

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 2, 2005

1:13 p.m.

**MEMBERS PRESENT**

Representative Lesil McGuire, Chair  
Representative Tom Anderson  
Representative John Coghill  
Representative Nancy Dahlstrom  
Representative Pete Kott  
Representative Les Gara  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative Ethan Berkowitz  
Representative David Guttenberg  
Representative Ralph Samuels

**COMMITTEE CALENDAR**

OVERVIEW(S): THERAPEUTIC COURTS, ALASKA COURT SYSTEM & PARTNERS  
FOR PROGRESS

- HEARD

CS FOR SENATE BILL NO. 56(JUD)

"An Act relating to criminal law and procedure, criminal sentences, and probation and parole; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 88

"An Act relating to certain weapons offenses involving minors; to aggravating factors in sentencing for certain offenses committed against a school employee; and providing for an effective date."

- BILL HEARING POSTPONED TO 2/4/05

HOUSE BILL NO. 41

"An Act relating to minimum periods of imprisonment for the crime of assault in the fourth degree committed against an employee of an elementary, junior high, or secondary school who was engaged in the performance of school duties at the time of the assault."

- BILL HEARING POSTPONED TO 2/4/05

**PREVIOUS COMMITTEE ACTION**

BILL: SB 56

SHORT TITLE: CRIMINAL LAW/PROCEDURE/SENTENCING

SPONSOR(S): SENATOR(S) THERRIAULT

01/14/05	(S)	READ THE FIRST TIME - REFERRALS
01/14/05	(S)	JUD, FIN
01/18/05	(S)	JUD AT 8:30 AM BUTROVICH 205
01/18/05	(S)	Heard & Held
01/18/05	(S)	MINUTE(JUD)
01/19/05	(S)	JUD AT 8:30 AM BUTROVICH 205
01/19/05	(S)	Heard & Held
01/19/05	(S)	MINUTE(JUD)
01/20/05	(S)	JUD AT 8:30 AM BUTROVICH 205
01/20/05	(S)	Moved CSSB 56(JUD) Out of Committee
01/20/05	(S)	MINUTE(JUD)
01/21/05	(S)	JUD RPT CS 3DP 1NR SAME TITLE
01/21/05	(S)	LETTER OF INTENT WITH JUD REPORT
01/21/05	(S)	DP: SEEKINS, HUGGINS, THERRIAULT
01/21/05	(S)	NR: FRENCH
01/21/05	(S)	FIN REFERRAL WAIVED
01/26/05	(S)	TRANSMITTED TO (H)
01/26/05	(S)	VERSION: CSSB 56(JUD)
01/28/05	(H)	READ THE FIRST TIME - REFERRALS
01/28/05	(H)	JUD, FIN
01/28/05	(H)	LETTER OF INTENT
01/31/05	(H)	JUD AT 1:00 PM CAPITOL 120
01/31/05	(H)	Heard & Held
01/31/05	(H)	MINUTE(JUD)
02/02/05	(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

ROBYN JOHNSON, Therapeutic Courts Coordinator  
Alaska Court System (ACS)  
Anchorage, Alaska

POSITION STATEMENT: Assisted with the overview of therapeutic courts.

JANET McCABE, Chair  
Partners for Progress, Inc.  
Anchorage, Alaska

POSITION STATEMENT: Assisted with the overview of therapeutic courts.

JAMES N. WANAMAKER, Director  
Alaska Center for Therapeutic Justice  
Partners for Progress, Inc.  
Anchorage, Alaska

POSITION STATEMENT: Assisted with the overview of therapeutic courts.

#### **ACTION NARRATIVE**

**CHAIR LESIL MCGUIRE** called the House Judiciary Standing Committee meeting to order at [1:13:10 PM](#). Representatives Anderson, Coghill, Kott, and McGuire were present at the call to order. Representatives Gruenberg, Dahlstrom, and Gara arrived as the meeting was in progress. Representatives Guttenberg, Berkowitz, and Samuels were also in attendance.

#### OVERVIEW(S)

#### THERAPEUTIC COURTS ALASKA COURT SYSTEM & PARTNERS FOR PROGRESS

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CHAIR MCGUIRE announced that the first order of business would be the overview of therapeutic courts.

ROBYN JOHNSON, Therapeutic Courts Coordinator, Alaska Court System (ACS), introduced Don Smith, administrator for the Highway Safety Office, Department of Transportation & Public Facilities (DOT&PF), and Wendy Hamilton, project manager for the planned Juneau Wellness Court, which was funded by the Highway Safety Office.

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JANET McCABE, Chair, Partners for Progress, noted that Judge James Wanamaker recently retired from the court system and is now director of the Alaska Center for Therapeutic Justice, which is an arm of Partners for Progress. She said that there are

three main purposes for this overview: to explain how and why therapeutic courts are effective; to show how therapeutic courts protect the public; and to request that the legislature work with the administration to strengthen the therapeutic court system. Ms. McCabe said she is also promoting proposed recommendations to be included as part of a comprehensive strategy to address alcoholism and addiction.

Ms. McCabe stated that in the 1980s, courts started creating mandatory penalties for crimes related to drug and alcohol addiction. She said the increased penalties were effective in reducing crime among social drinkers, but had no affect on strongly addicted offenders, so some judges started to look for a better way. The first therapeutic court started in Florida in 1989, and now there are over 1621 such courts nation-wide. She compared these courts to the "wellness court" started by Judge Wanamaker in Anchorage. She opined that it is fortunate that the Alaska legislature is supportive. She then relayed that Anchorage municipal prosecutor, John McConnaughy, has said that the need for these courts is obvious, and that there is a certain population out there that clearly does not respond to the traditional model of the criminal justice system, and that offenders with multiple driving under the influence (DUI) arrests do not respond to the increasing punishment that they get. Most of these offenders are highly addicted, she said, and the traditional model required a rehabilitation program after sentencing, but 50 percent of this group never even "sign up," and those that do generally do not complete the program.

MS. McCABE stressed that protecting the public is primary. Serious repeat alcoholics always come out of jail, "and once they get out they are an extreme danger to the public - a car in their hands is a deadly instrument," she warned.

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JAMES N. WANAMAKER, Director, Alaska Center for Therapeutic Justice, Partners for Progress, Inc., noted that he's a recently retired judge from Anchorage's Third Judicial District. The main goal of Partners for Progress is to promote therapeutic courts, he stated. The group supports a forthcoming bill by Representative Rokeberg which will extend the wellness court method. He expressed appreciation for previous legislation setting up a system for wellness courts, specifically the one in Anchorage.

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MR. WANAMAKER showed the committee a chart indicating that of people going through the traditional court system, only 33 percent did not repeat their crime. In wellness court cases of 2001 and 2002, 75 percent of offenders remain free of crime, and for 2003, 100 percent of the offenders have remained free of repeat crime to date. These are outstanding statistics, he said. The therapeutic court model is effective because it gets the offender to treatment immediately. Treatment involves medication and moral recognition therapy. He said that in the traditional system, all "the players" are working separately, and with the new system, everyone is at the same table trying to rid the offender of the addiction.

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MR. WANAMAKER stated that defendants are "pretty much ordinary folks" with an addiction who are offered an opportunity to rebuild their lives. There are long-term economic advantages to the state, he said, and it is an excellent program to rid people of addictions thereby protecting the public from intoxicated drivers. He said that the court system agrees and has hired a therapeutic courts coordinator. In Alaska, there are currently seven of these courts, he said, and four more are being created. Mr. Wanamaker said he wants the executive branch to provide more support for the new system, noting that there have been problems with the Department of Corrections. Mr. Wanamaker said that the Highway Traffic Safety office has invested \$800,000 for therapeutic courts, which would benefit from increased support at the administration level.

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MS. JOHNSON said the first therapeutic courts were drug courts, and they now have additional titles, such as problem solving courts, DUI courts, wellness courts, and specialty courts. Nationally they are called drug courts. "The main drug of choice for Alaskans is alcohol," she said, so alcohol addiction is Alaska's focus. Also, there is a "mental health" court and a "family dependency court." She relayed that Judge Stephanie Rhoades of Alaska started one of the first mental health courts in the country, and it is used as a model for other states, adding that Alaska's Judge James Wanamaker helped create the wellness court. There is a four-year study on that model to determine its transferability to the rest of the nation. Ms. Johnson noted that funding sources are varied. The legislature has funded several of the courts, she added, and the Alaska

Mental Health Trust Authority (AMHTA) is very supportive of the mental health courts. Ms. Johnson pointed out that therapeutic courts are not feasible in all Alaskan communities, so there is an effort to train judges to integrate some of the principles of therapeutic justice into their practice.

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MS. JOHNSON quoted a statement by President Bush in support of drug courts [original punctuation provided by Ms. Johnson]:

Drug courts are an effective and cost efficient way to help non-violent drug offenders commit to a rigorous drug treatment program in lieu of prison. By leveraging the coercive power of the criminal justice system, drug courts can alter the behavior of non-violent, low-level drug offenders through a combination of judicial supervision, case management, mandatory drug testing, and treatment to ensure abstinence from drugs, and escalating sanctions.

CHAIR MCGUIRE thanked the speakers for their presentation.

SB 56 - CRIMINAL LAW/PROCEDURE/SENTENCING

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CHAIR MCGUIRE announced that the final order of business would be CS FOR SENATE BILL NO. 56(JUD), "An Act relating to criminal law and procedure, criminal sentences, and probation and parole; and providing for an effective date." [CSSB 56(JUD) had been amended twice on 1/31/05.]

REPRESENTATIVE ANDERSON moved to report CSSB 56(JUD), as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE COGHILL said he still had questions about the bill.

The committee took an at-ease from 1:46 p.m. to 1:49 p.m.

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CHAIR MCGUIRE noted that at the bill's prior hearing, Representative Gara had made a motion to adopt Amendment 3 but, because of time constraints that day, had withdrawn it.

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REPRESENTATIVE GARA again made a motion to adopt Amendment 3, labeled 24-LS0308\L.1, Luckhaupt, 1/28/05, which read:

Page 4, lines 10 - 17:  
Delete all material.

Renumber the following bill sections accordingly.

Page 24, line 4:  
Delete "Sections 1, 4, 6, 26, and 29 - 31"  
Insert "Sections 1, 4, 6, 25, and 28 - 30"

Page 24, lines 5 - 6:  
Delete "Sections 2, 3, 5, 7 - 25, and 27 - 28"  
Insert "Sections 2, 3, 5, 7- 24, and 26 - 27"

Page 24, line 7:  
Delete "secs. 8 - 21"  
Insert "secs. 7 - 20"

CHAIR McGUIRE objected for the purpose of discussion.

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REPRESENTATIVE GARA stated that a judge can increase a sentence based on the "Chaney criteria" [statutory guidelines based on the 1970 Alaska Supreme Court case, Chaney v. State]. With Amendment 3, Representative Gara said, judges are required to explain their sentencing decisions, and it gives defendants the right to file an appeal if they think their sentences are too long. He said that if the legislature takes out the right to appeal, "this bill is going to be here next year." He said he thinks it is a constitutional issue.

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REPRESENTATIVE GRUENBERG referred to lines 11-13 on page 4 and said that it says that a sentence reviewed by an appellate court may not be reversed as excessive, adding that he believes this does not take away the right to appeal. It limits the court's discretion to render a decision, which therefore violates Article IV, Section 2, of the Alaska State Constitution, which makes the supreme court the highest court in the land. One cannot have the judicial power of the state in a court when it

is denied the right to reverse a sentence as excessive. That is a limitation on the judicial power of the state, Representative Gruenberg stated. He also said it is contrary to Rule 520(c) of the Alaska Rules of Appellate Procedure, which gives the courts full power to reverse a decision. He said, therefore, that he supports amendment 3.

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REPRESENTATIVE COGHILL said the constitution says the jurisdiction of the courts should be prescribed by law, and he thinks, "one of the things that we've done in the legislature is give sentence prescription, and if you want to call that a limitation on the court, that certainly is; this is just an extension of that prescription." He said he thinks the language in the bill wouldn't be challengeable constitutionally, so Representative Coghill said he will vote against Amendment 3.

CHAIR MCGUIRE announced that the committee's packet contains arguments for and against Amendment 3, and noted that Legislative Legal and Research Services reported that other states that have a similar prohibition against appeals based on excessiveness have been upheld. Chair McGuire said there are good arguments on both sides, and predicted that the debate will continue. She said she will oppose the amendment because she thinks an important prerogative of the legislature is to be able to set mandatory minimum sentences for certain crimes. She added that she would prefer to have aggravators in place, but separate trials are costly, and it is necessary to draw the line somewhere. She said there are some lawmakers who would like to simply raise the minimum sentence, but she said she feels more comfortable with giving the courts a range. If the bill allows for appeals based on excessiveness, there will be an appeal "every single time."

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REPRESENTATIVE GRUENBERG responded to Representative Coghill's points and said that even if Representative Coghill were correct, it would only apply to the court of appeals and not to the supreme court. Representative Gruenberg added that he looked at the two states where Chair McGuire said a similar law was upheld, and he countered that those laws are very different from what Alaska is doing. He said that the Washington statute limits the defendant's ability to file an appeal, and the Kansas statute limits the court's jurisdiction in the legal sense. That is "not at all what this bill does; this bill limits the

court's power to issue a judgment of reversal, and that's different from a jurisdictional issue," he said.

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REPRESENTATIVE GARA said he does not want to argue about constitutionality because the committee cannot determine that, and he wants to point out that he thinks determining a range is acceptable. Amendment 3 does not alter that; instead it requires judges to explain to the public what they did and why, he said. Representative Gara said he doesn't always have complete trust in judges, and the whole point of the court of appeals is to keep the law consistent. Making a judge defend his or her decisions makes the system more credible.

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CHAIR McGUIRE said she thinks there are two issues in Representative Gara's amendment, and she recommends that he consider bifurcating it if it fails. She said she is much more sympathetic to his requirement of findings.

REPRESENTATIVE ANDERSON recapped Chair McGuire's comments, and asked Representative Gara to respond.

REPRESENTATIVE GARA said Amendment 3 leaves the law the same as it is today, and the people who have the right to appeal today will have that right tomorrow. He said he agrees that there is abuse of the appeal process, but people with good appeals as well as bad appeals file. He said that by eliminating the right to appeal, both groups of people will be punished, and it would protect all judges regardless of whether they are doing a good job. "By taking away the right to appeal from everybody, you are going to uphold sentences that shouldn't have been issued," he said.

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CHAIR McGUIRE responded that under the current system a defendant knows that if sentencing goes above the presumptive because of an aggravating factor, the likelihood of appeal is less. The reason for pairing the appeal exclusion with the range is the "human tendency to say 'if there's a range of four to seven, and I get anything more than four, I'm mad about it.'" She remarked that all of Representative Gara's arguments standing alone make sense, but it is the package that causes her concern. She said that Section 7, puts "downward pressure," on

the sentencing, and she reiterated her belief that anyone who gets more years than the bottom of the range will want to appeal.

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REPRESENTATIVE GARA said those were good points. However, going back to the premise of the bill, he remarked, the Department of Law (DOL) said it did not want to change the average sentences in the state, but that it wanted to abide by the new constitutional ruling. Representative Gara said he believes his amendment would do that - keep Alaska's sentencing guidelines as similar to current guidelines as allowed. He opined that this bill changes sentencing for every crime, and if the legislature wants to do that, it should consider each crime individually.

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REPRESENTATIVE GRUENBERG spoke on incarceration costs, and suggested that it would save the state money when an appeal is won. He added that judges make "occasional mistakes," sentence appeals are inexpensive, and a few successful appeals can "save the state a significant amount of money."

The committee took an at-ease from 2:12 p.m. to 2:14 p.m.

[SB 56, as previously amended, was held over with the motion to adopt Amendment 3 left pending.]

#### **ADJOURNMENT**

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There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:14 p.m.