

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10274 HOUSE JUDICIARY

119

HB

172

AMENDMENT #1

OFFERED IN THE HOUSE
TO: HB 172

- 1 Page 2, line 1:
- 2 Delete "Second"
- 3 Insert "Third"

*MOVED &
ADOPTED*

AMENDMENT #2

OFFERED IN THE HOUSE
TO: HB 172

*MOVED &
ADOPTED*

- 1 Page 1, following line 11:
- 2 Insert "will focus on defendants charged with multiple driving while intoxicated
- 3 offenses and"

MOVED +
ADOPTED

AMENDMENT #3

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: HB 172

- 1 Page 2, line 1, following "Anchorage.":
- 2 Insert "In addition, the legislature recognizes that district courts are currently
- 3 experimenting with and using therapeutic concepts such as those contained in this Act. The
- 4 legislature acknowledges these efforts, encourages their continuation in the district courts, and
- 5 does not intend by this Act the extinguishment of these efforts."

MOVED &
ADOPTED

AMENDMENT #4

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: HB 172

1 Page 4, following line 30:

2 Insert a new subsection to read:

3 "(n) The Department of Health and Social Services is authorized to make advances to
4 a defendant accepted to the therapeutic court to cover the initial costs of participating in the
5 treatment programs if the defendant is otherwise without resources to pay those costs. The
6 court shall require as a condition of probation that the defendant repay the department."
7

8 Reletter the following subsection accordingly.

AMENDMENT #5

MOVED
+
ADOPTED

OFFERED IN THE HOUSE

TO: HB172

Page 2, following line 18:

Insert a new subsection to read:

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

Reletter the following subsections accordingly.

Page 3, line 19:

Delete "or municipal prosecutor"

Page 3, line 30:

Delete "or municipal prosecutor"

Page 4, lines 14-15:

Delete "or municipal prosecutor"

Page 4, line 26:

Delete "(k) of this section"

Insert "(l) of this section"

MOVED
FAILS

22-LS0612V.7
Luckhaupt
3/22/01

AMENDMENT #6

OFFERED IN THE HOUSE

BY REPRESENTATIVE BERKOWITZ

TO: HB 172

1 Page 3, line 23:

2 Delete "state or municipal prosecutor and the"

3

4 Page 3, lines 24 - 25:

5 Delete "prosecutor, the defendant, or the court if the defendant's"

6 Insert "defendant or the court if the"



ALASKA STATE LEGISLATURE

SPEAKER OF THE HOUSE BRIAN PORTER

SPONSOR STATEMENT

HOUSE BILL 172

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

House Bill 172 will establish two therapeutic court pilot projects—Anchorage and Bethel. These courts are designed to serve as working models for the development of other similar courts throughout the state.

As stated in the legislative purpose section of House Bill 172, therapeutic courts are designed to:

- assist offenders toward lasting sobriety;
- protect society from alcohol and drug related crime;
- provide prompt payment of restitution to victims;
- encourage effective interaction and use of resources among criminal justice and community agencies; and,
- reduce long-term costs relating to arrest, trial and incarceration.

The pilot projects will be implemented through joint efforts of the Court System, Department of Law, the Public Defender Agency, the Department of Corrections, the Department of Health and Social Services and other agencies in accordance with a mutually agreed upon plan. The courts are to use existing public agencies, medical and treatment services, housing and other public, private and non-profit community services as well. The Bethel pilot project is designed to coordinate services with municipal and local entities, taking into consideration local resources and cultural traditions, to facilitate rehabilitation.

The Court System has requested two additional superior court judge positions to preside over the therapeutic courts. These positions will be assigned to Anchorage and Bethel.



ALASKA STATE LEGISLATURE

SPEAKER OF THE HOUSE BRIAN PORTER

SECTIONAL ANALYSIS

HOUSE BILL 172

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

Section 1: Legislative purpose. This section states the purpose of the pilot therapeutic courts, their locations, criteria to consider when imposing sentences, sanctions to be imposed if conditions imposed by therapeutic court are violated, time limits for entering a plea and conviction judgement, conditions of bail or probation and evaluation of the pilot projects by the Alaska Judicial Council.

Section 2: Amends AS 22.10.120. Number of judges. This section adds two superior court judges. One additional judge assigned to the Third Judicial District (to be based in Anchorage) and one additional judge assigned to the Fourth Judicial District (to be based in Bethel). These judges will preside over the pilot therapeutic courts as well as other cases that they may be assigned.



FEB 16 2001

ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

Doug Wooliver
Administrative Attorney

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8265
FAX (907) 264-8291

February 16, 2001

The Honorable Norm Rokeberg
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

This letter is a follow up to our meeting on Friday, February 2, 2001. In that meeting you asked me to provide you with information relating to DWI offenses in Anchorage and to therapeutic courts for DWI offenders. Specifically, you asked:

- for a breakdown of the municipal and state DWI cases filed in the Anchorage trial courts;
- whether the Municipality of Anchorage (MOA) would need additional resources if the legislature were to expand the caseload of the therapeutic court for misdemeanor DWI offenders that Judge Wanamaker has developed in the district court;
- for the estimated cost of operating a therapeutic court for DWI offenders in Anchorage;
- whether the federal grant money we have received to operate a felony drug court could be used to offset some of the cost of a felony DWI court;
- whether the federal grant money we have received to operate a felony drug court could be used to help offset the cost of a therapeutic court for misdemeanor DWI offenders in district court.

State and municipal DWI prosecutions in Anchorage

The MOA prosecuted approximately 1,650 misdemeanor DWI cases in calendar year 1999, and approximately 1525 in calendar year 2000.

The state averages approximately 100 misdemeanor and 100 felony DWI cases a year in Anchorage.

Additional municipal resources for an expanded therapeutic court within the district court

The municipal prosecutor's office in Anchorage estimates that the Wellness Court project could double its program participants to 50 a year without a significant impact on their budget. If the program were to double again (to 100 cases), they would need additional resources.

That office believes that it can absorb these additional cases because they already have an attorney position that is dedicated to the Wellness Court and the Mental Health Court and that position has a growth factor built into it. Additionally, they will soon be receiving a grant-funded case manager to manage their Wellness Court and Mental Health Court cases.

Thus far I have been unable to speak with the law firm that contracts with the MOA for public defender services. When I do get through to them I will send you their estimate of how an increase in the municipal cases going through the Wellness Court would impact their workload.

Cost estimate for therapeutic court for Anchorage DWI offenders

Estimating the cost of a therapeutic court for DWI offenders in Anchorage is complicated by two significant variables. Those variables are the number of program participants and the court resources necessary for each one.

The number of participants will be influenced by the establishment of eligibility requirements, the treatment model and its costs, the availability of treatment cost subsidies, sentencing incentives, and other DWI related statutory changes that the legislature may enact.

The court resources necessary to devote to each program participant will be primarily influenced by the specifics of the program (i.e. how many times the defendant comes before the court) and the length of time the defendant will be under the court's scrutiny.

Because the above issues are still being developed, discussed, and debated, I will provide the costs associated with a new superior court judge (for a felony-based model) and a new district court judge (for a misdemeanor-based model). A new judge in either court would be able to handle a significant number of defendants under a variety of program scenarios. However, other support staff, such as a case manager, may be necessary depending on the number of program participants.

A superior court judge in Anchorage costs \$270,591 a year. That includes the salary and benefits of a superior court judge, law clerk, secretary, and in-court clerk.

A district court judge in Anchorage costs \$184,002 a year. That includes the salary and benefits for a district court judge, in-court clerk, and one half of a secretary.

Representative Rokeberg
February 15, 2001
Page 3 of 3

benefits for a district court judge, in-court clerk, and one half of a secretary.

The above costs are limited to those associated with adding new judicial positions only. They do not include the fiscal impact that a therapeutic court will have on other criminal justice agencies.

Use of federal Drug Court grant money for felony DWI cases

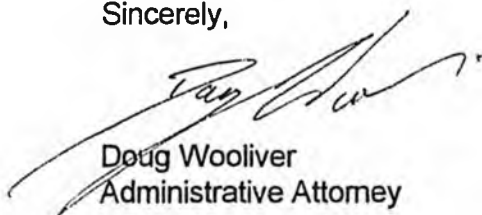
Although the federal grant that is funding our Drug Court program can be used to fund the therapeutic treatment of some felony DWI offenders, the principal focus of the program must be felony drug offenders.

Use of federal Drug Court grant money for misdemeanor DWI cases

The terms of our federal grant limit the use of the money to felony level offenses.

Thank you for the opportunity to comment on these issues. I hope this information is helpful.

Sincerely,



Doug Wooliver
Administrative Attorney

FW: more information

Subject: FW: more information

Date: Wed, 14 Feb 2001 09:46:00 -0900

From: "Lindstrom, Elmer A." <Elmer_Lindstrom@health.state.ak.us>

To: "Janet Seitz" <Janet_Seitz@legis.state.ak.us>

FYI....

> -----Original Message-----

> From: Jones, Loren A

> Sent: Wednesday, February 14, 2001 8:53 AM

> To: Lindstrom, Elmer A.; Turner, Ernest J.

> Cc: 'Dapcevich, Don'; Soule, Susan

> Subject: RE: more information

>

> I checked with Susan in ADA Anchorage office.

>

> * Yukon Kuskokwim Health Corporation (YKHC) is a BRU funded agency.

> They provide residential care in Bethel and outpatient care in Bethel and

> the villages. YKHC have split the region into 8 sub regional areas and

> these areas are served by a outpatient treatment team.

> * The Bethel Group Home, while not a grantee, have been given limited

> approval to provide adolescent treatment in their group home.

> * Kuskokwim Native Association (KNA) in Aniak is a grantee that

> provides outpatient care in the seven villages of that region.

> * 4 River in McGrath is a grantee that provides care in the villages

> of that region. They have some working agreements with YKHC to help serve

> four villages that are in both YKHC region but served as well by 4 Rivers.

>

> Hope this is what you wanted.

>

> Loren

> -----Original Message-----

> From: Lindstrom, Elmer A.

> Sent: Wednesday, February 14, 2001 7:03 AM

> To: Turner, Ernest J.; Jones, Loren A

> Cc: 'Dapcevich, Don'

> Subject: FW: more information

> Importance: High

>

> Please send response to me this morning and I will forward to Janet.

>

> Elmo

>

> -----Original Message-----

> From: Janet Seitz [SMTP:Janet_Seitz@legis.state.ak.us]

> Sent: Tuesday, February 13, 2001 2:15 PM

> To: Elmer_Lindstrom@health.state.ak.us

> Subject: more information

>

> Elmer:

>

> Thanks for your help.

>

> More information needed. Question: What alcohol and/or substance abuse

> programs are state grantees in the Bethel area? How many are there?

> What level of service(s) do they offer?

>

> thanks.

>

> Janet << File: Card for Janet Seitz >>

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FEB 16 2001

alaska judicial council

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To: See Below

Fax #: See Below

Date: 2/16/01

Time: _____

From: Teri Carns

Number of pages (including this cover sheet) 5

If you have any problems or questions, please contact Teri Carns
at (907) 279-2526.

Comments:

The Judicial Council has prepared the attached charts at the request of the members of the interim Criminal Justice Council. We thought that you would find the information helpful. Please contact me if you have questions or comments. Teri Carns

*If more than one person at the same agency please distribute copies to each one.

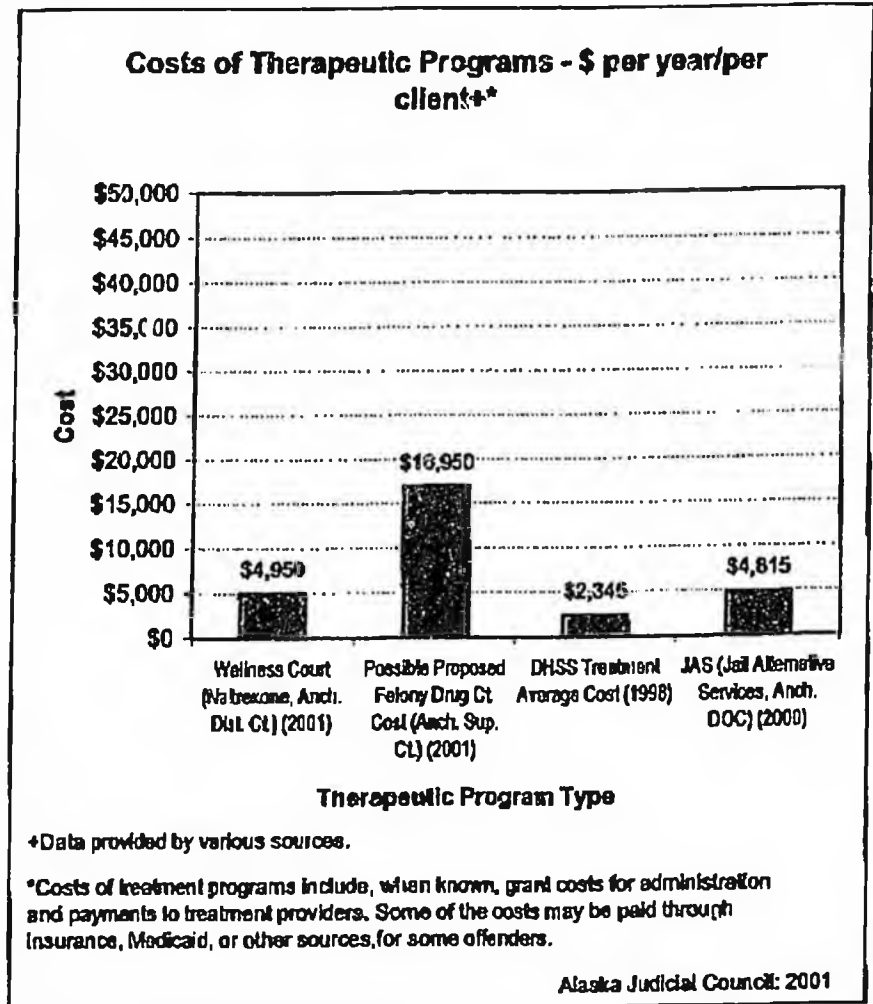
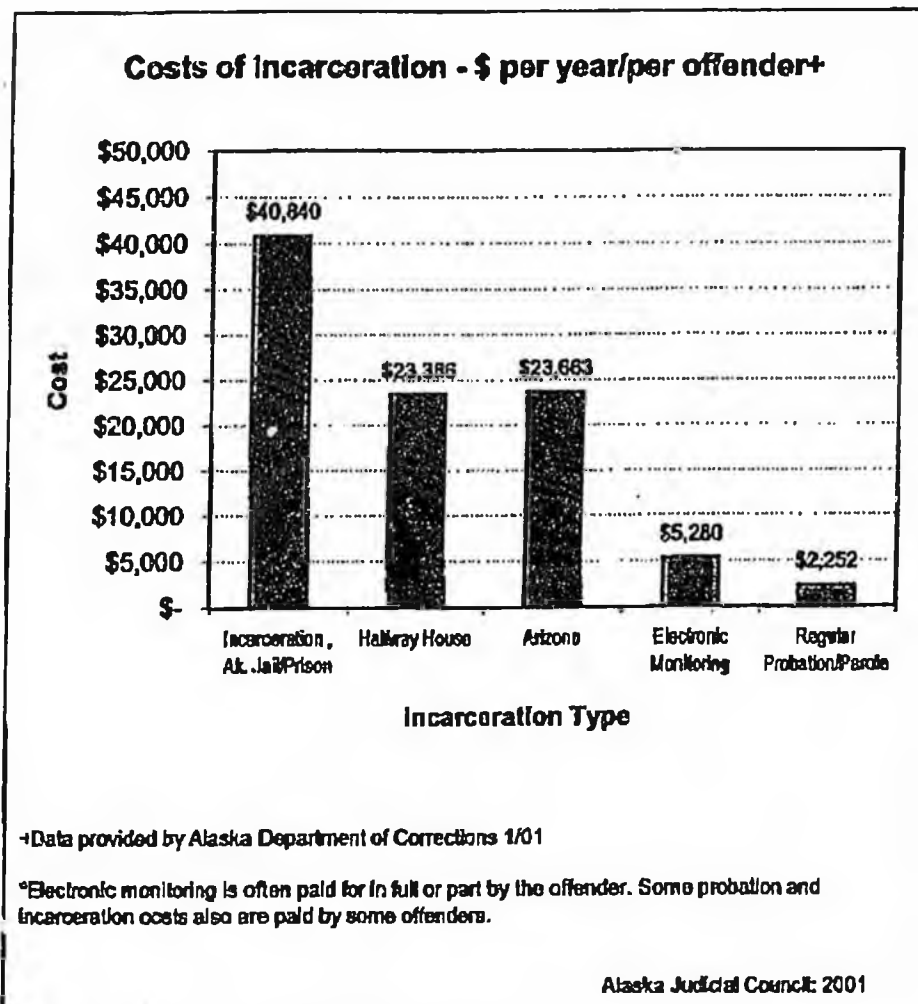
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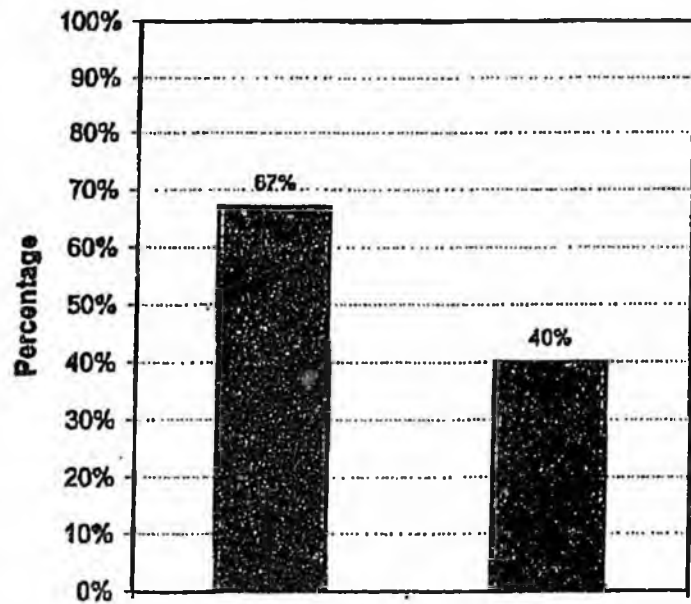
Costs and recidivism rates for incarceration compared to therapeutic programs



FEB-16-2001 15:06
 AK JUDICIAL COUNCIL
 2755046 P.02/05

Costs and recidivism rates for incarceration compared to therapeutic programs (continued)

Recidivism Rates After Incarceration

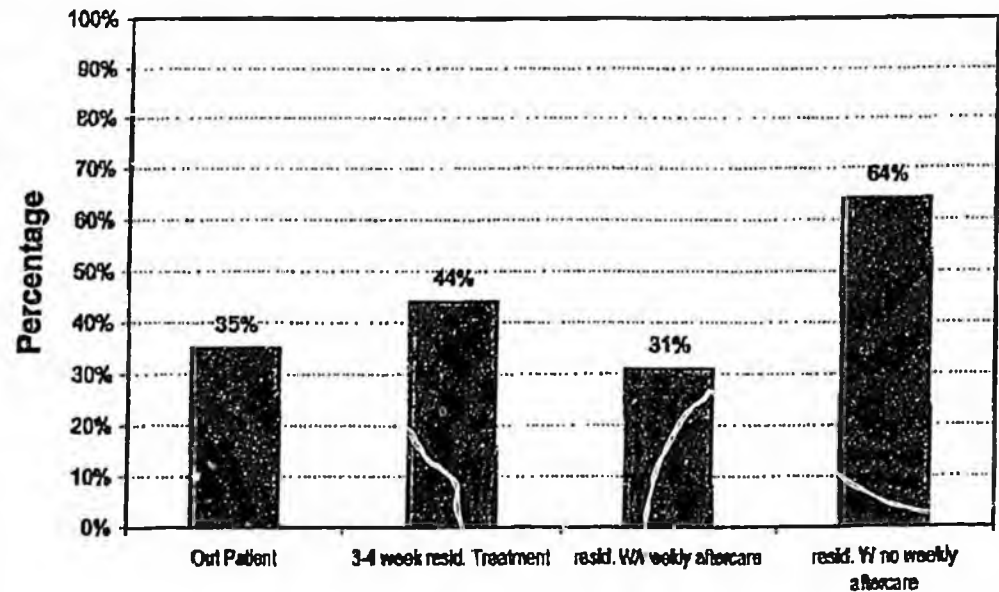


Nationwide, 67% of all released re-arrested within 3 years (p. 3, 11/00 DOJ paper) 2 of 5 of all inmates released this year nationwide will return to jail within 3 years (VERA p. 3 2000)

Incarceration

Alaska Judicial Council: 2001

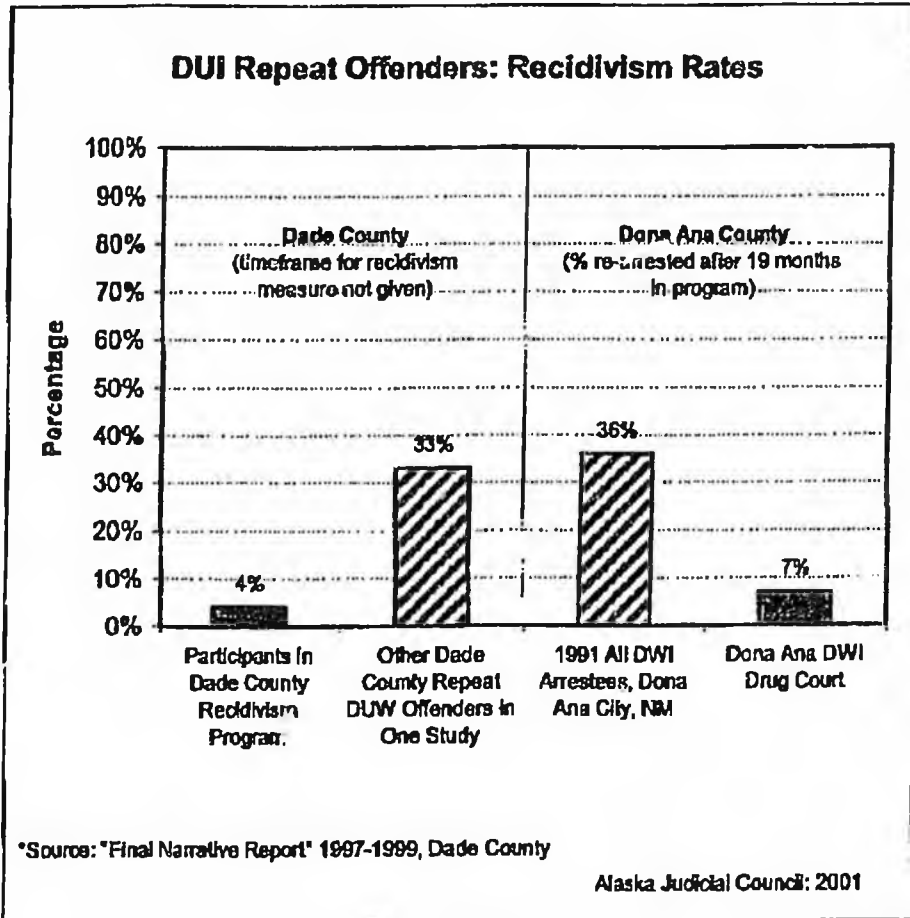
Effectiveness of different substance abuse treatments in one study* - Relapsed within 6 months after leaving program



*1994 Division of Alcoholism and Drug Abuse, cited in Legislative Audit #08-4570-89, p.30.

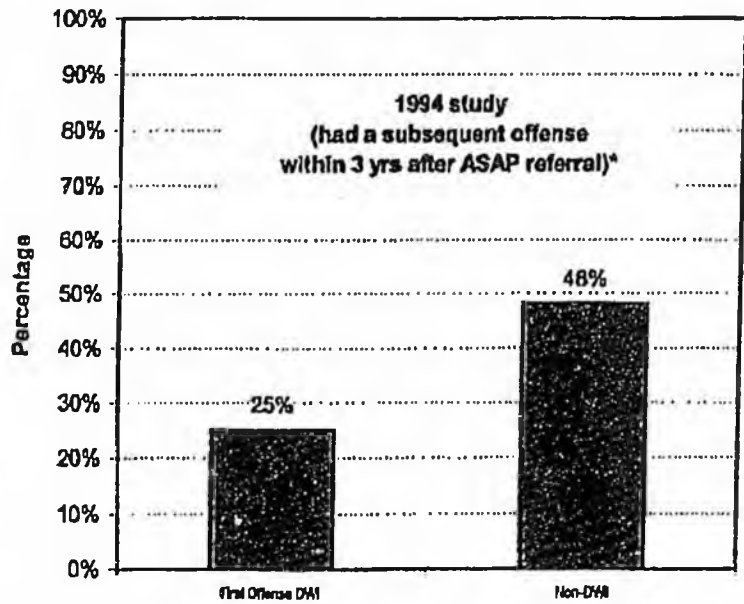
Alaska Judicial Council: 2001

Costs and recidivism rates for incarceration compared to therapeutic programs (continued)



Costs and recidivism rates for incarceration compared to therapeutic programs (continued)

Recidivism Rates, with ASAP Referral

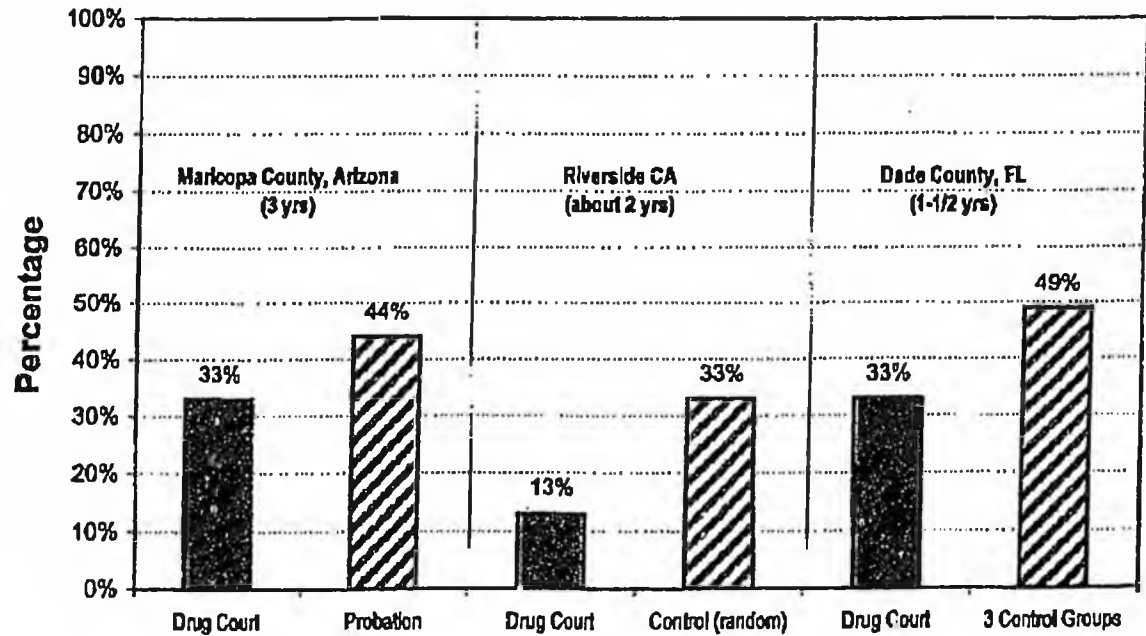


No control groups available

*ASAP Evaluation Survey, 1994, UAA

Alaska Judicial Council: 2001

Drug Courts: Recidivism Rates in Controlled Studies*



**Research on Drug Courts: A Critical Review," S. Belenko Nat'l. Drug Ct Institute Review Vol. I, Issue 1.

Alaska Judicial Council: 2001



alaska judicial council

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To: See Below

Fax #: See Below

Date: 2/22/01

Time: 2:30

From: Teri Carns

Number of pages (including this cover sheet) 20

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■ DRUNK DRIVERS, DWI "DRUG COURT" TREATMENT, AND RECIDIVISM: WHO FAILS?

James F. Breckenridge
L. Thomas Winfree, Jr.
James R. Maupin
Dennis L. Clason

■ Abstract

We conducted an evaluation of an experimental Driving-While-Intoxicated (DWI) Drug Court treatment program operated by a single municipal court. Specially trained court personnel assessed first-time (and, as we found out, some second-time) DWI offenders for symptoms of alcoholism. Once court personnel reached a clinical determination that an individual was an alcoholic, research team members randomly assigned that person to either the treatment program or to a control group receiving normal municipal court processing. A third group consisted of a like number of randomly selected, nonalcoholic, first-time offenders. The conviction records of all three groups were tracked for up to 24 months following the initial DWI conviction. We found significantly fewer alcohol-related and other serious crime reconvictions for the nonalcoholic group. Among those determined to be alcoholic, the treatment group had significantly fewer reconvictions than the control group. We address the implications and limitations of our findings for similar experimental studies in criminal justice and for DWI Drug Court treatment programs.

An earlier version of this paper was presented at the annual meeting of the Academy of Criminal Justice Sciences, Orlando, FL, March 9-13, 1999. This work was supported under grant #96-IJ-CX-0022 from the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the author and do not necessarily reflect the official position of the U.S. Department of Justice.

Since the early 1980s, driving while intoxicated (DWI)¹ has been identified as a major problem in the United States because of the large number of lives lost in alcohol-related vehicle accidents. Between the years 1982 and 1997, alcohol-related driving accidents resulted in 333,586 deaths, an average of 22,240 persons each year (National Highway Traffic Safety Administration [NHTSA], 1999b). In 1997, there were two alcohol-related traffic deaths per hour, 45 per day, and 315 per week (NHTSA, 1999b).

In this paper we examine one community's effort to reduce the number of DWI offenses. In particular, we evaluate an experimental court-based treatment program for clinically diagnosed alcoholics convicted of driving drunk. We begin with a brief discussion of drunk driving in the United States in general and in New Mexico in particular. Next, we outline the development of and process used by a post-adjudicatory treatment program employed by one New Mexico court. Finally, we assess this program by analyzing the new conviction records of program participants and comparing them to the records of two groups of nonparticipants.

■ Responding to a Social Problem: DWI Policies and Practices in the 1980s and 1990s

In 1995, 1.4 million arrests, or 9% of all arrests, were for drunk driving (National Center on Addiction and Substance Abuse [NCASA], 1998, p. 55). Interestingly, this figure represents a drop of almost 500,000 arrests from the peak year in 1983 (Greenfield, 1998, p. 11; NCASA, 1998, p. 55). Liu and associates (1997), however, estimate that drivers in the United States operate motor vehicles under the influence of alcohol approximately 123 million times each year. In other words, for every one drunk driver who gets caught, nearly 90 others escape.

The national response to the "DWI problem" throughout the 1980s represented a linear approach to criminal justice policy: an escalation in the sanctions for DWI offenders, as well as those whose alcohol consumption directly contributes to an automobile accident. As a result of pressure from citizen groups and the "just deserts" attitude about criminals held by many members of society at the time, legislators enacted laws giving individuals convicted of DWIs increased jail time, and, in some circumstances, prison sentences. The effect of these laws

¹ Some states, in recognition of the fact that alcohol is but one drug, use the term Driving Under the Influence, or DUI.

on inmate populations has been considerable.² In 1997, more than a half million DWI offenders were on probation (454,500), in jail (41,100), or in prison (17,600); in other words, DWI offenders accounted for 14% of all probationers, 7% of all jail inmates, and 2% of all state prisoners in the United States (Maruschek, 1999, p. 1).

Incarceration may not be the optimal solution for preventing reoffending for substance abuse-related law violations (McGuire, 1995), and may be viewed as counterproductive by society (NCASA, 1998). By the 1990s, increased emphasis began to be placed on a second approach to drug-using offenders: treatment. Indeed, many treatment options exist, ranging from educational programs to individual and group clinical counseling sessions. However, as Taxman and Piquero (1998, p. 130) observed, "Due to wide variation among rehabilitation programs, researchers have repeatedly found it difficult to make general statements about the effectiveness of rehabilitation programs for drunk drivers." According to Brennan (1992, p. 40), "If the problematic drinking and/or the dependency/addiction is not addressed, the offender will be back in the criminal justice system."

■ Drunk Driving: The Case of New Mexico

The State of New Mexico is a sparsely populated state of 1,729,751 residents (U.S. Census Bureau, 1997). However, it has a relatively high incidence rate for alcohol-related accidents. For example, in 1982, New Mexico reported 367 alcohol-related traffic fatalities, or 63.6% of the traffic fatalities for that year; by 1997, DWI fatalities had declined to 220, or 45.5% of all traffic fatalities (New Mexico State Highway and Transportation Department [NMSHTD], 1998b, p. 2). Even with this decline, New Mexico remained above the national average by more than 10 percentage points, with alcohol being involved in 42.5% of all fatal crashes for 1997 (NHTSA, 1999b, p.1).

The high rate of drinking and driving in New Mexico is reflected in the state's arrest rates. In 1997, there were 19,136 DWI arrests and 11,608 DWI convictions (NMSHTD, 1998b, p. 15). New Mexico's per capita arrest rate, at 1,156 per 100,000 drivers, is tied with Nebraska's for the sixth highest in the

²Nationally, legislation that increases the sanctions for DWI offenses tends to have the same effects on state and local criminal justice systems as does the mandatory sentence legislation for illegal drug offenses: far higher prison and jail populations (Kinkade, Leone, & Wacker, 1992).

nation, behind only Minnesota, Washington, North Carolina, Idaho, and Wyoming (Maruschak, 1999, p. 3). Of New Mexico's 33 counties, Doña Ana County is the second most populous and is ranked fourth in the number of DWI convictions in 1997 with 969 (NMSHTD, 1998a, p. 8). Also in 1997, Las Cruces, the state's second largest city and the city in which this study was performed, recorded 569 DWI convictions, or 60% of the convictions in Doña Ana County (NMSHTD, 1998a, p. 9).

■ Creation of a DWI Drug Court Preadjudicatory Treatment Program

The creation of special courts for drug-involved offenders is not a totally new idea. For example, special courts directed at those arrested for heroin use and distribution began operating in Chicago and New York in the early 1950s and into the 1970s (Belenko, 1998). These courts were created in response to increasingly stiff penalties for drug-related offenses, but they were punishment oriented. They did not provide substance abuse treatment for offenders. Essentially, these courts focused on the law breaking, and not the underlying substance abuse problems with which the offender was burdened. A court that was aimed at dealing with the offense and the offender's substance abuse problem was not available until the late 1980s.

Drug Courts: Miami and Beyond

In 1989, Janet Reno, then the Miami-Dade County Attorney, worked with other local officials to design and implement the first drug court containing a significant treatment component. This court was based in part on the assumption that successful treatment of substance abuse problems would eliminate future commission of drug-related offenses and lower the jail and prison populations (Belenko, 1998). The Miami court used its coercive power to make offenders comply with a presentence treatment program or face harsher sanctions.

The Miami Drug Court dealt with chronic substance abusers through a combination of rehabilitation and sanctions. Miami's diversionary drug court approach to handling drug offenders provided the offender with "a year or more of treatment and case management services that included counseling, group therapy, self-help, fellowship meetings, educational courses, and vocational services, along with strict monitoring through periodic urine tests and court appearances" (Finn & Newlyn, 1993, p. 2). The program had three phases: detoxification, stabilization, and aftercare (Goldkamp, 1994). This was a switch from the traditional judicial approach that consisted of jail time or probation as the only possible outcomes.

Drug courts have evolved into two different models but still use the same treatment approach to dealing with offenders. The Miami Drug Court was a presentence program that exposed participants to treatment prior to proceeding through the standard criminal judicial process. Offenders were provided with the option of undergoing a treatment program, staying clean and meeting all other requirements set out by the court, or facing the judge and conventional judicial actions. Those offenders who were designated by the court counselor as needing treatment were offered the treatment choice. Incentives for the offender included dismissal and expungement of all charges and fines (Belenko, 1998; Finn & Newlyn, 1993).

The second model was a postsentence treatment program. Under the postsentence drug court model, offenders would proceed through the traditional judicial process, but prior to the sentencing hearing they would be offered the option of going through the drug court program. If the offenders chose the drug court program, they received a deferred sentence that could be suspended providing they completed the treatment. Incentives for participants to complete the program included the suspension or reduction of remaining fines or probation time (Belenko, 1998).

Drug Court Practices and Procedures

The drug court, given its unique approach to dealing with offenders, has a specific set of punishment/treatment goals. According to Belenko (1998, p. 6) the central drug-court goals are:

to reduce drug use and associated criminal behavior by engaging and retaining drug-involved offenders in programmatic and treatment services; to concentrate expertise about drug cases into one courtroom; to address other defendant needs through clinical assessment and effective case management; and to free judicial, prosecutorial and public defense resources for adjudicating non-drug cases.

These goals generally are applicable to either drug court model. Moreover, drug court programs generally recognize the high potential for client relapse since the offenders' substance abuse problem is defined as a disease (Brown, 1997).

Drug courts generally include four treatment phases (cf., Belenko, 1998; Finn & Newlyn, 1993; see, too, Mays, Ryan, & Bejarano, 1997; NCASA, 1998). During the first phase (Phase I), detoxification provides physical, mental, and emotional stability for inmates suffering withdrawal symptoms (NCASA, 1998, p. 121). Participants attend weekly hearings for up to three months, combined with group counseling sessions twice a week and individual counseling sessions once a week. The judge may also "prescribe" Alcoholics Anonymous sessions.

The second phase of treatment (Phase II) encompasses the Phase I treatment, although both group and individual counseling sessions are held only once a week. Trained professional counselors, leading groups of 8 to 10 participants, seek to explore and modify underlying psychological and behavioral problems that contribute to the addiction (NCASA, 1998, p. 125). Phase II also includes Alcoholics Anonymous meetings, and participants meet with the drug court judge only on a monthly basis. The goal of this stage of the treatment is to make the clients aware of their substance abuse problem.

The group and individual counseling sessions continue in Phase III, with an emphasis on positioning offenders to start taking over some of the aspects of the treatment and to provide them with more structure and personal responsibility. Moreover, they clearly understand that they must continue treatment or face sanctions. This phase fits in with "the goal of individual counseling [which] is to develop the inmate's self-image and sense of personal responsibility, as well as learning coping skills to deal with personal problems" (NCASA, 1998, p. 125).

The final phase (Phase IV) of the treatment includes monthly meetings for the time remaining in the program. An interesting aspect of the treatment is that group sessions are held only once a week and individual sessions are held on a request-only basis. However, the Alcoholics Anonymous meetings continue at the same frequency as at the start of the program.

Drug Court Successes and Failures

Belenko (1998, p. 29) reviewed the research on drug courts and found a recurring theme: Groups that received treatment had substantially lower rates of criminal behavior while in the program as opposed to groups that followed the traditional judicial process (Belenko, 1998, p. 29). In their evaluation of the Miami Drug Court, Finn and Newlyn (1993, p.13) found that rearrest rates for people who completed the program were roughly 49% lower than for those who did not receive the treatment. Goldkamp (1994), after studying the characteristics of the participants who recidivated, concluded that offenders with higher self-reported frequency of drug abuse subsequently tend to have poorer rates of program performance. Nonetheless, drug court defendants showed much lower rates of arrest, and when they were rearrested, they averaged two to three times longer from the completion of treatment to the first rearrest than people who did not participate in drug court (Goldkamp, 1994, p. 126). Other researchers report that program graduates are substantially less likely to become recidivists, and the likelihood of reoffending for persons who did not complete the program but did receive some treatment is also lower than for persons who were not exposed to drug court programming (Belenko, 1998; NCASA, 1998). Even atti-

tudes toward drinking and driving can be changed through participation in a treatment program (Juhnke, Sullivan, & Harman, 1995).

In two other areas, drug courts have increased the work of the participating court. The rate of failure to appear before the court tends to go up, as do probation violation rates (Goldkamp, 1994). Both trends may be artifacts of the repeated court visits mandated by the program for participants and the increased number of drug screenings (Goldkamp, 1994).

Despite some problems, the successes of the drug court programs have not gone unnoticed. According to Belenko (1998), as of April 1998, 275 drug courts had been implemented in different jurisdictions around the United States. Federal funding for drug courts of all sorts began to flow in the mid-1990s. Between 1995 and 1997, the U. S. Department of Justice, through the drug court programs office, provided \$56 million for drug court implementation (Belenko, 1998).

DWI Drug Court

Much of the drug court movement's emphasis has been on illegal drug use; however, the use and abuse of legal drugs clearly costs lives and other resources. Apparently, at least one judge believed that the drug court approach could be applied to offenders convicted of DWI offenses. Bakersfield, California, initiated the nation's first drug court focusing on alcohol offenses in July 1993 (Mays et al., 1997). In 1995, a second program was established in the Las Cruces, New Mexico, Municipal Court. The Las Cruces Municipal DWI Drug Court evolved from the same general postsentence drug court model that was being implemented around the country (Mays et al., 1997). Moreover, the court's presiding judge, Stephen Ryan, adapted the four-phase Drug Court program for DWI offenders. Instead of trying to rehabilitate and treat a person's problem in a jail setting, the outpatient approach was chosen for the Las Cruces Municipal DWI Drug Court.

■ Methods

The current study examines a group of 152 convicted DWI offenders who appeared in the Municipal Court of Las Cruces, New Mexico, between March 1 and November 30, 1997.³ The Municipal Court dealt only with offenders arrested by Las Cruces Police Department officers or state police officers operating

³ The New Mexico Criminal and Traffic Law Manual (1994, p. 649) defines simple DWI offenses to be offenses where a person is operating a vehicle under the influence of intoxicating alcohol or drugs, with a blood or breath alcohol concentration of 8 one-

within the city limits. Throughout this 9-month period, Municipal Court personnel, assisted by research team members, followed a two-step process for assessing first-time DWI offenders (and, as we found empirically, some second-time offenders). At the first stage, specially trained court personnel screened the convicted offenders for symptoms of alcoholism using either the Western Personality Inventory or the Michigan Alcohol Screening Test. The nonalcoholic group consisted of "first time" DWI offenders who were deemed by the court DWI screeners not to have a clinical substance abuse problem.⁴

At the second stage, members of the research team randomly selected individuals from the group defined as alcoholics for membership in either the treatment or control groups. For example, assume that at a regular Monday afternoon sentencing session of the DWI Drug Court, the judge was set to review 16 convicted DWI offenders, including 6 alcoholic first-time offenders, 8 nonalcoholic first-time offenders, and 2 chronic offenders. On the previous Friday, court officials would have provided the research team with a list of all 16 names. The chronic offenders were taken off the list. Alcoholics were assigned numbers ranging from 1 to 6; nonalcoholics were also assigned individual numbers. All 6 alcoholics would be randomly assigned to either treatment or normal court processing by research team members, based on a table of random numbers. From among the 8 nonalcoholic first-time offenders, 6 were randomly selected using the same method. At the Monday afternoon sentencing session, researchers presented each list to the judge, who followed the assignments to the letter. We followed the subsequent conviction records of all 14 individuals for the study period. Members of the nonalcoholic group and the alcoholic control group

hundredths or more which renders them incapable of safely driving a vehicle. Aggravated DWI offenses constitute the same intoxicated condition but with the qualifying characteristics of having a blood or breath alcohol concentration of 16 one-hundredths or more, or causing bodily injury as a result of the intoxicated driving, or refusing to submit to an implied consent chemical alcohol level test (New Mexico Criminal and Traffic Law Manual, 1994, p. 649). The first three DWI offenses, which are considered to be misdemeanors, are handled through the Municipal Courts. Fourth or higher DWI offenses, considered to be felony offenses, are handled at the District Court level. For the purposes of this evaluation, only misdemeanor DWI offenses will be evaluated. It is these DWI offenses that are central because they are offenses with which the Las Cruces Municipal DWI Drug Court treatment program deals.

⁴ Additional factors sometimes played a role in determining whether an individual driver was an "alcoholic." If the accused had a blood alcohol level twice the legal limit—that is, 0.16 blood alcohol content per 100 milliliters of blood for a person 21 years of age or older—staff members could make a recommendation to the judge that the individual in question be defined as an alcoholic for the purposes of the DWI treatment program, irrespective of the other test results.

proceeded through the justice system, receiving traditional punishments like probation, fines, and, if called for, jail time. The experimental group received many of these same punishments, but also had to undergo DWI Drug Court treatment, which included individual, group, and even family treatment sessions.⁵

Data Collection Procedures

At the conclusion of the formal sentencing hearing, the selected alcoholic and nonalcoholic participants were asked by research team members, at least one of whom was fully bilingual in English and Spanish, if they would participate in a long-term study of DWI offending in New Mexico. The voluntary nature of subject participation was explained, as was the fact that all information about the participants was protected under federal law.⁶ The fact that the research team members had no official connection with the court and could not alter the judicial outcome was also fully explained to each participant. Each participant was paid an honorarium of \$5. Fully 79% of the alcoholic offenders approached by research team members agreed to participate in the study. A slightly lower percentage (78.2%) of the nonalcoholic offenders expressed the same sentiment.

Recidivism Measurement

Recidivism is an outcome with variable measurement (Maltz, 1984). We employed reconviction as the chief measure of program success or failure since it can be reasonably argued that it provides the "most true" measure of a return to previous illegal behavior⁷: "The best indicator of recidivism is conviction for a new offense following a conviction for a previous offense" (Champion, 1998, p. 404). Champion (1998, p. 405), observing the importance of such measures in evaluation research, states that "using any other indicator may lead to false conclusions about a program's effectiveness." Arrest data change throughout the

⁵In a pilot study of the DWI Drug Court, Judge Ryan restored the driving privileges of convicted DWI offenders who successfully completed the program (Mays et al., 1997). Before initiation of the current evaluation project, the New Mexico Supreme Court informed Judge Ryan that this act was not within his judicial powers.

⁶In preparation for the data collection phase, the researchers obtained a confidentiality certificate from the National Institute on Alcoholism and Alcohol Abuse. Under the terms of this certificate, information about the respondents collected as a part of the project was deemed confidential, and members of the research team were forbidden, under penalty of federal prosecution, to share individual answers. This information was provided each subject, both orally and in writing.

⁷Opinions differ widely on this issue. For example, it can be argued that arrests are a closer estimate of actual law-violative behavior since convictions underestimate the amount of crime (Blumstein and Cohen, 1978; Worldredge, 1988).

justice system and may indicate a higher level of criminality than is accurate, simply because arrestees may not have engaged in any illegal behavior (Champion, 1998, p. 405). For example, in 1997, only about 60% of the arrests for DWI in New Mexico resulted in a conviction (NMSHTD, 1998a, p. 15). Conviction data represent the final level of criminality for the person as determined by a court of law.

We defined reconviction-as-recidivism in two ways: The first was a reconviction for any subsequent driving offense. While this measure may seem trivial, it is often driving offenses and not DWI checkpoints that result in the apprehension of a drunk driver. The second measure of recidivism counted reconvictions for all alcohol or drug-related charges—including aggravated and simple DWI offenses, public intoxication, selling or otherwise providing alcoholic beverages to minors—and all other “serious offenses” heard by the original sentencing court.⁸ The latter category included all non-alcohol-related misdemeanor offenses, including contempt of court, misdemeanor larceny and theft charges, and misdemeanor assault.

Reconviction data were obtained only from the Las Cruces Municipal Court computer system, which consisted of criminal histories for persons who had any convictions in that court. We followed all subjects for a minimum of 15 months after the initial DWI arrest, and given 9 months of data collection, up to 24 months.⁹ Conviction records were unavailable if the person in question appeared in one of the Doña Ana County Magistrate Courts or the State District Court, a shortcoming of the current study.¹⁰ However, only persons arrested by Sheriff's Department deputies or State Police officers operating in the county appeared in one of the county's three Magistrate Courts; and, the Las Cruces Municipal Court heard far more DWI cases than the Doña Ana County Magistrate Court system. Moreover, the only drunk drivers that appeared before the State District Court were

⁸ The original plan called for all “true crimes,” that is, offenses other than traffic tickets, to be broken into discrete categories, such as simple DWI, aggravated DWI, drug- or alcohol-related crimes, and the like. However, there were so few recidivists in this group that such finite grouping would have proved uninformative.

⁹ Right censoring occurred equally for both experimental and control groups since at each Drug Court session, eligible persons were randomly assigned to the two groups. At the end of the first month, there was roughly the same number of subjects in each group; the same was true for persons selected in the ninth month.

¹⁰ The New Mexico State District Courts are courts of original trial jurisdiction and, as such, are considered superior courts. They also hear, as trials de novo, appeals from the local inferior courts, including both the Doña Ana County Magistrate Courts and Las Cruces Municipal Courts.

fourth-offense DWI suspects, individuals who would not have been included in the current study as three-time losers, or persons accused of felonies. Only convictions that happened after that initial survey date were considered for inclusion. We recorded the three most serious offenses and all drug-related offenses.

Demographic Characteristics of the Aggregate Sample Population

The sample population was relatively small but diverse (see Table 1). The mean age was nearly 34 years old. The youngest participant was 17 years old; the oldest was 65 years old.¹¹ There were substantially more males than females. The majority of the population were never married; people who were currently married formed the second largest group. More than one half of the subjects were Hispanics/Mexican-Americans, with Non-Hispanic Caucasians being the second most frequently reported ethnic group. Other racial or ethnic group members, including African Americans and American Indians, accounted for less than 9% of the subjects. Interestingly, most participants had some education at the college level.¹² More than 80% of the participants were employed at the time of arrest.

The Drug Court staff diagnosed as alcoholic roughly one half (49.3%) of the drunk drivers interviewed during the study's 9-month primary data collection phase. Of this group, approximately one half ($n = 39$) were randomly assigned to the treatment group. The rest ($n = 36$) became members of the control group. Over the course of the next 15 to 24 months, approximately 2 in 10 of all the participants were convicted of a traffic offense; about one half that number, or 1 in 10, were reconvicted of an alcohol or serious offense. Subgroup comparisons by gender, age, marital status, race/ethnicity, education and employment status did not reveal any significant differences.

Hypotheses

To explore the viability of the DWI Drug Court program, we proposed four hypotheses for testing:

- (1) Offenders clinically defined as alcoholics will have higher reconviction rates for traffic offenses than the subjects not defined as alcoholics.

¹¹ The authors are reporting both the percentages of participants and the number of participants because of the small number of participants. This is done to ensure that the reader is not misled by a high percentage when the actual number is relatively small.

¹² The level of schooling is indicated by the highest categorical level achieved from the following: (1) grade school or less, (2) some high school, (3) high school graduate, (4) attended college, (5) college graduate, and (6) postgraduate education. For the purposes of this analysis, the first two categories were combined into one—less than high school graduate.

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Table 1

Study Subjects' Characteristics

Attribute		Number	Percent
Gender	Male	131	86.2%
	Female	21	13.8
Age	17-25 years old	45	29.6
	26-35 years old	50	32.9
	36 years or older	57	37.5
Marital Status	Married/Common law	36	30.0
	Divorced/Separated	25	20.8
	Never married	56	46.7
	Other	3	2.5
Race/Ethnicity	Caucasian/Anglo	33	26.2
	Hispanic/Mexican American	83	65.9
	Black/African American	2	1.6
	American Indian	3	2.9
	Other	5	4.0
Education	Less than high school graduate	36	29.6
	High school graduate	28	23.1
	Attended college	46	38.0
	College graduate or more	11	9.3
Employment status	Not employed	21	17.8
	Employed	97	82.2
Treatment status	Nonalcoholic group	77	50.7
	Alcoholic treatment group	39	25.7
	Alcoholic control group	36	23.7
No. of subsequent traffic offenses	None	123	80.9
	One	16	10.5
	Two or more	13	8.6
No. of subsequent alcohol-related and serious offenses	None	135	88.8
	One	11	7.2
	Two or more	6	3.9

(2) Offenders clinically defined as alcoholics will have higher reconviction rates for alcohol-related or serious crimes than the subjects not defined as alcoholics.

(3) The alcoholic treatment group will have lower reconviction rates for traffic offenses than the alcoholic control group, but higher rates than the nonalcoholic groups.

(4) The alcoholic treatment group will have lower reconviction rates for alcohol-related and serious offenses than the alcoholic control group, but higher rates than the nonalcoholic groups.

■ Findings

The four hypotheses are well-suited for crosstabular analysis. We used Fischer's exact test as the means to test the null hypothesis of no difference.¹³ The first and second hypotheses explore the differences between nonalcoholics and alcoholics, while the third and fourth hypotheses contrast three groups—the alcoholic treatment group, the alcoholic control group, and the nonalcoholic group.

As shown in Table 2, alcoholics are no more likely than nonalcoholics to report new convictions for traffic offenses only. Over 80% of both groups

■ Table 2

Alcoholism Status and Reconvictions for Traffic Offense Only (N = 152)

Reconvictions	Nonalcoholic (Percent/Number)	Alcoholic (Percent/Number)
None	80.5% (62)	81.3% (61)
One	13.0 (10)	8.0 (6)
Two or More	6.5 (5)	10.7 (8)
Total	100.0 (77)	100.0 (75)

Fisher's Exact Test (2-tail) = 0.462

¹³Fisher was able to find the exact distribution of his test statistic only for 2x2 tables, so the test was, until recently, limited to tables of this size. However, network maximization algorithms allow computers to determine the P value for Fisher's exact test for small tables. The 66.12 PROC FREQ (SAS Institute, Inc., 1996) program provided the P values for the data examined in Tables 2, 3, 4, and 5. The figures reported at the bottom of each table are the probability levels for the Fisher's exact test.

had no traffic offense convictions. The analysis for alcohol-related and serious offense convictions is somewhat different, however (Table 3). While we found convictions for less than 4% of the nonalcoholics, nearly 20% of the alcoholics had one or more convictions. These differences were statistically significant. Hence, we found no support for our first research hypothesis, while the second was supported: Offenders clinically defined as alcoholics had higher conviction rates for alcohol-related and serious crimes than the subjects not defined as alcoholics.

■ Table 3

Alcoholism Status and Convictions for Alcohol-Related and Serious Offenses Only (N = 152)

Convictions	Nonalcoholic (Percent/Number)	Alcoholic (Percent/Number)
None	96.1% (74)	81.3% (61)
One	1.3 (1)	13.3 (10)
Two or More	2.6 (2)	5.3 (4)
Total	100.0 (77)	100.0 (75)

Fisher's Exact Test (2-tail) = 0.0053

Tables 4 and 5 summarize the Fisher's exact test results for the third and fourth hypotheses. In Table 4 we see no support for the third hypothesis. The percentage differences among the three groups suggest that they differ little in terms of convictions, except, perhaps, for the number of alcoholics in the treatment group with two or more traffic offense convictions. However, the Fisher's exact test analysis suggests that this difference—and the rest observed in this table—are not significant.

Results of the Fisher's exact test analysis shown in Table 5 do provide support for the fourth hypothesis, similar to the results reported in Table 3: the differences for alcohol-related and serious offending conviction rates for the three groups were significantly different. Only about 4% of the nonalcoholics stood convicted of an alcohol-related or serious offense. However, 22.2% of the control group and 15.4% of the treatment group had similar problems with the law. Once again, we find that the individuals designated as having more severe

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substance abuse problems had higher reconviction rates for alcohol-related and serious crimes than those who were viewed as not having a serious substance abuse problem; moreover, the treatment group had lower reconviction rates for these same crimes than the control group.

■ Table 4

Group Status and Reconvictions for Traffic Offenses Only (N = 152)

Reconvictions	Treatment Group Alcoholic (Percent/Number)	Control Group Alcoholic (Percent/Number)	Nonalcoholic Group (Percent/Number)
None	79.5% (31)	83.3% (30)	80.5% (62)
One	7.7 (3)	8.3 (3)	13.0 (10)
Two or More	12.8 (5)	8.3 (3)	6.5 (5)
Total	100.0 (39)	100.0 (36)	100.0 (77)

Fisher's Exact Test (2-tail) = 0.729

■ Table 5

Group Status and Reconvictions for Alcohol-Related and Serious Offenses Only (N = 152)

Reconvictions	Treatment Group Alcoholic (Percent/Number)	Control Group Alcoholic (Percent/Number)	Nonalcoholic Group (Percent/Number)
None	84.6% (33)	77.8% (28)	96.1% (74)
One	10.3 (4)	16.7 (6)	1.3 (1)
Two or More	5.1 (2)	5.6 (2)	2.6 (2)
Total	100.0 (39)	100.0 (36)	100.0 (77)

Fisher's Exact Test (2-tail) = 0.011

■ Summary and Conclusions

Social scientists rarely encounter the level of support from a judge that formed the basis of the current study. Judge Ryan was willing to assign DWI defendants diagnosed as alcoholics to the treatment and control groups based on a random drawing. The problem was that the court saw so few individuals who qualified for the DWI court over the period of the study that the relative group sizes are small. Moreover, Judge Ryan left the bench approximately 8 months into the 24-month study; we were not allowed to use random assignment by the judge appointed to replace him. We feel confident, however, that the combination of the alcoholism screening process employed by the court and our use of random assignment allows us to make meaningful comparisons between the three groups in question (see Winfree and Giever, forthcoming).

Based on the program structure, goals, and practices, we hypothesized that program participants would experience lower reconviction rates than non-program participants, and especially lower than the members of the control group. Except for exposure to the DWI Drug Court regimen, these two latter groups were nearly identical. Moreover, we anticipated that failures would occur later for members of the experimental group. Our analyses only partly supported our hypotheses. That is, we found that only in the case of alcohol-related and other serious crimes did nonalcoholics have fewer reconvictions than alcoholics. Similarly, the treatment group members had fewer reconvictions than members of the control group, but more than the nonalcoholics.

These findings must be tempered by an important observation about the dependent variable. That is, we only measured recidivism in one of the courts in Dofia Ana county empowered to hear DWI cases.¹⁴ The municipal court in question handled roughly 60% of all DWI offenses in the county, and it is unlikely that offenders or law enforcement officials could, by their actions, bias the results one way or the other. Still, the findings must be tempered by our inability to collect reconviction data in other courts.

What does this preliminary analysis suggest about the DWI Drug Court we evaluated? Program participants had significantly fewer reconvictions than nearly

¹⁴ Dofia Ana county has several magistrate court judges who hear DWI cases; they also operated a DWI drug court at the time the study was being conducted. However, in a rather unusual move, the magistrate judges *en banc* made it clear to the researchers that they were not interested in participating in the DWI study. Moreover, they insisted that we make it clear that this study did not include the magistrate court. By this mechanism, we make that point.

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identical control group subjects, and this alone is an important finding. However, the clear majority of all persons convicted of DWI during the study's 9-month primary data collection period—between 80% and 90% of all three groups of subjects—were, at least one year later and in terms of the criteria used in this study, successes.¹⁵ One conclusion seems prudent, if not cautionary, in light of the sample sizes: Perhaps the enhanced DWI sanctions implemented in New Mexico in the year prior to the study yielded the same or very similar results as a very expensive individual and group treatment program.

¹⁵ We performed the SPPS^x (1983) survival analysis procedure on those reconvicted for traffic offenses ($n = 29$) and alcohol-related and serious offenses ($n = 17$). The findings reinforced the crosstabular analysis. However, given the extreme right-censoring issues surrounding the question of time to failure (i.e., so few individuals failed), we do not have full confidence in this analysis.

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STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF ALCOHOLISM AND DRUG ABUSE

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Dear Reader:

The Division of Alcoholism and Drug Abuse is pleased to present this report on the outcomes of treatment services provided in Alaska. Preliminary findings from this study show that Alaska's treatment programs work.

The State of Alaska's treatment programs care for about 2,500 residential and 5,500 outpatients a year. Treatment services are provided by 45 programs in the State.

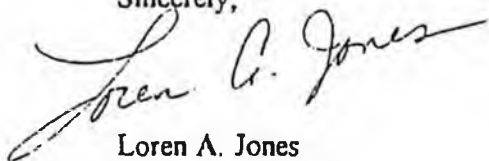
The study for the Division of Alcoholism and Drug Abuse is being conducted by New Standards, Inc., a nationally recognized authority in studying treatment programs. Under the study, some 1,600 residential patients and outpatients will be followed from their admission to a treatment program to one year following admission. In this portion of the study, NSI followed up on the first 300 patients in the study six months after they began treatment. These patients will be contacted again a year after treatment.

Findings from the study, even at this early stage, show that treatment does work. The study also confirms our belief that continuing care is very important. When complete, the study will help us design the best treatment and after care programs for Alaskans. These findings also compare very positively to studies done at programs elsewhere in the nation.

This study followed up patients from treatment centers in Anchorage, Barrow, Bethel, Craig, Dillingham, Fairbanks, Healy, Nenana, Juneau, Kenai, Ketchikan, Nome and Mat-Su. The full study is scheduled to be completed in mid-1997.

We encourage you to read and study this report. If you have any questions please contact the Division.

Sincerely,



Loren A. Jones
Director

Chemical Dependency Treatment Outcome Study Executive Summary

Results from a study of Alaska's chemical dependency treatment programs show that the state's efforts are succeeding on several fronts. Follow-up interviews with participants in both inpatient and outpatient treatment programs indicate that, after one year, arrests and hospitalization decreased, while participants' employment rates and work attendance increased.

The Alaska Division of Alcoholism and Drug Abuse commissioned the treatment outcome study to measure the effectiveness of publicly funded residential and outpatient treatment programs. Beginning in February 1994, the study surveyed 1024 residential/step-down patients and 510 outpatients who consented to assessments at admission, discharge, and six and 12 months after admission to treatment. The findings were collected by New Standards Inc., a Minnesota-based authority in studying treatment programs.

The study will provide information to help policymakers design the best treatment and after-care programs for Alaskans.

The outcome study found:

- Of Alaskan patients surveyed, 56 percent of those in outpatient programs abstained from alcohol for one year after treatment, compared to 42 percent of residential patients. Outpatients in the study received an average of 59 hours of care, while patients in residential programs received an average of 39 days of inpatient care.
- The study also found there is a strong association between abstinence rates and post-treatment levels of care and peer support groups like Alcoholics Anonymous. For 75 percent of residential patients, formal aftercare taken for a year resulted in a year of sobriety. Formal aftercare during the first six months appears to have the strongest impact on recovery among outpatients, with 71 to 77 percent reporting sobriety.
- Both residential and outpatient program participants reported substantial decreases in legal problems one year posttreatment. Criminal arrests, traffic arrests and motor vehicle accidents dropped. This yields overall societal benefits as a result of chemical dependency treatment by easing demands on already overburdened legal and insurance systems.
- Documented reductions in hospitalizations and emergency care and outpatient care for chemical dependency program patients support the notion that, following treatment there is a shifting away from costly hospital and emergency room "crisis" or urgent care, toward more timely and appropriate preventive or routine outpatient treatment.
- Employment rates changed dramatically from pretreatment through one year after treatment. Full-time employment increased from 30 percent before treatment to 45 percent at 12 months. Conversely, unemployment rates dropped from 45 percent to 24 percent.
- Both residential and outpatients reported significant reductions in tardiness and missing work. Outpatients in particular reported fewer problems with supervisors and fewer mistakes on the job.
- A significant number of patients surveyed reported sexual and physical abuse; 10 percent of the residential patients and 8 percent of the outpatients indicated incest by a male relative. Twenty-eight percent of the outpatients and 29 percent of the residential patients reported physical abuse prior to age 18.

ABUSE IN AMERICA: Fresh research and shifting views of treatment are opening new fronts in a deadly struggle. **By Jonathan Alter**

MAYBE YOU'VE SEEN THE MOVIE: DAD, AN OHIO JUDGE AND the nation's new drug czar, needs a cocktail to "take the edge off." Mom has her own youthful history with drugs and scoffs at Dad's suggestion that she was just "experimenting." Their 16-year-old

daughter, a lovely straight-A student at a fancy private school, starts freebasing cocaine, then turns tricks to pay for her habit.

Whatever happens next month at the Oscars, the movie "Traffic" is a cinematic IV injection—a jolting reminder of the horrors of drugs

**THE
WAR
ON**

ADDICTION

and the drug war. After a campaign in which both parties all but ignored the drug issue, director Steven Soderbergh manages the nearly impossible feat of illuminating a national debate without taking sides (both reformers and hard-liners like the movie), beyond attaching a patina of hopelessness to the whole issue.

Actually, the future may not be quite as bleak as the film suggests. While policy revolutions—like legalizing narcotics or somehow eradicating supply—are pipe dreams, change is coming to the world of addiction and drug policy. Voters in several states are far ahead of the politicians, approving ballot initiatives

that offer more treatment options. "Drug courts" that allow judges to impose substance-abuse treatment in place of jail have grown fiftyfold since the mid-1990s, part of a new understanding that, even with frequent relapses, treatment is much less expensive for society than prison and interdiction. All of the former drug czars as well as the man rumored to be President Bush's choice for the job, retired Col. James McDonough, stress treatment and demand-side reduction as their first priority, though the funding decisions have yet to catch up to the new rhetoric.

More broadly, this relatively peaceful interlude in the nation's drug history (half as many regular drug users as in 1979 and the crack epidemic ebbing) offers a rare chance to rethink old approaches not just to renewed threats like heroin but to the mother of all abused substances—alcohol. Science is yielding clues about the "hedonic region" of the brain, while breakthrough medications and greater understanding of the mental-health problems that underlie many addictions are giving therapists new tools.

Addiction is hardly an American affliction, but it sometimes looks that way. The master narrative of public life these days seems to be all about abuse

Even greatly expanded prison capacity that consumes billions can't accommodate this flow. So over the next few years, as sentences from the high-crime 1980s are completed and reform of drugs laws accelerates, hundreds of thousands of offenders will be released or sentenced more leniently. Hard-core addicts in some jurisdictions are estimated to commit 100 petty crimes each per year. If their substance-abuse problems aren't addressed, the country will face another crime wave soon.

In an attempt to break the vicious cycle, drug addiction is increasingly being viewed more as a disease than a crime. (Drug trafficking is a different matter.) California approved Proposition 36 last fall, a landmark referendum that offers treatment options in place of jail for nonviolent offenders. New York is rewriting its draconian Rockefeller-era drug laws. The outgoing drug czar, retired Gen. Barry McCaffrey, says the phrase "drug war" should be retired in favor of "drug cancer." The straight-talking military man has little to say about interdiction. His No. 1 recommendation on leaving office last

DRUG CULTURES

Stars become inmates; generals decry war. Even Hollywood can't write an ending to the substance-abuse story. Downey (far right), *Traffic's* Michael Douglas and ex-czar McCaffrey (facing page)



Even hard-liners in the war on drugs like to say that w

and recovery, with inner demons replacing outer enemies or forces of nature as the dramatic foils of choice. After leaving drug rehab, Jennifer Capriati stages an improbable tennis comeback to win the Australian Open. Robert Downey Jr. relapses once again, a haunting symbol of the limits of treatment. The departing president of the United States appears to have been addicted to sex, while the new president—by his own account—once had a drinking problem.

In the real America, the toll is incalculable. Consider Areina Garcia, 34, mother of four children ages 1, 2, 4 and 7. She admits she was "selling my ass for drugs" and getting high in front of her kids. She didn't stop until her husband reported her to family court. Or Brian Kelly, 31, who started drinking at 8 while tailgating with his alcoholic parents at Notre Dame games. His crack habit landed him in a \$14,000-a-month "country club" treatment program with a pool, tennis courts and nothing but what he calls "appeasement" of his problem. Now both Garcia and Kelly are midway through a no-nonsense, 12- to 15-month residential treatment program at Phoenix House, still at real risk of relapse, but with at least a fighting chance to salvage their lives.

The aggregate consequences of addiction are staggering. Consider that the number of inmates in American prisons more than tripled over the last 20 years to nearly 2 million, with 60 percent to 70 percent testing positive for substance abuse on arrest. These inmates are the parents of 2.4 million children, all of whom are disproportionately likely to follow their parents to jail. According to the exponential math of a Brown University study, if the prison population were to continue growing at the current rate, by 2053 the United States would actually have more people in prison than out.

month was that insurance companies offer the same level of coverage for mental-health and drug disorders as they do for any other illness. This is unlikely (managed care has led to lower reimbursements for treatments). But even hard-liners are beginning to say that we can no longer incarcerate our way out of the problem.

OF COURSE OLD HABITS DIE HARD. WASHINGTON still directs two thirds of the federal drug budget (including \$1.1 billion in military aid to Colombia) to law enforcement, while state legislatures—leery of seeming to coddle criminals—lag behind public opinion on funding treatment. So-called harm-reduction strategies like needle exchanges (common in Europe) have a tough time winning approval, despite many studies proving that they save lives. The new attorney general, John Ashcroft, has opposed not just needle exchanges, but a taxpayer-supported media campaign aimed at teens. The early signs are that the Bush team will essentially maintain the status quo on drug policy.

Even so, a "third way" consensus between liberals and conservatives is emerging, especially at the local level where the real money is spent. It combines flexible enforcement with mandatory treatment. The drug-court idea, which comes with strong backing from most prosecutors, is sometimes known as "coercive abstinence"—using the threat of jail to motivate substance abusers to get help. "The real, nut-cutting issue is motivation," says Joseph Califano, chairman of the National Center on Addiction and Substance Abuse. The research shows that those forced into treatment do at least as well as addicts who enroll voluntarily—often better, be-

cause they must stay in therapy longer or risk reincarceration. In all recovery programs, the best predictor of success is the length of treatment. While relapse is common, those who remain at least a year are more than twice as likely to stay clean.

So drug-treatment experts now often favor the "big foot" of law enforcement. "The legalizers don't understand the psychodynamics of addiction," says Dr. George De Leon, author of the National Institute on Drug Abuse's most thorough study of treatment. "The nature of the disorder is that the client is resistant to treatment." This suggests the need for intensive drug treatment not only in jail, where addicts are a captive audience, but after release, with sentences shortened in exchange for successful enrollment. Drug-court judges use carrots (gift certificates; the promise of fewer court dates) and sticks (return to jail) to change behavior.

Drug-policy reformers like Ethan Nadelman of the Lindesmith Center don't buy the approach: "Alcoholics don't have coerced treatment," Nadelman says. "So why should drug abusers?" But those who actually provide treatment say they have fewer empty beds when the courts are involved. They worry that California's Proposition 36 doesn't do

Meanwhile, hundreds of laws remain on the books that make it hard to treat substance abuse as a public-health matter. Consider heroin addiction. In nine American cities, men 20 to 54 are more likely to die of a heroin overdose than in a car accident. But courts won't often authorize methadone treatment, and junkies routinely fail to report overdoses to the authorities for fear of being arrested. In "Traffic," the kids leave their overdosed friend at the hospital and run—a common response.

IN NEW MEXICO, WHERE GOP GOV. GARY JOHNSON IS an outspoken drug reformer, the authorities are trying a new harm-reduction strategy to fight overdoses. Last month New Mexico doctors began giving addicts syringes full of Narcan, an easy-to-inject medication that counteracts the heroin, often saving lives. One test of the new public mood on drug-policy reform will be if other states follow suit.

New York is beginning to reassess its tough drug laws, which date from the 1970s. Last month Gov.



We can no longer incarcerate our way out of the problem

enough to compel long-term treatment. Addicts will "get kind of a driver's-ed course in drugs that isn't going to force them to take a self-inventory and change themselves," says Dr. Mitchell Rosenthal, founder of Phoenix House, which operates residential-treatment centers in eight states.

Rosenthal says Phoenix House has relied on the criminal-justice system for its recent growth spurt. As in all treatment, the vast majority drop out before completing the program, but those who make it through the whole year have a surprisingly good prognosis. The research shows that about three quarters of those who graduate from 12-month residential programs are employed, drug-free and not in jail five years later. The results for in-prison programs and outpatient therapy are worse than for long-term residential care, but there, too, the key variable is length of treatment.

At the same time, all but the fanciest 28-day residential programs are less expensive than prison, and outpatient care is much cheaper. Even when you throw in the costs of the drug court, the total expense is less than half as much as jail, and the results are far more effective. Inmates assigned to drug courts in Los Angeles and Washington, D.C., were 30 percent less likely to be rearrested than those who went through conventional courts—a huge savings to society. In another survey, only about 10 percent of those under drug-court supervision tested positive for drugs; for those in regular probation, the "dirty urine" figures were one third.

George Pataki, once a major hard-liner, proposed cutting the minimum sentences for serious drug felons from 15 years to eight and giving judges more discretion. In reviewing the clemency process, Pataki says he found "dramatically unfair sentences—people sentenced to 15 years when their involvement was minimal." But at the federal level, so-called mandatory minimum sentencing requirements are in no danger of being repealed any time soon.

Spending priorities right now look pound foolish. The Center on Addiction and Substance Abuse released a study last week showing that states spend more than 13 percent of their total budgets just "shoveling up" the wreckage of addiction—as much as they appropriate for higher education and 100 times what they spend on prevention and treatment. Another study by Rand Corp. shows that every dollar spent on treatment saves seven dollars in services. That's because even if addicts eventually relapse, they are clean during their time in treatment, saving millions in acute health-care costs and law enforcement.

For all its promise, treatment remains a spit in the ocean of national substance abuse. Phoenix House, the nation's largest network of treatment centers, has only about 5,000 residents—out of more than a million people arrested every year on drug-related charges. California's Proposition 36 will fund 10,000 new treatment slots. But that's out of 160,000 inmates who need it. While drug courts are multiplying fast, they still make up a tiny percentage of all criminal courts. In other words, like treating addiction, changing national drug policy will take patience, commitment and time. All we know for sure is that we have no choice but to try.

With MICHAEL ISIKOFF, MARK HOSENBALL and SUZANNE SMALLEY



FOR ADDITIONAL, WEB-EXCLUSIVE COVERAGE FROM OUR REPORT ON FIGHTING ADDICTION, GO TO NEWSWEEK.MSNBC.COM. AND LOG IN FOR AN AUDIO INTERVIEW WITH JONATHAN ALTER.

Millions of Americans abuse drugs, alcohol and cigarettes every year. The cost to society? Nearly \$300 billion.

MAPPING ADDICTION



HIGH TIMES: Eleven million Americans inhale monthly; Coloradans lead the pack



LIQUID: North Dakota ranks first in binge-drinking rates; Maryland is last



RAVING: 'Club drugs,' namely ecstasy, are on the rise; Boston and St. Louis report sharp increases



SHOOTING UP: Heroin use among teens is rising in San Francisco, Newark, N.J., and Atlanta.

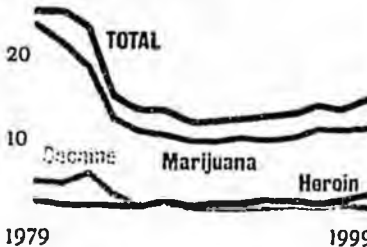
SNOWED: In Miami, San Diego and Bridgeport, Conn., cocaine use is up

SMOKIN': Tobacco kills 430,000 per year; Nevadans smoke the most

SUBSTANCE ABUSE

Abuse is down, but 47 million Americans are still hooked on cigarettes, and 14 million each on drugs and alcohol.

Millions of drug users



Adult users	Heavy drinkers
% OF TOTAL USERS	% OF TOTAL POP.
1965 42.4%	1994 6.2%
1999 24.1	1999 5.7

CONSUMING FIVE OR MORE DRINKS ON FIVE OR MORE DAYS PER MONTH

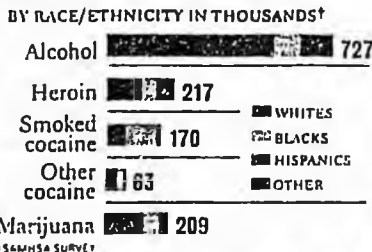
TREATMENT

Substance abusers who stay in treatment longer are less likely to resume their bad habits.

Long-term inpatient treatment



Admissions for treatment



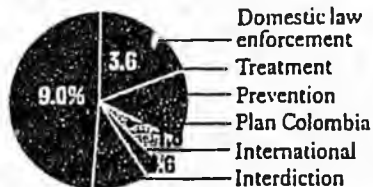
SPENDING

Federal and state governments spend only a small percentage of their budgets on treatment and prevention.

Substance-abuse-related spending

	PERCENT OF BUDGET	PREVENTION, TREATMENT, RESEARCH
New York	17.0%	1.0
Massachusetts	16.8	0.6
California	15.3	0.7

U.S. drug-control budget: \$18.4 billion 2000, IN BILLIONS OF DOLLARS



SOURCES: OFFICE OF NATIONAL DRUG CONTROL POLICY; SAMHSA; NATIONAL INSTITUTE ON DRUG ABUSE; NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM; NATIONAL CENTERS FOR DISEASE CONTROL AND PREVENTION; DRUG ENFORCEMENT ADMINISTRATION; DRUG ABUSE TREATMENT OUTCOME STUDIES; COLUMBIA UNIVERSITY; NATIONAL CENTER ON ADDICTION AND SUBSTANCE ABUSE; *1997 AND *1998 RESEARCH BY PARENTHOOD GRAPHICS; BY CARL GUDER, CHRISTOPHER BLUMMICH AND TONIA COMANICHEN-POWERS

Wellness Court

Naltrexone

A. A.

Nalgroup

Abstinence

Work

Frequent Appearances Before the Judge

Defendant's Physical Placement

HAP/EM: Bail

House Arrest, Program
Electronic Monitoring as
Condition of Bail

With Sobrieter

CRC: Bail

Community Residential
Center as condition of Bail

With Monitoring

T.P.C.: Bail

Third Party Custodian as
condition of Bail

Informal Monitoring

Residential
Treatment Providers

With Monitoring

HAP/EM: Jail

Serving Jail time on house
arrest program/Electronic
Monitoring

With Sobrieter

CRC: Jail

Community Residential
Center

With Monitoring

Additional Treatment

Outpatient Treatment
Providers

M. R. T.
Moral Reconciliation Therapy

Testimony on HB 172
March 21, 2001 – House Judiciary Committee
From Partners for Downtown Progress
By Janet McCabe, Chair

The bill's basic concept – in support of therapeutic justice – is absolutely correct – Therapeutic courts are far more effective and less costly than jail in reducing alcohol related crime. Fully 75% of first felony DUI's repeat with a second felony DUI. Groups such as MADD support therapeutic courts.

Add provision (b) as shown on the attached draft to recognize and support the existing Wellness Court – This addition is needed to continue this highly successful existing therapeutic court for misdemeanants in the Anchorage District Court. Without the Wellness Court, municipal cases, the largest group of alcohol-addicted offenders in Anchorage, are omitted from the bill. The Mayor's DUI Task Force recommended therapeutic court approach especially for 2nd and 3rd DUI's, i.e. a group that is heavily represented in the Anchorage District Court.

Page 4, line 26 – delete (l) that states that time served on House Arrest/Electronic Monitoring on bail cannot be credited as time served - The HAP/EM program, authorized by the legislature in 1998, has proved to be a highly effective therapeutic treatment for addicted offenders. Defendants are very strictly constrained and monitored. Their activities are highly limited, and sobriety is strictly enforced. Yet they can be employed and pay for their own incarceration, as opposed to the extremely high costs of jail. Established law (Nygren case) has determined that HAP/EM is equivalent to jail. HAP/EM has already been used successfully for defendants on bail as the equivalent of jail. Deleting (l) will allow the courts to continue to make wise and effective use of the 1998 law.

Page 3, lines 23 to 27 – reword this paragraph so referrals do not require the consent of the prosecutor, and add language giving the court authority to accept or reject a defendant on the basis of the defendant's appropriateness for the therapeutic approach in addition to the felony charges stated in the bill. – The D.A.'s staff has not in the past shown support for the therapeutic court approach. Given that history, this paragraph relies too much on the good will of the D.A.'s staff.

Page 3, line 29 and page 4 line 30 – delete the time deadlines imposed for entering a plea and for entering a judgment of conviction – These provisions do not recognize that each case must be handled individually in a therapeutic court. This is one of the keys to making the process work. There must be adequate time for discovery, and for the defendant to show real progress in recovery from addiction. Judges are selected for their good judgment, and state law does not need to override their judgment by being so specific.

Alaska State Legislature
State Capital (MS 3100)
Juneau, Alaska 99801-1182

MAR 26 2001

RE: HB 172

Dear Sirs:

I testified last week at the legislative hearing on this bill. At the conclusion of my testimony, I was asked to submit my comments in writing. This letter is to incorporate those comments. For convenience sake, I have also attached a copy of the bill with my suggestions. That copy is marked with numbers to correspond to my comments.

1 Insuring the bill is not read as changing current district court programs.

I think it was clear from the testimony of witnesses and the comments of the Legislators who were present that this bill is not intended to interrupt Judge Wanamaker's current wellness court or the mental health court supervised by Judge Rhoades. This simple sentence will insure that later no mistake is made regarding the scope of the bill.

2. Entry into the program should not be conditioned on stipulation of the prosecution.

My experience as a prosecutor and a defense attorney has convinced me that stipulation by the prosecutor is a bad idea. This is a court program; its implementation should not depend on the policy decisions of a separate legal entity that has no obligation to agree and the policies of which may change with leadership. Additionally, the department of law in Anchorage has been strongly opposed to therapeutic models both for inebriates and the mentally ill. Given the large number of individual prosecutors, consistency of cooperation would be difficult if not impossible even assuming a change in official policy took place.

It would be far better for the "gatekeeper" to be the judge who is supervising the program who can effectively utilize consistent standards. To that end, I have included a series of factors that could be expanded or deleted in order to insure that the pilot program is filled with offenders who can be changed rather than offenders who are offered the program as the prosecutor's solution to a weak legal case.

Additionally, I feel it is important that victims are heard on this point, and the original bill did not provide for their participation. My experience as a prosecutor with the district court therapeutic courts has convinced me that victim participation at this point is crucial to victim satisfaction with the process, even when the court allows the

offender to enter the program over their initial objections. I have yet to see, as a defense attorney or prosecutor, a victim who was not convinced as the case went on that the treatment model was beneficial.

3. There should be a delay between change of plea and sentencing to insure that dangerous offenders must prove rehabilitation in order to reduce presumptive sentences and offenders have a valid opportunity to do so.

I am in complete agreement that the entry into the program should occur early in the process. The changes I suggest are based on the following observations. First, an offender usually will not have complete discovery within 45 days of a felony arraignment. Thus, the initial opt-in should not occur until after discovery is complete.

Second, once the opt-in has been decided, there is no reason to delay the change of plea. It should be done as quickly as possible, maybe even at the opt-in hearing.

Third, once the change of plea has been entered, however, delay is necessary and in the best interest of the public as well as the offender. These offenders are essentially "buying" their sentences. That is, most of them will be subject to presumptive terms of 2 to 10 years, but that presumptive term can be reduced upon a showing of success at treatment and behavioral modification. The current statute has the offender in treatment for a maximum 55 days before sentencing; assuming that the offender can start treatment the same day he changes his plea, a highly unlikely event.

Currently, offenders taking naltrexone or other alcohol treatment drugs must complete a 120 days course before a positive prognosis can be made. At a minimum 90 AA meetings in 90 days are also required. Judge Wanamaker's wellness court has found that 9 to 12 months of treatment and behavior modification are necessary to insure long-term change. That observation is in accordance with therapeutic courts from around the country according to the most recent presentations at the National Judicial College in Reno, Nevada.

If that is so, the 55 days currently anticipated by the statute is absolutely insufficient to establish a base for the sentencing court to determine that dangerous offenders should receive sentencing credit against presumptive terms and insufficient for the offender to show that he deserves consideration. The felony offenders I currently represent normally are evaluated as needing long-term residential treatment, and most of them desire it as well. The pilot program needs to recognize this and be designed to accommodate these needs.

The department of law indicated that fast sentencing was necessary to prevent offenders from withdrawing their pleas after entry into the program. Plea withdrawal before sentencing is only allowed for "good cause". A change of heart or fear of greater sentence because of a bail violation does not establish good cause as a matter of law. See McClain v. State, 742 P.2d 269 (Alaska App. 1987); Wahl v. State, 691 P.2d 1048

(Alaska App. 1984). A clear advisement at the change of plea should alleviate any concern about this.

The current felony-sentencing model usually requires 120 days from the entry of plea to sentencing in order for the Department of Corrections to prepare a presentence report. A presentence report cannot be adequately prepared in 55 days. The therapeutic court may not always want a presentence report, but it should be allowed the option of having one in the appropriate circumstances.

Concerns regarding restitution for victims and the like can be addressed with bail orders that remain in effect while treatment is on going. Victim impact statements could be received by the court at any time during the process and then considered at the time of sentencing. There is no need for quick sentencing and several good reasons against it.

4. Bail orders can be used for far-reaching affect

I suggest incorporating some of the testimony into a clearer bail order. Thus, I specifically added restitution and victim counseling into bail. I also moved the drug order based on language in a United States Supreme Court case and in recognition of on-going prisoner litigation at that level.

5. The Nygren issue and removal of subsection (l).

I suggest removal of subsection (l). The court decision which allows credit is based on constitutional protections that cannot be changed by statute. Additionally, as shown by the testimony, the judge can adjust the final sentence in order to deal with the issue by either imposing more time or suspending more time to take into account whether he wants "credit" to be given. The therapeutic pilot court statute should address the issues most important to it and allow litigation of this issue to occur in some other arena that would not potentially disrupt the therapeutic court.

In closing, I would like to thank you for your consideration of my suggestions. I would be happy to discuss them or my personal experience with therapeutic courts. I can be reached at 907/264-6789.

Sincerely,



Carmen E. Clark Weeks

Law Offices of Pamela Dale

HOUSE BILL 172

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

LEGISLATIVE PURPOSE: THERAPEUTIC COURTS FOR ALCOHOL AND DRUG-ADDICTED OFFENDERS.

- (a) The purposes of therapeutic courts are lasting sobriety of offenders, protection of society from alcohol-related and drug-related crime, prompt payment of restitution to victims of crimes, effective interaction and use of resources among criminal justice and community agencies, and long-term reduction of costs relating to arrest, trial, and incarceration. The pilot therapeutic courts established in (b) of this section shall serve as working models for the development of other similar courts in other areas of the state. It is the intent of the legislature that the additional superior court judge authorized for the Fourth Judicial District by sec. 2 of this Act be assigned to Bethel and that the additional superior court judge authorized for the Second (this should be Third) Judicial District be assigned to Anchorage.
- (b) The Alaska Court System shall establish two pilot sites for therapeutic courts for alcohol and drug addicted offenders in Anchorage and Bethel; the Anchorage therapeutic court shall commence on the effective date of this Act; the Bethel therapeutic court shall commence on January 2, 2002; the pilot programs shall end three years after the date each court commences. The Alaska Court System will designate one superior court judge in Anchorage and one superior court judge in Bethel to preside over the therapeutic courts. Under the leadership of these judges, all parties involved in the implementation of the therapeutic court process shall regularly meet to consult about the conduct and improvement of the process. The pilot programs shall be implemented by the joint efforts of the Alaska Court System, the Department of Law, the Public Defender Agency, the Department of Corrections, the Department of Health and Social Services, and other agencies in accordance with a mutually agreed upon plan. To the extent

feasible, the therapeutic courts shall use existing public agencies, medical and treatment services, housing, and other public, private, and nonprofit community services; the pilot program in Bethel shall also consult and coordinate services with municipal and other local entities to facilitate the successful reintegration of offenders into municipalities and other locales outside of Bethel. Each therapeutic court shall be adapted to fit the available local resources and cultural traditions. Nothing in this bill is intended to interfere or change therapeutic, wellness, or mental health courts already established in district court.

- ①
- (c) In addition to any authorized sentence under AS 12.55, a therapeutic court shall, to the extent feasible, consider or require
- (1) early intervention to plan and begin treatment for recovery from alcohol or drug addiction;
 - (2) emphasis on personal responsibility;
 - (3) frequent appearances before the same judge to provide in-court recognition of progress and quick sanctions for relapses;
 - (4) in-court recognition of progress and quick sanctions for relapses;
 - (5) if the offender is living in a municipality or an area of the state without a judge, frequent appearances before a person or persons designated by the judge who will report progress and relapses to the judge;
 - (6) prompt payment of restitution for victims;
 - (7) completion of community work service as appropriate for restoration of the community;
 - (8) pharmaceutical treatment of the physical addiction to alcohol or drugs, as approved and prescribed by a physician;
 - (9) treatment addressing the psychosocial bases of the addiction;
 - (10) a strong monitoring program to enforce long-term abstinence;
 - (11) appropriate physical placement or housing;
 - (12) assistance in obtaining a constructive alcohol- and drug-free occupation and lifestyle;

- (13) assistance from supportive friends and relatives;
- (14) payment for all or a portion of treatment costs;
- (15) adherence to all probation conditions;
- (16) collection of data about and evaluation of the effectiveness of the program;
- (17) the defendant to execute releases to provide information and reports to the court, the prosecutor, and all agencies involved in the defendant's therapeutic court plan; and
- (18) Case coordination in planning for and assisting offenders in accomplishing the conditions set out in (1)-(17) of this subsection.

(d) The state or municipal prosecutor, publicly appointed counsel, and court shall develop a list of sanctions to be imposed in the event that a defendant violates conditions imposed by a therapeutic court.

2

(e) [WITH THE CONSENT OF THE STATE OR MUNICIPAL PROSECUTOR AND THE DEFENDANT,] [A] 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 the completion of discovery [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. In deciding whether to accept the defendant into therapeutic court, the court may consider

(f) 1. The suitability of the offender for the program;

(g) 2) Whether the offender's background indicates the offender may be dangerous to the public even when not intoxicated or under the influence of controlled substances;

(h) 3) The offender's prior treatment history and the intervals between offenses;

(i) 4) Statements by the victim or victims;

(j) 5) Statements by the offender and/or his family

(k) Regarding his need or dedication to treatment and change;

(l) 6) Any other pertinent information.

3

- (1) A defendant referred to a therapeutic court shall enter a plea of guilty or no contest within 10 [45] days after the defendant's first appearance before the therapeutic court.
- (g) The state or municipal prosecutor and the defendant may enter into a plea agreement. If the court accepts the agreement, the court shall enforce the terms of the agreement;
- (h) Within a reasonable time given treatment needs [30 DAYS] after entry of the plea, the court shall enter a judgment of conviction. The judgment of conviction must set a schedule for payment of restitution owed by the defendant. In the judgment of conviction and upon probation conditions that the court considers appropriate, the court may withhold pronouncement of a period of imprisonment or a fine to provide an incentive for the defendant to successfully complete recommended treatment. Imprisonment or a fine imposed by a therapeutic court shall comply with AS 12.55 or any mandatory minimum or other sentencing provision applicable to the offense. However, notwithstanding any other provision of law, the entire period of imprisonment or amount of fine, including a presumptive or mandatory minimum sentence, may be suspended if the defendant has successfully completed court-ordered treatment, is current with restitution payments, and has substantially complied with sobriety and other conditions imposed by the court.
- (i) Notwithstanding any other provision of law to the contrary, the judge, the state or municipal prosecutor, the defendant, and the agencies involved in the defendant's treatment plan are entitled to information and reports dealing on the defendant's assessment, treatment, and progress.
- (j) The Alaska Judicial Council shall conduct an evaluation of the pilot therapeutic courts and prepare a report to the legislature, courts, and affected agencies. The report shall be disseminated no later than July 1, 2005.
- (k) In addition to other conditions authorized under AS 12.30 or AS 12.55, a therapeutic court may impose the following conditions of bail or probation;

- (1) require the defendant to submit to electronic monitoring if the commissioner of corrections agrees to this condition;
- (2) Require the defendant to submit to house arrest.
- (3) Require the defendant to pay restitution or verified on-going treatment costs to the victim or victims of the crime:
- (4) Require the defendant to take a drug or combination of drugs intended to prevent the consumption of alcoholic beverages.

4

(l) DELETE [A DEFENDANT WHO IS SUBJECT TO A CONDITION SET OUT IN (K) OF THIS SECTION IS NOT ENTITLED TO CREDIT TO TIME SERVED.

5

(m) DELETE [IN ADDITION TO OTHER CONDITIONS AUTHORISED UNDER AS 12.30, A THERAPEUTIC COURT MAY REQUIRE THE DEFENDANT TO TAKE A DRUG OR COMBINATION OF DRUGS INTENDED TO PREVENT THE CONSUMPTION OF ALCOHOLIC BEVERAGES.]

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

*Sec 2, AS 22.10.120 is amended to read:

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

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 172

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Therapeutic Courts BRU Alaska Court System
 Component Trial Courts
 Sponsor Rep. Porter
 Requester House Judiciary Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	397.8	486.9	486.9	486.9	486.9	486.9
Travel						
Contractual						
Supplies						
Equipment	24.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	421.8	486.9	486.9	486.9	486.9	486.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	421.8	486.9	486.9	486.9	486.9	486.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	421.8	486.9	486.9	486.9	486.9	486.9

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	8	8	8	8	8	8
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Douglas Wooliver Phone 463-4750
 Division: Alaska Court System Date/Time 3/20/01 @ 5:00 P.M.
 Approved by: Stephanie Cole Date _____
 Agency: Alaska Court System

For distribution information, call the Governor's Legislative Office

HB 172
Fiscal Analysis
Alaska Court System

House Bill 172 allows the court system to establish a pilot court in Anchorage and another in Bethel for the prosecution and treatment of defendants who are addicted to alcohol. The focus of these therapeutic courts will be those charged with multiple DWI offenses.

The court system and the Department of Law estimate that the Anchorage court will see 80 defendants a year, and the Bethel court will see 15 cases the first half-year and 45 cases a year in years two and three.

Therapeutic courts are resource-intensive for the court system. They require defendants to appear regularly before the judge to report on progress and to appear for sanctions if they have failed to meet the program requirements. In order to meet this additional workload, and because the Anchorage and Bethel courts are already beyond their carrying capacity for felony cases, this bill calls for a new superior court judge in each location.

The superior court judge position in Bethel will replace the current district court position in that location so the fiscal impact is the difference between a district court judge and a superior court judge.

In both Anchorage and Bethel, a superior court judge position comes with a law clerk, a secretary, and an in-court clerk. The Anchorage position includes a court clerk to coordinate and schedule the therapeutic court procedures. This fiscal note includes one-time expenses for equipment for the judges and their staff.

Alaska Court System
 Therapeutic Drug Court HB 172
 3/20/01

<u>Positions for Bethel</u>	<u>Range</u>	<u>FY02 Cost Position Cost</u>	<u>FY03 Full Year Cost Position Cost</u>
Superior Court Judge (6 months)	82A	\$ 72,821	\$ 145,642
Law Clerk (6 months)	13D	\$ 30,777	\$ 61,553
Secretary (6 months)	12A	\$ 26,336	\$ 52,671
In-Court (6 months)	10A	\$ 23,378	\$ 46,755
Equipment (3 desks, 3 chairs, 3 computers)		\$ 9,000	\$ -
Total Superior Court Judge Position & Staff		\$ 162,311	\$ 306,621
Less: District Court Judge FY01 Funding (6 months)		\$ (64,161)	\$ (128,321)
Net Funding Required for Bethel Positions		\$ 98,150	\$ 178,300
 <u>Positions for Anchorage</u>			
Superior Court Judge	82A	\$ 138,467	\$ 138,467
Law Clerk for Superior Court Judge	13D	\$ 48,130	\$ 48,130
Secretary	12A	\$ 41,997	\$ 41,997
In-Court Clerk	12A	\$ 41,997	\$ 41,997
Court Clerk	10A	\$ 38,018	\$ 38,018
Equipment (5 desks, 5 chairs, 5 computers)		\$ 15,000	\$ -
Funding Required for Anchorage Positions		\$ 323,609	\$ 308,609
Fiscal Note Total		\$ 421,759	\$ 486,909

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: HB 172
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to therapeutic courts for BRU Criminal Division; Civil Division
offenders and to the authorized number of superior court judges." Component 3rd Judicial District; Anchorage;
 Sponsor Representative Porter 4th Judicial District; Human Services
 Requester House Judiciary Committee Component No. 2261;2201;2208

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	423.9	484.4	484.4	60.6	0.0	0.0
Travel	1.4	1.6	1.6	0.2	0.0	0.0
Contractual	65.5	74.8	74.8	9.4	0.0	0.0
Supplies	5.6	6.4	6.4	0.8	0.0	0.0
Equipment	32.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	528.8	567.2	567.2	70.9	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	528.8	567.2	567.2	70.9		
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	528.8	567.2	567.2	70.9	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	5	5	5	1		
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 172 authorizes the court system to establish two pilot sites for therapeutic courts for alcohol- and drug-addicted offenders in Anchorage and Bethel. The Anchorage court would commence on the effective date of the act, and the Bethel court on January 2, 2002. The pilot programs end three years after each commences. The bill also adds two new superior court judge positions: one in Anchorage, and one in Bethel. The new judges would preside over the therapeutic courts, and also handle other matters, including criminal cases, juvenile delinquency cases, and children in need of aid cases.

Therapeutic courts are very resource intensive. Defendants who are accepted into the court agree to enter a program structured for them that is very closely monitored. The court requires defendants to make frequent appearances, and all parties, including the prosecutor, attend these court proceedings.

Prepared by: Joan M. Kasson Phone 465-5370
 Division Attorney General's Office Date/Time 3/15/01 5:30 PM
 Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney-General Date 3/15/01
 Agency Department of Law

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 172

ANALYSIS CONTINUATION

In addition, a new superior court judge in Anchorage means another court room in which prosecutors and assistant attorneys general will need to appear on other criminal and civil matters. As a rule of thumb, the department's experience has been that it needs four attorneys for each superior court judge.

However, because the therapeutic court will theoretically be operating about one-half of the time, we estimate three attorney positions will be sufficient: two for the Criminal Division, Anchorage District Attorney's Office, and one for the Civil Division, Human Services section. One attorney will be responsible for cases before the therapeutic court, and the other two will handle other criminal and civil cases the new judge will calendar.

Beginning January 2, 2002, the Bethel therapeutic court will begin operations. The department is informed that the court system plans on replacing the current District Court judge position with the new Superior Court position. Because of this, only one new FTE attorney position will be necessary for the Bethel District Attorney's office. This position will be assigned cases that are referred to the therapeutic court. Existing staff will be able to handle the other criminal and civil cases because this is not a new and additional court room to be covered.

Using the department's FY02 standard attorney cost allocation plan, the annual cost of the positions is \$567.2 (\$141.8 x 4). This includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. The standard cost does not include one-time new equipment purchases, and \$6.5 per position is included. Proportionate support position funding is included in the standard attorney cost schedule at a rate of approximately one support position for every three professional positions. Position authorizations for the support positions are required, however, and the one FTE legal secretary position is requested, along with \$6.5 for one-time equipment costs in FY02. The Bethel attorney position is funded in FY02 for only one-half of the fiscal year due to the delayed effective date of the pilot court. It will be necessary to annualize that position in FY03.

The line-item breakdown by component follows:

Component	Position	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Criminal Division: 3rd Judicial District: Anchorage (2261)							
	100 2 FTE Attorney	242.2	242.2	242.2			
	200 1 FTE Legal Secy	0.8	0.8	0.8			
	300	37.4	37.4	37.4			
	400	3.2	3.2	3.2			
	500	19.5					
	Total 1004 General Fund	303.1	283.6	283.6	0.0	0.0	0.0
Criminal Division: 4rd Judicial District (2201)							
	100 1 FTE Attorney	60.6	121.1	121.1	60.6		
	200	0.2	0.4	0.4	0.2		
	300	9.4	18.7	18.7	9.4		
	400	0.8	1.6	1.6	0.8		
	500	6.5					
	Total 1004 General Fund	77.4	141.8	141.8	70.9	0.0	0.0
Civil Division: Human Services (2208)							
	100 1 FTE Attorney	121.1	121.1	121.1			
	200	0.4	0.4	0.4			
	300	18.7	18.7	18.7			
	400	1.6	1.6	1.6			
	500	6.5					
	Total 1004 General Fund	148.3	141.8	141.8	0.0	0.0	0.0

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 172
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title: An Act relating to therapeutic courts for offend- BRU: 271
ers and to the authorized number of superior court judges. Component: Community Corrections
 Sponsor: Representative Porter
 Requester: House Judiciary Component Number: 1382

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	89.9	179.9	185.9	36.0		
Travel						
Contractual	14.0	14.0	14.0	3.5		
Supplies						
Equipment	6.0	3.0				
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	109.9	196.9	199.9	39.5		

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	109.9	196.9	199.9	39.5		
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	109.9	196.9	199.9	39.5	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	2	3	3	1		
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The first year of the Wellness Court in Anchorage would require 1 fulltime Probation Officer, including a leased vehicle as well as a one time expenditure for computer equipment. In Bethel, the Probation Officer would begin in January 2002, requiring salary for only 1/2 of a year. This person would also require a vehicle and a one time purchase of computer equipment. By the second year, Anchorage will need an additional Probation Officer position which will also include a vehicle and one-time purchase of computer equipment. This position will be responsible for case management and supervision of the Therapeutic Court offenders.

Prepared by: Candace Brower Phone 465-4652
 Division: Commissioner's Office Date/Time 3/14/01 4:00 p.m.
 Approved by: Margaret Pugh, Commissioner Date 3/14/01
 Agency: _____

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: HB 172
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: An Act relating to therapeutic courts BRU: Alcohol & Drug Abuse Svcs
 Component: Alcohol/Drug Abuse Grants
 Sponsor: Porter
 Requester: H Judiciary Component Number: 1239

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	501.3	685.4	685.4			
Miscellaneous						
TOTAL OPERATING	501.3	685.4	685.4	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	501.3	685.4	685.4			
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	501.3	685.4	685.4	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

ANCHORAGE PILOT PROJECT: The agencies propose that 80 DWI offenders will be handled each year in the therapeutic court. Participants will be felony DWI offenders currently prosecuted by the state, as well as offenders who have 2 or more prior DWI convictions and are currently prosecuted as misdemeanants by the Municipality of Anchorage because of the 5-year look-back for felony DWI. Under this model, the state would take over the prosecutions of these misdemeanor offenses and process them in the therapeutic court in the superior court.

BETHEL PILOT PROJECT

The agencies plan to have 15 offenders participate the first half-year and 45 offenders in years 2 and 3. Offenders charged with alcohol or drug-related felonies and misdemeanors will be eligible to participate.

Prepared by: Ernest Turner, Director Phone 465-2071
 Division: Alcoholism and Drug Abuse Date/Time 3/13/01 2:05pm
 Approved by: Elmer A. Lindstrom, Special Assistant Date 3/15/01 9:16 AM
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

The amount of grant funds needed is based on the following levels of care for one year.

The following schema is predicated on 12 months involvement with the treatment program. These figures are for a single client. The total cost then would be based on the number of persons served by the therapeutic court. Obviously "one size" does not fit all clients and some will require more intensive treatment and some will require less but this is the best design for most of the clients from either the drug or alcohol involved clients.

Phase I Intensive Outpatient 6 weeks	
Assessment	\$100.00
Urinalysis @ \$25 per week	\$150.00
10 Hours intensive outpatient/week @\$45	\$2,700.00
Naltrexone 1xday @\$4.50	\$189.00
Physical Exam for safe Naltrexone use	\$200.00
Two written reports for courts	\$60.00
Total Phase I costs	\$3,399.00
Phase II Continuing Care 20/weeks	
Urinalysis \$25 bi-weekly	\$250.00
1 group per week @\$20	\$400.00
Naltrexone 1xday @\$4.50	\$630.00
On-going medical monitoring	\$100.00
Five care coordination of 30 min.	\$75.00
Five written reports for courts	\$150.00
Total Phase II costs	\$1,605.00
Phase III Extended Continuing Care 26 weeks	
Urinalysis \$25 monthly random	\$150.00
1 group every 2 weeks @\$20	\$260.00
Six care coordination of 30 min.	\$90.00
Six written reports for courts	\$180.00
Total Phase III costs	\$680.00
Total 12 month costs per person with indirect costs @20%	\$6,821.00

For the Anchorage therapeutic court the costs would reflect serving 80 persons each year of the court.

Year 1 costs for 80 clients \$545,664 less self pay ^{25% 20%} \$409,248
 Year 2 costs for 80 clients \$545,664 less self pay \$409,248
 Year 3 costs for 80 clients \$545,664 less self pay \$409,248

ANALYSIS: (continued)

For the Bethel therapeutic court the cost would reflect serving 15 persons in first year and 45 in the second year. HB 172 indicates the Bethel court is just six months (January 1, 2002) the first year.

Year 1 Costs for 15 clients \$102,312 ^{10%} less self pay \$92,081

Year Two Costs for 45 clients \$306,936 less self pay \$276,242

Year Three Costs for 45 clients \$306,936 less self pay \$276,242

Note: These costs are reflective of Intensive Outpatient Services. Some clients will require residential services that can be supplied only on a space available basis unless the administration's budget increments for treatment expansion are fully funded.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 172
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: "An Act relating to therapeutic courts for BRU: Legal & Advocacy
offenders and to the authorized number Component: Public Defender Agency
 Sponsor: Representative Porter
 Requester: House Judiciary Committee Component Number: 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	321.7	375.8	375.8	54.1	0.0	0.0
Travel	11.8	13.6	13.6	1.8	0.0	0.0
Contractual	88.6	101.7	101.7	13.1	0.0	0.0
Supplies	7.1	8.1	8.1	1.0	0.0	0.0
Equipment	29.2	3.2	3.2	0.0		
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	458.4	502.4	502.4	70.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	458.4	502.4	502.4	70.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	458.4	502.4	502.4	70.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	5	5	5	1		
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

PLEASE SEE ATTACHED

Prepared by: Barbara Brink, Director Phone 907 334-4414
 Division: Public Defender Agency Date/Time: _____
 Approved by: _____ Date: _____
 Agency: _____

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

This bill would authorize the Alaska Court System to set up two pilot therapeutic courts. The courts would be located in Anchorage and Bethel and would be for alcohol and drug dependent defendants. These therapeutic courts would be based on models that have been shown to be effective in Alaska and other states. The Anchorage court would commence on the date this bill is effective. The Bethel court would start on January 2, 2002. The pilot programs end three years after commencement. Two new superior court judges would be added – one in Anchorage, one in Bethel. The judges would handle other matters, including criminal cases, juvenile delinquency cases, and child in need of aid cases.

The Public Defender Agency attorneys assigned to these courts would have intensive workloads. Therapeutic courts require frequent court appearances and a great deal of monitoring and referral to be successful. We estimate that the therapeutic courts will be operating about one-half of the time. But the addition of new superior court judges will result in additional work in the other types of cases because the new judges will be handling these cases as well. Our experience has shown that four attorneys are needed for each superior court judge.

Based on these factors, in Anchorage, the Public Defender Agency will need two full-time attorneys and one three-quarter time attorney starting in the beginning of Fiscal Year 2002. The two full-time attorneys will handle criminal cases, while the three-quarter time attorney will handle civil cases initiated by the Civil Division, Human Services section of the Department of Law. Clerical support and one-time equipment costs are included for these attorneys.

In Bethel, the therapeutic court will begin operations in January 2, 2002. The court system has informed us that the judge will use current facilities and a current district court judge will be filling the position. Therefore, we are requesting only one full-time attorney in Bethel. Again, clerical support and one-time equipment costs are included. Because the court will not begin operations until the second half of Fiscal Year 2002, only half the funding will be needed for that year. However, the Bethel pilot project will extend into FY 2005.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 172 (JUD)
 (H) Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Court
 Title: Therapeutic Drug and Alcohol Courts BRU: District Court
 Component: District Wellness Court
 Sponsor: Representative Porter
 Requester: House Judiciary Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	85.0					
Miscellaneous						
TOTAL OPERATING	85.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	85.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	85.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

\$75,000 to be used by Judge Wanamaker's Wellness Court, located in the Anchorage District Court, for subsidizing initial treatment costs for needy participants.
 \$10,000 to be designated to Judge Froehlich's Naltrexone Court, located in the Juneau District Court.

Prepared by: Heather Nobrega, Committee Counsel

Phone 465-4990

Representative Rep. Norman Rokeberg
 Committee Chair

Date 03/23/01 1:00 p.m.

HB

174

Adopted

AMENDMENT #1

OFFERED IN THE HOUSE
TO: HB 174

1 Page 4, following line 26:

2 Insert a new bill section to read:

3 **** Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 DATA FROM PRIOR YEARS. (a) As a condition of receiving state money for state
6 fiscal year 2002 under AS 47.30.520 - 47.30.620, 47.30.660 - 47.30.915, or AS 47.31, the
7 entity eligible for the state money shall agree to furnish the Department of Health and Social
8 Services with confidential and other information about recipients of services paid for, in
9 whole or part, with state money during state fiscal years 2000 and 2001 under AS 47.30.520 -
10 47.30.620, 47.30.660 - 47.30.915, or AS 47.31. The entities governed by this subsection shall
11 comply with regulations of the department regarding the submission of the information
12 required under this subsection.

13 (b) The department may review, obtain, and copy the information submitted under (a)
14 of this section. The department may also obtain information of the type described in (a) of
15 this section from the patient who received the services described in (a) of this section and
16 review or copy that information.

17 (c) Records and information obtained by the department under this section are
18 medical records, shall be handled confidentially, and are exempt from public inspection and
19 copying under AS 40.25.110 - 40.25.120. The records and information may be copied and
20 disclosed under regulations established by the department only under the same circumstances
21 as provided for confidential records under AS 47.30.845, as amended by sec. 4 of this Act.

22 (d) The department may review the information obtained under this section to
23 evaluate compliance with the applicable statutes and grant contracts. However, the
24 department may not use the information furnished under this section to impose civil or

1 administrative penalties for failure to comply with applicable statutes and contracts. The
2 department may use the information to establish a database on which to base future
3 management practices and to impose restrictions and conditions on use of state money in
4 fiscal year 2002 and later.

5 (e) In this section, "department" means the Department of Health and Social
6 Services."

7

8 Renumber the following bill section accordingly.

Alaska State Legislature

REPRESENTATIVE
HUGH "BUD" FATE

Mailing Address:
119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 452-4448
Fax: (907) 456-3346



While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4976
Fax: (907) 465-3883
House District 33

House Of Representatives

APR 18 2001

Memo

TO: Representative Rokeberg, Chair
House Judiciary Committee

FROM: Representative Hugh Fate, Vice-Chair
Legislative Budget and Audit Committee

RE: Bill Hearing Request, HB 174

Date: April 18, 2001

Hugh Fate

The Legislative Budget and Audit Committee respectfully requests a hearing on House Bill 174 "A Act relating to mental health information and records; and providing for an effective date."

This bill was introduced by request of the Legislative Budget and Audit Committee on behalf of the Department of Health and Social Services. The bill addresses recommendation #4 of the Audit Report: "Department of Health and Social Services, Divisions of Medical Assistance and Mental Health and Developmental Disabilities, Community Mental Health Center Program Follow-Up" dated December 1, 2000 (excerpt attached). An analysis of the bill's provisions is also attached. A zero fiscal note will be forthcoming from the Department. *is attached.*

Your favorable consideration of this request will be appreciated.

CC: Pat Davidson, Legislative Auditor

Elmer Lindstrom, Special Assistant
Department of Health and Social Services

Alaska State Legislature

REPRESENTATIVE
HUGH "BUD" FATE

Mailing Address:
119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
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House Of Representatives

While in session
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House District 33

SPONSOR STATEMENT HB 174

Reporting of Confidential Client Data

The Division of Mental Health and Developmental Disabilities has had difficulty in its efforts to gather confidential information about clients. Some providers are resistant to reporting data, and to notifying the division of emergent situations when clients are missing, seriously injured or deceased. Some providers claim that they fear potential litigation if they supply confidential information, that reporting would violate client rights to privacy and professional ethics. Some providers are experiencing technical difficulties or may have back-burnered the submission of data. While most providers are cooperative, in-order for the state to insure the health, safety and well being of consumers, it is necessary to strengthen and clarify laws to specify the Departments legal positions on these matters.

The gathering of this data is essential to the division's ability to monitor, make management decisions, meet service needs of Alaskans with mental illness, and to comply with legislative expectations for providing accurate performance measure information. The requirement that providers notify the division of missing, seriously injured, and deceased consumers involves emergent situations, and is consistent with the intent of HIPPA and HCFA.

This bill:

- Gives the Department of Health and Social Services the statutory authority to require that mental health centers that receive state funds report certain confidential client data to the Division of Mental Health and Developmental Disabilities (DMHDD), and comply with regulations regarding such data submission.
- Protects licensed mental health clinicians who report required confidential client data.
- Clarifies that confidential client data are considered to be "confidential medical records" and are not open to the public for inspection or copying.

- Requires that mental health providers notify DHSS of emergency situations involving mental health clients—most other states have these requirements.
- Provides access to confidential information regarding consumers utilizing the Mental Health Treatment Assistance Program and requires confidential handling of that information.
- Protects consumers rights to privacy by insuring that confidential information is used and handled appropriately
- Promotes the health and safety of Alaska's mental health consumers.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 174
 (H) Publish Date: 4/18/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: Mental Health Information & Records BRU: Institutions & Administration
 Component: Mental Health/DD Admin
 Sponsor: RLS by Request of Leg Budget & Audit
 Requester: H(HES) Component Number: 310

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 2 of this bill requires Community Mental Health Centers receiving State mental health grant funds to report confidential information to the Division about State-funded consumers' demographics, service and cost of service, and to notify the Division in the case of a missing, injured or deceased State-funded consumer. These data reporting requirements are being included in the FY02 Request for Mental Health Grant Proposals.

This statutory change bears no direct cost implication for the Division.

Prepared by: Sarah Brinkley, Administrative Manager Phone 465-3167
 Division: DMHDD Date/Time 3/17/01 3:13 PM
 Approved by: Elmer A. Lindstrom, Special Assistant Date 3/17/01 3:13 PM
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

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March 31, 2001

Honorable Hugh Fate
Vice-Chairman
Legislative Budget and Audit Committee
Alaska State Capitol; Rm. 416
Juneau, AK 99801-1182

SUBJECT: Background on mental health records lawsuit

Dear Representative Fate,

The Department of Health and Social Services, Division of Mental Health and Developmental Disabilities, has been involved in a lawsuit brought against the state by the Fairbanks Community Mental Health Center (FCMHC). The suit was filed because of concerns over the division's authority to require the submission of certain confidential client information, and the center's belief that submission of confidential information could result in liability suits brought against the center and clinicians by mental health treatment consumers. While only one suit was filed, other mental health centers expressed similar legal concerns.

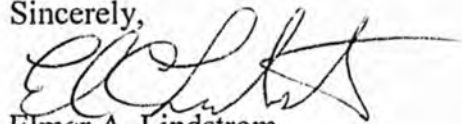
FCMHC has recently agreed to drop their lawsuit because House Bill 174, introduced at the request of the Legislative Budget and Audit Committee, addresses virtually all of their legal concerns. However, if this legislation does not pass this session, the suit will be reopened. Without passage of HB 174, there will continue to be questions about the state's authority to require data from FCMHC and all other community mental health centers that receive state funding.

As you know, the recent legislative audit follow-up on the Division of Mental Health and Developmental Disabilities was critical of the division's effectiveness at collecting "comprehensive client information". The passage of HB 174 is viewed as a significant step toward ridding the division of a longstanding barrier to effective data collection.

Honorable Hugh Fate
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The bill has the support the Department of Health and Social Services and of Pat Davidson, the Legislative Auditor.

Sincerely,



Elmer A. Lindstrom
Special Assistant to the Commissioner

CC: Pat Davidson, Legislative Auditor

Walter Majoros, Director
Division of Mental Health and Developmental Disabilities

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Auditor's Report

P.O. Box 113300, Juneau, Alaska 99811-3300

Division of Legislative Audit

06-7599-01

Audit Control Number



December 1, 2000

DEPARTMENT OF HEALTH AND SOCIAL SERVICES,
DIVISIONS OF MEDICAL ASSISTANCE
AND MENTAL HEALTH AND DEVELOPMENTAL
DISABILITIES, COMMUNITY MENTAL HEALTH
CENTER PROGRAM FOLLOW-UP

Audit Report



Prior Recommendation No. 4

DMHDD should obtain client service data to enable effective management of the State's community mental health programs.

Currently, the lack of client service data renders DMHDD unable to determine if community mental health funding is appropriate. No reliable data currently exists which accurately reflects the total number of clients annually receiving publicly funded community mental health services. While the Medicaid payment system does collect the number of clients served through Medicaid, major deficiencies exist in DMHDD's data collection concerning clients served by state grant funds.

DMHDD has collected selective mental health client data from providers for many years using a management information system (MIS). However, the type of information collected is not adequate to measure the number of clients served by the state grant system. Inherent system inadequacies such as no mandatory provider participation requirements, no data verification process, and a varying definition between providers of who qualifies as a "client" makes the reliability of the data suspect. Some providers we

⁷ The cost study consisted of actual personal services and overhead expenditure data from each of 6 providers. The providers sampled were selected in an effort to produce a representative cross section of providers with regard to size, region, and funding amounts.