate, what percentage of cases comes from municipalities could be determined, but not how much time was spent on them.

SENATOR OGAN said he would like to meet privately with Mr. Christensen and discuss that issue. He said it may be time to look at municipalities assuming some of the responsibility for the citations they write that go to court. "Have a municipal court system or something like that and taxpayers, local taxpayers and fines and that kind of thing pay for." He asked how much it would reduce the state's cost if the Legislature did that.

MR. CHRISTENSEN noted the Alaska Court System handout. Page 5 lists "FY2002 Funds Collected on behalf of Cities and Boroughs" totaling \$1,270,892. This money was turned over to municipalities and presumably reduced the municipalities' need to come to the legislature for municipal assistance.

SENATOR OGAN said it would be interesting to see how much it cost the State of Alaska to adjudicate those cases and turn over \$1.2 million to the cities. He thought it would be more than \$1.2 million.

SENATOR ELLIS asked how the therapeutic courts were doing and for details about other specialized courts and innovations of the Alaska Court System.

MR. CHRISTENSEN informed the committee that therapeutic courts cropped up in the nation in the last ten years. A therapeutic court treats people with special kinds of problems, typically addictions to alcohol or drugs or those with mental illness. They use a different method of court procedure to keep these

people out of jail, get them the treatment they need and then "hopefully" they won't commit future crimes.

The first of these therapeutic courts are drug courts, which take in non-violent felony drug offenders. The Alaska Court System set up a drug court in Anchorage several years ago using a federal grant. Most of the grant moneys were distributed to the prosecutor, the public defender, and other agencies incurring costs. The judge acts as a super probation officer and sees the person every week or two and a probation officer monitors the person very closely. The person receives weekly drug tests or alcohol tests and is required to pay restitution. These people volunteer and are accepted by a joint decision between the judge, the prosecutor and the public defender. If this court system works, people who have committed non-violent drug felonies can get off drugs, complete a GED (General Education Degree), get a job and get their life back in order.

MR. CHRISTENSEN said the misdemeanor mental health court is being operated in Anchorage. The Trustees of the Mental Health Trust fund this court with legislative approval. This court deals with people with serious mental problems who are committing "nuisance crimes" like disorderly conduct, simple assault and shoplifting. The person is monitored very closely and in court on a weekly basis. Seeing that people receive medication is one of the main points of this court. Alaska is the second state in the country to start this type of court. He thought the mental health court is very effective.

The Legislature created and provided general funds for a felony DWI court two years ago in Anchorage and Bethel. Judge Wanamaker in Anchorage, on his own initiative, got together with the Partners for Progress, a local business organization and created the Wellness Court, which deals with people who have committed minor alcohol related nuisance crimes and treats them with naltrexone. Naltrexone is a drug that makes a person lose their desire to drink by doing away with the high from alcohol. This is funded primarily through the private sector though in the last year or two the Legislature has given some small grants directly to the Partners for Progress for treatment money.

MR. CHRISTENSEN said these courts seem to be working; however, they have been in operation for a short period of time and involve a small number of people so it is difficult to say. They were started with grants because the court system did not want to come to the Legislature for money until they could prove these courts could work. The Alaska Judicial Council is

currently doing comprehensive surveys of most of these courts and the Legislature will receive an independent review. There should be detailed preliminary information available for the committee shortly.

SENATOR FRENCH referred to "FY02 Collections of Costs and Fees Imposed by Courts" on page 7, Alaska Court System. He asked if the cost of appointed counsel, \$883,259, and the cost of incarceration, \$762,325, was money collected from criminal defendants. He asked if criminal restitution, \$91,464, was the total amount of criminal restitution paid into the system.

MR. CHRISTENSEN said it was his understanding this is the amount collected by the Department of Law. He did not think that was the total amount of criminal restitution paid in the state during the year. Some restitution is paid directly and some is paid through the Department of Law.

SENATOR FRENCH asked if these costs were prioritized. If the court collects \$1000 from a defendant who owes \$10,000 for appointed counsel, \$10,000 for cost of incarceration and \$10,000 for restitution, how does that money get allocated and in what order?

MR. CHRISTENSEN said virtually every penny the Department of Law seizes is from Permanent Fund Dividends. This is typically restitution and debts owed to the state.

TAPE 03-02, SIDE B

2:20 p.m.

MR. DOUG WOOLIVER, Administrative Attorney, said statute applies to attachments to the Permanent Fund Dividend itself. If someone writes a check to the court for \$1000 and they owe \$1500, how that gets divided up is not set by statute. The dividend is one of the reasons the Collection Division of the Department of Law has a miraculously high collection rate for criminal fines compared to any other state. Restitution is either first or second on the list of collection priorities. Child support is also very high and debts owed the state are a little bit farther down the list. Private people can also attach the dividend. Often there will be competing demands on a dividend.

SENATOR FRENCH asked if it was a one-year windfall because most people who go to prison for any length of time lose their right to a dividend.

MR. WOOLIVER said there are statutes that restrict the number of people who get the dividend based on criminal charges. In future years these people could become eligible again so sometimes the collection process is drawn out.

MR. CHRISTENSEN referred to page 7, where Senator French noted the cost of appointed counsel being \$883,259. He explained that about 85 percent of people charged with felonies are legally indigent and are provided with an attorney by the state. About 7 years ago, the U.S. Supreme Court issued an opinion that indicated a person's future income could be taken into account. The Alaska Supreme Court said when a person is indigent, a payment schedule can be set up and take some of their dividend. Legislation was drafted and adopted about 6 years ago. Little money was collected over the first couple of years but over the last two years, this has expanded dramatically up into the \$880,000 range.

CHAIR SEEKINS called at ease from 2:25 p.m. to 2:30 p.m.

SENATOR THERRIAULT asked Mr. Wooliver what he wanted to add about specialized courts.

MR. WOOLIVER explained these courts are fairly new nationwide. A long-term study of recidivism rates would be available in the next few months. The short-term studies show these courts do cut down on recidivism. Judge Rhoades' mental health court in Anchorage has impressive short-term statistics. All these studies seem to indicate these courts are helping.

SENATOR ELLIS asked if there was a standard, uniform definition of non-violent offender. He said he was of the opinion there is cost saving to the state to be achieved by effective treatment programs to divert people away from state incarceration. People worry about violent offenders being included in a treatment program and not incarcerated. He asked who makes the non-violent determination.

MR. WOOLIVER was not aware of a standard definition. The felony drug and felony DWI courts have strict guidelines on who can participate and a history of violence excludes someone from the program. Judge Wanamaker and Judge Rhoades are both nationally recognized leaders in this area and they speak all over the country. HB 171 created the therapeutic courts and the guidelines that limit participants to non-violent offenders.

ADJOURNMENT

There being no further questions Chair Seekins adjourned the meeting at 2:35 p.m.

NOTE: The meeting was recorded and handwritten log notes were taken. A copy of the tape(s) and log notes may be obtained by contacting the Senate Records Office at State Capitol, Room 3, Juneau, Alaska 99801 (mailing address), (907) 465-2870, and after adjournment of the second session of the 23rd Alaska State Legislature this information may be obtained by contacting the Legislative Reference Library at (907) 465-3808.