Transferability of the Anchorage Wellness Court Model

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Part I
Executive Summary

The Anchorage Wellness Court is a "therapeutic" court program located in Anchorage, Alaska. It was established in 1999 to provide alternative case processing for misdemeanor defendants who had chronic alcohol problems. Defendants voluntarily waived their right to a trial, entered substance abuse treatment, and agreed to monitoring, frequent court hearings, and other program requirements in return for reduced jail time, reduced fines, and the opportunity to achieve sobriety.

The National Institute of Justice funded this research to study the Anchorage Wellness Court including: the outcomes of the program, such as possible reduced criminal recidivism and increased defendant quality of life and productivity; the cost-effectiveness of the program; and whether the court's policies and practices were transferable to other courts and locations. The principal research was assigned to the Justice Center at the University of Alaska. It was to perform the outcome analysis, including exit and follow-up interviews with participants to gather information on previously unstudied socioeconomic outcomes that are otherwise difficult to capture. The University contracted with the Urban Institute to perform the cost-benefit and with the Alaska Judicial Council to conduct the transferability study.

To study transferability, the council conducted 146 interviews, 150 hours of court observation, and a review of relevant literature. Interviewees included therapeutic court judges, attorneys, program staff, and service providers from the Anchorage Wellness Court and other therapeutic courts in Alaska, as well as local and state policymakers. This report summarizes the Judicial Council's findings on the transferability of the practices and policies of the Anchorage Wellness Court to other jurisdictions and situations.[1] A summary of outcome and cost-benefit analysis from the Urban Institute is appended to this report.[2]

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[1] The Judicial Council's full report may be downloaded from the Council's website at http://www.ajc.state.ak.us/reports/transfer08.pdf

The full report provides detailed background information on Alaska's criminal justice system and therapeutic courts so that readers may fully understand the legal environment in which the Anchorage Wellness Court developed and operated. The full report presents interview and court observation findings in significant detail. Findings are organized into discrete sections to enable researchers, practitioners, and policymakers to review issues of particular interest.

[2] The Urban Institute's full report may be downloaded from: http://www.urban.org/UploadedPDF/411746_anchorage_wellness.pdf.

Findings from all three parts of the study were to have been integrated into a single report. Due to unforseen circumstances, the research instead generated separate reports from the Judicial Council and the Urban Institute, which ultimately performed the outcome analysis. A significant limitation on the Judicial Council's report was that it

Background

The Anchorage Wellness Court began operations in August, 1999, within the auspices of the Alaska Court System. Like the better-known drug courts, it is a therapeutic court program.[3] The founders of the Anchorage Wellness Court chose to focus on alcohol-addicted offenders, instead of drug-addicted offenders, because of the prevalence of alcohol as a factor in crime in Alaska. One study estimated that almost 70% of convicted defendants who were charged with a felony in Alaska had an alcohol problem. (Alaska Judicial Council, 2004). Another study estimated that alcohol was a primary or contributing factor in 80-95% of all criminal offenses in Alaska. (Alaska Criminal Justice Assessment Commission, 2000).

The hopes of the founders of the Anchorage Wellness Court were twofold. First, they wanted to implement a successful program in Anchorage that would treat alcohol-addicted offenders in a different way: by treating the offender's substance abuse problem and by requiring the offender to become accountable for his or her problem. It was hoped that the program would render a responsible citizen who was able to follow the law, maintain employment, and fulfill societal obligations in the community. Second, they wanted to take the program, once established, into other areas in Alaska with as-bad or worse problems with alcohol-induced crime. The program was to be portable – in other words, "transferable."

The Anchorage Wellness Court began as a bail and sentencing option that allowed releasing the addicted offender into the community while undergoing substance abuse treatment and regular judicial supervision. Over the course of several years it developed into a full-scale therapeutic court that included substance abuse treatment, Moral Reconation Therapy (MRT), recovery meetings (such as Alcoholics Anonymous), employment and financial responsibility, case management and substance abuse monitoring, and judicial supervision. For most of its history, the program lasted at least eighteen months. If assessed as appropriate by clinical staff and prosecutors, criminal defendants could voluntarily enter the program in exchange for reductions in their jail terms and fines.

Judicial Council researchers chose to investigate the transferability of the program by interviewing the people mostly closely involved with the development of the Anchorage Wellness Court program and other therapeutic court programs – including attorneys, court professionals,

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was not informed by the outcome or cost-benefit data or findings, which became available only shortly before publication of the Council's report. To address this limitation, the council received permission to append the executive summary of the Urban Institute's report to this publication.

[3] Throughout this report, the term "therapeutic court" is used to designate alternative court processing systems that include substance abuse or mental health treatment, ongoing judicial supervision, and case management. "Therapeutic court" is the preferred term in Alaska.

policymakers, and service providers. Researchers supplemented the knowledge gleaned from these interviews with hundreds of hours directly observing the Anchorage Wellness Court and other therapeutic courts. Judicial Council researchers did not perform participant interviews because the University of Alaska had retained that function.

During the course of this study, two events occurred that expanded its boundaries from the original transferability question. First, new therapeutic courts in other jurisdictions emerged that incorporated specific elements of the Anchorage Wellness Court. Second, notions of another kind of transferability began to emerge from the literature and from criminal justice administrators – those of institutionalization and broad application of drug court principles and practices without specialty "courts." These developments enabled researchers to explore these concepts, as well as to compare experiences from the emerging courts and to follow the developments of the Anchorage Wellness Court, in a series of follow-up interviews. Interviews were completed in early 2007.[4]

Findings

The Anchorage Wellness Court is very similar to other drug court programs around the country. The main differences are the program's target of misdemeanor DUI offenders, the eighteen month program, the required use of naltrexone, required employment and financial responsibility, and MRT. Similarities include substance abuse treatment, judicial supervision, case coordination, and criminal justice collaborations. Analysis of the interviews and court observations led to the following main findings. Topics here track main topics in the body of the report and are loosely arranged to follow the "Ten Key Components" of standard drug courts. For more detailed information on any of these topics, please refer to that section of the full report.

- **Overall Impressions:** Most interviewees had a positive overall impression of the Anchorage Wellness Court. Most people believed that treating addicted offenders' underlying substance abuse would stop them from reoffending and would improve the quality of their lives, their families, and their communities. Interviewees expressed persistent concerns about resources needed for the court, efficiency, and the inability of criminal justice practitioners to collaborate.

- **Target Population, Incentives and Eligibility Criteria:** Targeted offenders were chronic misdemeanor DUI offenders. Due to statutory changes making chronic offenders felons, the pool of eligible misdemeanor offenders was significantly decreased after the program's conception. Incentives for the targeted misdemeanor DUI offenders – reduced jail terms and fines – were insufficient compared with

[4] Additional information about this study's methodology may be found at Appendix A.

program requirements, which included eighteen months of substance abuse treatment and court supervision instead of relatively short jail terms. According to interviewees, this led to intake problems and low participation. Attorney communications to their clients about perceived lack of incentives may have contributed to the problems. Program staff attempted to shift the target to other offenders to increase participation; these offenders were often chronic inebriates with substantially greater needs, including housing, job training and medical needs. Program requirements did not shift with the new target population. When prosecutors attempted to shift the target back to the original intended target, the court all but collapsed. Perhaps due to the shifting target population, program eligibility was not clearly understood by interviewees.

- **Screening, Referral and Recruiting:** Prosecutors and other program staff screened out potential participants despite their meeting legal and clinical eligibility criteria, and despite available program capacity. Decisions were based on perceived public safety risks and defendant motivation. Interviewees did not understand screening processes or standards and perceived screening standards as highly subjective. This led to suspicion of those performing the screening. But many supported the screening as a way to allocate resources to those who would benefit most.

- **Assessment and Opt-in:** A significant lag time – sometimes months – occurred between the defendant being identified as appropriate for Anchorage Wellness Court and the entry of the defendant's plea agreement. Although the defendant received substance abuse treatment and program services during that time, the lag may have contributed to intake and low participation problems because many defendants decided to "opt out" even before they had officially "opted in."

- **Treatment Components**: Providers offered an eclectic approach to treatment, including cognitive-behavioral treatment, insight therapy, drug and alcohol awareness and education, and family counseling. In theory, the treatment was highly individualized. In reality, most participants received most of the modules because the mandated treatment period was so long. The independently facilitated and manualized cognitive-behavioral treatment module MRT (Moral Reconation Therapy) was viewed as highly successful, low-cost, and highly transferable. Many viewed the medication naltrexone as a useful tool but not as a necessary component of a therapeutic court focused on alcoholic offenders. Some continued to advocate its required use.

- **Treatment Resources:** Although benefits from multiple and single-source treatment providers were identified, interviewees strongly preferred a sole provider system. In any event, a sole provider is the norm in Alaska, which lacks sufficient substance abuse treatment resources, especially in rural communities. The lack of culturally-sensitive treatment did not appear to be a significant barrier to implementing successful therapeutic courts. Treatment costs were not a significant barrier to potential participants due to sliding-scale fees but some were left with large debts. Insufficient state subsidies, however, limited treatment provider's ability to provide services; this in turn limited the capacity of the court. The level of political support for treatment resources had a significant effect on the therapeutic courts.

- **Collaborative Processes:** The Anchorage Wellness Court team worked well together. Collaborations worked best when team members were stable and the number of stakeholders were limited. The success of collaborations did not depend on initial planning processes but on programs' responses to problems that arose during implementation. Collaborations worked best when institutional policy was clear. When institutional leaders equivocated, local supervisors became key decision makers and sometimes acted in a way that did not support stated policy.

- **Attorneys:** Attorney "buy-in," or the lack thereof often determined how successfully a program operated. When attorneys bought into the program, the program operated; when they did not, the program did not function due to lack of referrals by defense attorneys or the lack of accepted plea agreements by prosecutors. For prosecutors and defense attorneys to "buy-in" to a proposed therapeutic project, they had to believe that their clients' interests were well served, their agencies were adequately funded, and their time was well spent. Having an experienced attorney from prosecution and defense agencies dedicated to the court was seen as highly useful.

- **Community Partnership**: The group Partners for Progress was instrumental in founding the Anchorage Wellness Court, securing funding, and proposing legislation that enabled the therapeutic courts in Alaska. Interviewees reported that, now that structures exist to support therapeutic courts, a community partner would be welcomed by a developing court, but may not be a necessary ingredient to its development. Interviewees believed that a community partner enhanced the community's awareness of, and participation in, a developing court.

- **Judges:** Judicial changes significantly affected court operations. This often occurred when new judges implemented new procedures, which were resisted by existent team members. New judges also needed time to build relationships with other team

members. Having a particular judge was not seen as critical but certain personality traits were viewed as helpful in a therapeutic court judge. These traits included a belief in the therapeutic court process, compassion, and a willingness to sanction defendants when necessary. Different characteristics were deemed advantageous at different stages of a court's development. Voluntary service by judges, rather than assignment or rotation, was highly preferred. Having a number of judges serve as therapeutic judges was seen as one way to institutionalize therapeutic courts.

- **Judicial Supervision:** While direct judicial interaction with a defendant is one of the hallmarks of a therapeutic court, many viewed judicial/defendant interactions as taking much too long, which fueled perceptions of inefficiency. While most interactions were positive, some were perceived as paternalistic or preachy. Incentives beyond judicial recognition and audience applause were rare and sanctions usually were days in jail. The court did not employ a formal graduated sanctions and rewards schedule.

- **Case Management and Community Supervision:** Case management and community supervision approaches worked well. The court effectively used emerging technological tools to test participants for alcohol and drug use and to monitor their whereabouts to assure public safety when released into the community.

- **Evaluation:** The program lacked sufficient evaluation. Program stakeholders and policymakers were eager for process and outcome information, which was not readily available. Interviewees especially wanted information on the program's effect on "big picture" issues such as successful participants' economic contributions, drug and alcohol-free babies, and healthier families. Interviewees also expressed a desire for specific information about discrete components of the courts to assist in making programmatic changes.

- **Funding:** Like most other therapeutic courts, the Anchorage Wellness Court operated through "hodgepodge" funding. The approach appeared to be successful, though it required considerable administrative effort. The community partner was viewed as essential to the successful operations of the therapeutic courts in Alaska, at least initially, because of its funding contributions.

- **Perceptions of Transferability:** Interviewees generally believed that the Anchorage Wellness Court model was transferable; they identified both barriers and opportunities for using the Anchorage Wellness Court model:

- When considering barriers to transferring the program, interviewees most often pointed to an overall dearth of resources including: substance abuse treatment, case management, housing, medical services, employment, access to naltrexone, and even access to courts in rural locations. Interviewees also identified a lack of buy-in from prosecutors, defense attorneys, and private attorneys as significant.

- Full-scale replication was viewed as achievable in larger cities and small road-system accessible towns. To overcome the lack of resources, especially in rural locations, interviewees identified ways in which a pared-down model might be effective. These included innovative delivery of substance abuse treatment through videoconferencing, and the use of components *without* traditional substance abuse treatment, such as using MRT with drug and alcohol monitoring, and the use of naltrexone with MRT. To overcome a lack of attorney buy-in, interviewees suggested that agency policy be more directive towards local district attorney's offices.

- **Applications of Therapeutic Court Practices and Principles:** Interviewees expressed mixed views about applying therapeutic court principles and practices in conventional court cases. They believed that mainstreaming these would be a gradual process and occur naturally over time as more judges became familiar with therapeutic courts. Some judges, however, had already begun to apply them to non-therapeutic court settings.

Conclusions

One of the preliminary questions this study posed was: how was the Anchorage Wellness Court able to start up and operate when other such efforts in Alaska failed or stalled for lengthy periods of time? The Anchorage Wellness Court took root in 1999. The Juneau Wellness Court did not. The Anchorage Wellness Court set the Anchorage legal community abuzz. The Anchorage Felony Drug Court did not. Why?

Overall, the initial adoption of the Anchorage Wellness Court followed a pattern similar to other drug courts around the country. The key elements were all there including strong judicial and community leaders, salesmanship of the program, links to municipal and state policymakers, and considerable federal funding assistance. These elements all contributed to the early acceptance of the Anchorage Wellness Court as a program.

Replication of the therapeutic courts, however, has been slower in Alaska than has been seen nationally, in part because the court administration was cautious about investing resources in programs that, until recently, had not produced evidence of long-term success. Existing capacity also has yet to be filled. Still, therapeutic courts continue to spread in Alaska due to community interest in addressing alcohol-driven crime. The court system has taken concrete steps to institutionalize therapeutic courts so that new projects are more easily implemented. It is still concerned, however, with low participation and high relative costs.

Much of the recent research on drug courts is now focused on getting inside the "black box" of drug court programs to see what works. As Alaska and other states look to replicate programs, adapt them to new target populations, or increase their capacity, findings about what works should be integral to program decisions. Each component should be considered individually with emerging research outcomes and costs in mind. Although the interviews did not generate quantitative findings, the findings here may be instructive when deciding "what works" in a practical sense when implementing a therapeutic court program.

Opportunities

Many aspects of the Anchorage Wellness Court model appear to be transferable and new therapeutic courts based on the Anchorage Wellness Court have already been successfully "transferred" to other locations in Alaska. Some communities without therapeutic courts are exploring ways to develop them. The proved success of many aspects of the model, and the now-established administrative structure to support the therapeutic courts, should be encouraging to any community looking to find ways to incorporate therapeutic justice.

Some distinctive components of the Anchorage Wellness Court model appear to be particularly transferable. These include the use of the cognitive-behavioral treatment module MRT, which appears to be helpful, is low-cost, and requires little training to facilitate. The use of naltrexone – whether as a required element or as an as-needed supportive tool – appears to be useful as long as appropriate medical services are available. Intensive supervision, combined with MRT, is particularly transferable with the advent of technologies that ease the monitoring of whereabouts and illicit substance use. The innovative use of these elements may allow a "therapeutic" response to alcohol-driven crime without the full-scale "court."

Barriers

Roman and his colleagues found, among other things, that the Anchorage Wellness Court "was effective in reducing recidivism and associated harms among the group that formally entered the program. Among those who were referred to the program, but who did not enter the program,

there was no effect, or even a negative effect." (Roman, Chalfin, Reid, & Reid, 2008: 46). This finding has implications for the Judicial Council's findings that incentives to participate were considered insufficient, that participation was low, that the court was under capacity for much of its history, and that screening and referral methods needed to be examined and revamped. If the program's benefit accrues mainly to those who formally enter the program, an attempt must be made to make the program more accessible.

Having the target population of misdemeanor offenders undergo an eighteen month long program does not appear to be a transferable aspect of the model given the lack of incentives to enter the program. The lack of transferability of that aspect of the program was borne out in the failure of one start-up misdemeanor DWI court, the struggle in all the therapeutic courts trying to attract misdemeanor offenders, and in the shift towards felony offenders in newly emerging therapeutic courts. The eighteen month long program is currently mandated by statute for all therapeutic court programs. That mandate currently prohibits presenting a shorter program for misdemeanor offenders.

The Anchorage Wellness Court experienced significant problems with screening and intake processes. Screening processes and standards were not well understood and shifted depending on who was making the decisions. Increasing certainty about eligibility and screening criteria could serve to increase referrals from attorneys and decrease the perceptions of subjectivity. Increasing certainty about screening standards by documenting them could also serve to stabilize the therapeutic courts' operations by limiting the risk of changing standards and procedures in high-turnover offices.

Therapeutic courts require significant resources, especially substance abuse treatment resources, that are not readily available in all areas of the state. They also require significant case management, monitoring, and legal resources. These would all need to be increased for full-scale replication efforts. Pared-down models, as discussed above, may present an alternative. Another alternative is to apply therapeutic court principles and methods in conventional settings, especially where judges' and attorneys' caseloads are less burdensome, as in some rural settings.

One remaining concern is that Roman and his colleagues suggested that the program's benefit accrues mostly during the first 24 months after initial arrest – most of this time is while the participant is in treatment and being intensely monitored. After 24 months, the positive effect dissipated and those who committed new crimes committed more serious ones than individuals in the comparison group (46). Attempts should be made to determine why this occurred and to alleviate this post-program relapse. Partners for Progress has started to address this by starting "alumni" support groups for those who complete the Anchorage Wellness Court and other therapeutic courts in Alaska.

Summary

As discussed, both barriers and opportunities exist for replicating and transferring the Anchorage Wellness Court program model, or adapting it or portions of it for alternative use. Overall, one of the most positive aspects of the Anchorage Wellness Court was its effect on community members, stakeholders and policymakers, who all benefitted by finding ways in which they could attempt to close the usual "revolving door" of justice for addicted offenders. This positive reaction suggested that those working in the criminal justice system, and those closest to it, strongly desired alternative and innovative ways in which to respond to the significant problem of alcohol-driven crime in Alaska. This innovative spirit could encourage many more justice initiatives by increasing confidence of policymakers that criminal justice innovations relating to substance abuse treatment will be well-received by criminal justice stakeholders and, especially, by communities across Alaska.

Part II
Understanding the Context: Therapeutic Courts in Alaska

Alaska's Criminal Justice System

Alaska Court System

All of Alaska's therapeutic courts operate in the context of state courts. Alaska has one "unified" court system, administered by the state.[5] There are no municipal, county or borough courts. The court system has four levels of courts: the district court, the superior court, the court of appeals, and the supreme court.[6] The district and superior courts are divided between four geographical judicial districts for administrative purposes.[7] The appellate courts serve the entire state. Both superior and district court judges have presided over different therapeutic courts.

The Courts

The district court is a legislatively-created court of limited jurisdiction which handles misdemeanor state offenses and violations of city and borough ordinances.[8] It handles small claims and civil cases involving less than $100,000, forcible entry and detainer cases and domestic violence cases.[9] District courts also record vital statistics in some locations.[10] There are district courts in nine cities.[11] Magistrates serve many small cities and villages with no district or superior court judge and provide supplemental judicial services to district or superior court locations where needed. District court judges preside over misdemeanor therapeutic court cases and may preside over felony cases if the presiding judge of the judicial district appoints them to serve in that capacity *pro temporare*.

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[5] Alaska Constitution, article IV, section 1.

[6] Alaska Constitution, articles II and III; AS 22.05.010 - 22.15.070. See generally, http://www.state.ak.us/courts/ctinfo.htm (last visited June 4, 2007).

[7] AS 22.10.010. A map of Alaska's four judicial districts is available at www.state.ak.us/courts/map.pdf.

[8] AS 22.15.010, 22.15.060.

[9] AS 22.15.030-.040.

[10] AS 22.15.100 - .010.

[11] District court locations are: Juneau and Ketchikan (First Judicial District); Anchorage, Palmer, Kenai, Homer, and Valdez (Third Judicial District); and Fairbanks and Bethel (Fourth Judicial District). No district courts serve the Second Judicial District. For district court locations, see map, supra, note 7.

The superior court, created by the Alaska Constitution,[12] is the trial court of general jurisdiction which handles all felony cases, delinquency and child-in-need-of-aid cases, civil cases (including domestic relations), guardianship, probate, and civil commitment cases, and some administrative and civil appeals.[13] Alaska's superior courts are located in twelve cities across the state.[14] Superior court judges may preside over both misdemeanor and felony therapeutic court cases.

Alaska has two appellate courts. The court of appeals is a legislatively-created court that hears criminal appeals as a matter of right.[15] The supreme court, established by the Alaska Constitution,[16] is the court of final jurisdiction which hears most civil appeals as a matter of right and criminal appeals upon grant of petition.[17] It also has original jurisdiction to hear other cases, such as attorney and judicial discipline cases. The court of appeals and the supreme court have very little direct administrative contact regarding the daily operations of the therapeutic courts, although they do hear appeals over legal matters that arise in the therapeutic courts. Instead, the supreme court has delegated supervision of the administrative operations of the judicial system, including the therapeutic courts, to the administrative director pursuant to policy guidelines provided by the supreme court.[18]

Court administration

Administrative authority for the Alaska Court System is vested in the statewide administrative director who centrally directs the operations of all the state courts. To accomplish this, several statewide administrative posts were created to serve under the administrative director, including two deputy directors, a court initiatives attorney, a judicial education coordinator, a magistrate education coordinator, a court rules attorney, and an administrative attorney. In addition, one area court administrator serves each of the four judicial districts.[19]

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[12] Alaska Constitution, article IV, section 3.

[13] AS 22.10.020.

[14] Superior Court locations are: Juneau, Sitka, and Ketchikan (First Judicial District); Barrow, Kotzebue, and Nome (Second Judicial District); Anchorage, Palmer, Kenai, Kodiak, and Dillingham (Third Judicial District); and Fairbanks and Bethel (Fourth Judicial District). See map, supra, note 7.

[15] AS 22.07.020.

[16] Alaska Constitution, article IV, section 2.

[17] AS 22.05.010.

[18] Alaska Administrative Rule 1.

[19] See the court directory at: http://www.state.ak.us/courts/courtdir.htm#admin (last visited June 4, 2007).

The administrative director added a therapeutic courts coordinator position in 2003. The therapeutic courts coordinator administers all the operational therapeutic courts and assists in planning and implementing emerging therapeutic court projects. The court system also employs project managers for several of its therapeutic courts. Alternatively, some courts have a court coordinator, employed by the State of Alaska's Department of Behavioral Health, Alcohol Safety Action Program (ASAP), who fulfills the project manager function and performs case management. Project managers report directly to the therapeutic courts coordinator. Court coordinators who are ASAP employees report to the ASAP Program Director but work closely with the therapeutic courts coordinator.

Supreme Court Committee on Therapeutic Courts

In response to the proliferation of therapeutic court projects, the Alaska Supreme Court established an advisory committee for the therapeutic courts in 2005. That committee worked with the therapeutic courts coordinator to develop a statewide planning and implementation model, which was complete in August 2006.[20] The primary mission of the committee included establishing a formal process to submit proposals for new projects, recommending standards for their evaluation and recommending projects' approval or rejection. The committee was also to make recommendations about coordinating and standardizing existing therapeutic courts, mainstreaming therapeutic court principles when possible and appropriate, reviewing existing courts, developing strategies to ensure the existing courts' sustainability, and providing mentoring in the development of new therapeutic courts.[21]

Prosecution agencies

Acting within this statewide court structure are two types of prosecuting agencies. First, the state prosecutes most criminal cases, and all felonies, through the Department of Law, Criminal Division's district attorneys' offices. Like the courts, prosecutors have a central statewide administration with regional and local offices. In Alaska, the attorney general is appointed by the governor. The attorney general generally appoints a deputy to oversee the criminal division. Prosecution is carried out by thirteen regional district attorneys offices, led by district attorneys and staffed with one or more assistant district attorneys. Second, two cities and boroughs prosecute misdemeanor violations of their own ordinances: Anchorage and Juneau.

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[20] Alaska Court System Therapeutic Courts Planning & Implementation Manual (August 2006)(on file at Alaska Judicial Council).

[21] Therapeutic Courts Planning & Implementation Manual, *supra* note 20, at 5. The committee, having fulfilled its original mission, still existed as of 2007 but reduced its membership to a small group of court "experts" able to monitor and evaluate the projects.

In Anchorage, both the district attorney's office and the municipal prosecutor's office participate in therapeutic courts. In Juneau, both prosecuting agencies also participate, although the state handles most cases because they are mostly felony cases. In all other venues with therapeutic courts, the state district attorney's office acts as the prosecuting authority.

Defense agencies

Alaska has two state defense agencies. The public defender agency provides public representation to most criminal defendants who cannot afford the costs of representation. If that agency has a conflict of interest in a case, the Office of Public Advocacy provides representation from staff attorneys or private attorneys with whom it contracts. The public defender agency represents most cases in the felony therapeutic courts, although the public advocacy office participates on occasion. Like the courts and district attorneys, the public defender agency and the public advocacy office are centrally administered on a statewide basis, with local offices in locations large enough to support them.

In addition, cities that prosecute their own misdemeanor offenses may provide public defense by contracting with local law firms. The Municipality of Anchorage provides public legal representation for the misdemeanors it prosecutes by contracting with a local criminal defense law firm. Contract attorneys also represent defendants in the Juneau Wellness Court in municipal cases. In all other therapeutic courts, public defenders or public advocates represent indigent defendants.

Private defense attorneys

Private defense attorneys participate regularly in Alaska therapeutic courts. As a practical matter, they tend not to be involved in planning the courts or in operational decision making. Due to the economies of private practice, judges will hear cases with private attorneys first on the calendar as a courtesy, or may not require private attorneys to attend status hearings unless some legal action is to be taken.

Department of Corrections

The Alaska Department of Corrections administers all state and local correctional institutions in Alaska and the supervision of offenders in the community. Its Division of Probation and Parole provides community supervision only for felony offenders. It provides no community supervision for misdemeanor offenders. It has stated its commitment to ensure compliance with sentencing and probation conditions, such as treatment.[22]

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[22] See http://www.correct.state.ak.us/corrections/CommunityCorr/Director.htm (last visited June 4, 2007).

The department participated in early planning and operations of Alaska's therapeutic courts by providing probation officers to supervise participating defendants and report their compliance to the court. When a new governor was elected in 2002, a new commissioner and deputy commissioners took charge of the department. Shortly afterwards, the department declined to provide further community supervision for therapeutic court participants in Anchorage and Bethel and pulled their probation officers from the programs. The department continued to participate on a limited basis by authorizing and monitoring compliance with the House Arrest Program/Electronic Monitoring (HAP/EM) for qualified felony and misdemeanor defendants. That program permitted defendants to satisfy mandatory jail terms while released in the community through stringent restrictions on their movements which were comparable to incarceration.

As previously mentioned, the state provides no community supervision for misdemeanor offenders. When planning and implementing the Anchorage Wellness Court, the Municipality of Anchorage obtained grant monies to hire a case manager to provide case management and supervision for municipally-prosecuted misdemeanor offenders.

Department of Health and Social Services

The Department of Health and Social Service's Division of Behavioral Health administers grant funding for substance abuse and mental health treatment providers.[23] The department also administers the Alcohol Safety Action Program (ASAP).[24] Historically, the program provided substance abuse screening and referral to treatment and alcohol education programs.

After the Department of Corrections declined to participate in the felony therapeutic courts, ASAP hired several case coordinators to provide state-prosecuted therapeutic court defendants in felony and misdemeanor cases with case management and supervision services.[25] Those services included substance abuse monitoring, program compliance monitoring, and assisting with obtaining housing and employment. Case coordinators reported defendant compliance at every status hearing. Some case coordinators provided community supervision, such as home visits, as well. The case coordinator positions were filled with probation officer-level employees. Because ASAP case coordinators are not armed, ASAP negotiated and executed a memorandum of agreement with the Division of Probation and Parole which provided that probation officers would assist and provide back-up in some situations, such as arrests, as necessary.

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[23] See http://www.hss.state.ak.us/dbh/sq/default.htm (last visited June 4, 2007).

[24] See http://www.hss.state.ak.us/dbh/prevention/programs/asap/default.htm (last visited June 4, 2007).

[25] Recall that case management in the Anchorage Wellness Court is not provided by ASAP but by the Municipality of Anchorage. In the Juneau Therapeutic Court, case management services are provided by a case coordinator hired by the Juneau chapter of the National Council on Alcohol and Drug Dependence (NCAAD).

Public safety and policing agencies

The Alaska State Troopers, a division of the state Department of Public Safety, has not participated in the therapeutic courts. The Anchorage Police Department, a division of the Municipality of Anchorage, has participated. It was a strong proponent of the program and provided referrals and community supervision, including home visits, for misdemeanor defendant participants in the Anchorage Wellness Court.

Alaska's Therapeutic Courts

Alaska's first therapeutic court began in July, 1998. At of the end of 2007, Alaska had eleven operating therapeutic court programs. The programs are divided into two categories: "coordinated resource projects" and "addictions" courts. The coordinated resource projects focus on offenders who experience mental disorders. The addictions court projects focus on offenders whose primary problem is alcohol or substance abuse. Many participants in both populations experience co-occurring mental health and substance abuse disorders.

Coordinated Resource Projects

Two therapeutic courts in Alaska are "coordinated resources projects," also known as "CRP courts" or "mental health courts." These courts target misdemeanor offenders with mental illness, co-occurring disorders, developmental disabilities, traumatic brain injuries and other related disorders. As their name suggests, the courts attempt to coordinate various mental health and social services for affected individuals whose offense had its genesis in the mental disorder. Cases in the CRP courts are diverted from normal criminal justice processing and, if defendants comply with their programs, are dismissed.

The Anchorage CRP court was the first therapeutic court in the state; it began in July 1998. The Palmer CRP court started in March 2005.[26] At the writing of this report, two more projects were in the planning stages. The Alaska Judicial Council published an evaluation of the Anchorage CRP court in January 2003 (Alaska Judicial Council, 2003). The Council reported that outcomes improved for participants on all measures including: fewer days of psychiatric institutional commitment, half as many psychiatric institutional admissions, fewer days of incarceration, and fewer arrests. The CRP courts were widely accepted and supported by local and state agencies that

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[26] For more information on the Coordinated Resource Projects, see the Alaska Court System website at: http://www.state.ak.us/courts/pamerct.htm and www.state.ak.us/courts/palmerct.htm (last visited June 4, 2007).

participated, in part because the courts employed existing treatment and social service resources for qualified defendants.[27]

Addictions courts

By 2007, the Alaska Court System administered nine therapeutic courts that handled cases arising from underlying drug or alcohol abuse. These are commonly known as the "addictions courts." Five of the addictions courts were in Anchorage: the misdemeanor Anchorage Wellness Court, the misdemeanor State Wellness Court, the Anchorage Felony DUI Court, the Anchorage Felony Drug Court, and the Family CARE Court. The Bethel Therapeutic Court accepted both misdemeanor and felony cases, and both drug and alcohol-related offenses. The Ketchikan and Juneau Therapeutic Courts also accepted both felony and misdemeanor offenses; most of the cases in those courts were felony Driving Under the Influence cases. The Fairbanks Wellness Court began in late 2007 and accepted felonies and misdemeanors.

The addictions therapeutic courts all operated similarly. The courts were based largely on the National Drug Court Institute (NDCI) Drug Court and DUI Court models. Each court operated by offering a legal incentive in exchange for the defendant's compliance with a host of program requirements including substance abuse treatment, monitoring for drug and alcohol abuse, and frequent court appearances. Due to statutory constraints, the criminal alcohol addiction courts offered reduced or modified sentences for compliance and completion of the treatment program. The drug court was also able to offer dismissal of charges. The Family CARE Court operated in a civil child protection context and offered parents the opportunity to reunite with their children if they met stringent program requirements.

One program operated slightly differently. The Anchorage Veterans' Court was not a NDCI based therapeutic court and was not administered as such by the court system. It operated by linking substance-abuse-affected veterans with appropriate treatment and other services offered by the Veteran's Administration.

In 2005 and 2007, the Alaska Judicial Council evaluated the Bethel Therapeutic Court, the Anchorage Felony DUI Court, and the Anchorage Felony Drug Court. In its most recent evaluation, the Council reported that the three therapeutic courts had a combined 54% graduation rate (2007b). One year after completing the program, graduates of those courts experienced 13% rearrest and 6% reconviction rates. These rates compared favorably with a matched comparison group's 32% rearrest

[27] For more information, see: Ferguson, A., Hornby, H., & Zeller, D. (2008). *Outcomes from the Last Frontier: An Evaluation of the Anchorage Mental Health Court (Anchorage Coordinated Research Project).* South Portland, Maine: Hornby Zeller Associates, Inc. Available at http://www.mhtrust.org/documents/ACRP%20Report%20Final1.pdf (Last visited September 3, 2008).

and 23% reconviction rates and with a baseline felony offender group's 38% rearrest and 28% reconviction rate after one year. The combined "participant" group of graduates and discharged participants, showed lower, but not statistically significant, rearrest and reconviction rates than the matched comparison group. In its previous report on the same three courts, the Council found in-program reductions in incarceration days, remands to custody and reconvictions for graduates and active participants in those three courts compared to defendants who had opted out of the program and matched defendants who had never entered (Alaska Judicial Council, 2005).

History and Development of the Anchorage Wellness Court[28]

Anchorage Wellness Court start-up: 1999-2000

The Anchorage Wellness Court effort began in 1999. Anchorage District Court Judge James Wanamaker had heard of naltrexone, an anti-addictive medication to combat alcoholism, at a National Judicial College training in 1997 and recognized its potential to assist in reducing alcohol-driven crime in Alaska. Also at that training, Anchorage Superior Court Judge Stephanie Joannides introduced Judge Wanamaker to the NDCI drug court model. These influences, combined with the success of the Anchorage Mental Health Court, an effort initiated by his colleague Judge Stephanie Rhoades, inspired Judge Wanamaker to consider starting a court-based therapeutic program for alcoholic offenders. During the spring and summer of 1999 Judge Wanamaker began approaching attorneys and other community members in Anchorage to discuss implementing such a project.

As part of an effort to inform the Anchorage legal community about the use of naltrexone, in July 1999, Judge Wanamaker invited Judge Darrel Stevens of the California Superior Court in Chico to present information on about how he used naltrexone to curb some criminal defendants' cravings for alcohol. A few days later, Judge Wanamaker met with Municipal Prosecutor John Richard to gain his support in using naltrexone orders with municipally-prosecuted, alcohol-related misdemeanor cases. Mr. Richard expressed interest and enthusiasm about the project. Judge Wanamaker also attempted to gain the support of the state prosecutor's office but the state declined to participate. With the municipality's support, in August 1999 Judge Wanamaker began ordering willing defendants to take naltrexone and comply with other requirements such as treatment in exchange for being released into the community while awaiting disposition or sentencing of their cases.

In the fall of 1999, Judge Wanamaker met with Janet McCabe, who was affiliated with the Anchorage Downtown Partnership, a community group that was attempting to revitalize downtown

[28] Information in this section was obtained from project interviews and from Council staff and records. It was also informed by an article previously written by Council staff. *See generally*, Carns, T., Hotchkin, M. G., & Andrews, E. M. (2002). Therapeutic Justice in Alaska's Courts. *Alaska Law Review 19* (1), 1-55.

Anchorage through reducing the amount of vagrancy and minor crime. Ms. McCabe had a background in urban planning and had approached Judge Wanamaker with an idea for starting a community court, similar to the Manhattan Midtown Court. Judge Wanamaker suggested that they focus their efforts on chronic alcoholic offenders instead. Ms. McCabe agreed and created a new non-profit group, Partners for Progress,[29] to assist with that effort.

Partners for Progress began to solicit businesses and individuals for donations and to seek grant money so that it could assist participants with treatment, naltrexone, and other costs. It also coordinated with the Anchorage Bar Association and presented a series of continuing education courses to educate attorneys, judges and community members about the drug court model and the use of naltrexone. Partners for Progress also produced and distributed pamphlets and a video about the use of naltrexone in conjunction with appropriate substance abuse treatment.

In conjunction with his efforts to educate and garner support from community and bar leaders, Judge Wanamaker continued to work with community service providers in developing appropriate treatment and support services. To that end, Judge Wanamaker partnered with one substance abuse treatment provider, Alaska Human Services, to provide treatment for defendants participating in the court. It was a private for-profit provider that used primarily a cognitive-behavioral treatment modality and had substantial experience treating substance-affected offenders. Defendants were expected to pay the entire costs of treatment.

In addition to treatment, defendants in the program were expected to attend a specified number of "recovery group" (such as Alcoholics Anonymous) meetings a week. In late 1999, Mike Krukar, a master's degree candidate at Alaska Pacific University, approached Judge Wanamaker about forming another support group for defendants taking naltrexone. Judge Wanamaker agreed and arranged for a site to hold meetings. The group, coined Nalgroup,[30] was formed and began holding meetings in February 2000. Judge Wanamaker incorporated Nalgroup attendance into the program requirements.

Meanwhile, the court's founders began to identify outside funding sources to assist with program costs. In April 2000, Partners for Progress applied for the first of several federal Byrne grants[31] and received $75,000 for the court program, which was renewable for another year, for a

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[29] The group was originally called Partners for Downtown Progress and was later renamed Partners for Progress when it expanded its efforts statewide.

[30] Originally the group dealt with issues related only to naltrexone use. The group later changed its focus to "Non Addicted Living" and issues related to the Anchorage Wellness Court program.

[31] Byrne grants are grants given out by the U.S. Department of Justice, Bureau of Justice Assistance, generally to public safety agencies.

total of $150,000. In the grant application, Partners identified the problem it sought to address as the "revolving door" of justice encountered by defendants with substance abuse problems. Partners' stated goals for the Anchorage Wellness Court were to reduce crime associated with alcohol abuse, as well as to alleviate associated social, personal and economic harm; to demonstrate the effectiveness of a therapeutic justice court that combined treatment with the use of naltrexone; to demonstrate the effectiveness of a cooperative organizational structure involving state, local and non-profit participants in reducing recidivism by alcoholic misdemeanor offenders; and to share the results of the project with legal, judicial and medical organizations.

At the time of the grant application, Judge Wanamaker intended that cases in his new therapeutic court would proceed pursuant to a drug court model. Judge Wanamaker described the intended model in the Byrne Grant application as including a formalized plea agreement between the municipality and the defendant, judicial approval of the plea agreement, deferred sentencing, favorable sentencing or dismissal of charges if the defendant completed the "plan," release on bail, periodic compliance hearings, and sanctions or removal from the program for noncompliance. A case coordinator would assess and report on the defendant's compliance to the court. The program at that time contemplated a course of six to twelve months, with a requirement of taking naltrexone for at least ninety days.

In November 2000, Judge Wanamaker invited Dr. Ken Robinson to Anchorage to train Anchorage Wellness Court team members how to facilitate Moral Reconation Therapy (MRT), a cognitive-based treatment that attempted to teach offenders to raise the level of their moral thinking so that they did not reoffend.[32] Partners funded the training. After the training, Judge Wanamaker added completion of the twelve principal MRT steps to the Anchorage Wellness Court program requirements. By the end of 2000, the Anchorage Wellness Court had incorporated into the program the core components of naltrexone, substance abuse treatment, MRT, recovery meetings, Nalgroup, and frequent court hearings to monitor compliance. In addition, the Anchorage Wellness Court had a clear philosophy and expectation that participants would become or remain employed, would pay most treatment expenses and other costs of the program, and would strive towards complete sobriety.

During this time, the court functioned largely through the effort and dedication of Judge Wanamaker, Janet McCabe, and John Richard. The court was almost entirely sustained through funds allocated by the municipality and Partners for Progress from the Byrne grant. The Alaska Court System administration did not allocate specific resources to the project in its budget but it did permit Judge Wanamaker to dedicate some of his time and some of a clerk's time to the Anchorage

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[32] The Moral Reconation Therapy website may be found at: http://www.moral-reconation-therapy.com.html. (Last visited June 20, 2007.)

Wellness Court endeavor. While permitting the experiment, court system administrators expressed skepticism about the project's long-term prospects due to lack of quantitative information about the court's success and due to concern about the amount of resources that the court required. Meanwhile, community leaders and some state and local policymakers embraced Judge Wanamaker's experiment due to anecdotal evidence that the court helped participants to achieve sobriety and not reoffend.

Statewide Therapeutic Courts development: 2001 - 2003

The years from 2001 to 2003 were a time of relative stability for the Anchorage Wellness Court. All the programmatic components were in place, the court had a stable treatment provider and staffing remained stable throughout this period. The early reported anecdotal successes of the Anchorage Wellness Court, however, sparked many statewide changes within all three branches of state government including: several new therapeutic courts, the emergence of statewide court administrative support, evolving executive branch cooperative agreements, and the passage of critical legislation.

In early 2001, Partners for Progress lobbied the Alaska Legislature for legislation to support the emerging therapeutic courts. House Speaker Brian Porter, along with House Judiciary Committee Chair, Representative Norm Rokeburg, introduced House Bill 172, which established pilot felony therapeutic court programs in Bethel and Anchorage.[33] The bill specified that the courts would focus on alcohol-addicted offenders. Judge Wanamaker testified in support of the bill, relating his experiences with the Anchorage Wellness Court. The bill passed unanimously. To support the pilot courts, the legislation included specific appropriations for two additional judges, additional prosecutors and public defenders, probation officers, and treatment monies. In addition, separate legislation included appropriations to support the development of the misdemeanor addictions courts: $75,000 to Partners for Progress for the Anchorage Wellness Court and $10,000 to the Juneau chapter of the National Council on Alcoholism and Drug Dependency (NCADD) to support an emerging Juneau Wellness Court.

In the 2001 session, one other critical piece of legislation passed the legislature which did not have an immediate effect on the Anchorage Wellness Court but which significantly altered its development. House Bill 132 of that year changed the "look-back" period to determine DUI offense classification as a misdemeanor or felony offense from five years to ten years. After 2001, if a defendant had previously been convicted twice in the past ten years of driving under the influence, the third offense would be classified as a felony. Before then, the state only looked at prior DUI

[33] This bill and other legislation affecting the therapeutic courts discussed in this report is described in Appendix B.

convictions entered within the past five years. This change all but eliminated the misdemeanor chronic drunk driving population that the Anchorage Wellness Court initially targeted by reclassifying those offenders as felons.

In early 2001, Judge Wanamaker bolstered the community supervision element of the Anchorage Wellness Court. He first worked with the Department of Corrections to incorporate the House Arrest Program/Electronic Monitoring program into the Anchorage Wellness Court protocol, so that therapeutic court participants could serve their mandatory "jail" time, required by statute for DUI offenders, while living and working in the community and fulfilling their program requirements. He also partnered with the Anchorage Police Department to assist with sobriety monitoring for misdemeanor defendants not monitored by the Department of Corrections. For their part, Anchorage Police Department officers performed home visits to monitor defendants. The municipality funded the police program for one year from municipal liquor license fees. The program proved to be popular with the police department and even after the one-year special funding ended, APD officers continued to provide home checks.

In June 2001, the Municipality of Anchorage hired a case coordinator for the Anchorage Wellness Court with funding provided through the Partners grant funds. Before that time, a Partners for Progress staff person had been providing some limited case management services such as assisting defendants make appointments. The new case manager had extensive law enforcement experience and was able to provide additional services such as screening for appropriate cases, substance monitoring, and home visits.

At about the same time, Judge Wanamaker increased the length of the program to eighteen months and increased the requirement of taking naltrexone to 120 days. He believed the increase was warranted because research indicted that six months was not long enough to sustain sobriety. Shortly after he made the increase, intakes dropped dramatically but eventually rebounded.

The summer of 2001 saw several other important developments, including the beginnings of operations for the Anchorage Felony Drug Court. In 1999, the United States Department of Justice had initiated a Drug Court in Alaska (one of the only states without one) by offering federal grant monies to key state agencies. With the permission of the court administration, Anchorage Superior Court Judge Stephanie Joannides agreed to preside and coordinate planning efforts. Various agencies including the court, the district attorney's office, the public defense agencies, the Department of Corrections, the Alaska Judicial Council, and the Department of Health and Social Services collaborated on issues such as eligibility criteria, plea agreements, program structure, treatment, and evaluation concerns (Alaska Judicial Council, 2005). These stakeholders attempted to stay close to the nationally tested drug court model but were still confronted with many programmatic issues (Ibid). In the end, planning and training took over two years.

The Anchorage Felony DUI Court, mandated by House Bill 172, began operations in December 2001. That program took much less time to plan and implement, in part because it involved the same stakeholders as the Anchorage Felony Drug Court, in part because the state was somewhat more flexible in its requirements than the federal government, and because it was also presided over by Judge Joannides, who held a combined hearing docket for both courts. While most of the DUI court's program requirements were the same as the drug court's, the incentives and outcomes were different. State law permitted dismissal of drug charges for compliance with the program but did not permit dismissal of Driving Under the Influence charges.

In December 2002, the companion Bethel Therapeutic Court began operations. In contrast to the Anchorage Felony DUI Court, the Bethel Therapeutic Court stakeholders decided to process both misdemeanor and felony cases, and both drug and alcohol cases, although most of its cases involved alcohol to some degree. Another distinguishing feature of the Bethel Therapeutic Court was the formation of defendant cohorts; defendants there began the program and proceeded through it in small groups together, barring any individual set-backs.

Another therapeutic court began – and ended – during this time. The Juneau Wellness Court effort began informally in 1999 after a Juneau defense attorney saw Judge Wanamaker's presentation in Anchorage and approached Juneau District Court Judge Peter Froehlich to start a similar court in Juneau. It formalized operations in 2002, after it received the 2001 legislative appropriation for the 2002 fiscal year. Unlike the Anchorage Wellness Court, however, the Juneau court had no community partner, had little money for treatment, and lacked cooperation from criminal justice agencies, including the prosecutor's office. By 2003 it could not continue its efforts and closed its doors.

In October, 2003, the Alaska Court System hired a statewide therapeutic courts coordinator, a new executive administrative position within the court. Before then, no one person administered or oversaw the emerging therapeutic courts. Despite the development of court administrative support, many therapeutic court proponents perceived the court system as still hesitant to endorse the therapeutic courts and to allocate long-term resources to them.

From 2001 to 2003, Partners for Progress expanded its programmatic reach, mirroring the expansion of the therapeutic courts. In addition to the Byrne grant funds previously received, Partners for Progress received several allocations from the Alaska Legislature to support the therapeutic courts statewide. As a result, some therapeutic court stakeholders perceived that Partners for Progress had positioned itself in a competitive, rather than cooperative, stance vis a vis the court system for resources, which had begun to seek continuation funding from the legislature for previously grant-funded positions. Also during this time, Partners for Progress staff continued to be highly involved with Anchorage Wellness Court participants. Staff attended pre-meets, court

hearings, and arranged appointments and sometimes provided transportation for participants. This direct interaction with offenders and the intermingling of the non-profit's activities with court operations created discomfort among many court administrators, judges, and other therapeutic court stakeholders.

A time of change: 2004 - 2007

This period saw many staffing and program changes for all the therapeutic courts. In February 2004, the Anchorage Wellness Court case coordinator resigned. The municipality hired a new one and she quickly started work later that month. At about the same time, a treatment provider disruption occurred in the Anchorage Wellness Court. In 2003 the court had added another approved treatment provider. In early 2004 it became apparent that the new provider would not work out due to substantially different requirements of participants. Participants who had chosen the new provider were allowed to continue or to transfer to the existing provider. The resultant disruption to the program was considerable and lasted for months, however, because participants were uncertain about their treatment and rumors circulated among participants and stakeholders about why the provider was discontinued.

A fledgling Ketchikan therapeutic court experienced different problems. It began operations in 2004, accepting only "hard-core" defendants. Reportedly, these offenders all committed new crimes while in the program. That program was discontinued by its presiding judge and court administration just a few months after it began.

Like the Anchorage Wellness Court, the Anchorage Felony Drug and DUI courts experienced difficulties with their treatment provider during this period. Stakeholders determined that the provider's treatment protocol was inappropriate for the therapeutic courts and both felony courts were put on hiatus while the court solicited for a new provider. Existing participants continued with their treatment and therapeutic court programs but no new participants were accepted after April 2004.

Shortly thereafter, the Department of Corrections declined to provide continued case management or to supervise therapeutic court defendants. Although the Department of Corrections had received legislative funding for the therapeutic court probation officer positions in House Bill 172, department policymakers believed that participation was problematic on several levels, including a belief that DOC did not have authority to supervise defendants who had not yet been sentenced.

Even after a new treatment provider was found and assumed care of the felony courts' defendants, the district attorney's office was unwilling to refer anyone to the courts without adequate

community supervision. As a result, the Anchorage and Bethel felony therapeutic courts ground to a virtual halt. Meanwhile, despite its treatment provider problems, the Anchorage Wellness Court continued to operate and develop. Because DOC did not supervise misdemeanor defendants, the court was not affected by DOC's pull-out.

Also in 2004, the state district attorney's office in Anchorage agreed to participate in a misdemeanor program and a State Wellness Court began operations in April, presided over by Anchorage District Court Judge Samuel Adams. To further that effort, in June the Alaska Court System, with matched highway safety funds, hired a project manager to oversee both the Anchorage Wellness Court and the State Wellness Court. The project manager solved programmatic problems, negotiated contracts with treatment providers, forged new relationships with potential service providers, and relieved the judge and Partners for Progress of many administrative tasks.

2004 also heralded the biggest change in the Anchorage Wellness Court. Judge Wanamaker retired after over ten years on the Anchorage District Court and after five years of presiding over the Anchorage Wellness Court. This change in leadership was fraught with uncertainty for stakeholders. At first it appeared that no Anchorage District Court judge would volunteer to assume the Anchorage Wellness Court duties. Eventually, Judge Stephanie Rhoades, who already presided over and administered the Anchorage Coordinated Resources Project, offered to lead the Anchorage Wellness Court and to lend her expertise to try and regularize the practices of both courts. She assumed the Anchorage Wellness Court judicial duties in late June, 2004. Sadly, Judge Adams died suddenly in September 2004. As a result, Judge Rhoades also assumed the State Wellness Court duties on what was proposed to be a short-term basis.

In 2005, due in part to efforts of the court system, the Alcohol Safety Action Program (ASAP) entered into a reciprocal services agreement with the Department of Corrections to provide case management and community supervision for the felony therapeutic courts with the funding that DOC had received from the legislature for that purpose. Initially, ASAP provided probation-officer level case coordinators for state-prosecuted cases in the three state therapeutic courts in Anchorage and the court in Bethel. The state district attorney's office was satisfied with the new supervision arrangement and began referring cases to the Anchorage Felony Drug Court and to the Bethel Therapeutic Court.

In 2005, the court system received more highway safety funds for the therapeutic courts. With the additional funds, the court system renewed its efforts in Ketchikan, Juneau and Fairbanks. Because the grants required that the funds be designated for felony DUI offenses, those courts focused on felonies. The Ketchikan court decided not to use naltrexone as a standard component, whereas the Juneau court added it to its program requirements. Planning for the therapeutic court

in Fairbanks continued to be delayed, by some accounts due to a local district attorney's resistance, and by other accounts due to the lack of a suitable treatment provider.

The Anchorage Felony DUI Court, however, was still on hiatus due to the Anchorage District Attorney's belief that a constitutional problem had arisen due to some statutory changes in 2005. The 2001 House Bill 172 legislation for the Anchorage and Bethel therapeutic courts permitted 100% reductions in fines and jail terms for successful DUI defendants. In 2005, the legislature passed House Bill 136, which permitted 75% jail term reductions for other therapeutic court programs – such as those that had emerged in Ketchikan and Juneau. The Anchorage District attorney's office believed that this difference created a potential equal protection problem because similarly situated defendants were being treated differently and it sought a legislative fix to regularize the incentives for state-charged defendants eligible for therapeutic courts. The Bethel district attorney's office, however, did not perceive that the different incentives created a constitutional problem; it continued to operate.

Meanwhile, during the latter half of 2004 and 2005, Judge Rhoades and the program manager, in collaboration with stakeholders, drafted new policies and procedures and new forms for the Anchorage Wellness Court. Judge Rhoades also solicited for a new treatment provider because the existing one declined to take on any new cases due to financial constraints. When the court awarded the contract to a new provider, existing participants were again permitted to stay with the old provider but new participants were placed with the new one. At around this time, the number of opt-ins into the Anchorage Wellness Court faltered. Although many potential defendants continued to observe and consider the court, and were clinically assessed as appropriate, only a few formally opted-in.

In October 2005, Judge Rhoades stepped down from the Anchorage Wellness Court. Again, it appeared as if no judge would volunteer to assume leadership of the court. Because no judge was forthcoming, the presiding judge hired a former Anchorage District Court judge, Judge Peter Ashman, to administer the court *pro tem*. This decision also proved disruptive to the functioning of the court. Because the *pro tem* judge did not have his own courtroom, the court was relegated to an empty courtroom in the basement of the courthouse, which was without significant amenities. Because the judge was not a full-time, regular judge, he was often not available to perform the many administrative tasks that arose daily with the court.

By the end of 2005, participation in the court had again dropped dramatically. Some attributed the decline to the 2001 change that made most subsequent DUIs felonies. Some attributed the decline to the absence of Judge Wanamaker and Judge Rhoades, who both actively recruited participants for the court. Whatever the reason, it appeared to many as if the Anchorage Wellness Court was on the verge of collapse.

In early 2006, a new presiding judge for the Third Judicial District tapped Anchorage District Court Judge Nancy Nolan and Anchorage Superior Court Judge William Morse to co-preside over a combined docket of the Anchorage Wellness Court, the State Wellness Court, the Anchorage Felony DUI Court, and the Anchorage Felony Drug Court, collectively known as the "Wellness Courts." The judges alternated weeks on the bench and both judges heard felony and misdemeanor cases. The addition of a superior court judge to the misdemeanor Wellness Court judicial roster may have alleviated some of the burden on the other district court judges, whose dockets were purportedly increased when one district court judge was dedicated to the combined Wellness Court an afternoon every week. It also halved the administrative burdens, although communication between all stakeholders and the judges became even more important.

In spring 2006, the legislature standardized allowable jail term reductions to 100% for all programs by passing House Bill 441. Even so, the Anchorage Felony DUI Court had not resumed due to public defender objections to the standardized plea agreement and due to the court's attempts at revising the policies and procedures, which were not well-received by the public defender or the prosecutor. Anchorage Felony DUI Court stakeholders remained unable to negotiate a satisfactory plea agreement for several months. Once the stakeholders agreed on the terms of the plea agreement, and the court decided not to pursue further policy and procedure revisions, the district attorney's office and public defender's office began referring cases.

In late 2006, the municipality, which had previously been a strong supporter of the Wellness Court, all but stopped referring cases to the Wellness Court due to its perception that defendants lacked incentive to complete the program. The presiding judge of the Third Judicial District, Judge Morgan Christen, met with stakeholders to address this problem and to encourage the municipality to continue its participation. Municipal prosecutors agreed to refocus their efforts beyond DUI cases and began referring cases again.

Partners for Progress continued to participate and expand its assistance to more therapeutic courts statewide. Some of the boundary issues were resolved by the court when the Wellness Court judge restricted Partners for Progress staff, and other non-essential team members, from attending confidential pre-meets. Although not directly involved with participants any longer, Partners for Progress continued to provide initial financial assistance to participants, training money for stakeholders, and other helpful assistance to support the courts.

At the end of 2006, despite their bumpy roads, both felony courts in Anchorage were doing well. Operations had regularized and participation was up. Despite their uneven beginnings and operational problems, it appeared that the felony courts in Anchorage would thrive. In contrast, despite renewed efforts, both the Anchorage Wellness Court and the State Wellness Court misdemeanor programs continued to experience very low participation.

Statewide, the addictions courts in Juneau, Ketchikan, and Bethel appeared relatively stable but participation there also hovered under capacity. The Fairbanks court remained in planning stages. By the end of 2006, many stakeholders perceived that the court administration had demonstrated long-term commitment to the therapeutic courts by soliciting grants and incorporating the courts into their continuation budget process, and by making operational and administrative changes that eased the burdens on therapeutic court presiding judges.

Part III
Wellness Court Model Transferability

Interview Findings and Discussion

This section presents findings from the interviews. It discusses the elements of the Anchorage Wellness Court and reports on how well the interviewees believed that they worked, or didn't work. In some areas, the experience from the Anchorage Wellness Court stakeholders and policymakers is contrasted with experiences and impressions from stakeholders from other Alaskan therapeutic courts. Interviewees are quoted in places to give the reader the stakeholders' perspectives, in their own words. These quotes are not directly attributed because researchers assured interviewees that their anonymity would be maintained.[34]

Findings and discussion topics are arranged loosely around the National Association of Drug Court Professional's "Ten Key Components" of drug courts and the National Drug Court Institute's "Ten Guiding Principles of DWI Courts," a familiar framework for many researchers and drug court professionals (National Association of Drug Court Professionals [NADCP], 1997; National Drug Court Institute [NDCI], retrieved April 16, 2006). Because the interview questions were not developed in that framework, however, the interviews did not yield much information about some topics. Those topics are discussed but briefly. Last, it discusses interviewees' beliefs and perceptions surrounding the transferability of the Anchorage Wellness Court model to other courts in Alaska and elsewhere.

Quantitative outcome data and process measures were not considered by the interviewees. Care should be taken to remember that the interview findings present beliefs, perceptions, and impressions based on the interviewees' life and work experiences and not on data, which were unavailable at the time of the interviews. These findings do reveal operational successes, and failures, of the Anchorage Wellness Court model. They also present possible explanations about why certain efforts succeeded or failed, and predict to some extent whether the model is viable for replication or scaling up. While some of these operational successes and failures may be particular to the Anchorage Wellness Court, many are likely to occur in other therapeutic courts or collaborative justice efforts.

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[34] In most cases quotes are generally attributed to "an interviewee" or "a stakeholder." Because the legal and therapeutic court communities are so small in Alaska, general attribution was the only way to maintain anonymity. In some instances, quotes could be more directly attributed, to "a prosecutor" for example, when anonymity would not be compromised.

Overall Impressions

All interviewees were asked about their overall impression of the Anchorage Wellness Court. Almost all of the interviewees directly involved with a therapeutic court – whether judge, case coordinator, attorney, or other provider – had a positive overall impression of the Anchorage Wellness Court. This overwhelmingly positive viewpoint was based on several different underlying perceptions.

Many people liked the Anchorage Wellness Court because they believed that it provided a viable alternative option to incarceration for alcohol-abusing offenders.

> It is a good alternative to what we normally do – incarcerate people. It's probably the best alternative that we've come up with.

***

> I think it's a great alternative for those that want to look into treatment as opposed to sitting in jail.

Those interviewees were likely to refer to conventional court processing of DUI cases as "punitive" and/or "ineffective."

Many interviewees believed that an effective approach for these defendants required treating the underlying addiction so that they would not recidivate.

> I think it's the way justice should be done for most people in the court system because the majority of them are substance abusers, and many would not be in court without their substance abuse problem. So it makes sense.

Most interviewees shared the beliefs that punitive measures did not work and that treatment did work to reduce recidivism.

In addition to reducing associated criminal behavior through treatment, many interviewees held positive impressions of the Anchorage Wellness Court because they believed that the court changed the entire life of the offender, and society, in a positive way.

> Anchorage Wellness Court is a significant change in strategy for an onerous addiction. It changes lives.

***

> It serves a really good purpose. We have a high rate of offenders who go through the court and turn their life around and become decent members of society. And that doesn't just affect them – it makes society safe and it also affects their friends. It's a big ripple effect. It's a really good program.

This perception of a wider social effect tended to inspire those who worked within the criminal justice system who had wearied of the usual "revolving door" and the depersonalization of justice.

> It was good to see people sustaining these healthy lives. Going to the alternative courts was the more positive part of my day – it was nice to focus on fixing lives and not just punishing people.

***

> From my experience, it's a very heartfelt feeling to see that support and let the guys know they have a second or third chance. . . . Judge Wanamaker had a heart for wanting people to see people change their lives around.

Because of these cumulative positive effects, most people involved with the therapeutic courts were open to trying the therapeutic court approach and were positive about its process, while withholding judgment about its potential for a long-term effect. As one stakeholder summarized:

> It's a good program with a lot of potential. I think it's worth experimenting because the current ways are limited and not working. . . . But I say [it is an] experiment, and it's a big experiment, because we don't yet know about long-term effectiveness. To me, it's still unknown how effective this is. On the short-term, sure, people are staying sober in the program, getting and keeping their jobs – and don't get me wrong, that's wonderful – but what about three years out?

In addition to questions about long-term effectiveness, concerns about the court's efficiency tempered many interviewees' positive impressions of Wellness Court.

> The system has to be tinkered with to reduce administrative and participant costs. We have to figure out which [program elements] are significant and provide those.

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> [The court] could do more and be more efficient.

Overall, though, these concerns did not override the positive feelings that Wellness Court generated.

Only a few interviewees voiced unqualified negative impressions. Some naysayers objected to the Wellness Court on purely philosophical grounds.

> I don't think it's compatible with the legal system. And I think it's impossible for anybody to think it is . . .. [I]n order for this model to work, we'd have to turn our back on hundreds of years of common law jurisprudence . . .. I don't think people appreciate the change that would be required of a viable model.

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> I think it's a gross error. One, I don't believe what Anchorage Wellness Court and the others do is a function of the judicial system. It's misplaced. It's a therapeutic treatment system that is more appropriately handled by an agency . . .. [Judges] are not trained that way, their focus is different. And I think it's a terrible waste of money . . .. These are very conscientious people but I think this trend is asinine. I understand why we're going that way – the courts are frustrated with the revolving door.

Only a handful of interviewees expressed this viewpoint. Other interviewees objected to the court acting as a social services provider and believed that the therapeutic courts in general were a direct result of a broader failure of the corrections and probation systems. As one interviewee stated:

> I have a hard time with the concept of the judge as a probation officer. I see that therapeutic courts [are] happening because of the failure of probation and corrections and assistance people with rehabilitation, through creative, realistic, Twenty-first Century problem-solving. I see therapeutic courts as shifting the burden for

> rehabilitation from corrections to the court system. So instead of forcing corrections to change, we've thrown up our hands and built a new house.

The interviewees who shared that perspective tended to feel strongly but, again, the viewpoint was not widespread.

Policymakers also expressed overall positive impressions of the court but tended be even more guarded about it than those directly involved with the therapeutic courts due to concerns about resources.

> In isolation, it's a noble effort. In light of the ever-increasing workload of the courts, the prosecution and defense attorneys, it's a very ineffective use of resources.

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> I have a positive impression of the court . . .. [I]t's a question of balance for me in terms of resources. It's very resource intensive for very few cases.

In addition to these concerns, some policymakers questioned the court's ability to function well due to interagency bickering and lack of collaboration.

> Conceptually it's great. The functioning – it's dysfunctional. Because of the [institutional and agency] cultural barriers.

Despite the concerns about resources, and the likelihood of successful collaboration, overall, policymakers held positive impressions of Anchorage Wellness Court.

The themes that emerged in the "overall impressions" arose again and again throughout the interviews. On the positive side, interviewees expressed relief in trying to achieve justice differently, in a more humane, effective, and holistic way than by resorting to incarceration. People agreed that incarceration increased public safety in the short term, and was necessary in some cases, but that it did not promote the long-term health of the community or public safety because once offenders got out of jail, they were very likely to reoffend due to their still-problematic substance abuse. In contrast, most people believed that treating offenders' underlying substance abuse would stop them from reoffending, and would improve the quality of their lives, their families, and their communities.

But, alongside these perceptions, interviewees expressed persistent concerns about resources, efficiency, and the ability of criminal justice practitioners to collaborate.

These overall impression findings suggest that interviewees – whether practitioners or policymakers – were very open to experimenting with innovation in criminal justice processes to address the problem of alcohol-driven crime. This openness stemmed from a common core belief that conventional criminal case processing, and especially the use of incarceration, did not work for substance-affected individuals. Although the interviewees had resource concerns, they were willing to experiment with a program that offered some hope of alleviating alcohol-driven crime and restoring healthy communities. This openness to innovation suggests that if the Anchorage Wellness Court model is not ultimately transferable as currently implemented, practitioners and policymakers are open to adopting other innovations or modifying the model to achieve the goals of the Anchorage Wellness Court. This openness to innovation also suggests that experiments with other types of innovations – perhaps less resource intensive or less collaborative projects within single agencies – could be tried with substance-affected offenders in addition to the therapeutic courts.

Target Population, Incentives, and Eligibility Criteria

Defining the target population is one of the most fundamental tasks of therapeutic courts (Loeffler & Wanamaker, retrieved April 16, 2006). Practitioners suggest that considerations should include: levels of political and community support; public safety concerns; and court goals and expectations. Once the population is identified, eligibility criteria should be clearly defined and well documented, considering both offense and offender characteristics (ibid.).

The Anchorage Wellness Court interviews revealed that, although the proposed target population was identified early on by assessing the considerations listed above, the actual population was circumscribed and defined by shifting political forces outside the court's control. Incentives for the target population were limited and may not have been communicated effectively. Adding to these problems, eligibility criteria were not well documented or understood.

Target population

The Anchorage Wellness Court target population proved to be a moving one. At the outset, Judge Wanamaker wanted to address the problem of the chronic inebriate with many alcohol-related offenses but he was ultimately thwarted from accessing the main source of those defendants. When he began developing the therapeutic court in 1999, the State of Alaska's Department of Law, which prosecuted all felony offenses and misdemeanors outside of Anchorage, Juneau and Fairbanks, was not willing to participate in a therapeutic court program. In contrast, Municipality of Anchorage policymakers and prosecutors strongly endorsed the proposed program and were willing to

participate. This circumstance circumscribed the target population to offenders charged with misdemeanors occurring within, and prosecuted by, the municipality.

Although Judge Wanamaker's initial target population was broadly defined as offenders with alcohol-related misdemeanor offenses, the Anchorage Municipal Attorney and Judge Wanamaker decided to focus on those with driving offenses, particularly those with numerous DUIs. In 2000, there was a substantial pool of those offenders because most DUIs, even repeat offenses, were classified as misdemeanors. A DUI was a felony only when the offender had received two or more previous convictions within five years. Most other subsequent DUI offenses were classified as misdemeanors.

In 2001 two changes affected the target population. First, the Alaska Legislature changed the "look-back" provision for consideration of previous convictions for classification of felony offenses from five years to ten years.[35] After the change, many fewer subsequent offenses were misdemeanors. Most DUI charges for offenders with two or more prior convictions were prosecuted as felonies by the state, not by the Municipality of Anchorage. The change significantly decreased the number of defendants eligible for Anchorage Wellness Court.

Second, at about the same time, Judge Wanamaker changed the Anchorage Wellness Court protocol from a flexible six to twelve-month program to a standardized eighteen-month program. Judge Wanamaker and other stakeholders concluded that substance abuse research and their experience supported the longer program because six months to a year was not long enough to support sobriety. The team also increased the required course of naltrexone from 90 days to 120 days.

According to interviewees, the remaining eligible municipally-prosecuted misdemeanor DUI defendants, mostly first and second-time offenders, were not as willing to participate. These offenders faced mandatory minimum terms of only three and twenty days in jail, respectively. An eighteen-month Anchorage Wellness Court program involving house arrest, treatment, frequent court hearings, and intensive monitoring proved insufficient as incentive for avoiding these minimal jail sentences which state law required to be served in a halfway house, not jail.

According to interviewees, this change in the law dramatically changed the makeup and operations of the court. One interviewee characterized Judge Wanamaker's initial target defendant before the change in the law as the "chronic DUI guy." As described by Judge Wanamaker, these defendants were offenders who had "lost it" due to alcohol abuse and needed only to be rehabilitated. Defendants in these cases were mostly employed, had families to support them in their

[35] Ch 63 SLA 2001, sec. 9-11.

sobriety effort, and were likely to have stable housing. Many of these chronic DUI defendants had been willing to participate in the program to avoid a possible year-long jail sentence and to have an opportunity to achieve sobriety.

After the change in the law, it became clear that the Anchorage Wellness Court could no longer function by focusing on the "chronic DUI guy" as a base of its eligible defendant pool because those defendants were now felons and because the remaining DUI defendants did not want to participate. Most interviewees perceived that the Anchorage Wellness Court responded by shifting its resources towards offenders charged with alcohol-related or inspired trespass, theft, or other non-DUI misdemeanors. These offenders were described by some as needing primary habilitation, having never been oriented to societal norms.

Interviewees reported that the new defendants were often more seriously-affected individuals. Although the new defendants were not charged with felony offenses, interviewees perceived that their criminal histories were often lengthier and that their alcohol problems were more severe than the original target defendants' problems. These new defendants were more likely to be chronic street inebriates who were harder to treat, were less likely to have stable housing, less likely to be employed, and less likely to have family or other social support. One interviewee summed up these changes:

> The clientele . . . the [defendants used to have] five to six DUIs. [Those defendants] are getting fewer and fewer because of the change in the laws. The ones previously [entering Anchorage Wellness Court] are now going to felony court. . . . What I've seen is more homeless folks. It used to be more stable folks which makes it a lot easier for them. [Now we need to] get them stabilized - housing, employment - until they can start contributing. It used to be those issues weren't barriers. So we're now serving a harder clientele because of their economic background.

Because of decreased social functioning, the new type of defendant required more ancillary services to support safe, sober living situations, to find employment, and to encourage sober social networks. They were more likely to have co-occurring mental health disorders and often required more medical care to address health issues caused by very long- term alcohol use.

Despite the *de facto* shift in population, the Anchorage Wellness Court made no outward changes to its stated target population of chronic offenders with alcohol-related offenses. Program requirements and goals – permanent and complete sobriety – remained the same. Documented and published program criteria also remained the same. At one point, in late 2006, the municipality

attempted to return to its original target of chronic DUI offenders. This led to an intake crisis that all but closed the court. After several rounds of discussions with other stakeholders in the court, the municipality again agreed to offer the program to other offenders. Intake resumed but the court still struggled with attracting participants.

Incentives

As suggested above, the Anchorage Wellness Court history suggests that legal incentives – or lack thereof – strongly influenced the program's actual population, despite its targeted population. Legal incentives for misdemeanor DUI offenders are limited. They include reductions in jail time, reductions in fines, and the opportunity to obtain a limited driver's license. Reductions in jail time and fines must be understood in the framework of misdemeanor offenses, however. The maximum jail time to serve for any misdemeanor offense is one year[36] – which translates to about eight months to serve if the offender receives reductions for "good time."[37] Maximum fines for misdemeanor offenses are generally $10,000.[38]

In the drug court model, avoiding a recorded conviction may present a significant incentive for some participants. This opportunity is generally not available for DUI offenses. This is largely due to advocacy groups, which insist on offender accountability, and to funding through the National Institute of Traffic Safety Administration (NHTSA) which requires a recorded conviction for funded programs. In the Anchorage Wellness Court, an offender charged with DUI or refusal to submit to a chemical test for drugs or alcohol always received a recorded conviction. Those charged with other offenses, such as trespass or theft, sometimes received a suspended imposition of sentence (SIS), outright dismissal, or consolidation of charges, at the prosecutor's discretion. Interviewees believed that the ability to offer dismissals or SISes in drug courts presented significant incentives to enter those programs that were not generally available in the Anchorage Wellness Court.

Interviewees perceived that the opportunity to avoid time in jail did present an important incentive in the Anchorage Wellness Court model. Alaska statutes now permit therapeutic court defendants to serve no time in jail, even when the offense would otherwise mandate jail time.[39] Stakeholders believed that the opportunity to avoid jail provided the biggest incentive for defendants

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[36] AS 12.55.135(a).

[37] AS 33.20.010(a).

[38] AS 12.55.035(b)(5).

[39] At first Anchorage Wellness Court participants had no jail reductions but were allowed to serve their mandatory jail time on a house arrest electronic monitoring program administered by the Alaska Department of Corrections. Through the years this was changed to permit 50%, then 75%, then 100% jail time reductions for successful completion of the Anchorage Wellness Court program. See Appendix A.

to participate. But almost all interviewees who commented on incentives believed that defendants still would not participate if the jail term attendant with conventional case processing was not very long compared to the length and difficulty of program requirements.

> We have to ask, do they have enough jail time to be sufficient to motivate them to want to stay in the program for eighteen months? Treatment isn't easy. . . . The choice is easier if you're facing a lot of jail time.

The lack of sufficient mandatory jail time facing first and second-time DUI offenders – three or twenty days, respectively – was doubtless a significant reason for low participation and intake problems in the Anchorage Wellness Court. Many interviewees believed that when faced with the looming vision of an eighteen month long program with hundreds of hours spent in hearings, restricted liberties, treatment, and other program requirements, defendants often chose "flat time" sentences of jail and fines.

Aside from avoiding jail time, other legal incentives for participating in the Anchorage Wellness Court included the reduction of significant fines, up to 100%, and the ability to retain or resume driving privileges. Interviewees perceived that fine reductions, although welcomed, did not generally induce participation in the Anchorage Wellness Court. One interviewee maintained:

> People don't care about fines, and community work service doesn't get them. But jail and the length of probation are important to people.

More often, interviewees believed that instead of specific fine reductions, a defendant's overall economic status was more likely to motivate a defendant to participate. For instance, if a defendant had lost a job or other economic supports due to alcohol abuse, interviewees perceived that he or she was more likely to participate.

The Anchorage Wellness Court also offered the opportunity to receive a limited driver's license if participants completed the program. Very few interviewees even mentioned the ability to receive a limited license as inducement to participate. One interviewee did remark:

> Some were excited about getting a second chance. For example, getting a driver's license for work.

The limited license opportunity probably did not provide significant incentive because limited licenses were potentially available in all misdemeanor DUI cases, not just through Anchorage

Wellness Court.[40] For non-DUI misdemeanor charges that brought offenders to Wellness Court, such as theft, the loss or resumption of driving privileges was probably not a factor.

Many interviewees believed that *non-legal* incentives were more important than the opportunity to avoid jail time and fines or to obtain a limited driver's license. These interviewees maintained that the opportunity for obtaining and maintaining sobriety was the greatest draw to the Anchorage Wellness Court. They believed that some defendants perceived that the highly structured and closely monitored environment of the program would afford them an opportunity to resist falling back into an alcoholic lifestyle. Court observations supported this view. During court compliance hearings defendants often spoke of the difficulty of the program, but stated that it was the program's very difficulty that kept them from drinking. They stated that they had not been able to stop drinking by any other means, although they had tried many times. This motivator, rather than any legal incentive, may well have provided the biggest reason for misdemeanor defendants to enter and complete the program.

The opportunity to avoid jail, and the opportunity to obtain sobriety have previously been found to influence participation (Farole & Cissner, 2005). But participant decisions are also influenced by others. In one study, researchers found that participants' perceptions of legal consequences, and judges' and lawyers' communications to participants about legal consequences, was an important factor in program retention (Young & Belenko, 2002). Because an important incentive to enter the Anchorage Wellness Court did exist in the opportunities to spend no time in jail and to obtain sobriety, the "lack of incentive" to defendants may not have been the problem that many interviewees believed. Rather, the commonly-held *belief of stakeholders* that there was a lack of incentive for defendants may have prevented prosecutors from offering the program to appropriate defendants, prevented defense attorneys from referring their clients to the program, or caused prosecutors and program staff to screen out defendants without significant legal incentives. When queried, several stakeholders agreed that communications to participants about incentives and the program may have played a significant factor. They noted that, although legal incentives did not change, and program requirements did not change after 2001, participant intake fluctuated considerably and often depended on who was staffing the prosecutor or defense attorney positions.

Eligibility criteria

One source from the Alaska Court System stated that criteria for the Anchorage Wellness Court included only that the defendant's offense must be an alcohol-related misdemeanor and the

[40] To receive a limited license, the Department of Motor Vehicles must assess the driver's risk to the public. The Wellness Court partnered with the DMV so that participants could apply for licenses after completing the program. The DMV was likely to grant the application if the offender had completed the court.

defendant must be addicted to alcohol or other substances.[41] Another source added that eligible offenders must be 18 or over, reside in Anchorage, and be committed to a life of sobriety.[42] These documented criteria have not changed since the program's inception.

Although they were broad, or perhaps because they were broad, criteria were not well understood by interviewees. Most interviewees did not know what criteria were used for referral to Anchorage Wellness Court. Even those closest to the program, such as judges, defense attorneys, and prosecutors, expressed only vague notions about program criteria:

> It's people with a long substance abuse history, people with big criminal exposure. . . . That's it.

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> That's a good question. It's not entirely clear on how it is defined by the court and where the ideas are shifting right now. We're looking for long-term inebriates . . . for people with long-term alcohol problems. I don't know if there is some written protocol about who is supposed to be in the program.

Many interviewees could not identify even the baseline criteria:

> I don't know. I think they're looking at priors.

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> Beats me.

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> Nothing. As far as what criteria Anchorage Wellness Court and prosecutors use, I don't know.

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[41] The Alaska Court stated in its website on therapeutic courts that: "A defendant is eligible to participate in the [Anchorage Wellness Court] if he/she has been charged with an alcohol-motivated misdemeanor offense and is addicted to alcohol and/or drugs. Admission . . . is not automatic. Cases are reviewed on a case-by-case basis." Http://www.state.ak.us/courts/wellness.htm. (Last visited April 16, 2007.)

[42] Alaska Court System, Anchorage Wellness Court policy and procedures (April 2005) (on file at Alaska Judicial Council).

Although not directly expressed, some interviewees seemed to understand that the offender must have been over 18 years of age, and that the offense must have been committed in the municipality. Because those requirements related to jurisdiction, perhaps interviewees did not view them as part of the eligibility criteria.

Overall, it appeared that incentives for the misdemeanor target population were insufficient to induce participation when compared to program requirements. Or it may be that incentives were not communicated to defendants in a way that induced them to participate. Stakeholders from every addiction court in Alaska that served misdemeanor offenders reported difficulty attracting and retaining defendants, suggesting that misdemeanor programs may be inherently problematic.

Only two studies have been published on Misdemeanor DUI courts. One reported success in reducing alcohol-related offenses (Breckenridge, Winfree, Maupin, & Clason, 2000). The other reported no success, probably due to the lack of significant threatened jail time (MacDonald, Morral, Raymond, & Eibner, 2007). Even in drug courts, with the ability to avoid a conviction, misdemeanor courts have difficulty attracting participants at intake (Porter, 2002; Labriola, 2006). Without the ability to avoid a recorded conviction, a misdemeanor alcohol program has even less to offer potential participants. As the interviews demonstrated, without sufficient legal incentive, neither defense attorneys nor prosecutors will recommend the program.

The change in the law that made most repeat DUI offenders felons contributed to intake problems by decreasing the pool of eligible misdemeanor defendants. The program attempted to adjust by targeting defendants with other types of alcohol-driven offenses but the new defendants were harder to treat, required more services, and in the end also had few incentives. One evaluation suggested that attempting to increase participation by shifting from drug offenses to other types of offenses, such as drug-driven property offenses, undermined attempts to reduce recidivism. (Labriola, 2006). This would suggest that the shift to "alcohol-driven" crimes, rather than focusing on DUI offenses, may have actually undermined attempts at reducing recidivism through the Anchorage Wellness Court.

The program could not adjust the length of the program, which by 2001, was legislatively mandated at eighteen months. Douglas Marlowe has suggested that twelve months in treatment may be the minimum length of time to see reductions in drug use (2002). Anspach and Ferguson have suggested that even twelve months of treatment may be insufficient because most participants spend longer in the treatment courts they studied (2003). This presents a dilemma for those attempting to attract misdemeanor offenders whose sentences are twelve months at the longest, and only nine months to serve. Both program length and the possibility of other creative incentives could be reconsidered to attract misdemeanor offenders.

Although documented criteria did not change throughout the history of the Anchorage Wellness Court, those closest to the program did not know what those criteria were. This was likely due not to problems with the criteria but with the screening process and standards used by prosecutors and other program staff, as described in the next section. These problems may also have contributed to low participation in the program.

Screening, Referral, and Recruiting

In Anchorage Wellness Court, team members, including judges, attorneys, case coordinators, and community partners, regularly screened offenders to determine whether to admit them into the program. Neither the screening process nor the standards used were understood by stakeholders. Stakeholders reported that the processes and standards seemed to change in response to staffing changes, and to defendant participation numbers. Stakeholders reported that in addition to being fluid, screening standards seemed to be highly subjective. Although they did not understand the process or its standards, stakeholders did understand that these screening practices significantly affected who, and how many, participated in the court. This led to some suspicion of those making the decisions.

Screening, referral, and recruiting processes

All interviewees were asked what they knew about how defendants were selected, screened, or recruited for the court. Interviewees reported many different ways in which defendants came to Anchorage Wellness Court. Many were referred to the court by their defense attorneys. Many were referred to the court by the case coordinator. In the early days of the court, and until 2003, some interviewees reported that the case coordinator screened cases by sitting in at in-custody arraignments. Anchorage Wellness Court judges, and the program manager (after one was hired in 2004) also referred, or "recruited," cases by identifying them at arraignment or from new case files. At times, the prosecutor flagged some cases for evaluation by the case coordinator. ASAP employees also at times flagged some of their high-risk cases for evaluation by the program manager.

Interviewees reported that, ideally, after a referral a defendant observed Anchorage Wellness Court proceedings for a week or two before deciding whether to participate. The court would then refer the participant for a clinical assessment by a treatment provider. Meanwhile, the prosecutor would assess the charges, the defendant's criminal history, and speak to the victims, if any to determine if the case was appropriate, based on public safety risk and other factors. If the prosecutor and the treatment provider concluded it was an appropriate case, the prosecutor negotiated a plea agreement offer with the defense attorney. If the defendant agreed to it and a treatment plan, the judge entered the guilty plea into the record with two alternative sentences – one to be used if the

defendant completed the program, and one to be used if the defendant opted-out or was discharged at any point before completing the program.

Many interviewees perceived that the court – including judges, case coordinators, and program managers – actively recruited participants. Some interviewees perceived this type of recruitment negatively and as a lack of screening for appropriateness:

> I didn't see screening based on level of need or fitness.

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> It's problematic because we don't assess who's appropriate.

One person expressed frustration with the situation:

> There is no critical analysis. . . . [The program is] taking people who wouldn't be accepted in other programs. . . . They'll take any [that are] not felonies. There is no real specified criteria. [They] are so desperate to get enrollment up they'll take anyone that shows interest.

And another stated bluntly, referring to the practice of recruiting cases for Anchorage Wellness Court:

> They're ambulance chasers.

This perception was voiced during a time when court intake was particularly low. Some interviewees reported, however, that active recruitment occurred during the entire Anchorage Wellness Court history, not just when numbers were particularly low. In any case, many perceived that recruiting participants was an appropriate mechanism for informing potential participants and their attorneys about the program. Some interviewees, however, voiced the opinion that active recruitment would not be necessary if the program offered enough incentives to participate. Both prosecutors and defense attorneys believed that court-recruited defendants were less likely to opt in and less likely to complete the program than attorney-referred cases.

Screening standards

As confusing as the screening process seemed to be to some, the interviewees understood the screening standards even less. First, interviewees often confused screening standards with program eligibility criteria. Some interviewees added to their list of program "criteria" that

defendants needed to display "overall amenability of the person to the program" and a decision about whether the person would be a "good fit" or was "like other cases" in Anchorage Wellness Court. Interviewees generally understood that in addition to whatever positive criteria might exist (whatever it was), prosecutors imposed some specific limits on who they would accept into the program. Some interviewees stated that prosecutors would not accept into the Anchorage Wellness Court: defendants who exhibited a history of domestic violence, felony cases, or cases that treatment providers deemed inappropriate. But they also stated that defendants whose records included minor assaults, or in which assaultive behavior was incidental to another alcohol-driven offense were sometimes accepted. These limits were not incorporated into the documented, published criteria put out by the court system.

Second, interviewees reported that screening standards seemed to be analyses of case coordinators, program managers, judges, treatment providers, or other team members about who was likely to succeed. Many stakeholders felt that the standards of who would be likely to succeed, and therefore who would be accepted into the program, was highly subjective. This led to perceptions of favoritism and bias. Adding to these perceptions of subjectivity, the interviews revealed that screening standards changed over time and changed depending on who evaluated the defendants, such as when case coordinators or prosecutors changed. Similarly, court observations suggested that the standards about who would be a "good fit" in the Anchorage Wellness Court loosened in response to low defendant loads in the court.

Many interviewees suggested that some stakeholders used screening standards in an attempt to "stack the deck" with participants who were likely to succeed and to make the program's statistics "look good." Some stakeholders disagreed with the practice believing that all eligible offenders should have the same opportunity. Many endorsed the practice, however, maintaining that it was a better use of resources to help participants who would likely succeed, rather than throwing money and resources towards people who were not likely to succeed.

These perceptions of subjectivity caused some to be suspicious of the prosecutors:

> I think the screening process could use revamping. I get the sense that the biggest voice is the prosecutor. So the prosecutor has a voice on who they want to work with. The screening process has a prosecutorial flavor to it rather than everyone having the same opportunity to get in.

Furthering the feelings of suspicion, interviewees stated that the community partner often argued in favor of allowing individual defendants to participate – usually successfully. Many interviewees expressed discomfort with that practice. As one interviewee expressed:

> I don't think [the community partner] should be in the room – no one with an agenda should be. Especially given that [the partner] can lobby for a particular defendant because the defendant or his family has given money to Partners in the past? That makes me feel weird about the program.

Overall, the subjective, changing standards created suspicion about the prosecutors and the community partner.

Interviewees expressed more certainty about the judge's role in the process and his or her standards. Interviewees reported that judges held liberal standards for participant entry and rarely, if ever, denied a defendant from opting-in if the treatment provider and prosecutor concluded that the defendant was appropriate.

Generally, expectations of the targeted population were low. Many people believed that the criterion of having a long-term alcohol problem made it difficult for defendants in the Anchorage Wellness Court to succeed:

> The program is geared towards people who are less likely to succeed. An eighteen-month program is geared to people with long-term, intransigent problems who have probably had treatment and failed. By definition, those people are less likely to succeed. But that's what we are supposed to be doing – a program for people not likely to benefit from less intensive programs.

But many believed that, while difficult, the program allowed some participants to succeed who otherwise would not. When the target population shifted from the chronic DUI offender to the lower functioning defendant, people believed that the new defendants were even *less* likely to succeed:

> The cycle of substance abuse for the participants we choose – it's the hardest of the hardcore. So we expect success rates to be low. But it's still worth it if only it's just making a dent.

Most stakeholders believed that success rates would be low for the targeted defendants, and even lower for the actual population of offenders who ultimately participated, because of the difficulties inherent with their long-term alcohol abuse, their previous failed attempts at treatment, and their lack of employment, housing and social supports.

Overlying this expectation of low success rates was a feeling by many that defendant motivation could predict success. So screening for "success" almost always meant screening for defendant motivation. One interviewee described this process:

> Success requires commitment, which comes out of some level of desperation. To the extent we're selecting for commitment, it enhances success. There is far more scrutiny of defendants in [Anchorage] Wellness Court than in other [therapeutic courts].

In addition to being "desperate" or "committed," interviewees described motivated defendants as those who had "hit bottom" or were "sick and tired of being sick and tired." Similarly, interviewees believed that defendants with "something at stake" tended to be more motivated and do better. Interviewees often identified defendants with kids or jobs that they did not want to lose to alcoholism as being more motivated.

Prosecutors, case coordinators and other program staff believed that they could ascertain a defendant's motivation. As one interviewee explained:

> They look for people who can succeed, who have the will, who want to try. You can see that much when they come in. You can tell the ones who want to try.

It was unclear from the interviews and court observations how much of the determination of defendant motivation came from the clinical assessment and how much came from prosecutor or program staff's own assessment. And it was unclear exactly how prosecutors and program staff made their assessments. It was clear that prosecutors and program staff made their own determinations and that these determinations were either combined with information from clinical assessments, or exercised independently, when deciding whether to accept potential participants. It appeared to be a two step process in which the clinical team and the prosecutor and program staff had to agree that the defendant was appropriate. Everyone agreed, however, that the prosecutor was the ultimate gatekeeper.

Beyond motivation, interviewees believed that older defendants (ranging from 35-55) did better and those who had job skills or were employed full-time did better. Most interviewees felt that middle-class, higher functioning individuals with jobs or job skills and family support systems did better than those in a lower socio-economic bracket who were not employed and who had few social supports. Most interviewees believed that gender and ethnic origin did not affect success rates in the Anchorage Wellness Court, although a few believed that Native Alaskans fared slightly better than

whites. Although interviewees described these attributes as likely predictors of success, it did not appear that prosecutors and program staff screened for these characteristics in the same way they screened for defendant motivation. Having, or not having, these attributes did not appear to affect decisions about whether defendants would be accepted into the program.

Interviewees reported that prosecutors and program staff in the other therapeutic courts in Alaska also regularly screened potential defendants for probable successful candidates. In those courts, however, stakeholders expressed much more certainty about eligibility criteria and screening processes and standards. The suspicion and uncertainty that surrounded the Anchorage Wellness Court screening processes and standards did not occur in those other courts, or at least not to the same extent.

The difference between the Anchorage Wellness Court and the other courts might be attributable to differences in external constraints on eligibility. The Anchorage Wellness Court defined its eligibility requirements internally, with no externally-directed limitations. In contrast, the Anchorage Felony Drug Court originated from a federal Office of Justice Programs effort to install a drug court in every state. With that effort, and its federal funding, came already-created standardized eligibility criteria, including exclusions for a long list of prior offenses. The Anchorage Felony DUI Court originated from state legislation. It, too, came with legislatively-directed target populations and legislatively-set limiting criteria. The Ketchikan and Juneau Therapeutic Courts were both established through NHTSA grants, which also include specific eligibility requirements. These programs with more tightly defined eligibility criteria appeared to afford prosecutors and program staff less discretion about who to admit.

The difference might also be attributed to how the courts developed. Unlike the other addictions courts in Alaska, the Wellness Court was not a “planned” program. Judge Wanamaker began the court as a sentencing practice and implemented the practice in cases which he believed would benefit. Even after the Wellness Court instituted more formal procedures, the subjective element of his vision remained. The Anchorage Wellness Court was also developed in an *ad hoc* manner, adding staff, changing program requirements, and adjusting as it went along. Eligibility criteria were broadly written, leaving entrance decisions to be determined by program staff, prosecutors, and even the community partner. This flexibility in program development seems to have translated into a highly discretionary system of admitting defendants. As staff people changed, so did the standards. As participation levels fluctuated, so did screening processes and standards. In contrast, the other courts were planned over the course of many months or years. Target populations, eligibility criteria, and an understanding of who to admit into the program was arrived at though consensus and was not left to prosecutors and program staff in the same way as in the Anchorage Wellness Court.

Anchorage Wellness Court stakeholders may have been accepting of broadly written criteria and unwritten screening standards because the Wellness Court targeted only misdemeanor defendants. These chronic misdemeanor defendants were viewed as expensive to the system but stakeholders and policymakers perceived that they presented fewer public safety risks than felons. For the most part, they were not violent and they did not cause personal injury. But as the perceived public safety risk grows, community comfort level recedes. All other addictions courts in Alaska accept felonies. It appears that the more risk that the offender presents, the more narrowly defined the targeted population, the more policymaker control over the criteria, and the more specific the documented criteria will be. Because of these tighter parameters, programs that accept felons have fewer opportunities for exercising discretion. With less opportunity for discretion, there appears to be less concern about subjective screening standards and less suspicion of those making the decisions.

Overall, some screening and referral processes of the Anchorage Wellness Court were successful and some were not. Vague screening and referral processes seemed to decrease the confidence of stakeholders and potential stakeholders about eligibility. They were also prone to possible inappropriate influence by the community partner and prosecutors. Clearly defined criteria, referral, and screening procedures would improve identification of appropriate cases for participation and improve stakeholder certainty about the program. More certainty could also result in better advocacy and promotion of the program, which in turn could lead to better enrollment.

A referral process that seemed to work well was having a case coordinator review cases at arraignment or intake, tag them for possible participation based on legal criteria, and explain the program to eligible defendants or their attorneys. The process worked less well when a variety of people made referrals, possibly because of differing standards or a breakdown in identification of appropriate cases. The process also seemed to work less well when stakeholders perceived that others were "recruiting" possibly inappropriate cases – widening the eligibility net – instead of "referring" appropriate cases. Regardless of who was making the referrals, programs worked best when there was a regular, known mechanism for referral and when legal incentives were enough that defendants' attorneys would recommend the program and enough that prosecutors believed that the defendants would participate, comply with, and complete the program.

Overall, Anchorage Wellness Court stakeholders seem to have melded the concepts of legal criteria for entry with screening standards used by prosecutors and program staff. Researchers have previously observed the melding of legal criteria with what are usually defined as clinical screening standards – amenability to treatment and motivation – in treatment courts. (Taxman, Pattavina, & Bouffard, 2005; Wolfe, Guydish, Woods, & Tajima , 2004). But Taxman et al. also noted that non-clinical staff may not have training or experience to correctly assess clinical factors, such as motivation to change, appropriately. The screening for probable "success" by prosecutors, case

managers, and other non-clinical stakeholders may have unnecessarily limited the pool of defendants who could have successfully participated in the Anchorage Wellness Court.

Assessment and Opt-in

After identifying potential participants, DUI court personnel refer candidates for a clinical substance abuse assessment (Devine, Huddleston, & Marlowe, retrieved April 16, 2006). Clinical assessment tools usually include questions about alcohol use severity and drug involvement, level of needed care, medical and mental health status, extent and stability of social support systems, and individual motivation to change (ibid.). A number of assessment instruments are recognized by the National Institute on Alcohol Abuse and Alcoholism as reliable and valid (ibid.). Researchers have found that immediacy of engagement in treatment strongly predicts success in drug court programs; ideally, the assessment and opt-in process should be quick (Rempel & DeStefano, 2001, Rempel, et al., 2003).

As described in the previous section, after a defendant was told about the Anchorage Wellness Court, usually by his or her attorney, program staff put the case on the Anchorage Wellness Court calendar so that the defendant could observe court compliance hearings for one or two weeks. Meanwhile, the prosecutor and program staff screened the case for appropriateness. If the defendant decided to try the program he or she "informally opted in" and was then referred to the treatment provider for a clinical assessment, using a standardized clinical assessment survey tool as described above. Due to release and transportation problems, a clinical assessment interview was often performed over the telephone with the assistance of a defendant's prior written information.

After the clinical assessment was received, the court team met and made a determination about a defendant's appropriateness based on the assessment, with the prosecutor acting as the determinative gatekeeper. Meanwhile, as long as the assessment was received and indicated appropriate outpatient treatment, the defendant began participating in treatment and fulfilling other program requirements. The attorneys then entered plea negotiations. After the attorneys and defendant agreed to a plea deal, the defendant formally opted in and the judge entered the plea on the record.

Observations of the Anchorage Wellness Court suggested that the clinical assessment and opt-in process were not always quick. It was unclear where the delays were occurring. At times assessments were delayed. At other times, it appeared that assessments were available but that plea negotiations delayed formal opt-ins. Although treatment and other services began before a formal entry of plea, defendants often did not become true Anchorage Wellness Court participants until months after they first appeared in court, and often not at all.

Two distinct issues arose in the interviews surrounding the assessment. First, Anchorage Wellness Court team members – including the prosecutor – relied heavily on clinical assessments to determine an offender's eligibility. No interviewee second-guessed the treatment provider in its evaluation. A defendant had to be assessed as needing intensive outpatient treatment to participate in the Anchorage Wellness Court. If assessed as needing residential treatment, defendants were not accepted into the court. If the assessment indicated other problems, such as significant mental health problems, the defendant might be referred to the CRP court or for other services more appropriate for that individual.

Second, some stakeholders voiced the opinion that the clinical assessment was not always timely. Those stakeholders believed that immediacy was critical when assessing a potential participant; that the closer in time to the arrest the assessment occurred, the better the prospects for convincing the defendant to participate. Some interviewees believed that delays in assessment negatively affected participation in Anchorage Wellness Court.

Researcher observations of Anchorage Wellness Court corroborated this perception to some extent. Often, a potential participant would observe the court and express willingness to participate and not return with a completed assessment for weeks. It was unclear what caused the delay. At times it appeared that scheduling the assessment was difficult – an assessment would be scheduled and then either the provider or the defendant would reschedule it. At times it appeared that the defendant would incur problems at the jail with completing the assessment by telephone. And at times it appeared that the provider did not communicate the assessment to the court in a timely fashion.

An even greater problem, and one that may have fed into the perception about untimely assessments, occurred with the plea agreement process. Participants, even though assessed as appropriate for intensive outpatient treatment and the Anchorage Wellness Court, would often have to wait weeks while the prosecutor and defense attorneys worked out agreements. One interviewee reported that there was often a significant backlog of participants wanting to opt-in and only a few participants actually enrolled.

One interviewee provided several explanations for the delays. First, potential candidates' court observations often took several weeks, since Anchorage Wellness Court hearings were set only once a week. Second, defendants were often not sure if Wellness Court was a good deal legally and needed time to determine that and to discuss the situation with their attorney. Third, delays in treatment assessments sometimes occurred due to lack of treatment capacity, or due to transport and public safety problems if the provider needed to see the defendant personally for the assessment, which sometimes required release from jail. Fourth, long delays in the formal entry of the plea were often due to the prosecutor and defense attorneys being unable to reach an agreement. If the

prosecutor was reluctant to accept the defendant, defense attorneys would attempt to show the prosecutor that the defendant was a good risk by having the defendant follow the recommended treatment plan for several weeks or even months. In addition, some plea negotiations were complicated by the defendant's criminal involvement in multiple jurisdictions and in multiple cases.

It is unclear how the delays in the assessment and plea agreement process affected a defendant's participation. If a delay in assessment occurred, treatment was delayed as well. But a delay in entry of a plea did not delay treatment or other participation. Once assessed, defendants could begin treatment and participation in the program even though their plea entry could be delayed for considerable lengths of time, although there were sometimes delays at that point, as well. But a delay in formally entering the program could have created an ambiguity where defendants, once past the initial crisis of arrest and jail, and on release into the community, began to weigh their options and decide against entering a Wellness Court plea, and ultimately against treatment. This may have contributed to low formal intake rates. All delays in the opt-in process should be examined including defendant observation periods, clinical assessment, and plea negotiations. Having clearer referral and defined eligibility requirements, as discussed above, could help to speed these processes.

Substance Abuse Treatment Components

The Anchorage Wellness Court required eighteen months of substance abuse treatment involvement.[43] Only individuals assessed as needing intensive outpatient treatment were admitted into the court. Defendants needing residential treatment could be reassessed for placement into the Anchorage Wellness Court after they completed their residential treatment. Along with provider-based substance abuse treatment, defendants were required to take an anti-addiction, "adjunctive" medication (naltrexone), complete a cognitive-behavior module (MRT), and participate in community-based recovery group meetings (such as Alcoholics Anonymous and NalGroup).

Provider-based substance abuse treatment

Drug court literature suggests that the length of time in treatment predicts positive outcomes including fewer rearrests (Goldkamp, White, & Robinson, 2001). In the Alaska felony therapeutic court, the longer participants spent in the program, the less likely they were to recidivate (Alaska Judicial Council, 2007b). Also, the greater the participation in treatment, the greater the likelihood of completing the program (Anspach & Ferguson, 2003). Research has not yet been published on treatment in alcohol-specific addictions courts but alcohol is a popular drug of choice among drug

[43] When it began, the Anchorage Wellness Court program lasted six to twelve months. After several participants relapsed near to graduation in its first year, Judge Wanamaker concluded that twelve months was not long enough to maintain sobriety and he lengthened the entire program, including treatment, to eighteen months.

court defendants (Taxman, Pattavina, & Bouffard, 2005), suggesting that alcohol treatment and drug treatment occurs simultaneously in those courts.

One researcher has suggested that ninety days may be the threshold for detecting an effect of substance abuse treatment and that twelve months may the minimum treatment period for meaningful reductions in drug use (Marlowe, 2002). Others suggest that even twelve months may be too short (Anspach & Ferguson). They have not studied the appropriate time needed specifically for alcohol treatment courts, although Anspach and Ferguson's study included a DWI court.

Cognitive behavior treatment has been shown to reduce recidivism among offenders (Aos, Miller, & Drake, 2006). Other treatment interventions, such as insight and group-process interventions and educational and drug-awareness sessions may serve to increase drug use and recidivism or have no effect (Marlowe, 2003). One randomized study of alcohol-specific treatment regimens, including CBT, motivational enhancement therapy, and facilitated twelve-step treatment, found that treatment was effective, and that no one treatment modality was superior. (Fuller & Hiller-Sturmhofel, 1999). In practice, substance abuse treatment providers tend not to have a strong affiliation to a particular therapeutic model (Wilson, Bouffard, & MacKenzie, 2005) and providers take a broad, eclectic approach to treatment (Anspach & Ferguson, 2003).

The Anchorage Wellness Court used several different treatment providers but their approaches to treatment were similar. One provider's intensive outpatient treatment model began with six weeks of intensive group sessions and individual counseling. This first phase included numerous individual and group sessions weekly. The number of expected group and individual sessions then decreased over the next ten and a half months as the defendant progressed. By the last six months, the participant was expected to attend one group session weekly and one individual session monthly. During the entire course of treatment, the treatment provider performed substance abuse testing to monitor the participant's progress. Any use was reported to the court by the provider.

In theory, the makeup of the treatment provided to Anchorage Wellness Court participants was to be highly individualized. Group sessions could include group counseling, educational groups, recovery living skills groups, and various life skills groups. Family counseling was included if warranted. A participant's individual counseling sessions were tailored to address that participant's particular needs. If an individual had a co-occurring mental health disorder, he or she received separate treatment for that issue. Treatment protocols were adjusted if the participant was not doing well in treatment and relapsed. In fact, because the treatment period was so long, most graduates completed most of the offered treatment and education modules, unless clearly not warranted (having no family for family counseling, for example). Both of the primary treatment providers described their programs as incorporating, but not exclusively reliant upon, cognitive-behavioral

principles. Both programs also incorporated drug and alcohol awareness and education, and insight therapies.

Interviewees reported that therapeutic court planners across the therapeutic courts in Alaska tended to choose the most appropriate provider in their community, based on which provider was willing to perform therapeutic court services, the level of professionalism of the provider, and which provider responded to the RFPs with the most appropriate array of services at the lowest cost. In general, therapeutic court professionals were willing to defer to treatment professionals about best practices in that field. In a few cases, when stakeholders became dissatisfied with the contracted treatment provider, the treatment provider was replaced when its contract with the court to provide services expired. But in all regions, few providers were available and interested, and choices for treatment services were very limited.

Several interviewees reported that requiring a treatment provider to employ cognitive-behavioral treatment, as some therapeutic courts did, limited the model's use. They reported that only participants with sufficient intelligence and thinking skills would be able to process the cognitive aspects of the treatment. Those without those skills would not be able to succeed in an Anchorage Wellness Court-type program. As one person explained:

> The CBT model . . . assumes a certain level of intelligence. Other models may work better for those without those skills. They may need more black and white instructions.

Several interviewees noted that this limiting aspect may be especially apparent with Fetal Alcohol Spectrum Disorder (FASD)[44] affected persons, who may not have the cognitive abilities to be able to participate in a Wellness Court-type program. Interviewees noted that FASD-affected persons may therefore need an alternative substance abuse treatment program more carefully tailored to that population. Interviewees, however, noted that the *other* aspects of Wellness Court benefitted the FASD-affected, or otherwise cognitively impaired, offender by providing a high level of structure, monitoring, and social services. [45]

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[44] FASD includes: fetal alcohol syndrome (FAS); partial FAS (PFAS); fetal alcohol effects (FAE); alcohol-related neurodevelopmental disorder (ARND), and other alcohol-related birth defects (ARBD). One study found the prevalence of FAS in Alaska was 1.5 per 1000 live births, which is significantly higher than the 0.3 to 0.4 in other states. (McDowell, 2005) The same study estimated FAS prevalence rate of 4.8 per 1,000 live births among Alaska Native populations. Ibid.

[45] FASD-affected and other cognitively-impaired persons were sometimes referred to the CRP court, which offered the judicial structure and ancillary services combined with other, more appropriate, treatment.

In practice, limiting an Anchorage Wellness Court-type program to an exclusive substance abuse treatment model, such as cognitive-behavior treatment, would severely limit its application because of the dearth of those types of “pure” modality programs. Stakeholders seemed satisfied with a mixed-bag therapeutic approach. But at least one state, Maine, has responded to the problem of lack of appropriate treatment providers and protocols by using a manualized treatment protocol for its therapeutic courts and providing training for providers. (Taxman, Pattavina, & Bouffard, 2005). If appropriate treatment availability remains a difficulty, Alaska therapeutic courts could try that approach.

Naltrexone

The Anchorage Wellness Court treatment plan required that a participant use an adjunctive medication, except when medically contraindicated. The Anchorage Wellness Court plea agreement included the defendant’s consent to use the adjunctive medication. Any defendant who was medically able but who refused at the outset to use the drug was not admitted into the program. Naltrexone, a drug originally used to combat opiate abuse, was used in almost all cases.

The history of the Alaska court’s use of adjunctive medications to alleviate alcohol abuse has been reported to predate statehood. One retired judge reported an account of a magistrate in Sitka administering an adjunctive medication, probably disulfuram (Antabuse), to defendants and closely monitoring them to alleviate alcohol abuse and related crime as early as the late 1950's. Disulfiram, a drug that induces nausea and vomiting upon alcohol consumption, was commonly used by Alaska judges as a condition of bail or probation from that time up until the 1990's, although its long-term effectiveness was questionable.

In 1999, Judge Wanamaker first heard about naltrexone (marketed as Revia or Depade) while at a Judicial College training in 1997. He became interested and further researched the drug. In 1999, he learned that Judge Darrell Stevens, a Superior Court judge in Chico, California, was using naltrexone as a condition of probation. In July 1999, Judge Stevens came to Anchorage and spoke about his methods. Judge Wanamaker first imposed the use of naltrexone, in conjunction with treatment, as a bail condition in August 1999.

Anchorage Wellness Court defendants generally took naltrexone for 120 days. Most of the time, a defendant’s naltrexone use coincided with intensive outpatient treatment. If the defendant had a delay in entering treatment, however, naltrexone could be administered prior to treatment. Defendants needed a prescription for the drug written by a physician, which involved a physical exam and evaluation before the drug could be administered, as certain medical conditions contraindicated its use. If appropriate, the medication was administered by an independent party, usually a pharmacist. Follow-up care and monitoring by a physician was required due to the risk,

although small, of increased liver enzymes in some patients. If a defendant experienced side effects such as nausea or fatigue, dosages were modified. In rare cases, defendants were allowed to discontinue the drug. More often, defendants who wished to discontinue the drug were allowed to optout of the Anchorage Wellness Court.

The FDA approved naltrexone in 1995 for the treatment of alcoholism (O'Brien & Cornish, 2006). Unlike disulfiram, which functions by making the defendant nauseated when he or she consumes alcohol, naltrexone is an "opiate-receptor antagonist" and works by occupying, but not activating, neurotransmitter receptor sites in the brain. This mechanism eliminates the pleasurable feelings that some drinkers experience while drinking alcohol. Research has demonstrated naltrexone to be safe and largely free of serious side effects (ibid.).

Interviewees held mixed views of the use of naltrexone. Some interviewees vehemently objected to its "forced" use. Conversely, some regarded the use of naltrexone as the cornerstone of the Anchorage Wellness Court program. Most interviewees viewed naltrexone as a useful tool that could reduce alcohol cravings while the participant was in treatment. Proponents believed that while on naltrexone, the participant could concentrate on treatment without the distraction of alcoholic cravings. One individual captured this sentiment:

> It looks as if [naltrexone is] another tool. And it has turned out to be fairly effective with some people. I think it's a little bit like any other tool – it has its uses and with some it's very helpful and with other it's not. It's not something that can be used by itself.

Many of those interviewees who regarded naltrexone as useful cautioned against seeing it as a "magic bullet" and stated that it should be used only in combination with appropriate substance abuse treatment and other supportive structures.

> All [components] are useful tools – none of them is a silver bullet. What they've tried to do, and what the participants need, is a support structure, treatment. And naltrexone is a good tool because it does assist in reducing the craving. [No component] alone is a silver or magic bullet and even together it's not a magic bullet, but [the components] provides a structure, and for some people, one is likely to be more important than another.

No interviewee objected to the use of naltrexone or other adjunctive medications as a tool *per se*. Some interviewees, however, reported that some participants objected to taking naltrexone,

ironically due to (addicted) participants' resistence to putting "a drug" into their bodies.

Interviewees who expressed philosophical objection or hesitation about the use of naltrexone did so due to an ambivalence about legally requiring a medication to be eligible for bail or probation. As one interviewee stated:

> I guess that I'm philosophically against court-ordered medications. but if that's the price of admission and admission is voluntary, then I don't feel it's forced. Judge Wanamaker is an absolute missionary on this position - he thinks you shouldn't have any therapeutic courts without it – I don't agree with that.

Another felt the same way:

> I'm told that it is [a useful tool in combating alcoholism]. I don't like the idea of forced medication, though. I think the defendants should determine when it's time to be taking a medication like that.

Some stakeholders did not have ethical concerns but were merely unaware of naltrexone's efficacy.

Ethical concerns regarding the "forced" administration of adjunctive medications were recently debated in the Journal of Substance Abuse Treatment. Although the arguments varied, a bioethicist, (Caplan, 2006) a law professor, (Bonine, 2006) and a judge (Presenza, 2006) all concluded that administration of naltrexone in "leveraged" situations, like a drug court, presented no legal or ethical concerns.

Naltrexone use was not remarked on by any interviewee as a limiting component of the transferability of the Anchorage Wellness Court model. The cost of the drug, however was noted by a few respondents as a possible barrier to individual defendants' participation in the Anchorage Wellness Court.[46] Moreover, because the use of naltrexone requires a physical examination by a physician and administration by an independent party, those factors may limit its application in communities without those resources. The requirement of independent administration of the drug may be eased in the future by a recently-approved injectable delayed-release form of the drug. But one interviewee noted that costs of that form of the drug may be even more prohibitive for some patients.

[46] They reported that the drug cost, at that time, about three dollars a day.

Other alcohol addiction courts in the state have had a mixed response to the use of naltrexone or other adjunctive medication. About half of the addiction courts in Alaska require its use unless medically contraindicated. The other half use it as a tool, if needed. The decision seemed to depend on the presiding judge's philosophy towards using medication as a tool for leveraging alcohol abstinence among participants, and on the judge's view about whether it worked. Although its *required* use discomfited some, its use as a tool to combat alcoholism was accepted by most stakeholders, perhaps due to the history in Alaska of using other adjunctive medications.

Naltrexone appears to be a transferable element of the Anchorage Wellness Court. Although it is currently used in conjunction with substance abuse treatment, recent research suggests that naltrexone may be effective – at least in the short-term – with "medical management" which includes monitoring, regular consultation, and education from medical personnel (Anton, et al., 2006). In that study, the use of naltrexone with medical management resulted in outcomes that were as good as outcomes obtained with behavioral interventions with medical management. The use of naltrexone with medical management could prove a boon to communities without adequate substance abuse treatment resources that do have adequate medical services. The therapeutic court community may benefit from more education and information about naltrexone's efficacy and about ethical issues surrounding its use.

MRT

The Anchorage Wellness Court has used a cognitive-behavioral model called Moral Reconation Therapy (MRT) almost since its inception. Developed by Drs. Greg Little and Kenneth Robinson, MRT is based on their theory that criminal offenders employ low moral reasoning skills (Wilson, Bouffard, & MacKenzie, 2005). The theory behind MRT holds that individuals with higher moral development are less likely to choose harmful behaviors and are less likely to engage in criminal thinking. One literature review of several cognitive-behavioral models found MRT to be effective (ibid). Another meta-analysis found that manualized cognitive-behavioral models, including MRT, were effective in reducing recidivism by over eight percent in general offender populations (Aos, Miller, & Drake, 2006).

According to the MRT developers, clients enter treatment displaying "low moral development, strong narcissism, low ego/identity strength, poor self concept, low self-esteem, inability to delay gratification, relatively strong defense mechanisms, and relatively strong resistence to change and treatment." (Wilson, Bouffard, & MacKenzie: 180.) MRT attempts to connect thought processes with behavior to promote moral development. The course employs a workbook for offenders with group discussion exercises and homework lessons. The model is designed for groups of ten to fifteen participants, which are run by a trained facilitator.

Judge Wanamaker was introduced to MRT in about November 2000, after which he added it to the Anchorage Wellness Court program requirements. Although MRT is a cognitive-behavioral model, the current Anchorage Wellness Court treatment provider plays no part in administering it. Partners for Progress administers the program and provides funding for the MRT facilitator, MRT facilitator training, and group meeting space. Participants must pay for their own workbooks. Participants generally do not begin MRT until they have substantially completed their intensive outpatient substance abuse treatment.

Only a few interviewees commented on the MRT component. Those who did, generally those with direct experience with the program, spoke very highly of it:

> I think everyone should do MRT. Every offender.

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> MRT is important. It is most appropriate for personality disorders. It is easily transferable. We're finding that the vast majority of the prison population is personality-disordered. So even when the addiction is cured, a lot of these people will [still] have criminal thinking disorders.

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> I'm a fan of MRT. I'm even hoping to make the MRT domestic violence module standard for everyone.

No interviewee spoke negatively about any aspect of the MRT component.

Interviewees reported that all the addictions courts in Alaska use MRT. In some courts the court coordinator administers the program. In other courts, either the treatment provider or an independent contractor provides that service. As in the Anchorage Wellness Court, all the other therapeutic courts have had positive experiences with MRT.

MRT could prove to be one of the most transferable elements of the Anchorage Wellness Court. It is easily obtainable and easily administered as a separate component of substance abuse treatment. It is also a relatively low-cost component to procure and administer. The fact that the MRT program has been adopted by every addiction court in Alaska speaks to its perceived success and wide acceptance.

Recovery support groups

Anchorage Wellness Court required participants to attended "recovery groups," such as Alcoholics Anonymous, Nalgroup (described below), or other similar meetings designed to support abstinence. At the beginning of their program, participants generally were required to attend two or three meetings a week, including one Nalgroup meeting. That requirement decreased as the participant progressed through treatment.

Nalgroup is unique to Anchorage Wellness Court. It was developed by Mike Krukar as part of a clinical psychology internship and, later, a master's thesis.[47] He envisioned a recovery group specifically to support Anchorage Wellness Court-involved participants through that program, including the taking of naltrexone. The group was coined Nalgroup, originally denoting a "naltrexone group." As the group matured and participants progressed beyond taking naltrexone, it developed into a "non-addicted living" group. Individuals attended Nalgroup to share their experiences in the Anchorage Wellness Court. As in AA, participants who had longer periods of sobriety and who were in a more advanced phase of the Anchorage Wellness court program could share their thoughts, feelings, and experiences with participants who had just begun their programs. Nalgroup was not designed to replace AA but to supplement it. Mr. Krukar believed that AA was helpful but not sufficient for Anchorage Wellness Court participants, who had often failed to attain sobriety with AA alone. He believed those individuals needed something more: naltrexone and Nalgroup.

Anchorage Wellness Court interviewees had little to say about recovery meetings in general, or about Nalgroup. While most believed that Nalgroup was a positive addition to the Anchorage Wellness Court protocol, no interviewee believed that it was essential for transferring the program. Stakeholders from other courts remarked that they had not implemented a Nalgroup in their community because that group seemed to be very personality-driven. But they also remarked that other types of recovery meetings were sometimes difficult to find, or were sometimes dysfunctional in smaller rural locations. In Bethel, cohort defendant groups seemed to provide the same kind of recovery support that Nalgroup provided in Anchorage. Although not necessary for implementation of an Anchorage Wellness Court-type program, any community without a healthy recovery group could probably implement a Nalgroup, or a similar type of independent recovery group.

[47] Nalgroup is a registered trademark and is a proprietary program.

Treatment Resources

Treatment delivery: Sole provider or multiple providers?

Some research suggests that drug courts that employ a sole provider are more effective (Wilson, Bouffard, & MacKenzie, 2006). Researchers hypothesized that a single, dedicated provider was more likely to provide treatment using cognitive-behavioral principles, which have been shown to be effective with criminal populations. They further suggested that a dedicated-provider relationship might also enhance treatment integrity.

During the course of this study, two substance abuse treatment providers treated the great majority of participants in Anchorage Wellness Court. When the court began, and for its first six years of operations, one provider, Alaska Human Services, treated most of the participants studied in the outcome report. A multi-provider model was attempted in 2004 but that attempt was not successful and the other providers were phased out. Only a few participants were affected.

In 2005, Alaska Human Services declined to participate further, in part due to financial constraints. The Anchorage Wellness Court then began using the Clitheroe Center, a division of the Salvation Army, as a sole provider for treatment. Program participants who began their course of treatment with one provider generally remained with that provider throughout their participation. In a few instances, participants were permitted to change providers.

The interviews generally supported the use of a sole provider. Stakeholders reported that using a sole provider reduced the feelings among defendants and other stakeholders that a particular program was more or less difficult, or more or less effective then another program. As one interviewee remarked about the Anchorage Wellness Court's use of multiple providers:

> [T]he court had no right to bring in a treatment provider that wasn't providing equal or substantially similar treatment. Choice is great, but not when one program is easier or harder than the other.

Reportedly, participants tended also to compare relative costs of different programs. In one therapeutic court in the state, two different treatment providers were used. One program was no-cost to Native Alaska participants through the Indian Health Service/Native Corporation, while non-Native court participants were required to pay for treatment. The cost differential, like program requirements, tended to create a situation where participants could compare what was required of them versus the other participants.

Other benefits of having a sole provider included providing another opportunity for participants to bond and create support networks with their peers who were undergoing the same treatment in group sessions. Administratively, it was reported to be easier to have one treatment provider at pre-meets and providing reports to the court regarding participants' progress, and easier to control the quality of the treatment being provided.

Interviewees reported a few negative effects of using a sole provider. Most often, interviewees noted that with only one treatment provider, treatment capacity was limited. Some interviewees also remarked that the nature of treatment available from the sole provider might not have been the optimal treatment for all participants. Researchers observing the court did note several instances where participants opted out of the program because the treatment provided was not optimal for them.

The risk of relying on a sole treatment provider was also noted when one interviewee queried "if the court relies on [sole] treatment providers, what happens when something happens to them?" That sentiment was confirmed by evidence of lengthy disruptions in court operations after Alaska Human Services withdrew from the Anchorage Wellness Court and after the Anchorage felony courts discontinued services from their provider.

Overall, however, the benefits of working with a sole provider seemed to outweigh the drawbacks. Most therapeutic courts in Alaska have gone with a sole provider. In many places in Alaska, however, the question of whether to have sole or multiple treatment provider model is academic: many communities have no provider and many others have just one.

Treatment availability

The lack of substance abuse treatment availability and capacity is perceived to be a significant limiting factor on the transferability of the Anchorage Wellness Court and other therapeutic court programs. As in most places, treatment resources in Alaska do not meet the need.[48] Availability of treatment through the Anchorage Wellness Court did not appear to be a problem but almost all interviewees who commented on treatment remarked that Alaska needed more treatment providers, especially outside the greater Anchorage area. One interviewee stated:

> The biggest number one obstacle is the treatment providers. We need more, there is not enough of them. There is a huge demand -- not enough of them.

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[48] In 2002, one report revealed that 34-46% of those seeking treatment for alcoholism and other substance abuse in Anchorage were on waiting lists (*Waiting in Line for Treatment,* C&S Management, 2002). Although high, that figure probably significantly under represented the need for treatment resources. Ibid.

One interviewee also stated that this problem was common across the country and noted that complaints were raised at the National Association of Drug Court Professionals annual meetings.

Almost all interviewees perceived that an Anchorage Wellness Court-type program could only be transferred to jurisdictions that had appropriate substance abuse treatment resources. Most also believed that only larger cities and towns had the substance abuse treatment resources required to put an Anchorage Wellness Court type program in place. Two individuals captured this sentiment:

> The lack of treatment resources is the biggest problem. Alaska is sorely lacking in appropriate treatment facilities and programs that could participate in a Wellness Court model. . . . I think that any village where there isn't a treatment program couldn't handle it. You've got to have a treatment program.

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> [It won't work] where no treatment resources are available – when the community is so small there are no behavioral health resources available.

One person, however, believed that an Anchorage Wellness Court type program could work in small, rural villages, even absent a substance abuse provider:

> You couldn't have a full treatment provider there, but you could do MRT, the pre-sentence plea, then send them to the village clinic for naltrexone. Perhaps you could have a group that gets together to support each other, as in Nalgroup. And the participants could still stay busy, have meds, group support, monitoring, and be in front of a judge.

This sentiment was an outlying view, and one that runs counter to the drug court model of leveraging substance abuse treatment with criminal court processing. As discussed above, whether MRT could achieve a full treatment effect without traditional substance abuse treatment, is not known.

Culturally-appropriate treatment resources

The lack of available substance abuse treatment is compounded in Alaska by the lack of culturally-appropriate treatment. Alaska has a significant Native Alaskan/Native American population that is alcohol dependent and is involved with the criminal justice system (Alaska Judicial Council, 2004). The Council found in a study of 1999 felony cases that a noticeably higher percentage of charged (80%) and convicted (83%) Native defendants had alcohol problems than charged (63%) and convicted (67%) Caucasian defendants (2004:65). Many of those interviewed were concerned with the lack of specific culturally-sensitive treatment for the Native population. As two individuals expressed:

> The big [barrier to transferability] would be treatment providers. . . I'd think it would need to be culturally sensitive, too. That's another barrier – the lack of well-trained, certified or licensed Alaska Native folks.

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> Unfortunately, we don't have a treatment provider that's culturally adept to deal with Native Alaskans. So we can't engage them in treatment and treatment retention. They may be following the rules, but we don't see the same effect as we do with the Whites.

Conversely, in one other state therapeutic court, the Bethel Therapeutic Court, a culturally sensitive treatment provider *was* available for about a year. During that period, it was reported that Alaska Native defendants were "pounding down the door" to be accepted into the court – specifically so that they could receive treatment from that provider.

Although the concern with the lack of culturally sensitive treatment was prevalent, that circumstance may not be the barrier that it was believed. In a recent outcome study of three other Alaska therapeutic courts, Native participants fared as well as Caucasians in rates of participation, graduation, and recidivism (Alaska Judicial Council, 2007b). The recidivism finding was especially significant because Alaska Native offenders are rearrested at a much higher rate than Caucasians in a non-therapeutic court context (Alaska Judicial Council, 2007a).

The finding that Native participants did as well as Caucasians was thought to be confounded by the fact that, as discussed above, the Bethel Therapeutic Court employed a culturally-sensitive counselor for part of the study period. Additional analysis was performed on the original data set. Graduation and recidivism rates were found to be similar between the Bethel group and non-Bethel

group of Native participants.[49] This showed that Alaska Natives did well in all three courts, and that the effect was not necessarily related to a culturally-sensitive treatment provider in Bethel.

Although culturally-sensitive treatment may be ideal, the lack of it does not seem to be the barrier that the interviewees perceived it to be. According to one interviewee, this circumstance may be due to the fact that, although there is no *programmatic* response to cultural issues, the therapeutic court teams in the Alaska Wellness Court and the other therapeutic courts in Alaska attempt to address each *individual's* needs for cultural components on a case-by-case basis. The Bethel court experience seems to suggest that having culturally-sensitive treatment may improve intake and participation for the relevant population but does not necessarily affect outcomes.

Treatment costs

Interviewees reported that the cost of treatment has two effects, one on the participant and one on the provider. The Anchorage Wellness Court stressed offender accountability and responsibility. Anchorage Wellness Court participants were expected to pay the costs of treatment, along with any court fines and restitution to victims. Anchorage Wellness Court participants paid treatment costs based on a sliding scale of what the participant could afford. Despite the sliding scale, some defendants had trouble paying the costs of treatment and ended up with large debts to pay off over several years. Several interviewees perceived the participants' difficulty or inability to pay as the most important cost issue facing the Anchorage Wellness Court. Despite that perception, no interviewee could recall any specific instance in which a participant was denied treatment due to an inability to pay.

Although the participants' inability to pay did not directly impact their ability to benefit from the Anchorage Wellness Court program, it did affect substance abuse treatment providers' ability to provide services. In the early days of the Anchorage Wellness Court, and until about 2005, treatment providers' fees were not directly subsidized by state funding. Some treatment costs were subsidized by Partners for Progress (first through the Byrne grant funds, then through legislative grant funds) but that partial subsidy – about $1000 per participant – proved to be insufficient. Some interviewees also reported that the monies that participants did pay were sometimes paid on a very lengthy schedule, which also tended to burden the treatment provider. Several interviewees noted that the lack of timely or full payment served to limit the number of individuals a treatment provider could carry.

> That's what limits the number of people that can go through, at least with one particular provider or another, because the provider just

[49] Data and analysis on file at Alaska Judicial Council.

> won't be able to carry a full enrollment of people unable to pay for themselves.

This problem ultimately resulted in Alaska Human Services declining to provide services for the Anchorage Wellness Court and significantly limiting the capacity of the other treatment provider, Clitheroe Center.

In late 2005 or early 2006, the Alaska Department of Behavioral Health decided to open the doors to the Anchorage Wellness Court so that it could utilize available treatment capacity that was already subsidized by the department. The treatment capacity had been allocated for use by the felony addiction courts but because the felony courts were not then fully operational, available treatment capacity could be used by participants in the operating Anchorage Wellness Court. Currently the department contracts directly with the Anchorage Wellness Court treatment provider to provide treatment on a sliding-fee basis, subsiding the costs that participants are not able to pay.

The move towards direct state-supported treatment improved the treatment provider's position. Although the ability to carry Anchorage Wellness Court participants was still limited – because the subsidy was still not enough to pay the full costs of treatment in many cases and because participants still did not always pay their portions – payment of treatment costs were more certain from the provider's point of view.

Political support for treatment

Because substance abuse treatment costs were subsidized in one way or another, the availability and capacity of treatment was directly tied to the level of political support for the therapeutic courts and for responding to alcohol-driven crime through treatment generally. When the Anchorage Wellness Court began, interviewees reported that then-Governor Knowles's administration supported using a treatment model to reduce crime and treatment monies were available. When Governor Murkowski was elected in 2002, the new administration did not support rehabilitation efforts through treatment and it significantly cut related funding, choosing to focus on prevention, especially of Fetal Alcohol Syndrome/Effect and youth substance abuse, instead.[50]

The policy shift away from treatment and rehabilitation efforts in 2002 did not have an immediate or direct effect on the Anchorage Wellness Court because it was then receiving separate specific funding from the legislature and the Byrne grants. The shift may have had an indirect effect on the number of treatment providers and level of services available in the community because

[50] Sources on file at the Alaska Judicial Council.

treatment providers relied on Department of Behavioral Health monies to pay for some overhead and infrastructure costs. One interviewee remarked on that indirect effect:

> [Y]ou need money for treatment. You have to have that. If we continue to have a governor that strips all the money out of Clitheroe and a legislature that goes along with him, it's not going to work. I've been doing this awhile. And 85% of the crimes I've seen are committed in some way because of drug and alcohol use. So [the Murkowski] administration takes $260,000 away from Clitheroe? It's costly to treat these people, but it's a lot more costly not to. Without treatment, where do they think all these people are going to go? Without it we're going to have to either ignore the crimes or lock people up forever.

Interviewees perceived that while policymakers expressed support for the therapeutic courts, this support did not generally translate into financial support – or enough support – for treatment services to allow the courts to function optimally. As one interviewee noted:

> It is a weird dichotomy. Therapeutic Courts are the darling of part of the legislature but there hasn't been a shift in attitudes. . . . They are cutting treatment money.

So while the legislature was supporting the therapeutic courts, the governor did not support treatment and attempted to cut substance abuse treatment funding.[51]

The lack of available treatment limits the transferability and growth of all the therapeutic courts in Alaska. If policymakers continue to endorse and fund the therapeutic courts as a way to deliver treatment, the corresponding need to subsidize treatment should also be addressed. The current governor, Governor Sarah Palin, elected in 2006, has proposed to provide more funding to the Department of Behavioral Health for treatment.

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[51] Governor Murkowski proposed $3.4 million dollars for FY 2008 Department of Behavioral Health grant funds, which are used in part to subsidize treatment. The legislature responded by allocating $5.6 million dollars for that fiscal year, including specific language supporting the therapeutic courts. Governor Palin's FY '09 budget proposal includes almost $6.3 million dollars to the department for grants. (Information on file at the Alaska Judicial Council.)

Collaborative Processes

Therapeutic courts require a unique degree of collaboration within the criminal justice system and between the criminal justice system and the community to operate. The criminal justice collaborative effort must include judges and court staff, prosecutors, public and private defense attorneys, case managers, and corrections or probation officers. In addition, they must collaborate with private sector entities such as treatment providers, social service providers, and community groups. The degree to which all these entities can plan, implement, and operate a therapeutic court program is critical. When the collaboration is not successful, the court will not operate optimally, or sometimes will not operate at all. Even when it is successful initially, stakeholders must vigilantly preserve that collaboration.

By most accounts, the Anchorage Wellness Court collaboration evolved over several years from Judge Wanamaker's sole sentencing efforts to a seven member "team" involving a judge, two or more lawyers, a treatment provider, a case coordinator, a project director, and a community partner, not to mention ancillary providers such as employment specialists, MRT facilitators, housing specialists, physicians and pharmacists, and community supervisors. Even though the Anchorage Wellness Court experience was different than the other Alaska therapeutic court experiences, similar issues arose in every therapeutic court with the team collaboration processes.

Collaborative projects generally include a planning phase, an implementation phase, and an ongoing operational phase (Downing, 2006). In the planning phase stakeholders meet to define their interests, and to allocate responsibility, authority, and accountability (ibid). That process did not occur with Anchorage Wellness Court. Because it was experimental, the Anchorage Wellness Court never had discrete "phases" as described above, and almost continually revised its operations, policies, and procedures. The Anchorage Wellness Court experience can be separated into two parts, however: the "early years" and "institutionalization." This experience can be contrasted with the experience of the other addictions therapeutic courts in Alaska, which did have planning, implementation and operational phases.

The early years

Many interviewees reported that instead of planning, Judge Wanamaker started by "doing." As he went along, he added more partners and more components -– implementing the court piece by piece and taking in a few participants at a time. From its start in 1999, the court developed in this *ad hoc* fashion until about 2004, when Judge Rhoades began presiding and regularized its policies and procedures and when a program manager was hired to handle many administrative matters.

In stark contrast, the Anchorage Felony DUI Court and the Anchorage Felony Drug Court were strategically planned. The Anchorage Felony Drug Court team went through several years of training, planning meetings, and policy and procedure revisions. The Anchorage Felony DUI Court team undertook the same process but was able to complete it in a matter of months, not years, largely because the project shared many team members with the Anchorage Felony Drug Court.

Some stakeholder interviewees believed that the lack of initial Anchorage Wellness Court planning facilitated Judge Wanamaker's experiment in the very early stages. Many believed that because he did not have to gain consensus, or even permission, to implement "sentencing practices," he could act without impediment. Some stakeholders believed that this early direct action enabled the project to get off the ground and that institutional stakeholders, such as the court system, would have resisted had they been more aware of what he was doing. One stakeholder mused:

> [T]oo much planning tends to kill start-up. Judge Wanamaker took a few cases, tried it, saw what worked, what didn't, and attracted some good people.

Most interviewees believed that the team – the individuals that Judge Wanamaker "attracted" – functioned well during the Court's beginning stages, despite the lack of discrete planning and implementation phases. Interviewees perceived that the strong leadership and vision of Judge Wanamaker and of Janet McCabe of Partners for Progress promoted the functioning of the Wellness Court in those early years. Judge Wanamaker, Janet McCabe and the municipal prosecutor were able to carry the court forward for several years in that fashion. But once the court began to be absorbed into the court system's normal operations, and began to become institutionalized, a more complex collaboration began to develop and more regularized policies and procedures were necessary.

Institutionalization

As the Anchorage Wellness Court grew, and the team grew, the need for gaining consensus among new incoming stakeholders became apparent. At that point, around 2004, acting as a team became more difficult and the lack of initial planning began to affect operations:

> One of the harder things that we dealt with . . . was not having everyone on the same page – community buy-in, treatment providers, attorneys. Also, at some level, we had to buy in to the concept of being team members.

In true Anchorage Wellness Court fashion, interviewees reported that these problems were largely resolved through "trial and error" and by building relationships over time.

Around the time that Judge Rhodes began presiding, stakeholders also began to recognize the need for regularized policies, procedures, and forms. Some interviewees believed that the lack of initial planning negatively affected the development of the policies and procedures and the overall functioning of the court, even years later:

> Terms . . . need to be clarified. That kind of thing. If that had happened in the beginning, I don't think we'd be having a number of the issues we are.

Judge Rhodes had developed policies and procedures for the Coordinated Resources Project and was credited with beginning that process in the Anchorage Wellness Court. There, however, stakeholders attempted several times to develop policies and procedures and would seemingly come to agreement, only to revisit the same issues time and again, often due to a new team member arriving on the scene. This continual revision and experimentation eventually wore on team members:

> [I]t got exhausting - having the same fights over and over . . . having to redo things that we had worked out - not just put into place, but had discussions about and read up on and had decided on - because a new person came on board.

Eventually, the court was able to develop somewhat stable policies and procedures. Even so, every time a new key team member came aboard, existing policies and procedures were called into question, if not changed.

Formal procedures enhanced the collaborative effort, however, by providing a structured means to resolve problems that arose.

> There has to be a procedure as to how to work things out so that it's not traumatic for everybody, like a procedure of how to process problems as perceived by any member of the Wellness Court team who is acting in the best interest of the [participant]. . . . [One team member] had no procedure to follow and she brought the court to a standstill. An absolute standstill. . . .

Once in place, having formalized procedures seemed to lessen the likelihood of difficulties with the collaborative relationships.

Team member turnover, in addition to disrupting the drafting of policy and procedures, also regularly affected the team's collaborative working relationships. Because the Anchorage Wellness

Court involved misdemeanors, entry-level attorneys often staffed the court. According to interviewees, the lack of continuity negatively affected team building because team relationships developed over time. The longer team members worked together, the more time they had to educate each other about the process, get to know each other's institutional or agency interests and concerns, and to build trust. Every time the team members changed, those relationships were disrupted, the cross-agency education effort curtailed, and the trust eroded.

Leadership was a key element in the Anchorage Wellness Court collaboration. Interviewees consistently noted the need for leadership by heads of agencies and institutional commitment for the collaboration to work. Leadership was apparent from the municipality, where policymakers from the mayor's office, the city attorney, and the head of the criminal division all voiced support for the Anchorage Wellness Court program early on. The municipality also expressed support by dedicating a prosecutor (when available) and by hiring a case coordinator for the court. Anchorage Wellness Court interviewees, however, perceived a lack of consistent institutional leadership within the court system administration:

> There has to be a consistent message from the court system They say they support it but then you hear that it "takes too many resources" etc. . . . Not everyone has bought into it so there is not a consistent message from court administrators and judges.

Interviewees' perceptions of the court system's ambivalence towards all the addictions courts eventually shifted to perceptions of support when the court system hired its therapeutic courts coordinator and incorporated the Anchorage Wellness Court into its continuation budget.

Despite the efforts to strategically plan the other therapeutic courts, interviewees perceived that many of the same problems occurred, including problems with numerous policies and procedure revisions and a high degree of staff turnover affecting the integrity of the collaboration. Institutional leadership was also key. In contrast with the leadership at the municipality, interviewees from the state felony therapeutic courts perceived a lack of institutional leadership and commitment for the state therapeutic courts not only from the court system but also from prosecutors, defense attorneys, and community supervision agencies at various times. Interviewees remarked:

> You have to have support by the organization and leadership to set an overall direction . . . . They have to say, "this is not an option. We will do this and anything to make it successful."

On several occasions, the lack of agency support for the state-run therapeutic courts caused the affected courts to halt operations. The Department of Corrections pull-out caused the Anchorage

Felony Drug and DUI courts and the Bethel Therapeutic Court to stop operating. The Anchorage District Attorney's concern about equal protection halted the Anchorage felony courts. The Public Defender Agency's concern about their clients' legal and therapeutic interests caused them to stop referring cases, causing another halt to operations in the Anchorage felony courts.

Institutional leadership was not the only concern. Interviewees on both the municipal and the state therapeutic court teams wanted judges to show leadership with regards to the collaboration itself by directing the team and resolving disputes. Interviewees resisted a judge having too much influence, however, and balked when a judge attempted to impose decisions that others believed should be made by the team.

> Don't [allow judges] to force stuff. It drives people crazy and you get inferior results.

When the judge stopped trying to impose procedures on the team, but still acted as a leader to facilitate the resolution of problems, the team functioned better.

Having an equal voice in decisions was also important. During a rocky period in the Anchorage Wellness Court, some believed that the community partner, Partners for Progress exerted too much influence on the team and lacked appropriate boundaries. This perception affected the collaboration by fostering distrust. When that perception was openly addressed, it was overcome and interviewees reported that the team functioned better.

> I've often felt that Partners is not fully communicative about their agenda, and there tends to be some competition between the non-profit and the Court System's administration. . . . I think the relationships have strengthened because everyone had the opportunity to speak and now it's in writing. So if there's a question or problem, someone can say, "hey, we discussed that, we figured it out, and it's here on page ten."

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> I think there is a lot more open communication in the team [than before]. They're all very intellectually honest about their positions and were in on developing the written policies and procedures that the defendants can rely on.

Partners for Progress staff was eventually restricted from direct interaction with defendants but retained a seat at the table for stakeholder meetings and strategic planning. Interviewees believed that role was more appropriate. Although interviewees highly valued Partners for Progress's many contributions to the Anchorage Wellness Court, and credited it for statewide therapeutic courts legislation, its absence from the team seemed to strengthen the relationships between the remaining team members and lessen perceptions of unequal voice. Because Partners for Progress was not involved in the operations of the state therapeutic courts in the same way that it was with the municipal Anchorage Wellness Court, their participation was not an issue for those collaborations.

That flexibility and the ability to adapt was critical when collaborating in the Anchorage Wellness Court.

> You have to have flexibility to work through failures and difficulties that will come up. You can't give up when you set it up and it doesn't work.

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> I think it's real important that everyone understands the flexibility that everyone needs to have.

The need for this type of flexibility was exemplified when new judges changed the roles of the Anchorage Wellness Court team members. After one judge cut Partners for Progress from the team, another restricted the treatment provider, Department of Corrections, and the project manager from team meetings.[52] Several interviewees felt that the extensive stripping-down of the team was a mistake and impeded communication with stakeholders. Other stakeholders appreciated the new system's efficiency. In the end, Anchorage Wellness Court team members' flexibility carried the day and team members adapted.

As described previously, stakeholders implemented the Anchorage and Bethel felony courts after extensive planning meetings. The extensive planning of those courts did not save them from many of the same operational problems that arose in the Anchorage Wellness Court regarding lack of agreement about written policies and procedures, and lack of institutional leadership. In fact, the strategically planned courts experienced more significant problems than the Anchorage Wellness Court and stopped operating for lengthy periods due to one stakeholder or another refusing to participate.

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[52] This change coincided with the consolidation of the Anchorage Wellness Court with the State Wellness Court, the Anchorage Felony DUI Court and the Anchorage Felony Drug Court into one calendar.

Although strategic planning is probably ideal, the planning process, or lack thereof in the Anchorage Wellness Court, did not appear to affect the functioning of a program as much as team members' ability to respond to problems that occurred during operations. The Anchorage Wellness Court did not experience a formal planning process but eventually team members had to arrive at consensus about policies and procedures anyway, though those were revised several times. The other courts did go through a formal planning process but they also had to revisit their policies and procedures at times. All of the courts were able to (eventually) overcome significant problems that arose during their operations. The Anchorage Wellness Court experience suggests that a therapeutic court team's ability to work with existing resources and levels of institutional commitment, and the team's ability to respond to problems as they occur were more important than being able to implement a therapeutic court as a strategically planned package program.

Collaborative operations tended to work well in the Anchorage Wellness Court, where the stakeholders were limited, worked closely together on a regular basis, and tended to be more stable. They worked less well in the state-run courts at the felony level where many more stakeholders were involved, stakeholders did not work together as often, and staff turned over and moved around more frequently. When case coordinators, or prosecutors, or judges changed, problems ensued. While these problems were not fatal to the program, they did hamper operations for a significant time period because new team members called policies and procedures into question and because the new team member was often untrained and inexperienced. These problems could be resolved by instituting firmer policies and procedures, or even court rules to make them more stable. New team members could be trained at national training, or if that was not possible, the therapeutic courts or the disparate agencies could develop their own training manuals, videos, or memoranda. Teams could also meet regularly out of court setting for team-building and to discuss operations.

Attorneys

Three main issues arose in the interviews regarding the attorney team members that related to transferability. The first was attorney buy-in. When attorneys bought in to the concept and process of the therapeutic courts, the courts generally operated. When they did not, the courts did not function. Second, attorneys emphasized that their concerns hinged primarily on caseload and efficiency concerns, and their clients' interests, although some expressed philosophical objections. Last, interviewees strongly believed that having dedicated attorneys allowed the courts to function better.

Buy-in

Prosecutors

The municipal Anchorage Wellness Court legal agencies and attorneys remained extremely stable throughout its history. The Municipality of Anchorage was the sole prosecuting entity. One private defense firm, Gorton & Logue,[53] provided public legal defense for the great majority of defendants, all indigent, through a contract with the municipality. Only a few private attorneys provided legal counsel for defendants able to afford their fees. Although there was some prosecutorial turnover, there was generally less turnover than with the state therapeutic courts.

Interviewees noted that the Anchorage Wellness Court attorneys worked well together and supported the therapeutic court philosophy. Almost all attorneys and policymakers who were involved in the Anchorage Wellness Court stated that they supported the therapeutic court process as a way to address alcohol-related crime. Most municipal prosecutors viewed the Anchorage Wellness Court program positively and regarded it as an opportunity for individuals and the community to address and reduce alcohol- related crime. Only one municipal prosecutor interviewee strongly disagreed with the therapeutic court philosophy, and opined that the Anchorage Wellness Court was a "get out of jail free" card.

One former policymaker from the municipal attorney's office, however, vehemently disagreed with the therapeutic court philosophy. Despite his objection to the philosophy and process, the court operated successfully during his tenure. This may have been due to municipal policymakers' apparent delegation of most therapeutic court program decisions and operations to supervisors and line attorneys. The criminal division supervisor at that time was widely regarded as a strong proponent of the court.

In 2006, when participation drastically dropped, some interviewees began to question the commitment of the municipal prosecutor's office to the Anchorage Wellness Court. They suggested that prosecutors were not referring cases due to the "lack of incentive" problem. Stakeholder and policy meetings ensued. Policymakers at the municipality expressed their continued support and the issues seemed to be resolved. At about the same time, the therapeutic court prosecutor left the municipal attorney's office and it dedicated a new prosecutor to the court who began referring more cases. Subsequent to the renewed political support and the new prosecutor, intake slowly rebounded.

Unlike the experience in the municipal Anchorage Wellness Court, interviewees consistently reported that they perceived a lack of "buy-in" from state prosecutors regarding the felony

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[53] The current name of the firm is Gorton, Logue & Graper. It was Gorton & Logue for most of the study period.

therapeutic courts. Interviewees tended to fault Department of Law policymakers and supervisors for program operational glitches, delays in opening new therapeutic courts and for court shut-downs.

Some Department of Law, Criminal Division, supervisors' remarks about therapeutic courts substantiated the perception that prosecutors were unsupportive. One supervisor remarked:

> What we can't lose sight of - at the root of all this is an adversarial system with its set roles. . . . The problem is that the "group hug" model is not the criminal justice model. And it doesn't match our mission - to take dangerous people off the streets and incarcerate them to enhance public safety.

Only that one prosecutor actually expressed a lack of support due to philosophical reasons, but most expressed skepticism about whether the therapeutic courts were successful in reducing recidivism.

Many Department of Law policymakers and many prosecutors reported that, despite the perception to the contrary, they supported the therapeutic court effort, or were at least willing to experiment with it – given adequate resources. They believed that prosecutors would be less resistant to the therapeutic courts if their agency were adequately funded. They believed that prosecutorial resistence largely stemmed not from philosophical objection but from a frustration with their caseloads and the enormous amount of time therapeutic court consumed, which was in addition to prosecutors' normal caseloads. Non-prosecutor interviewees expressed some doubt about that position, because prosecutors had received sizeable allocations in their budgets specifically to staff the therapeutic courts.

Department of Law interviewees explained that the negative perception about their commitment was grounded in delays in implementation and operational glitches that had external causes, such as treatment provider problems and the Department of Corrections' pull-out. Prosecutors' explanations were somewhat supported by subsequent events. When the external issues with the two Anchorage felony therapeutic courts were resolved to the department's satisfaction in 2006, the two Anchorage felony therapeutic courts began to function as they were intended, enrolling new defendants at a previously unprecedented rate.

Prosecutors' explanations were not entirely convincing, however. The Anchorage District Attorney's Office cited statutory problems with the Anchorage Felony DUI Court as one external problem that potentially raised equal protection concerns. Presumably, the problem would have affected all felony DUI cases in all the therapeutic courts. But the felony courts in Bethel, Juneau, and Ketchikan operated without interruption despite the concern in the Anchorage office. And the delays in implementing the therapeutic court in Fairbanks continued, despite policy level support,

reportedly due to one holdout district attorney. Where the therapeutic courts had strong prosecutor support, as in Juneau, the courts operated well.

As in the Anchorage Wellness Court, the philosophy of the policymakers did not seem to affect the implementation and functioning of the courts as much as the philosophy and commitment (or lack thereof) of mid-level supervisors. When the supervisors, in most cases regional district attorneys, supported the therapeutic court effort, the courts seemed to be implemented and operate well. When they did not, delays and problems ensued.

Interviewees saw the disconnect between stated policy and operations as either an ambivalence by leaders within the Department of Law, or as an inconsistency between publicly stated goals and actual policy. Many interviewees believed that the Department of Law needed to give clearer directives to regional district attorneys' offices. Some interviewees from outside the department believed that this supervisory-level control in the Department of Law was too great and that individual supervisory district attorneys were deciding limiting policies for therapeutic courts for individual communities, even though Department of Law policymakers expressed support for them. Interviewees believed that this local control and inconsistency within the Department detracted from the overall therapeutic court effort.

A few interviewees expressed the belief that local control was preferable to a consistent state-wide department approach because each community was different, with different resources and different problems. Those people believed that imposing a therapeutic court on an unwilling community would not work. They believed that a district attorney's willingness, or lack thereof, reflected a community's willingness to engage in the therapeutic court process. But this was not the majority view. Others believed that the great degree of local control given to district attorneys was part of the department culture that had evolved over many years in response to the great geographical distances and regional diversity in Alaska.

The interviews suggested, though, that Department of Law ambivalence was exacerbated when prosecutors believed that a therapeutic court was imposed on them. For example, some prosecutors felt that they were not included in the planning process for the state misdemeanor therapeutic court in Anchorage or the first unsuccessful attempt at a Juneau therapeutic court. One prosecutor interviewee commented:

> I don't recall ever having it be discussed in terms of "let's all work together" - it seems like no one talked to the D.A.'s office about the purpose or what was going on. It was just . . . [a] way of sentencing people. . . . I don't recall having a lot of understanding about what it was for and the purpose of it. "Railroaded" might be a little harsh, but

> it seemed like instead of sentencing people the way we were used to, it was this really optimistic, "let's give everyone a chance" thing that was a difficult concept for us to understand, letting people walk out the door. It seemed very random about who would do it – it was all of a sudden, you'd show up and your person was in [therapeutic] court – there was no discussion like there was later when the drug court was setting up.

When prosecutors felt that a therapeutic court was imposed on them, or believed that the therapeutic courts were attempting to limit their discretion, they were less enthusiastic about participating.

Defense attorneys

No interviewee questioned the philosophical buy-in from municipal defense attorneys. Although all the Anchorage Wellness Court defense attorneys felt positive about the program in theory, if it was not advantageous for an individual client in a particular case, they would not recommend participation. Most Anchorage Wellness Court defense attorneys believed that an eighteen-month Anchorage Wellness Court program did not advance their client's best interest unless the client had a long history of prior offenses and was facing significant jail time. At one point early in the program, defense attorneys would not recommend the Wellness Court at all to their clients because they believed that the client would get a much *worse* deal if he or she failed out of Anchorage Wellness Court than the client would have received at the outset in traditional court processing. That difficulty was addressed through more formalized, standardized plea agreements.

Although state public defenders did not face the negative perception of stonewalling that the state prosecutors faced, interviews of public defenders suggested that public defenders were, if anything, more resistant to the therapeutic court process than prosecutors. Again, interviewees did not suggest that the public defenders' reticence was philosophical in nature. Rather, their concerns included programmatic concerns, client-interest concerns, and the same resource and caseload concerns that prosecutors raised.

State public defenders tended to view the program goals as admirable, but the way that the courts operated as problematic, believing that the infringements on their clients' interests were too extensive and that treatment and other team members unnecessarily micro-managed their clients. Because they believed the therapeutic court process already imposed significant restrictions on their clients, public defenders successfully kept out of the state felony courts two of the more restrictive (as public defenders perceived) required components of the Anchorage Wellness Court: continuous transdermal alcohol monitoring and naltrexone. Those components were used in the Anchorage felony courts only when a defendant faltered.

As in municipal cases, state public defenders believed that recommending therapeutic court was not always in the best interest of most of their DUI clients. Unless a defendant faced presumptive time for a DUI, public defenders would not recommend therapeutic court, partly due to the believed-excessive infringements on the defendant's liberties, partly due to the length of the program versus the "flat-time" jail exposure faced by a defendant, and partly due to a treatment program that attorneys believed was out of date and ineffective.

Caseload and efficiency concerns

Defense attorneys and prosecutors from all the Alaska therapeutic courts agreed that the therapeutic court process took too much time. They frequently complained that the courts were inefficient and tedious.

> In terms of the court itself, for the professionals, it could get kind of irritating, spending time on issues that I didn't think were that relevant. And it took a lot of time . . . . It was a lot of wasted time, and chit chat - it was just kind of frustrating, irritating, and it didn't feel very productive.

The attorneys tended to assign responsibility for the inefficiencies to whichever judge was presiding. Most of the presiding judges of the therapeutic courts (municipal or state) were criticized by different attorneys for being too slow and engaging in too much "counseling" of defendants. Attorneys also complained that they felt like their time was wasted because their roles in therapeutic court were mostly passive, which frustrated them when they felt that they had piles of case files that needed their attention back at the office.

Several judges attempted to address the feeling by attorneys that their time was not well spent by experimenting with allowing the attorneys to miss regular status hearings, and requiring attorneys' presence only when the judge took a legal action such as at a change of plea, or imposition of sanctions at a compliance hearing. Interviewees reported mixed results from that experiment. Some interviewees believed that the therapeutic court lost a "team" focus if the attorneys were not consistently present, that the attorneys were less "in the loop" of the therapeutic court, that attorneys were less likely to make referrals, and that the overall functioning of the court declined without the attorneys present.

Both prosecutors and public defenders from the state therapeutic courts consistently cited pressures from their "regular" court cases as barriers to therapeutic courts. Although the legislature funded additional prosecutors and public defenders specifically to staff therapeutic courts in House Bill 172, which authorized the pilot projects in Bethel and Anchorage, interviewees reported that

the funding was always at risk of being "absorbed" by the agencies for traditional functions. Agency attorneys explained that the agencies could not justify having one attorney's practice be solely dedicated to the therapeutic courts despite the extra funds, when therapeutic court caseloads were often in the single digits, and when their compatriots' caseloads were upwards of one hundred at any given time. The designated attorneys for therapeutic courts reported that their caseloads were not adjusted for their therapeutic court caseload. This effectively meant that they worked even longer hours – and were effectively penalized – because of the enormous amount of time spent on administrative concerns, premeets, and status hearings in the therapeutic court cases. This happened in both state agencies. It did not, however, happen to the same extent in the municipal Anchorage Wellness Court, where attorneys' caseloads were not as great a problem and where having a dedicated attorney was more successful.

Dedicated attorneys

When the Anchorage Wellness Court began, the municipality staffed it by rotating assignment among all its trial attorneys. Eventually both the municipality and Gorton & Logue assigned specific attorneys to the court and continued to do so for most of its history. Having one attorney dedicated to Anchorage Wellness Court cases was the most remarked-upon aspect of the attorneys' roles.[54] Interviewees believed that having dedicated attorneys increased each attorney's knowledge of the therapeutic court process. Interviewees also perceived that it decreased the adversarial activity between attorneys, increased teamwork, and improved the overall administrative functioning of the court.

> I do think that you need dedicated positions in each agency involved – you need that so there is some continuity, so it's not as sketchy, and there's a consistent team that can evaluate cases fairly across the board.

A few interviewees noted that having dedicated attorneys allowed the agencies to provide training opportunities at national conferences, which would not have been possible or beneficial if the attorney position had rotated among all agency or firm attorneys.

When the municipality or Gorton & Logue did not dedicate a specific attorney, or was between dedicated attorneys, interviewees commented that the court process suffered, mostly due to the lack of knowledge by the substitute attorneys. Lack of knowledge about the process tended

[54] The use of "dedicated" in this sense does not mean that the attorney took *only* therapeutic court cases but means that the attorney was designated to handle all therapeutic court cases and handle administrative concerns. Substitutes were necessary when the dedicated attorney took vacations or otherwise could not participate on a given day.

to create problems during court hearings and decreased levels of communication about participants, resources, and court processes.

Interviewees from other therapeutic courts agreed that having dedicated attorneys improved the functioning of their respective courts. Those that had dedicated attorneys cited the same positive aspects as the Wellness Court interviewees. Those that did not have dedicated attorneys cited attorney turnover and lack of attorney consistency as one of the biggest obstacles to the operational success of their programs.

The reasons for not dedicating an attorney to cover a therapeutic court varied. Some interviewees suggested that the lack of consistency often occurred because of personnel and resource issues in public defenders' and prosecutors' offices – such as high turnover and inadequate numbers of attorneys to staff the offices. This occurred most often in rural locations, such as Bethel, where it was difficult to retain attorneys. Some interviewees believed it was difficult to recruit attorneys for a dedicated therapeutic court role because prosecutors and public defenders inherently enjoyed litigation and the adversarial nature of a trial calendar but did not enjoy the team-focused, non-adversarial process of therapeutic court. One interviewee suggested that it was difficult to recruit attorneys for therapeutic courts because being a dedicated therapeutic court attorney put that attorney at risk for a static career within the department. He explained that advancement in the department largely depended on success negotiating and trying cases, which were skills that were not used or developed in the therapeutic courts. Last, some interviewees suggested that agencies did not dedicate attorneys because the agencies just did not "buy in" to the therapeutic court philosophy.

Overall, the attorney issues raised by the interviewees appeared to be some of the most significant to transferability of the Anchorage Wellness Court, or any therapeutic court model. Attorney buy-in was viewed as one of the most critical elements of implementing a therapeutic court. The interviews strongly suggested that attorney buy-in could be achieved – but only by directly addressing attorneys' concerns. Relieving attorneys from mandatory attendance at compliance hearings may be useful in some situations; having a dedicated attorney alleviated many pressures on the attorneys and appeared to work better for the team. The most important concerns include finding adequate resources for each agency and ensuring that each agency was able to protect and promote their clients' interests. In Alaska, once achieved at a policymaking level, buy-in must also be achieved at a supervisory level for therapeutic courts to function optimally, because supervisors often had an effective veto over policy if they did not wish to participate. Interviewees suggested that policymakers should direct supervisor participation over individual objections when necessary.

Community Partnership

Another key member of the Wellness Court collaboration was the community partner, Partners for Progress. Partners for Progress is a non-profit community organization that formed during the genesis of the Wellness Court specifically to assist that court with funding, organization, and other services. It has provided critical assistance with both large initiatives and small, day-to-day tasks. Views of Partners for Progress ranged from grateful appreciation for their outreach and fundraising efforts to discomfort with their at-times too-close relationship with the Anchorage Wellness Court participants.

In the very early days of the Anchorage Wellness Court, Partners for Progress organized education for the legal community and helped to forge relationships with the Anchorage Police Department and the Municipality of Anchorage. It provided funds for training and implementation of MRT. It applied for and received a large federal grant that enabled funding of a case coordinator and a data collection system. In 2001, it lobbied for and helped to secure legislative funding for the Anchorage Wellness Court, the Bethel Therapeutic Court, and the Anchorage Felony DUI Court. All of these efforts were critical in the start-up and early implementation for many of the therapeutic courts in Alaska.

Partners' less visible efforts were perhaps equally critical to the Anchorage Wellness Court. It provided early case management services for participants by helping them with appointments, obtaining employment and housing, and transportation. It provided money for the "extras" such as certificates and commencement parties for program graduates. It paid for spaces to conduct MRT and Nalgroup meetings. Perhaps most importantly, it provided "grubstake" grants to participants to pay for costs of treatment and naltrexone in the early phase of their Anchorage Wellness Court participation, before participants could get on their feet to self-pay. Because of its high level of involvement and its early role as de facto case manager, Partners for Progress acted as a member of the Wellness Court "team" and attended premeets until late 2005.

Stakeholders were not asked directly about the role of Partners for Progress. Even so, the subject arose repeatedly during the interviews. Many people credited Partners for obtaining adequate funding through public outreach. One stakeholder commented:

> Partners for Progress has been very good at drawing people in who you wouldn't think would become involved. But [those people] have been stunned and impressed.

Policymakers especially credited Partners for Progress' efforts at educating the legislature and obtaining funding.

Not all interviewees expressed positive views about Partners for Progress. Partners' direct participation with participants created discomfort among some stakeholders.

> They should be putting the money in, but not making the client decisions. It's good having them involved, and it's great how a nonprofit can bring in all these funds, but it needs to be at arms-length. Like the federal government – they dish money out for grants, but they don't come in and redecorate the office or expect to make programmatic decisions and tell you how to spend the money. Partners should not have as much access to the court.

That discomfort, and concerns about participant confidentiality, eventually resulted in their restriction from such a close involvement with participants. One stakeholder explained:

> [The judge] decided there would be no Partners for Progress representation at premeets because of confidentiality issues. Judge Wanamaker had crafted something with a community base and the way he expressed that was including them. But eventually the legal [confidentiality and judicial independence] concerns became primary. . . . There was a lot of anxiety about the changes.

In addition, some perceived that, at least at one time, Partners for Progress had a difficult relationship with the court system, ironically because of its successful lobbying efforts. According to one stakeholder:

> About the community partnership – Janet [McCabe] and Jim [Wanamaker] got along well and had a close collaboration. The statewide administration feels that Partners for Progress [is] competing for money with them in Juneau and that their efforts disadvantage the court system for funding other areas. . . . So the court administration doesn't appreciate Partners competing with them, taking credit for the courts, and creating the perception that part of the court is being run by a nonprofit. . . . It is unfortunate because Partners for Progress brings in a lot of money. They lack a productive mechanism for a positive partnership.

As the years went on, Partners for Progress' role was less problematic, as the court system assumed many of the roles that Partners fulfilled out of necessity in the early years. Partners for Progress continued to lobby the legislature and to provide public outreach for the Anchorage Wellness Court.

It also continued to provide its assistance to participants through grubstake grants and was instrumental in developing safe and sober housing resources for therapeutic court participants.

Partners for Progress was a necessary ingredient for the development and implementation of the Anchorage Wellness Court. It provided community education and critical funding, and assisted with program operations when no other entity was able to fulfill that role in the Anchorage Wellness Court's early days. Later-emerging therapeutic courts, such as those in Juneau and Ketchikan did not need a community partner to that degree because by that time therapeutic courts were accepted into the Alaska legal landscape and especially into the Alaska Court System administrative structure. The degree to which a community partner is needed therefore depends on the structures already available in communities and institutions to support therapeutic court development. If structures are in place, funding is available, and the community understands the court's mission, a community partner is undoubtedly helpful, but may not be necessary in the way that was necessary in the early days of the Anchorage Wellness Court. If those structures are not in place, a community partner may be critical to helping to develop them.

Therapeutic courts in Alaska have been successful with only limited or no support from a community partner. All, however, would welcome such support if it was available. When incorporating a community partner into court programs, however, care should be taken to delineate appropriate roles and boundaries for the community partner. Such roles could include public education, providing needed referrals and links to community social services, and providing for "extras" that are outside the bounds of what a government institution can provide, such as monetary incentives for participants, graduation cakes and certificates. Care must also be taken to ensure that the community partner does not become a competitor for the same resources that fund the court system or for legislation that may not be the court system's primary goal at a given time. Care must also be taken to avoid the perception that a nonprofit exerts inappropriate influence over participation criteria, or court operations. Overall, however, involving a community partner seems to enhance the community's awareness and participation of an addictions court.

Judges

The judge is viewed as a vital member of a DWI court collaboration and operates as the leader of that team (Kavanaugh, Howerton, Lawrence, & Wanamaker, retrieved April 16, 2006). Research suggests that when judicial changes occur, such as when a single judge model is changed to a rotating judge model, participants attend treatment less often (Goldkamp, White, & Robinson, 2001). Research also suggests that a judge's positive interaction with participants is a critical component to a drug court, and can increase positive outcomes (Cissner & Rempel, 2007). Prevalent negative judicial feedback was found to result in higher rates of re-offending in one drug court evaluation (ibid.).

In part because Judge Wanamaker was so closely associated with the Anchorage Wellness Court, interviewees were asked about the effects of changing judges. As it turned out, two more judicial changes occurred during the study period. Interviewees responded that they believed that judicial changes significantly disrupted operations for a time. Again, because Judge Wanamaker was closely associated with the court, interviewees were asked how important the identity of the judge was to the model, and about important judicial traits. Although interviewees believed that some traits were important in a therapeutic court judge, they did not believe that having a particular judge preside was critical.

Judicial changes

Five judges presided over the Anchorage Wellness Court since its inception in 1999 to the end of the study period in 2006. Judge James N. Wanamaker founded the court and presided until late June, 2004. Judge Stephanie Rhoades, who presided over the Coordinated Resources Project, assumed direction of the Anchorage Wellness Court and presided from June 2004 until October 2005. Judge Peter Ashman, a former Anchorage District Court Judge, was appointed to preside over the court *pro tem* and acted in that capacity from November 2005 until February 2006. Judge William F. Morse, the first superior court judge to preside, and district court Judge Nancy Nolan began presiding in March 2006 over a combined "Wellness Courts" docket.[55]

Many interviewees cited the judicial changes as the most important change, or set of changes, that the Anchorage Wellness Court faced during their association with the court. Many interviewees believed that the transitions themselves, independent of the judges involved, were disruptive to the Anchorage Wellness Court:

> With every change in judge the structure changes. . . . The judge and the way they control the courtroom is extremely important and influential. Any time the judge changes, the philosophy, structure, feeling of the program might change.

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[55] The combined "Wellness Courts" included misdemeanor and felony alcohol-related cases and felony drug cases – incorporating the former Anchorage Wellness Court, the State Wellness Court, the Anchorage Felony DUI Court, and the Anchorage Felony Drug Court. The combined docket processed both city and state-charged cases for about nine months until the municipality misdemeanor "Anchorage Wellness Court" was again put on a different day for compliance hearings.

> Overall, my biggest concern is when it transitioned from Judge Wanamaker to other judges - it hasn't taken hold yet. There has been so much turnover it hasn't had the continuity it needs. You need the judges to be stable.

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> [W]e've had too much turnover with judges. Hopefully that will stop now.

The interviewees mostly perceived the disruptions as affecting the overall "leadership" of the court but they could not articulate what that meant. Researcher observations of the court suggested that after a judicial change, it took time for a new judge to understand the therapeutic court process, form relationships with the therapeutic court team, and form a rapport with the participants.

The second greatest concern surrounding the judicial changes focused on the effect on the defendant. As one interview remarked:

> It is far less important, the style of the [judge] than having a solid relationship, like with a therapist. There is more likelihood of success if the judge is consistent. That's the basis for the therapeutic court – that relationship. I have to think it has some effect.

Court observations supported this view to some extent. When new judges began presiding, participants often seemed nervous about the changes. However, how individual participants responded to a new judge after one or two hearings appeared to depend less on whether the judge was "new" and more on whether the participant's and judge's personalities clicked. Some participants responded better to a new judge; some seemed to respond worse.

Several interviewees viewed judges as "fungible." Those persons believed that judicial changes had no effect or had a beneficial effect on defendants. For instance, one person believed that "the clients adjust." Another believed that participants might benefit from a yearly change of judge by being afforded the opportunity to adapt to new circumstances - a skill they would need in their sober life. Another believed, as the observations suggested, that change might benefit one defendant and harm another, depending on whether the new judge identified more or less with a particular client. While most interviewees believed that some consistency and continuity was necessary, they also believed that judicial changes were necessary and did not, as a whole, hamper the participants' ability to succeed.

Several interviewees remarked that routine judicial changes were necessary to institutionalize the Anchorage Wellness Court into the court system operations. They suggested that by involving more judicial officers, the therapeutic court would be less dependent on the availability of the assigned judge and that more judges would be educated about therapeutic courts. The Anchorage Wellness Court then would be perceived less as a "boutique" court and more as a routine, alternative process.

One person noted that the Barrow court was experimenting with a model in which the judge's role was less prominent than in the Anchorage Wellness Court model. In the Barrow court, when the judge ordered misdemeanor defendants to substance abuse or other treatment, the judge also scheduled compliance hearings to make sure that the defendant followed through on getting the proper treatment in the community. The compliance hearing process did not include the other features of a therapeutic court. That interviewee believed that "most judicial officers are able to handle" routine compliance hearings.

Several other interviewees remarked that the "therapeutic court process" was more important than the judge. Those interviewees viewed the case manager as a more important figure than the judge, and the process outside the courtroom as more important than the judicially-run compliance hearings. They explained that although the judge was the most visible and most public figure, the case manager performed the important work of arranging substance abuse treatment, drug and alcohol monitoring, and ancillary services, out of the public eye. According to that perspective, judicial changes may or may not affect the out-of-court "process" depending on whether the new judge makes changes that hinder the out of court process, or that disrupt collaborative relationships.

Judicial characteristics

Most interviewees believed that the unique personality of a particular judge was not a critical element to the effectiveness or sustainability of the Anchorage Wellness Court. As one interviewee explained:

> I think to make a program sustainable and transferable, it has to transcend a personality. To get started with a program like [the] Anchorage Wellness Court, I think the personality of the judge is incredibly important. But the principles have to be transferable. What's going to sustain the therapeutic courts is that the model works.

Instead, each judge was viewed as bringing his or her own personality to the court and putting their own distinct mark on it:

> My observation was that the judge provides the perspective for the court. . . . Each judge has their own personality. . . . It becomes an extension of the judge's personality.

Interviewees did not believe that the success of the Anchorage Wellness Court hinged on having a particular judge at the helm.

Several interviewees warned of having a therapeutic court that was identified with one particular judge. As one person explained:

> The [Anchorage Wellness] court has been too closely identified with individual judges and needs to be more mainstreamed. Identification with a personality undercuts the effect of the court. . . . The attitude of the judge is critical, more than identity. It is possible for any judge to do this work. I dispute the cult of personality - it denigrates the process. Particular judges are better or worse in the courtroom but the ongoing work is done outside the courtroom.

Although interviewees denied the importance of the *identity* of a particular judge, all interviewees believed that therapeutic judges needed to exhibit certain traits.

The most frequently cited necessary judicial trait was having a belief in, or commitment to, the therapeutic court philosophy. Interviewees invariably believed that without that quality, the court could not function. One interviewee summarized this view:

> You have to have a judge that's committed to ensuring that it's working, that its goals are being met and the purpose is being continued. So you have to have a judge that believes in the therapeutic court.

Interviewees believed that the judge not only had to believe in the therapeutic court process but also needed to believe in the participant. This intangible quality of hopefulness – in a belief in a participant's ability to recover through the process of treatment – was seen as critical to the functioning of the court. No interviewee suggested that a "non-believer" judge would perform well in a therapeutic court setting; some believed that a "non-believer" would "kill" a therapeutic court effort. Consequently, most interviewees were opposed to the practice of rotating judges through the Anchorage Wellness Court and to assigning judges to preside. Although some interviewees believed that anyone could preside over therapeutic court proceedings given some training, most believed that presiding over therapeutic court should be entirely voluntary.

The next most cited necessary judicial trait was having compassion or empathy:

> He or she has to have empathy for a spectrum of human beings who are frail and have a constellation of problems. You have to be tolerant of mistakes and sincerely like the participants and want to interact at a level you don't have in other court settings.

Similarly, many interviewees remarked that therapeutic judges need to have sufficient "life experience" and that older, more experienced judges were more likely to exhibit that trait. Most interviewees who commented on compassion noted that compassion for the addict needed to be tempered by the willingness of a judge to exert authority and act as "enforcer" when necessary. This firmness was seen as a necessary corollary to empathy:

> The judges I've seen, particularly Judge Wanamaker, had a great deal of empathy for defendants and what they were going through. The flip side is sometimes I don't think he was as firm as I felt he should have been. There has to be a combination of the two.

Although interviewees regarded empathy as necessary, many also warned against a judge who was emotionally invested in the defendants. Those interviewees saw an emotional investment as creating risks of bias, unwillingness to sanction defendants, and advocacy:

> Judges become emotionally invested, it becomes difficult to judge, and he/she becomes more of an advocate, which is the antithesis of what a judge should be. Defendants need to be afraid of the judge, afraid of the system.

The overall picture was one of a compassionate but firm, and an interested but uninvested judge. Interviewees also noted that traditional judicial traits such as integrity, fairness, and humility were advantageous in a therapeutic court judge. Patience was also seen as a virtue and a necessary trait when dealing with the addicted offender.

Possessing a knowledge and understanding of addiction was also cited as a desirable judicial trait. One person maintained:

> A good knowledge of addiction is critical. For example, understanding that a person with significant alcohol addiction is more likely to relapse than not.

Interviewees believed that a judge who was knowledgeable about addiction would be more compassionate, more committed to the therapeutic court process, more able to connect with the defendants in the courtroom, and less likely to be manipulated by the addicted defendant. In addition, many interviewees identified a knowledge of co-occurring mental health disorders as beneficial because of their prevalence among addicted defendants.

Other interviewees identified the ability to work as a team member, and the ability to resolve problems among other team members as necessary. One interviewee noted wryly that judges were not known for possessing an innate "team spirit" and commented that many individuals became judges to avoid having to be a team player. That person noted that judges as a whole were not known for their skills at building consensus. Yet, many interviewees reported that the ability of a judge to identify and resolve problems among team members was extremely helpful in a therapeutic court setting. Active involvement and strong leadership were seen as more useful to the process than disinterest and passivity in the team setting.

Many interviewees perceived that different styles of judges had advantages at different stages of a courts' development. Many interviewees cited Judge Wanamaker's enthusiasm, commitment and team involvement as advantageous in a founding judge of therapeutic courts. Many interviewees cited Judge Rhoades's energetic leadership and direct managerial style as appropriate for a period when the Anchorage Wellness Court needed to develop job descriptions, policies and procedures, and undergo institutionalization in the court system so that the Anchorage Wellness Court would no longer be viewed as "Judge Wanamaker's Court." As one judge remarked:

> Starting a program up needs judge enthusiasm. You need a particular kind of judge in the courtroom, not one who disapproves of it, or it would collapse. It is a critical role in creation and in court. . . . One judge may be good at in-court stuff but never could have done the start up. It is really important who the judge is in different stages.

These interviewees believed that one judge may be good at going out into the community to muster support for a therapeutic court, or might be good at administering the program, but might not be as good at the in-court status hearings and building relationships with the defendants.

The Alaska Court System has experimented with using judges' differing skills by assigning two judges with different skills to each therapeutic court. One judge of the pair typically handled administrative, programmatic concerns such as contracts with treatment providers, links with safe and sober housing entities, or team concerns. The other judge typically presided over the in-court judicial status hearings with defendants. Or, as in the Anchorage Wellness Court, two judges rotated weekly. Court administrators hoped that these dual presiding-judge systems would alleviate

disruptions when judicial changes occurred, as occurred in the Wellness Court, and as inevitably will occur in other courts. Stakeholders responded very favorably to that approach.

When considering the role of the judge in transferability, the interviews indicate that having a particular judge preside over a therapeutic court is not critical. Rather, certain traits such as empathy and leadership are important. The interviews also suggest that particular traits are more important at certain points in a court's development than at others. Although the interviewees considered judicial changes as disruptive to operations at times, many also viewed the changes as necessary to a healthy functioning court and to institutionalization of the court into the larger court system. The Anchorage Wellness Court experience also suggests that, although changes are disruptive to operations, a therapeutic court can weather such changes. To minimize disruptions, courts could have clearly defined procedures in place that are not subject to change with every judicial change. Having two judges preside over a problem-solving court may also be a way to alleviate disruptions.

Judicial Supervision

Judicial supervision is at the center of the drug court and DUI court models (NADCP, 1997; Harberts & Waters, retrieved April 16, 2006). Generally, treatment courts advocate frequent appearances at the beginning of a program with diminishing requirements when participants are in advanced phases of a program (Marlowe et al., 2006). Douglas Marlowe's research strongly suggests, however, that this paradigm should be revisited. He and his colleagues studied the effects of a participant's risk status on how well he or she performed when assigned to biweekly and "as needed" hearings. They found that two high risk factors – having a prior drug treatment history or being diagnosed with antisocial personality disorder – were associated with better outcomes when participants attended biweekly hearings (ibid.). Conversely, low risk offenders' performance was worse if they had to appear biweekly than if they had to appear only as needed (ibid.). These findings suggest that therapeutic risk status should inform decisions about how often a participant comes before a judge. Low-risk offenders may need only to appear as needed while high risk offenders may need to appear bi-weekly, regardless of their progression through phases of the program.

A judge who encourages defendants to do well, and admonishes them when they falter, is seen as fundamental to the therapeutic court process (Harberts & Waters, 2005). Research on the application of sanctions and rewards indicates that positive feedback from a judge is important (Porter, 2001). Drug court participants have confirmed that direct interaction with the judge and positive judicial feed back were among the most useful components of the drug court (Porter, 2001; Farole & Cissner, 2005; Cissner & Rempel, 2007). Research also suggests that positive comments

from a judge results in better outcomes and conversely, that negative comments result in worse outcomes (Cissner & Rempel, 2007).

Rewards that are tangible, frequent, and escalating in value, such as gift certificates and that increase in value the longer the participant stays in treatment provide important incentives for participants (Cissner & Rempel, 2007). Sanctions that are applied consistently and fairly are thought to be more effective, and drug court researchers have advocated the development of formal graduated sanctions schedules (ibid). Some research indicates that when defendants believe the justice system has treated them fairly, and when sanctions are applied consistently, they are more likely to respond positively or comply with court orders (ibid.). But little research has been done on the skills or processes necessary for effective judicial interactions.

Many interviewees, as previously reported, voiced frustrations with the length of the hearings in all the courts. Many interviewees were also frustrated with the content of the interactions between the judge and the participant. Some interviewees negatively described the hearings as "therapy sessions" or "AA meetings." Those interviewees believed that the "therapy" should occur at treatment and that court sessions should be streamlined and limited to reporting on a participant's compliance with program requirements. Other interviewees believed that the relationship between the judge and the offender was itself therapeutic to the substance abusing offender, who (those interviewees perceived) had experienced little positive recognition from authority figures.

Observations of the Anchorage Wellness Court showed that all of the judges who presided interacted directly with participants and expressed some knowledge about participants' histories and participation in the therapeutic court. Judges often remarked on participants' successes, such as attaining jobs or sobriety milestones, and on participants' struggles, such as family difficulties or relapses. Many judges attempted colloquial exchanges with defendants about how they were doing in the program and about what their sobriety meant to them and their families. Some judges were more successful at that than others, and some participants were more forthcoming than others.

Sanctions were applied regularly for non-compliance. Remand to jail was the most-frequently applied sanction and was usually imposed for drug or alcohol use. Judges also sometimes ordered participants to attend increased numbers of recovery groups or treatment sessions. Judges invariably used verbal praise, and applause or standing ovations to reward participants. Judges employed few other sanctions or rewards. Some judges advocated calibrated, expected sanctions and rewards. Some were vehemently against the idea.

Court observations in the Anchorage Wellness Court and other therapeutic courts somewhat substantiated the frustration with the content of judicial-participant interactions and with the length of the hearings. Interactions sometimes lasted ten or more minutes per defendant, with sometimes

lengthy motivational or parental speeches by judges. When positive, some participants seemed to enjoy the attention but many participants appeared clearly uncomfortable in the spotlight for that length of time. When the interactions were negative, some judicial-participant interactions seemed to have a shaming effect on the participant.

The interviews and court observations suggest that streamlining court hearings would make the model more attractive to some practitioners. Hearings could be more efficient by limiting judge-participant interactions to just a few minutes, without sacrificing the positive influence of the judge. Some interviewees believed that this would naturally occur when more defendants participated, and that the interactions were too long because there was calendar time available. When more participants filled the calendar time better, the interactions would necessarily be shorter per defendant. Alternately, calendar time could be shortened if only a few defendants participate.

Altering the content of the interactions seems more problematic. More training may be necessary to divert judicial interactions away from what interviewees saw as inappropriate “counseling” attempts and towards more appropriate judicial interactions. Training should also be provided on the emerging research about the effective use of sanctions and rewards, and whether to develop formal graduated sanction and reward schedules.

Case Management and Community Supervision

Virtually no empirical research has been performed regarding case management and drug testing in drug court (Cissner & Rempel, 2007). One focus-group study noted that participants reported forming close relationships with their case managers – sometimes too close (Farole & Cissner, 2005). Research on the effect of case management on other drug offenders suggests that the effects of case management are variable and depend on how well programs carry out their responsibilities (Marlowe, 2003). Research on probationers and parolees with drug conditions suggests that increased drug testing and immediate sanctions for use significantly reduced the likelihood of arrest (Harrell, Roman, Bhati, & Parthasarathy, 2003). The reductions in arrests were more significant and larger in areas that used more drug tests per offender on supervision (ibid.).

The Anchorage Wellness Court has used a variety of strategies to supervise and manage its participants. In the very early days of the court, before a court coordinator was hired, a Partners for Progress employee provided case management services, assisting participants with obtaining housing, transportation, naltrexone and other medical needs, and obtaining employment. The court accomplished supervision through random drug and alcohol testing by the Anchorage Police Department. Participants were released into the community and could receive credit for (then mandatory) jail time through a Department of Corrections managed House Arrest and Electronic Monitoring (HAP/EM) program.

After the municipality hired a case coordinator, that person performed case management and supervision. The case coordinator identified suitable cases during in-custody arraignments, would go to the jail and interview the defendants and explain their options, and would calender them to observe the court. If the defendant was interested, he or she would call the case coordinator to start the opt-in process, which included a clinical assessment and acceptance into the court. Once accepted, the case coordinator ensured that the participant had suitable housing, performing a home visit if warranted, or by making referrals to appropriate transitional housing, or to an apartment. The case coordinator also visited the participant's employer to explain the demands and the benefits of the Anchorage Wellness Court. The case coordinator escorted the participant to medical appointments if necessary and provided other transportation through municipal bus passes. He or she supported the participants through visits to Nalgroup, if invited. The case coordinator also administered drug and alcohol testing.

Drug and alcohol testing ability in Wellness Court has evolved considerably from the random saliva tests used in the beginning by Anchorage police or the case manager. In 2001, the court began utilizing the Sobrietor, a voice recognition device installed in the participant's residence. The system would randomly call the participant twice a day to verify that the participant was at home and the participant would blow into the device, which would then detect and report any alcohol use.

After the case coordinator became convinced that defendants could "drink around" the Sobrietor, the Anchorage Wellness Court began using Secured Continuous Remote Alcohol Monitoring (SCRAM) testing in 2003. The SCRAM unit is a device put on the participant's ankle that tests for alcohol through the skin once an hour. If the unit detects alcohol, it begins testing every twenty minutes to determine the rate of dissipation. It has the ability to detect both interference and user tampering. SCRAM was used in the Anchorage Wellness Court through the end of the study period. The Anchorage Wellness Court also began using GPS monitoring for some clients, which had the ability to track and report a participant's whereabouts actively in real time or passively upon inquiry.

In the Anchorage felony courts, and in Bethel, the Department of Corrections performed case management supervision until 2004, when it declined to continue its participation. As previously discussed, the department's pull-out severely hampered the functioning of all those courts for a considerable period of time because prosecutors refused to refer defendants due to the lack of supervision.

In 2005, the Department of Health and Social Services agreed to perform those functions through its Alcohol Safety Action Program (ASAP). It hired two probation-level officers as case coordinators in Anchorage for the felony courts, and one as a court coordinator in Bethel. When the program in Ketchikan began, another was hired there. ASAP also hired a court coordinator to assist

with planning a court in Fairbanks. ASAP did not perform case management or supervision in Juneau; case management and supervision there were performed by a court coordinator hired by the local chapter of the National Council on Alcohol and Drug Dependence (NCADD).

A few Anchorage Wellness Court stakeholders reported that case management was one of the most important elements of the program. Several interviewees remarked that the case coordinator position was even more important than that of the judge because the case coordinator interacted with participants much more often, and formed closer relationships with them.

The disruption in operations caused when the Department of Corrections pulled out was a frequent topic with interviewees from other courts. The disruption to the collaboration and to operations occurred due to the lack of case management and supervision services. After ASAP assumed those duties, interviewees reported being very satisfied with the change. Many commented that having case management and supervision functions housed within the Department of Health and Social Services seemed to be a better "fit" because staff was better able to access needed referrals and information, and because staff had a more amenable attitude towards providing treatment to substance abusing offenders.

In general, the case management and supervision services provided by the Anchorage Wellness Court worked well and appear very transferable. The court had stable case coordinators and supervision, as well as back-up supervision from the Anchorage Police Department. The case coordinators displayed a high degree of flexibility, willingness to use emerging technologies, and the ability to form good relationships with both participants and other therapeutic court team members. Case management and supervision services in the other therapeutic courts also worked well after the change to ASAP. The situation that occurred when the Department of Corrections declined to provide supervision services demonstrated the necessity of flexible thinking and the ability to effectively adapt and work around significant problems as they occur in the therapeutic courts.

Evaluation

Evaluation is one of the "ten key components" of a drug court and one of the "ten defining principles" of a DUI court (NADCP, 1997; Marlowe & Monchick, retrieved April 16, 2006). Researchers and advocates warn that credible evaluations are the only mechanisms for determining program success or failure (Marlowe & Monchick). Process evaluations weigh progress towards meeting operational and administrative goals; outcome evaluations weigh progress towards meeting longer-term goals such as reducing recidivism (NADCP, 1997). Ideally, evaluation structures and data collection methods should be planned and implemented along with the therapeutic court

operations (ibid.). Evaluation should be an ongoing process to monitor day-to-day activities, assess services, and provide information on long-term results (ibid).

Aside from this study, the Anchorage Wellness Court was not independently evaluated for process or outcomes during its seven year history. The only publicly available data about the program came from Partners for Progress, which contracted with the University of Alaska to compile yearly "summaries of facts." At the time of the interviews, many interviewees anxiously anticipated the results of the current study. One reason given by administrators for not previously evaluating the Anchorage Wellness Court was the undertaking of this longitudinal study.

Nonetheless, about half of Anchorage Wellness Court stakeholder interviewees believed that they had enough data to evaluate the program for their own purposes. Many of those who answered in the affirmative, however, believed that they did not need data. Because they were the ones interacting daily with the participants, they believed that they could see success directly. Also, as one stakeholder commented, the stakeholders were the ones *giving* data, not necessarily receiving it. But those who believed that they did not have sufficient data felt the lack keenly:

> Data collection and analysis is a big weak point – gaping hole – in the process. How many graduates? Opt-outs? Recidivists? [The program manager] is creating that data but it's not at our fingertips. It's not part of the general discussion. The [court] administration has distrust of the [Anchorage Wellness] Court because of that. . . . There hasn't been a good self-evaluation process.

A few stakeholders acknowledged that, although their direct experience was sufficient for them to see the program's and participants' success, more data were needed to ensure funding from outside sources.

> The way you sell these programs is to tell administration and policymakers how much money is saved, lives saved. You need hard numbers. Some fiscal analysis of savings.

When asked what data they had used, many interviewees replied "none." Some interviewees identified articles on other drug courts and newspaper articles as sources for their information. Some identified court data on participation numbers, or individual court records. Some interviewees had reviewed Partners for Progress's summary of facts, which included numbers of participants, graduates, and re-arrests. But many were suspicious of those reports, claiming that they were "skewed" due to the advocacy bias of Partners for Progress and describing them as "sales pieces."

When asked what data they would like to see collected, interviewees identified several types of information. Most commonly, interviewees wanted data on long-term outcomes, especially recidivism measures and on the program's costs and benefits. They suggested ranges of one, three, and five years post-program. They also wanted data on "success" but commented that the definition of success varied greatly and could include graduation rates, long-term sobriety, no new criminal offenses, or no new alcohol- related offenses. Many interviewees also expressed their desire to have information on wider system costs such as societal benefits and savings to the criminal justice system. Many also wanted information on long-term personal benefits that accrued to the successful participants, such as restoration of relationships, employment, and health.

In addition to outcome measures, interviewees also wanted process data. They wanted to know how many participants opted-in, how many opted-out, and how many graduated. They also wanted to know more about participants such as who the program was offered to, who declined or accepted, and what made participants stay in the program or leave. Several interviewees wanted data on specific program elements, such as attendance at recovery and Nalgroup meetings, so that they could better adjust program requirements to participant needs. Many interviewees expressed some surprise that basic process information was not readily available during the much of the study period.[56]

Policymakers identified the same types of outcome measures and process/performance data as important. They also tended to want baseline data on other offenders so that they could compare outcomes. They wanted cost benefit analyses, and systems costs, such as avoided costs to public psychiatric institutions, and publicly subsidized emergency rooms. Many policymakers were troubled by the prevalent use of anecdotal experiences and uplifting stories to justify the program and wanted concrete data.

Both groups were asked whether they had experienced or could foresee problems collecting data or acquiring information. About half did not identify any potential problems. The others identified individual problems with data collection, but no themes emerged. Two interviewees remarked on the costs of collecting data. One person remarked on the difficulties of obtaining "quality of life data." Another commented on the poor quality of the municipality's case management system. Similarly, someone commented on the difficulty of obtaining data from the Department of Corrections. Another noted that data kept by the court had been accidentally deleted and improperly stored off-network. And another interviewee felt frustrated by not being able to talk to, or receive information from, treatment providers. But overall, interviewees believed that the data

[56] Current process information such as the number of participants, graduates, and opt-outs is currently readily available from the court system's therapeutic courts coordinator.

were obtainable, and most believed that data were being collected, although that was not the case in the early days of the Anchorage Wellness Court.

Funding

A sustainable program largely depends on, among other factors, sufficient funding (Jaeger & Reilly, retrieved April 16, 2006). Sufficient funding depends on the efforts made to secure it – therapeutic court money is usually a "hodgepodge" of different federal, state, and grant money. (Douglas & Hartley, 2004). Douglas and Hartley suggested that local drug courts engage in a two-stage process of obtaining resources: applying for initial seed money through state and federal grants, and then scrambling for resources to sustain their operations when the seed money runs out. They suggested that the search for resources requires ingenuity, opportunism, and luck. Their 2004 study indicated that initial grant money usually came from the U.S. Department of Justice, or state governments, with matching funds from local government. When the seed money ran out, sustainable continuation funding tended to come from six broad categories: federal funds, state funds, county funds, participation fees, donations, and other sources such as "scrounging" for otherwise-discarded equipment.

The Anchorage Wellness Court started without any external funds. It developed largely through the application and receipt of a discretionary federal Byrne grant and through some local donations, mostly generated by Partners for Progress. As Douglas and Hartley reported, the funding sources grew to include local government appropriations and staffing, state legislature-appropriated funds, and federal highway funds from the National Highway Transportation Safety Administration (NHTSA).

Funding procurement for the addictions courts in Alaska has resulted from a variety of approaches, generally following the model suggested by Douglas and Hartley. The Alaska experience suggests that the amount of available funding is more important than its source. Most policymakers agree that this type of hodgepodge funding is likely to continue, although direct, sustainable state funding would be optimal.

Cost concerns and funding

When asked what the biggest cost concerns were for the Anchorage Wellness Court, stakeholders almost invariably replied in terms of costs, to participants. They were concerned about treatment costs, naltrexone costs, transportation costs, and housing costs. Only a handful of stakeholders identified budget concerns and program costs, such as judicial and court staff, jail transport and safety officer overtime, and attorney time. A few also remarked on state treatment funding issues.

This seeming unconcern for program costs and funding from stakeholders probably stemmed from the perception that funding was readily available. During the study period, the Anchorage Wellness Court had ample funding from its Byrne grant, the Alaska Legislature, and NHTSA funds. As one stakeholder commented:

> The truth is that right now, it's not a matter of money, because NHTSA money is coming in and Partners for Progress has a good reserve. . . . It's more bureaucratic, internal obstacles than it is money.

One person attributed the financial security of the court to Partners for Progress's ability to lobby the legislature and anticipated that its success would continue:

> We've been fortunate to have Partners for Progress to assist us. . . . I can see Partners for Progress funds continu[ing] because they can lobby the legislature. They'll be successful.

Overall, stakeholders' responses demonstrated that although they were concerned about individual participants' costs, they were largely relieved of the burden of worrying about program costs and funding.

Another early court, the State Wellness Court in Anchorage, was also a primary beneficiary of Partners for Progress's lobbying efforts. One stakeholder from that court reported that it was only able to obtain buy-in from the district attorneys by obtaining funding for them:

> The DA's office has . . . "taken the money from the devil" to quote him. So they're in. And I think they're behind it. Why a separate state court? We got here because there was no money for the state before. Once Partners for Progress got the money, and once the PD and the DA took it, they were obligated. Before, it cost more than it benefitted the state.

When asked what was a likely source of further funds, that stakeholder replied "Partners for Progress."

Other emerging therapeutic courts were not so fortunate in the early days, before Partners for Progress expanded its efforts statewide. When asked whether their program had sufficient resources to enable adoption of the Anchorage Wellness Court model, a stakeholder from the (first) Juneau Wellness Court answered:

> No. Absolutely not. If we could have thrown money at the prosecutors [like Partners for Progress did] we could have bought some support. Even our city prosecutor won't agree to it. The state is dragging their heels and really insisting on money.

The same stakeholder reported that the court system was not receptive to helping find funding for that court at that time (2001) and that finding a non-profit, similar to Partners for Progress, to funnel grants through would have helped that program with treatment and attorney costs. He identified the most important cost issues for that court as case management, a prosecutor, and treatment – costs that Partners for Progress assisted with the early days of the Anchorage Wellness Court. Another stakeholder of that court echoed that sentiment but identified training money as the most important cost issue – another cost that Partners for Progress funded in Anchorage.

A later interview with a (second) Juneau Therapeutic Court interviewee showed that, with adequate funding, the court could operate and sustain itself. By then (2006) the Juneau court had received a three-year grant through NHTSA, funneled through the National Council on Alcohol and Drug Dependence. The state prosecutor's office was on board, although still complaining about lack of funding, and treatment money and case management money was available. Training money for staff continued to be an issue.

Similarly, in Ketchikan, which was funded through a NHTSA grant, a stakeholder reported no cost concerns and that funding was adequate. Partners for Progress, which by then had applied its efforts statewide, funded some training, but aside from that the stakeholders had been able to implement the program using only grant funds. Similar to Anchorage stakeholders, Ketchikan stakeholders reported only concerns about participant costs, not program costs, when queried.

A stakeholder in the Fairbanks court, which was still in the planning stages, reported that there was inadequate funding for treatment in that court. Obtaining a suitable treatment provider with the available funds provided proved to be next to impossible. The difficulty in finding a suitable treatment provider, along with difficulty in obtaining buy-in from the district attorney's office, continued to delay implementation of that court.

In the House Bill 172 courts – the Felony DUI Court in Anchorage and the Bethel Therapeutic Court – stakeholder interviewees were also largely unconcerned about program costs, as those had been funded by the legislature.

> [The judge in Bethel] was funded by House Bill 172. First let me say that the funding has been adequate and we really appreciate the legislature's experimenting with this.

When those stakeholders were asked about cost concerns, they tended to answer they needed "better" or "more" of the resources they already had, such as treatment, drug testing and designated attorney time. The same was true with the federally-funded Felony Drug Court stakeholders. As with the Anchorage Wellness Court, the larger concerns in the HB 172 and Drug courts revolved around bureaucratic and collaboration issues.

When considering the successes and failures of the Alaska therapeutic courts, a picture emerged that when adequately funded, the courts operate well and can focus instead on individual participant needs or improvements to their programs. When not adequately funded, they have great difficulty in starting up and operating.

When the court system and other agencies were resistant to therapeutic courts in the early days, Partners for Progress's efforts in obtaining funding was critical to the Anchorage and State Wellness Courts, and to a large extent, for the House Bill 172 courts. The federal Drug Court grant was critical for the Anchorage Felony Drug Court. The legislature's funding for the pilot House Bill 172 projects and the federal funding, which was designated as start-up money, seemed to achieve its intended purpose – to enable the agencies to experiment with untried projects without having to reallocate their own scarce funding. After the court system became more receptive to therapeutic courts, its efforts in obtaining the NHTSA grants enabled the start-up of Ketchikan and Juneau courts. The court system has also been successful in obtaining sustained funding from the legislature for all the therapeutic courts by subsuming some program costs into its continuation budgets in recent years.

Optimal and probable sources of funding

Policymakers were asked about their perceptions of what were optimal sources for funding the therapeutic courts. Most often, policymakers cited "general funds" or "legislative funding" as optimal. Policymakers who identified those funds regarded them as optimal because they were sustainable, or at least more sustainable than other types of funding. One policymaker went so far as to claim "the state has plenty of money." Other policymakers were less optimistic and regarded state funds as a limited resource with many competing projects. One policymaker, while agreeing that state funding was optimal, believed that the funding should be funneled through each participating agency so that they all had a stake in the courts' outcome. Similarly, one policymaker believed that optimal funding was through a mix of city and state funds so that each would have a stake in the courts' success.

A few policymakers identified the "alcohol excise tax" as an optimal source of funding.[57] Similarly, a few policymakers identified the Alaska Mental Health Trust Authority (AMHTA).[58] A few people believed that federal funding was optimal. Several policymakers believed that private, not public, funding was optimal.

When faced with practicalities, most policymakers agreed that funding the courts using a mix of funding was most probable. Federal funds, they stated, were largely intended for start-up costs and were limited in both scope and duration. Similarly, policymakers noted that the AMHTA provided initial funding for projects to effect policy change and then advocated for sustained state funding. Policymakers were in agreement that requiring alcoholics to self-pay for the therapeutic courts was not realistic.

Currently, most of the Alaska therapeutic courts enjoy sufficient funding to operate. Many interviewees, however, remarked on the need to "scale-up" so that the courts could become cost-efficient. At times, some of the courts, such as Ketchikan, Juneau, and the Anchorage Wellness Court, processed fewer than twenty participants. Given the resources expended on those courts, some interviewees believed that funding would not continue unless they could increase participation to justify the courts' fixed costs.

Like most therapeutic or problem-solving courts, the Alaska courts have used a hodgepodge approach to funding, which policymakers expected would continue indefinitely. It is unlikely, however, that the Alaska courts would need to be as reliant upon outside funding as they were in the early days because the therapeutic courts have, to some degree, gained acceptance as a criminal justice approach. Groups wanting to start a therapeutic court in a different location, which experience institutional resistence from court systems or agencies, could follow the tried and true model of raising initial start-up funds from federal or state grants and then seeking sustainable funding from there. Although administratively burdensome at times, the hodgepodge funding approach was successful in Alaska.

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[57] Fifty percent of alcohol excise tax proceeds are allotted to the Department of Health and Social Services for drug and alcohol prevention and treatment programs. AS 43.60.050.

[58] In 1956 Congress set aside a million prime acres in Alaska so that the then-territory could fund and provide mental health services to its residents. Alaska Mental Health Enabling Act Pub.L.N. 84-830, sec. 202, 70 Stat. 709, 711-712 (1956). Contrary to Congressional intent, Alaska conveyed and encumbered the land without funding those services. After a lawsuit in 1985, the trust land was restored and funding restored. State v. Weiss, 706 P.2d 681 (Alaska 1985). Currently, the Alaska Mental Health Trust Authority administers those funds. For more information see The Alaska Mental Health Trust Authority website at: http://www.mhtrust.org (last visited June 12, 2007).

Perceptions of the Transferability of the Wellness Court Model

The previous sections attempted to infer information about transferability indirectly from responses to questions about court operations. Interviewees, however, were asked directly if they saw any problems in transferring the Anchorage Wellness Court model to another jurisdiction in Alaska. They identified many difficulties, primarily the lack of resources in smaller, rural locations. They also saw many opportunities for replication both in Alaska and in other areas and offered suggestions for taking the Anchorage Wellness Court model elsewhere.

Obstacles

The obstacle most often identified was a lack of resources across the state, primarily the lack of suitable substance abuse treatment. Less often they noted the lack of centralized social services, case coordination, and monitoring. A few interviewees noted the lack of suitable housing, medical services, employment, access to naltrexone, and even a lack of a court in many areas. Some interviewees believed that scale could pose a problem – not enough defendants would be eligible and willing to participate in small locations to justify the expense and resource-requirements of an Anchorage Wellness Court model.

The second most common obstacle was a lack of buy-in or cooperation among state agencies, including district attorneys, public defenders, and community supervision providers. They attributed this probable lack of cooperation to philosophical differences, different criminal justice goals, a lack of manpower or ability to cover a therapeutic court due to one-person district attorney or public defender offices, and a resistance to working as a team. Similarly, some interviewees anticipated problems finding a suitable judge in some locations who was willing, educated, liked, and committed to the off-hours work that a therapeutic court required. A few interviewees believed that dedicated, committed individual proponents or advocates for a Wellness Court were critical.

Some interviewees commented that the model should not be “imposed” or “plopped down” in a community. About as many stated that the model needed to be adapted to fit local resources, needs, attitudes and working relationships. Community will, and involvement were seen as critical for transferring the model.

Some interviewees remarked that the lack of culturally-sensitive treatment providers and team members would pose a problem when dealing with rural and Native Alaskans. Others believed that those skills were obtainable through education and skill-building.

Last, some interviewees were concerned about the lack of anonymity and confidentiality that was inherent in small locations. They stated that confidentiality about medical and treatment

information would pose a problem because court employees, treatment providers, and other potential team members knew or were related to many defendants. In contrast, some interviewees believed that the inherent "smallness" of rural locations would prove to be advantageous to transferring the Anchorage Wellness Court model. Those interviewees remarked that, although treatment resources were limited, supervision and monitoring of the defendants would be easier because the entire community would be watching the defendants.

Opportunities

Many interviewees saw no potential problems in transferring the Anchorage Wellness Court model. And some interviewees believed that the model could be adapted and modified to fit any location, using the resources available in a particular community. Combined, these interviewees about equaled those that foresaw specific problems.

Stakeholders were asked what suggestions they would give to a group starting an Anchorage Wellness-type court. As could be expected, many stakeholders' replies involved getting early buy-in from prosecutors, public defenders, and private attorneys. One person recommended that a way to achieve buy-in was to give prosecutors unilateral discretion about who was eligible for the court because once a defendant opted-in, the prosecutor relinquished control. In contrast, another person recommended that prosecutors should not be given any control and therapeutic court participation should be mandated by the legislature. Neither of these extreme views was widespread – most stakeholders believed the way to achieve buy-in would come through education and training. A few suggested that planning was essential to achieve cooperation and buy-in and that all stakeholders should have a voice, and a stake, in the process. One person commented on the need for realistic expectations from all stakeholders.

Interviewees also suggested that, when planning, a start-up group should watch other courts in operation, as well as obtain nationally-available therapeutic court training. A few interviewees recommended reducing practices and procedures to writing before implementation so that all team members could "be on the same page." Only one person recommended against extensive planning and advocated that stakeholders move quickly into implementation to see what worked.

A few stakeholders believed that a Wellness-type court was possible even in places without adequate treatment resources. They believed that some elements of the court could be implemented and that treatment could be provided in other ways, or foregone. They identified MRT, drug and alcohol monitoring, naltrexone, and Nalgroup as elements that could be easily transferred. A few interviewees believed that substance abuse treatment could be provided in rural areas through videoconferencing or through a 30-day stay at a residential facility, with aftercare in the local village. Employment, a key element in the urban Anchorage Wellness Court model, was viewed as

less important when transferring the model to rural areas, where jobs were either seasonal or difficult to obtain.

Most interviewees believed that a Wellness-type court was achievable in the larger cities with treatment services, such as Fairbanks, and Juneau. Most also believed it was doable in the smaller cities of Palmer/Wasilla, Kenai/Soldotna, and Ketchikan. Fewer, but still a significant number believed that a Wellness-type court could be implemented in regional hubs such as Kotzebue, Nome, and Sitka and noted the success of the Bethel Therapeutic Court, which drew on an entire region. Most were skeptical of its viability in small, isolated rural villages due to lack of treatment, legal infrastructure, and local idiosyncracies.

Some interviewees, however, noted that small villages and regional hubs already operated in a "therapeutic" way. They had a *de facto* team in place with one judge or judicial officer, one prosecutor and one public defender. Because judges and attorneys had time to devote to the defendant, they could expend resources and attention on the defendant that was not likely to occur in urban areas absent a therapeutic court setting. Some interviewees also noted the potential for a Wellness-type court in tribal courts settings, although they did not provide details about how that could occur. Some interviewees noted the geographic spread of some regions and were dubious about having a therapeutic court due to the difficulties of access, believing that in-person, face-to-face contact was critical to success.

Outside of Alaska

Interviewees were also asked if they foresaw specific problems transferring the Anchorage Wellness Court model to locations outside Alaska. Most interviewees saw no obstacles. Those who did saw many fewer obstacles and noted that therapeutic – mostly drug – courts had been operating in other states for many years. Those who did identify obstacles saw the lack of treatment as the biggest challenge.

A few people identified some elements that other states might not have that made the therapeutic courts successful in Alaska. One person stated that statutes that permitted reductions in fines and jail sentences might not be available other places. One person commented that the need for alcohol addiction courts in Alaska was perhaps far greater than in other places, where drugs are more of a problem. As a result, other places might have less interest, commitment, and be less favorably inclined towards the mandatory use of naltrexone.

Overall, interviewees believed that the model was highly transferable in a theoretical sense. They questioned, however, whether external supports were in place – such as treatment resources, case management and supervision personnel, or attorney buy-in – to support a therapeutic court

endeavor. Given the resource problems in Alaska, many supported experimenting with a scaled-down version of a therapeutic court, trying compliance hearings with MRT for instance, or alcohol monitoring with community supervision, especially in small rural areas. Most interviewees believed that the therapeutic courts would continue to expand successfully in road-served areas with existing treatment resources.

Applications of Therapeutic Court Practices and Principles

In 2000 and again in 2004, the Conference of Chief Justices and Conference of State Court Administrators advocated encouraging "broad integration" of the "principles and methods of problem solving courts into the administration of justice." Drug court researchers have begun to explore how to implement that goal. (Farole, Puffett, Rempel, & Byrne, 2005).

Through focus groups of judges and other stakeholders, researchers Farole et al. identified five principles or practices of drug court model courts that participants believed were appropriate to apply more generally: a problem-solving, proactive orientation by the judge; direct interaction between the defendant/litigant and the judge; ongoing judicial supervision; integration of social services; and using a team-based non-adversarial approach. Some types of cases were viewed as more appropriate, such as child-in-need of aid cases, delinquency cases, and criminal cases in which the defendant exhibited an underlying problem such as addiction or domestic violence. Some cases were deemed less appropriate, such as criminal cases involving violence. Family court cases were viewed as inherently more problem-solving oriented and allowing of greater flexibility. Probation was also viewed as an excellent vehicle for problem solving due to the ability to set and monitor conditions, and to respond to violations (ibid.).

Barriers for wider application of principles and practices included limited time and resources, and a lack of staff to link defendants to services and provide the court with progress reports. Focus group participants believed that problem-solving could be achieved through judicial education and training, informal exposure to the principles and practices, assignment or rotation of judges to problem-solving courts, and judicial leadership that encouraged and enabled judges to try problem-solving techniques (ibid.).

In Alaska, interviewees were asked in follow-up interviews about whether therapeutic court principles, practices, or procedures could be applied to standard court proceedings. The responses were very mixed. Most interviewees were willing to consider it, but did not know how that goal could be implemented successfully given limited resources. Some were flatly against such a broad application, even while endorsing the process for addicted offenders. Many believed that the change would be slow but would occur gradually as more judges were exposed to problem-solving techniques in the therapeutic courts. Most believed that formalized training or imposing problem-

solving practices would not succeed and that informal exposure from other judges, or through experience or exposure to a therapeutic court would work better. This process had already begun at the time of the follow-up interviews.

Several therapeutic court-inspired projects sprang up in the later years of the study period across Alaska, suggesting that the dissemination of problem-solving principles, procedures, and practices was occurring as judges become more familiar with those concepts. One judge, Barrow Superior Court Judge Michael Jeffery, for example, implemented a system of compliance hearings for defendants with a probation condition of mental health or substance abuse treatment. ASAP probation officer and treatment providers attended the compliance hearings to give reports. There was no screening or opt-in process. As in therapeutic courts, defendants were encouraged with direct interaction from the judge and applause when appropriate. Prosecutors attended and were ready to file petitions to revoke probation at the hearing if defendants were found to be non-compliant with their treatment requirements.

Another judge, Kotzebue Superior Court Judge Richard Erlich, implemented a program for "minor consumption of alcohol" cases. Minors who were charged with consuming alcohol were required to attend an alcohol education course. In the Kotzebue court, the judge scheduled the program for after hours. He first held arraignments and took changes of pleas in the courtroom and then convened in another room and introduced the speakers. He also provided refreshments. If the participant completed the course, the judge set aside the judgment and reduced the fine. Parental involvement was encouraged. The program was taken over by the Juvenile Alcohol Safety Action Program when it was funded by the legislature in 2003. Recently, District Court Judge Dennis Cummings implemented a similar process for minor-consuming cases in Bethel.

In Anchorage, District Court Judge Stephanie Rhoades applied her therapeutic court experience to petitions to revoke probation (PTRPs). In misdemeanor cases in which treatment was a condition of probation and the defendant had not complied, she ordered the defendant to get an assessment and set the case on for another PTRP hearing. An ASAP officer was present at the hearing to link the defendant and the provider to schedule the assessment. After the assessment was completed, at the follow-up PTRP hearing the defendant could choose to opt-in to (State or Anchorage) Wellness Court, if the assessment is appropriate and the case acceptable to the prosecutor, or could choose to complete treatment elsewhere. If the defendant declined both options or failed to appear, he or she was remanded to jail or the court issued a bench warrant.

Even without a special process, many judges with therapeutic court experience reported that they applied their problem solving skills in traditional case settings. They stated that they asked more questions, interacted directly with litigants more often, and monitored cases more closely. As an example, one judge stated that he sent a parent for an alcohol assessment in a custody case and

then set the custody case on for monthly hearings to monitor the parent's compliance with treatment and no-alcohol conditions for joint custody.

Many judges, however, viewed these principles and practices as derived from their own experience and not directly from the therapeutic courts. Many judges reported that judges and the courts were becoming more proactive even before the advent of therapeutic courts. They stated, for example, that civil discovery rules promulgated in the 1980s and 1990s, which forced parties to share information earlier in civil cases, allowed judges to proactively manage cases and encouraged early settlements. Many judges in Alaska had also experienced trying different ways of requiring and encouraging alcohol treatment and viewed "problem-solving" principles and practices not as an innovation but as part of a set of judicial skills and interactions that they were accustomed to using when they had the time and the resources.

Part IV
Conclusions

Initial Adoption

One of the preliminary questions this study posed was: how was the Anchorage Wellness Court able to start up and operate when other such efforts in Alaska failed or stalled for lengthy periods of time? The Anchorage Wellness Court took root in 1999. The Juneau Wellness Court did not. The Anchorage Wellness Court set the Anchorage legal community abuzz. The Anchorage Felony Drug Court did not. Why?

Some factors critical to initial adoption were identified by drug court researchers and essayists Fox and Wolf (2004). They identified four elements critical to initial adoption of drug courts: leadership, salesmanship, legislation, and federal support (ibid.). Although Alaska joined the drug court movement relatively late in the day, in 1998 or 1999, well after the initial adoption phase in most of the country, the initial development of the Anchorage Wellness Court fits well into their model.

A strong leader, usually a judge, was essential. Fox and Wolf described the typical leader of a first-wave drug court as a free-thinker, charismatic, and well-connected. This leader was often "anti-establishment" and entrepreneurial. When thwarted by refusal from institutional sources, he or she turned to outside groups and formed partnerships for support and funding. This leader had good communication skills and moved for reform within the courts. Leaders often emerged in smaller communities because of greater opportunities for networking, closer community ties, and the possibility for greater influence (ibid.).

"Salesmanship" was also critical. A drug court initial-adopter attended associations and conferences, advertised success through "graduation" ceremonies, curried favor with the press, and mastered state politics. These political connections, in turn, promoted the third element, favorable legislation. Sometimes this came in the form of enabling legislation, sometimes alternatives-to-incarceration legislation, and sometimes mandated-courts legislation (ibid.).

Last, federal support and direction was vital. The United States Department of Justice provided necessary funding for the adoption of many first-wave drug courts. It also promoted consistency and uniformity in drug courts by advancing the "10 Key Components." Although the department did not require these components to be part of its funded programs, it did require grant seekers to "discuss" them in their applications (ibid.).

By all accounts, the adoption of the Anchorage Wellness Court innovation followed this model neatly. In Anchorage, Judge Wanamaker emerged as the leader and displayed many of the attributes identified by Fox and Wolf. Interviewees described him as a strong, charismatic speaker. He formed early critical partnerships with Janet McCabe, who then formed Partners for Progress, and with John Richard, the then-municipal prosecutor. Judge Wanamaker advanced change within the court, at first using naltrexone within the boundaries of existing sentencing practices, then gradually putting the pieces together for a recognizable "drug court" for misdemeanor alcohol-driven offenders.

After its inception, Judge Wanamaker and Janet McCabe embarked on a deliberate course to "sell" the Anchorage Wellness Court to practitioners, community members and legislators. They spoke at Rotary. They created and taught bar association continuing education classes. Judge Wanamaker spoke from the bench and at "brown bag" presentations for lawyers and community leaders. Partners for Progress developed an informational video. They held graduations and invited the press and key legislators.

Importantly, they convinced key criminal justice policymakers and legislators of the usefulness of the approach. Early on, they gained cooperation of not only John Richard but also Walter Monegan, then-Chief of the Anchorage Police Department. They also sparked interest in key legislators, particularly Norm Rokeberg, then-chair of the House Judiciary Committee, and Brian Porter, former chief of the Anchorage Police Department and then-Speaker of the House. Those two legislators were interested in ways to increase public safety by dealing with the plethora of alcohol-related crimes and had enacted legislation increasing penalties for DUI offenders. Those legislative connections resulted in the passage of House Bill 172 in 2001, which enabled the felony pilot programs in Bethel and Anchorage, and the passage of related funding for the Anchorage Wellness Court. The introduction and passage of House Bill 172 served to increase legislative awareness of drug and other therapeutic courts overall and set the stage for further development of therapeutic courts in the state.

Last, they sought and accepted federal funding assistance but with a key difference from many programs. The assistance came in the form of a federal discretionary Byrne public safety grant, not through a Department of Justice drug court grant. That difference allowed the Anchorage Wellness Court to deviate, at least for a time, from the programmatic "10 Key Components" encouraged by the department. Unlike the Anchorage Felony Drug Court, which had accepted a Department of Justice drug court grant, the Anchorage Wellness Court had the liberty to begin operating without some of those components, without a lengthy planning process, and without formalized procedures. This allowed legislators and community leaders to view the processes – and individual successes – immediately, without having to wait two years to see how it would work. This immediate implementation undoubtedly helped to garner support for the court.

Other therapeutic court initial-adoption attempts around the state failed or stalled because they did not have one or more of these elements. The Anchorage Felony Drug Court judge did not have the opportunity to employ the same leadership skills or connections as Judge Wanamaker. That court began in the context of a Department of Justice initiative to establish drug courts in all fifty states. The planning money provided to the Alaska Court System allowed for a lengthy preparation process and training for all team members. The focus on collaborative decisions by team members and court administrators resulted in little development of community and legislative support. Also, without a Partners for Progress promoting the court through the media and community events, and lobbying the legislature, the Anchorage Felony Drug Court remained largely unknown outside the courthouse.

The Juneau Wellness Court, which began informally in 1999, never achieved the initial success of the Anchorage Wellness Court. It did not have the federal financial resources that enabled training or the hiring of a case coordinator in the Anchorage Wellness Court. It did not have judicial or community leaders able to convince prosecutors of the value of the therapeutic court approach. It also suffered from the lack of incentives for misdemeanor offenders. It was discontinued in 2003. But in 2005, a renewed effort to adopt an addictions court in Juneau succeeded – with a new target population, a new judge, and most importantly, with federal funding through a substantial NHTSA grant.

The only other therapeutic court to succeed in the early initial-adoption phase was the Court Coordinated Resources Project (CRP – also known as the Anchorage Mental Health Court). Started earlier by Judge Stephanie Rhoades, that court also had all the necessary ingredients for success. Geared toward providing services for misdemeanor offenders with mental health problems, it had a strong, dedicated leader at the helm. The judge formed valuable partnerships – again with the Municipality of Anchorage prosecutor's office and with the Anchorage Police Department. Importantly, the court found outside funding and community support through the Alaska Mental Health Trust Authority. Specific legislation was not necessary for the CRP because it did not deal with the public safety concerns that were raised by DUI cases, it already had adequate incentives, and because, at least initially, it did not request additional legislative funding.

In addition to leadership attributes identified by Fox and Wolf, interviewees reported that the two successful initial-adopter judges, Judge Rhoades and Judge Wanamaker, had one more critical thing in common: a particular passion to address the "problem" to be solved in their problem-solving court that was derived from experience with people they knew. Interviewees believed that these life experiences caused those two judges to be more dedicated, less easily thwarted, and tireless in their efforts. They were willing to undertake the additional administrative duties of the courts without additional compensation. They were willing to spend their own time at lunch, at nights, and on weekends to research issues, resolve questions, work on cases, and promote

the courts in the community. Their life experiences also gave the judges an ability to impart an air of authority about the problem that other judges, without those experiences, could not project.

Once the Coordinated Resources Project and the Anchorage Wellness Court became entrenched into the Anchorage legal community, the therapeutic court ideal began to spread. Many judges, communities, and policymakers became aware of this new way to approach addiction in criminal offenders and believed it to hold promise. Even the "unsuccessful" effort in Juneau and the slower-to-start felony courts in Anchorage provided essential exposure to therapeutic court ideas and were essential for the next stage: replication and institutionalization.

Replication and Institutionalization

The addictions courts that followed the initial efforts in Alaska – the Anchorage DUI Court, the State Wellness Court, the Bethel Therapeutic Court, the Ketchikan Therapeutic Court, and the Juneau Therapeutic Court – were in essence replication courts. They all took some ideas and methods from the Anchorage Wellness Court. They sprang from the initial adoption successes of the Anchorage CRP and the Anchorage Wellness Court. Because the therapeutic court concept had been accepted in Alaska, at least experimentally, the replication courts did not need all four – or perhaps five – of the initial-adoption elements necessary for the Anchorage Wellness Court and the CRP.

After the initial adoption of the CRP and Anchorage Wellness Court, replication of the courts in Alaska was slow compared to the national scene. Nationally, drug courts, and drug-court-model courts were replicated a thousand times over. As of 2004, over 1,600 drug-court-model courts operated in the United States. (Huddleston, Freeman-Wilson, Marlowe, & Roussel). Although still developing, the growth of the primary modality – adult drug courts – has slowed (ibid.). In Alaska, in 2001 a burst of interest from the legislature added the Anchorage DUI Court and the Bethel Therapeutic Court. The Felony Drug Court actually began operating that year as well. A family dependency court, the Anchorage CARE court, was added in 2002. The State Wellness Court was added in 2004. Two additional courts were added in 2005 in Juneau and Ketchikan. At of the end of 2006, only eight addictions courts operated in Alaska. Compared to national growth, the growth from two to eight was modest and reflected caution about a program that had little long-term evidence to support its use.

The replication of drug courts nationally was not an evidence-based policy decision. As late as 2005, the jury was still out on drug courts. At that time the U.S. General Accountability office (GAO) reviewed 27 drug court programs (2005). It concluded that drug courts reduced recidivism during the length of the drug court program but that evidence was mixed on whether it affected outcomes after the program ended. The GAO bemoaned the state of drug court evaluations for

lacking strong research designs, including the dearth of evaluations with suitable comparison groups. In one meta-analysis, other researchers found evidence, but tentative evidence given weak research design, for positive post-program effects on recidivism (Wilson, Mitchell, & MacKenzie, 2006).

The explosion of drug courts across the country has been described as a judge-led "social movement" rather than an evidence-based policy decision (Nolan, 2001). The rise of this movement had little to do with evidence about the long-term outcomes of drug courts and more to do with the rise of therapeutic culture in the United States (Nolan, 2001) and responses to criminal justice conditions in the 1980's and 1990's (Dorf & Fagan, 2004). These conditions included docket pressure created by the 1980's "war on drugs"; the perception of the "revolving door" cycle that processed, punished, and recycled offenders without resolving underlying drug use or criminality; restricted judicial sentencing discretion in drug cases that frustrated judges; and popular demand for punitive responses to control the drug epidemic and its associated social problems (Dorf & Fagan, 2004). Political acceptance of the innovation occurred largely because the blending of strict supervision and monitoring with rehabilitative treatment permitted a unique left-right alliance (Dorf & Fagan, 2004) that served both interests.

As was observed nationally, in Alaska replication of the CRP and Anchorage Wellness Court was not an evidence-based decision. At the time, there was little evidence about the Alaska Wellness Court's processes or outcomes. Partners for Progress made some effort to generate information about the Anchorage Wellness Court but that effort was not viewed as credible by many policymakers or stakeholders. Instead, its "Summary of Facts" was perceived as part of Partners for Progress's advocacy and promotion efforts.

As was seen nationally, many interviewees reported that the desire to adopt and replicate therapeutic courts in Alaska reflected a desire by Alaska judges to respond to Alaska criminal justice conditions: extreme amounts of alcohol-driven crime; the "revolving door" of criminal justice; the failure of efforts to treat underlying substance and criminality problems; and restricted sentencing discretion. Some interviewees had other ideas about the motivation for adopting the drug court model in Alaska. One critic believed that judges became interested in starting therapeutic courts primarily because they were "bored" with the normal – and voluminous – processing of cases. Several others believed that drug courts arose because of failures – or refusals – by probation and parole to adequately supervise and rehabilitate offenders. But along with these responses came the hope that the programs would show long-term positive outcomes. Leaders in some communities, too, began to press for therapeutic courts to respond to alcohol-driven crime because other responses were not seen as successful.

The urge to replicate the courts, then, came largely from judges in Alaska and to some extent directly from the community. But unlike the explosive growth in drug courts nationally, the growth

of therapeutic courts in Alaska was tempered by a desire by policymakers and court administrators to balance these judicial and community desires with a desire to allocate resources according to evidence-based programs – ones that "worked." Court administrators were slow to unreservedly endorse the programs and remained skeptical about their outcomes, even while expressing support for their processes. Legislators' interest and support was hopeful but reserved. While they established the pilot courts, they also required that part of the funding for the House Bill 172 courts be used for evaluation. The interviews showed that policymakers across the board were eager for long-term outcome information and willing to modify their positions based on that information.

Despite the lack of strong evidence about long-term outcomes, drug court-modeled courts continued to expand. Nationally, the growth in drug-court-model courts has been in applying the drug court model to many types of cases (Huddleston, Freeman-Wilson, Marlowe, & Roussel, 2005). Judges, court administrators, and other criminal justice practitioners applied the model to juvenile cases, child protection cases, DUI cases, domestic violence cases, juvenile delinquency cases, and prisoner reentry situations. Recently, stakeholders have experimented with applying the methodology even to gambling and illegal weapons cases (ibid.).

In contrast, the Alaska therapeutic court movement overall has been primarily concerned with replicating the drug court model for use with alcohol-driven criminal cases. Seven of the eight addictions courts were focused on alcohol cases. But little has been published about applying the model to alcohol-driven crime or alcohol dependent or addicted offenders. That there are significant differences in the DUI court and drug court target populations was recognized as early as 1999 (Freeman-Wilson, 1999).

Only two studies have been published on DUI courts. In one randomized study of DUI courts, a study of the Rio Hondo DUI Court in California, researchers observed few differences in recidivism outcomes between DUI offender participants, who were assigned to DUI court with increased monitoring and treatment, and control groups, who were assigned to "standard" California DUI sentencing (MacDonald, Morral, Raymond, & Eibner, 2007). Researchers attributed the finding in part to the lack of incentives available to induce compliance with the DUI court for second and third-time offenders. But some components of the DUI court were already mandated by statute, making it difficult to show differences between the DUI court and other DUI offenders. In an earlier study, researchers found statistically significant differences in recidivism measures between DUI court participants and control groups (Breckenridge, Winfree, Maupin, & Clason, 2000). Both of these studies involved low-level offenders who were offered very little legal incentive to inspire compliance. Both studies involved small sample sizes.

Evidence of Alaska therapeutic courts' outcomes is developing. A recent study showed that graduation rates in the three courts studied (Anchorage Drug Court, Anchorage DUI Court, and

Bethel Therapeutic Court) were similar to national rates (Alaska Judicial Council, 2007b). It also showed that graduates of the courts committed significantly fewer crimes three years post-program than those who participated but did not graduate, and committed fewer crimes than those in a matched comparison group. Overall, the combined group of graduates and discharged participants showed a small, but not statistically significant, positive effect of the therapeutic courts versus the matched comparison group one year post-program. The Alaska Judicial Council study, however, may have been affected by the very small sample size. Sixty-three graduates of all three programs, and fifty-four discharged participants were studied (ibid.). Researchers are often unable to detect positive program effects, even when they do occur. (ibid.).

The Alaska Court System has been concerned with small participation numbers and the unrealized capacity of its existing addictions courts. During 2006, for example, Anchorage Wellness Court participation ranged from five to twenty participants but had a capacity of forty. Bethel Therapeutic Court participation ranged from sixteen to twenty-two but had a capacity of forty-five. Anchorage Felony DUI Court participation ranged from one to six and had a capacity of eighty; during most of that time the court was not operating. Overall, at the end of 2006, the stated capacity of the addictions courts[59] statewide was 256 but the courts had only seventy-seven participants.[60] The small scale of these courts increased their relative costs because staffing and certain program costs remain fixed, whether one or eighty defendants participate.

Nationally, existing problem-solving courts also tend not to meet their current capacity - the average drug-court-model court carries about 87% of its capacity (Huddleston, Freeman-Wilson, Marlowe, & Roussel, 2006). Even so, how to *increase* the capacity of existing courts to broaden the reach of the therapeutic courts has been a national concern of drug court and advocates (ibid.). Two ways of achieving this have been proposed: by expanding defendant eligibility criteria and by accepting all or most defendants who are eligible into the programs. But barriers to expanding court capacity are prevalent and include lack of funding, lack of treatment, lack of suitable supervisory services, insufficient political will, judicial apathy or resistance, ineffective screening mechanisms, limiting policies of individual team members, judicial time constraint, and lack of experience (ibid.).

Many of the barriers to increasing capacity identified nationally were the same concerns identified by the interviewees as limiting replication efforts in Alaska: scarcity of treatment and other resources, lack of political will, lack of supervision ability, and lack of experience.

[59] Included in this calculation were: the Anchorage Wellness Courts (State Wellness Court, the Anchorage/Municipal Wellness Court, the Anchorage Drug Court, the Anchorage DUI Court), Bethel Therapeutic Court, Juneau Therapeutic Court, and Ketchikan Therapeutic Court. The only courts that reached their capacity were the Juneau Therapeutic Court at fifteen and the Ketchikan Therapeutic Court at sixteen.

[60] Sources on file at the Alaska Judicial Council. Indicators for 2007 shows that the felony therapeutic courts are coming closer to filling their capacities but that the misdemeanor courts are still under-utilized.

Interviewees identified ways to overcome those barriers, including providing treatment in innovative ways, encouraging buy-in by addressing prosecutorial concerns, and providing training. A few concerns expressed nationally – funding and judicial apathy – were not concerns in Alaska.

At the end of 2007, court administrators' and policymakers' temperance about the drug court movement seemed justified. Until the existing courts fulfill their capacities, and until more evidence supports their utility, broad adoption of full-scale therapeutic courts may not be politically or practically feasible. Even so, the existing therapeutic courts have begun to be "institutionalized" into the wider court system: the court system hired a statewide therapeutic courts coordinator; it began to incorporate therapeutic court continuation funding into its budget requests; it formed the Supreme Court Advisory committee on therapeutic courts; and it participated and permitted the continued but slow expansion of the therapeutic courts within the court system. Largely due to the groundswell of community support, the court system added an addiction court in Fairbanks in 2007 and is contemplating adding another in Palmer.

Much of the recent research on drug courts is now focused on getting inside the "black box" of drug court programs to see what works. As Alaska and other states look to replicate drug courts, adapt them to new target populations, or increase their capacity, findings about what works should be integral to program decisions. Instead of whole scale adoption of the "10 Key components," each component should be considered individually with emerging research outcomes and costs in mind. Although the interviews did not present quantitative findings, they may be instructive when deciding what works in a practical sense when implementing a therapeutic court program.

The interviews suggested that some elements of the Anchorage Wellness Court's "black box" are not transferable and should be reconsidered. The Anchorage Wellness Court's focus on misdemeanor offenders when it could offer only an eighteen month program has not succeeded in drawing in sufficient participants to sustain the program long term. The lack of legal incentives, the program's length and rigor, and communications about the program to potential defendants from attorneys probably all contributed to low intake and participation. This was seen across Alaska in all the therapeutic courts that handled misdemeanors.

Adding to these problems were screening processes and standards in the Anchorage Wellness Court that appeared to screen out defendants based on non-clinical criteria. These processes and standards should be reviewed. Prosecutorial screening standards should be based on legal eligibility and clearly understood – and communicated – public safety risks. Increasing the certainty about eligibility criteria and screening criteria could serve to increase referrals from public and private defense attorneys, and limit discretion from prosecutors. With high turnover in prosecutors' offices, especially in positions that handle therapeutic court case loads, increasing the certainty about

screening standards could also serve to stabilize the therapeutic courts' operations by limiting the risk of changing procedures every time the prosecutor changes.

The interview findings also indicated that some elements worked – at least operationally – very well and are highly transferable. Generally, the treatment components of MRT and naltrexone appeared to assist recovery efforts and were easy to implement. MRT and naltrexone, or other medications, are used in all therapeutic alcohol addictions courts in Alaska. The debate about the required versus "as-needed" use of naltrexone continues; it is a required component only in half of the addictions courts. Case management and community supervision approaches also worked well. And even with its problems, interviewees viewed the model, as a whole, as transferable to other jurisdictions that had sufficient resources and court structures.

Collaborative working arrangements like those necessary for the Anchorage Wellness Court cannot be classified in terms of "black box" successes or failures. Because of their nature, they are dependent on personalities, agency cultures, and political changes. Some themes, however, did emerge from the study of that court and from comparing that court with other therapeutic courts in the state. Collaborations worked better when the "players" were limited and stable. Thus, the collaboration worked better in the municipal context than in the state one. There were fewer players, total. There was also less turnover, better relationships between the limited team members, more consistency, and less risk of one entity or another deciding to pull out or threatening to halt operations to leverage their position. In contrast, the state therapeutic court teams had more turnover, less consistency, worse relationships, and more risk of agency defection. Institutional leadership, or ambivalence, also played a key role in whether the collaboration was successful.

One big question when this study began was whether the identity of the judge was critical to the Anchorage Wellness Court. Because of his role in the initial-adoption phase, the court was known throughout the community as "Judge Wanamaker's Court." It remained to be seen whether the Anchorage Wellness Court could weather the transition to a new presiding judge. The interviews and the development of the court showed that it could and did weather such changes several times over. Although court operations were affected after every judicial change, the overall structure did not change. Certain personality traits, and voluntary service from the judge were seen as very helpful. The Anchorage Wellness Court, then, was not just Judge Wanamaker's court and could be transferred to other judges, and other jurisdictions.

The future of the Anchorage Wellness Court depends in part on how it can respond to the challenges of attracting misdemeanor participants to the eighteen month program. It may be that, absorbed into the larger umbrella of the "Wellness Courts" it can continue to exist, utilizing combined resources with the now-more-popular felony courts. It could be that the goals of the Wellness Court could change, to focus on community health rather than lower recidivism as its

primary goal. Like the CRP court, it could adopt a harm-reduction model to handle the demanding social, medical, and housing needs of its actual population.

The future of the therapeutic courts in Alaska in general appear to depend not on what "model" is used, or what discrete components are used, but on how limited resources are allocated. Treatment, attorneys, community supervision, and other resources are scarce and therapeutic courts are resource-intensive. Rural locations without treatment resources could experiment with new ways of delivering services that require fewer resources, such as attempted a scaled-down therapeutic court without a traditional substance abuse treatment regimen, but with MRT, naltrexone, and medical management, for example.

Applying therapeutic court principles and practices in conventional court settings and cases also holds some promise and will probably naturally occur over time, depending on the availability of those resources. Changes to conventional procedures, such as compliance hearings, may offer ways to implement promising therapeutic court practices without the attendant costs of a therapeutic court.

One important finding about transferability that came out of this study was not one directly related to the Anchorage Wellness Court. The interviews revealed that municipal and state justice system policymakers and stakeholders were eager and willing to try new ways of handling long-existing and pervasive problem of alcohol-related crime in Alaska. This innovative spirit could encourage many more justice initiatives by increasing confidence of policymakers that criminal justice innovations relating to substance abuse treatment will be well-received by criminal justice stakeholders and, especially, by communities across Alaska.

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Appendix A

Methodology

Anchorage Wellness Court Evaluation

Methodology: Anchorage Wellness Court

The Alaska Judicial Council used a combination of methods to evaluate the transferability of the Anchorage Wellness Court to other jurisdictions and situations. Because the concept of transferability was not easily quantified, the Council relied on numerous interviews, court observations, and a literature review to understand the viability of the Wellness Court components and other transferability concepts.

The evaluation was conducted, for the most part, by two Council staff. The staff conducted about 146 structured interviews, 150 hours of court observation, and a review of relevant literature between November 2003 and December 2007. Staff also prepared this report for submission to the University of Alaska Anchorage Justice Center, the primary contractor, and to National Institute of Justice, the funding agency.

Before beginning the interviews and court observations, Council staff met several times with court staff and stakeholders. The Council explained the goals of the evaluation, the types of questions asked and observations made, and the expected analytic approach. Based on the concerns and hopes expressed during these preliminary discussions, the Council modified its evaluation plan.

The questions about transferability of the Anchorage Wellness Court that the Council sought to answer from its combination of interviews, court observations and literature reviews were:

- What resources are essential to starting a new Wellness Court? Which are desirable, but not essential?
- Which (if any) of the components of the Anchorage Wellness Court (e.g., naltrexone, MRT, electronic monitoring, support groups, requirements for employment and payment of part of program costs, other treatment, frequent meetings with Wellness Court team), courtroom applause and support or sanction) can be transferred individually and show success in a different environment?
- What level of support is necessary (as distinct from desirable) from each of the team members: case manager, treatment staff, prosecutor, defense attorney, judge, etc.?
- What other components - strong community support, medical attention, supervision by an outside group (e.g., police officers in the case of Wellness Court), alcohol use monitoring are essential? Can these be effectively transferred separately from other components?

A. Interviews

The primary means of evaluation was a series of semi-structured interviews conducted with four major groups interested in the Anchorage Wellness Court. They included:

- people directly associated with the structure and administration of the court;
- people associated with another therapeutic court that was using the Anchorage Wellness Court model;
- people associated with a different therapeutic court model used in Alaska; and
- state and local policy-makers.

Interviewees in the groups included judges, court administrators, program managers, case managers, prosecutors, public defenders, private attorneys, substance abuse treatment providers, community partners, and ancillary service providers. Researchers formulated a set of questions for each group of interviewees, targeted to their specific experiences and perspectives on the court.

The interviewers conducted 116 semi-structured primary interviews. The interviewer attempted to remain within the framework of the question sets but remained flexible if the interviewee wanted to go off-question. Also not all questions were asked of all interviewees due to some time constraints. Interviewees were assured that their responses would remain anonymous but were told that their responses could be quoted if identifying information could be removed. The interviewer spent between 45 and 90 minutes with each interviewee; then transcribed notes from the interviews for a record of each discussion. More primary interviews were conducted than originally anticipated. Because of staff turnover and development of the courts, and emerging projects, it was felt that conducting more primary interviews would yield more relevant information. Primary interviews were conducted between January 2004 and February 2007.

The interviewers also conducted 29 semi-structured follow-up interviews. The interviewer took this opportunity to expand on previous questions and to ask what had changed since the beginning of the project. The interviewer also explored emerging concepts of transferability including: replication, institutionalization, and applying problem-solving practices in conventional cases. These interviews tended to be with staff more directly associated with the Anchorage Wellness Court, or of policymakers. Fewer follow-up interviews were conducted than anticipated. Many interviewees declined to participate in the follow-up interview, believing that they had no further information to contribute. Follow-up interviews were conducted between May 2006 and February 2007.

In addition to the semi-structured follow-up interviews, the interviewers contacted many of the interviewees informally to ask directed questions and to ask about the current status of emerging projects. These informal discussions clarified information gained in the interviews. One interviewer was able to attend court team meetings to gain insight into that process. Interviewers also attended

numerous informational meetings, including a seminar on the cognitive-behavioral treatment module MRT, three judicial conference seminars on therapeutic courts, and court-sponsored meetings on the therapeutic courts. These meetings expanded the interviewers' understanding of the context of the therapeutic courts.

To analyze the data collected, the interviewers reviewed the comments in the transcripts, noting consistencies and differences among the various groups. The interviewer also made use of MAXQDA software to assist in analyzing and organizing material from the interviews. Information gleaned from each question was analyzed, and information relevant to specific questions was also captured from answers to other questions. Efforts were made to organize the material by topic, and by groups of interviewees, by judges or prosecutors, for example.

B. Court Observations

A second major method of collecting data about the functioning and transferability of the Anchorage Wellness Court was court observations. Interviewers and other Council staff observed:

- Anchorage Municipal Wellness Court hearings;
- Anchorage State Wellness Court hearings;
- Other therapeutic court hearings including CRP (Mental Health Court), Felony Drug Court, Anchorage Felony DUI court, and Family CARE court (the project budget did not allow observations outside of Anchorage);
- Non-therapeutic hearings for comparable defendants in the Anchorage District Court; and
- Therapeutic court graduation hearings and ceremonies.

The court hearings observed lasted between 30 and 180 minutes. Observers recorded detailed notes for each hearing, including:

- Case numbers;
- Limited information about the defendants or participants;
- Identities of judge, participants, team members and others;
- Judge actions;
- Actions and statements of participants;
- Actions and statements of team members; and
- Notes about other points of interest, especially program development.

About sixty individual hearings (about 120 hours of court time) were documented with specificity. Detailed court observations occurred between January 2004 and December 2005. After 2005, the

project coordinator continued to observe the then-combined misdemeanor and felony Wellness Courts to track further developments. A total of about 150 hours of court time was observed.

The project coordinator who prepared the final report reviewed the court observations before and during the drafting of the report. She incorporated the observers' perceptions and sense of the dynamics of the hearings into the final discussion of the court. The court observations provided context in which to understand the comments from the interviews and provided direct information about the courts' process and requirements.

C. Literature Review

The Judicial Council has maintained a library of materials about therapeutic courts. The collection included evaluations of therapeutic courts around the United States, cost-benefit analyses, policy discussions of the implications of therapeutic courts, and information and articles about legal issues. The project coordinator reviewed these materials. In addition, the project coordinator conducted an internet search for materials relevant to DWI Courts specifically and for materials discussing criminal justice innovation, collaboration, and emerging transferability issues. Late in the project, the University of Alaska project manager determined that a selected annotated bibliography would be more appropriate for inclusion in the report. The Council project coordinator subsequently selected materials particularly relevant to the transferability of the misdemeanor DUI court model, or to emerging transferability principles, and annotated them. Other research that had been performed was integrated directly into the transferability report.

D. Other Contributions

Other Council staff contributed to the project from time to time. They set up a database for collection of data from case managers and files; wrote an historical time line for the report; considered software for interview analysis; and worked on grant documentation. Their assistance in editing the final report was invaluable. Council staff also assisted University of Alaska and Urban Institute researchers with data collection issues, with understanding Anchorage Wellness Court processes, and with questions about data analysis.

Appendix B

Selected Annotated Bibliography

Anchorage Wellness Court Evaluation

Selected Annotated Bibliography

Introduction

This annotated bibliography presents selected literature that relates to concepts of "transferability," specifically to the transferability of misdemeanor DUI/DWI courts, like the Anchorage Wellness Court, and more generally to the transferability of therapeutic courts as a whole. It is not a comprehensive review of drug court outcomes, cost benefits, or best-practices research. Instead, it seeks to identify reported barriers to using a drug court approach with misdemeanor DWI/DUI cases and ways in which those barriers have been overcome to determine if the misdemeanor DWI/DUI court model is a viable one for replication. Because the lack of treatment resources is often identified as a barrier to implementing therapeutic courts, especially in rural Alaska, that literature is examined to explore options beyond traditional substance abuse treatment.

Wider concepts of transferability are also discussed, including: "mainstreaming," "going to scale," institutionalization, and applying drug court principles and methods in conventional cases. These notions are sometimes vague and sometimes overlap but generally relate to taking the discrete innovation of the drug court and broadening its reach across jurisdictions, to new problems, and embedding the innovation deep within the administration of justice. This process has begun in Alaska to a limited degree.

Research on Drug Courts/Problem-solving Courts

Aos, S., Miller, M., & Drake, E. (2006). Evidence-based public policy options to reduce future prison construction, criminal justice costs, and crime rates. Olympia: Washington State Institute for Public Policy.

This article presented the results of a meta-analysis of 571 methodologically-sound evaluations of corrections and prevention programs. The authors found that adult drug courts reduced recidivism by 8% compared to incarceration. This reduction compared favorably to other programs that target drug offenders which included: intensive supervision/treatment-oriented programs (-16.7%), drug treatment in the community (-9.3%) and drug treatment in prison (-5.7%). These programs were not the only adult offender programs to see positive effects; cognitive-behavior therapy also resulted in lower recidivism (-6.3%) as did general (-7.0%) and vocational (-9.0) education in prison. Costs and benefits were also presented. This article suggests that adult drug court programs are effective in reducing recidivism. The comparison with other programs is useful to help decide what place drug courts may have within an array of interventions targeted towards drug- addicted offenders.

Cissner, A. B. & Rempel, M. (2007). The state of drug court research: Moving beyond "Do they work?" In G. Berman, M. Rempel, & R. Wolf (Eds.), *Documenting results: Research on problem-solving justice* (23-50). New York: Center for Court Innovation.

This article summarized the state of drug court "action research," which focused on how drug courts worked, for whom they worked, and how they might work better. The authors concluded that empirical research supports: early identification, enrollment, and treatment of participants; substance abuse treatment; legal coercion to increase program retention; on-going judicial supervision with "high-risk" offenders; rewards, but not as traditionally applied; and sanctions when they are consistently and fairly applied. They also found that graduation predicted success. They identified three groups for whom drug courts worked: "high-risk" offenders; offenders facing legal consequences of failure; and offenders arrested for drug offenses. Several of these findings supported the Anchorage Wellness Court interview findings, namely the perception that the model works better for offenders facing greater legal consequences and that early identification and treatment promotes success.

Farole, D. & Cissner, A. (2005). *Seeing eye to eye: Participant and staff perspectives on drug treatment courts.* New York: Center for Court Innovation.

Researchers Farole and Cissner discussed findings from focus groups of staff and participants in three New York drug courts. The concluded that staff and participants generally shared perceptions about drug court team members and processes. Their findings included that participants usually entered drug court to stay out of jail or prison but once in, their motivation to stay in the drug became more treatment-oriented. Participants noted that they did not fully

understand the scope of their commitment, although staff attempted to explain it. In general, participants perceived staff and judges positively. Participants and staff tended to be critical of treatment. Participants identified the hands-on role of the judge and their courtroom experiences, in addition to threatened jail time for failure, as reasons for their success. These findings support the findings from the Anchorage Wellness Court that offenders' primary motivation for *entering* a therapeutic court is to avoid jail and their secondary one is to obtain sobriety. This finding may be helpful in fashioning incentives to induce more misdemeanor offenders to participate.

Sanford, J. S. & Arrigo, B. A. (2005). Lifting the cover on drug courts: Evaluation findings and policy concerns. *International Journal of Offender Therapy and Comparative Criminology 49* (3), 239-259.

The authors here reviewed several drug court evaluations and relevant literature to look at aggregate findings and identify common themes. They first observed that drug court evaluations suffered from persistent methodological problems that limited their utility. They then reviewed evaluations that presented negative, mixed, and positive outcomes. Although outcomes varied considerably, they concluded that aggregate data supported lowered recidivism rates among participants and graduates. They also noted that high retention and graduation rates are indicative of a program's success in delivering treatment to participants. They examined the literature of different components of the drug courts and concluded: substance abuse treatment modalities varied so much that assessment was problematic; the role of the judge and the non-adversarial team approach was the hallmark characteristic of the model; and external criminal justice factors may directly and indirectly affect operations. Policy implications included: the need to maintain the discretion of the drug court judge; using drug courts as a model for other problem-solving courts; and improving evaluation through rigorous methodology, better data collection and more detailed descriptions of drug court activities. This study, along with Aos's implicates transferability of misdemeanor DUI courts by supporting the utility of the drug court model. Taken as a whole, research supports the notion that drug courts "work" to reduce recidivism.

DWI/DUI Courts

Outcomes

Breckenridge, J. F., Winfree, L. R., Maupin, J. R., & Clason, D. L. (2000). Drunk drivers, DWI "Drug Court" treatment, and recidivism: Who fails? *Justice Research and Policy 2* (1), 87-105.

In this study, researchers looked at a Las Cruces, New Mexico municipal DUI court program which processed (mainly) first-time DUI offenders. Program staff randomly assigned offenders who agreed to participate and who were assessed as "alcoholic" to normal court processing or to the DUI court. They compared these groups to nonrandomly selected nonalcoholic first-time DUI offenders. They found significant differences in outcomes at fifteen to twenty-four months post conviction

between non-alcoholic and alcoholic offenders. They found no differences in reconviction for traffic offenses between the alcoholic groups but did find a lowered likelihood for reconviction for alcohol-related or serious offenses in the treatment group. Sample sizes, however, were small and included only 39 DWI court participants and 36 controls. Using only convictions to measure recidivism may have also underestimated recidivism measures, especially at only 15 to 24 months follow-up. Unlike the Rio Hondo study discussed below, however, it did show some evidence that supported the efficacy of a misdemeanor DWI court.

MacDonald, J. M., Morral, A. R., Raymond, B., & Eibner, C. (2007). The efficacy of the Rio Hondo DUI Court: A 2-year field experiment. *Evaluation Review 31* (4) 4-21.

The authors reported the results of a randomized study of misdemeanor DUI court participants in the Rio Hondo, California, DUI Court. They found no evidence that the Rio Hondo DUI court model reduced DUI recidivism, self-reported drinking and driving, or other alcohol-related offenses. It also found no differences in reported alcohol problems. The authors hypothesized that the actual differences in consequences between DUI court participants and members of the control group were minimal. Most control offenders who were sentenced to four days of jail time spent no time in jail and most offenders sentenced to "mandatory" 120 days in jail spent only an average of twelve days in jail due to a severe shortage of jail space in Los Angeles. Also, in California, all DUI offenders were required to attend treatment and the DUI court offered little above what they would get with normal case processing. The authors concluded that in jurisdictions where DUI offenders were likely to serve minimal jail time, programs should identify alternative participation incentives. The outcomes here demonstrated one of the significant problems with a misdemeanor DUI court – lack of incentive to induce compliance. With mandatory jail times for misdemeanor DUI offenses that can often be served in halfway houses or on electronic monitoring, misdemeanor DUI courts must offer more creative ways of attracting and retaining defendants.

Program Evaluations

Guerin, P. & Pitts, W. J. (2002). *Evaluation of the Bernalillo County Metropolitan DWI/Drug Court.* Prepared for Bernalillo County Metropolitan DWI/Drug Court. Institute of Social Research Center for Applied Research and Analysis.

The authors here evaluated the Bernalillo County, New Mexico, DWI/Drug court. Although a hybrid court, 95% of participants were referred for DWI offenses and the primary substance of abuse was alcohol. All were charged and convicted of misdemeanor offenses. A total of 450 offenders participated over a four-year period. Participants were primarily males, employed, over 35 years of age, and had a mean of 2.7 prior DWI convictions. In return for completing the program, charges could be pled down and recorded as a first offense. Over 70% of participants reported a prior attempt at outpatient substance abuse treatment. Average lengths of stay in the program for graduates, including a twelve-week aftercare phase, was 353 days. Graduation rates were about 56%.

Outcomes were reported but only graduates, not all participants, were assessed. This evaluation, however, demonstrates that misdemeanor DWI courts can be successful in attracting, retaining, and graduating misdemeanor offenders at about the same rates as other drug court programs.

Crancer, Alfred. (2003). ***An analysis of Idaho's Kootenai County DUI Court.*** **Prepared for the National Highway Traffic Safety Administration Region X.**

Kootenai County DUI court eligibility included a second DUI in five years or less or a .20 or higher blood alcohol content. Felony offenders were not accepted, nor were offenders who had a prior felony crime of violence. Program requirements included recovery meetings, agreement to ignition interlock, attendance at a MADD victim impact panel, bi-weekly status hearings for six months and monthly until completion, self-paid substance abuse treatment, employment, abstinence from alcohol or drugs. The program lasted at least a year. Program completion resulted in a reduced charge, typically to a first offense DUI, suspended fines and jail sentence, reduced license suspension and ignition interlock requirements, and the opportunity for sobriety. Evaluators reported a 70% graduation rate, which compared favorably to a regional 60% community treatment retention rate. Outcomes were reported but they also examined only graduates, not all participants. This evaluation, like the one above, reported no difficulties in attracting defendants, suggesting that some misdemeanor DUI court programs do not have difficulty with incentives to participate. In both the Bernalillo and the Kootenai programs, DUI charges were permitted to be reduced downward to first-offense level.

Background on DUI/DWI Courts

Freeman-Wilson, K. & Huddleston, C. W. (1999). DWI/Drug Courts: Defining a national strategy. Alexandria: National Drug Court Institute.

The authors here presented finding and recommendations of the National Drug Court Institute and the DUI/Drug Court Advisory Panel. The authors compared the practices of DUI and Drug Courts and identified some of the challenges of establishing them. Differences between Drug and DUI courts included: constraints on diversion incentives for DUI offenders; difficulties in maintaining a non-adversarial, team approach in cases requiring mandatory sentences and in which communities demand punitive sanctions; limited incentives to attract DUI offenders into treatment programs; limited access to treatment sites due to loss of driving privileges; more extensive and frequent substance monitoring, requiring more innovative technology and greater communication; limited professional educational opportunities for practitioners; and more difficulty in gaining community support for DUI courts. Challenges to implementation included: the need to attract practitioners to the field; limited funding; the perception of DUI courts being "soft on crime"; the vast scope of the need; existing, but off-model, DUI courts which need to be "reprogrammed;" and the need for a national implementation strategy. They proposed a national strategy using education, publications, standards, an advisory board, an information repository, and clear public outreach

efforts. This advocacy literature promoted the spread of DUI courts based on the Drug Court Model, while noting the significant differences in DUI cases. NDCI strategies did not include promoting legislation to provide more incentives for DUI offenders to enter the programs – perhaps a significant flaw, as one of its findings was that legal incentives were lacking. Many of the challenges identified in 1999 appeared still to be problematic at of the end of 2007.

Loeffler, M. and Wanamaker, J. *Determine the Population*. In The ten guiding principles of drug courts. Retrieved April 16, 2006, from http://www.ndci.org/pdf/Guiding_Principles_of_DWI_Court.pdf.

The authors stated that determining a target population and documenting specific eligibility criteria are critical to any DWI court program. After weighing the pros and cons of first-time versus repeat offenders, they concluded that DWI courts "should focus on offenders with the most serious criminal and dependency issues, who are at most in need of treatment, and whose behavior poses the most clear and present danger to society" and warned that low-level offenders may not have enough incentive to enter a program. They maintained that, after determining the proper target, program staff should clearly define and document eligibility criteria, considering both offense and offender characteristics. The authors stated that "[t]he more precise and descriptive the eligibility criteria, the more control a DWI court has over how many total offenders are eligible for, and whom it selects into, the program." They also stated that certainty of specified criteria may be advisable over flexibility in program requirements for newly implemented DWI court programs. This practitioner piece suggested that two elements are critical in establishing target populations for DWI courts: eligibility criteria and communicating the eligibility criteria clearly to stakeholders. This piece, along with its companion pieces in "The Ten Guiding Principles" sets forth a road map on how to implement a DWI court. The authors' caution about lack of incentives for low-level offenders has been borne out in the literature.

Misdemeanor Drug Courts[61]

Hepburn, J. R. & Harvey, A. N. (2007). The effect of the threat of legal sanction on program retention and completion: Is that why they stay in drug court? *Crime & Delinquency 53* (2), 255-280.

The authors present their findings of a randomized study between two misdemeanor drug court tracks: one in which offenders received a 120 day suspended sentence and one in which jail sentences were prohibited by law. Participation was involuntary. Almost all program and offender characteristics were the same. The authors found no significant differences in program retention or graduation, contrary to other evidence that suggested that legal coercion increases program retention.

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[61] Because of the lack of published studies and evaluations on misdemeanor DWI courts, misdemeanor drug courts evaluations were also reviewed.

The authors concluded that their study did not support the notion that legal coercion helps to retain defendants and advised that programs should find alternative ways of retaining defendants in treatment. They did acknowledge that the threatened sanction may not have been severe enough, that participants may not have correctly perceived the threat of (or lack of) incarceration, and the possibility that participants did not actually received the threatened sentence. The implication for misdemeanor DWI court is that there may need to be a threshold threatened jail term to see differences in program retention, or that threatened jail time needs to be communicated sufficiently to offenders for an effect. This study also presents the possibility that, as the authors concluded, once in a program, legal coercion has no effect. Even so, legal *incentives,* as reported in the Labriola evaluation, below, may be important in inducing initial participation.

Labriola, M. (2006). Process evaluation of the Queens Misdemeanor Treatment Court. New York: Center for Court Innovation.

The author evaluated a misdemeanor drug court's process. Participants had at least three prior nonviolent misdemeanor convictions. Participation lasted a minimum of nine months. It was a post-plea court that offered dismissals upon graduation. Failure originally resulted in an individualized sentence of four to twelve months, agreed upon at the time of the plea. Reported challenges included: the lack of legal coercion, screening problems, lack of defense bar buy-in and referral, participant disinterest, and a sometime lack of immediate treatment and enrollment. This court overcame its problems by responding to low intake by shortening sentences for failure to standard four-month sentences. Contrary to expectations reported by Cissner & Repel, above (2005) and supporting Hepburn and Harvey's work, the lessening of legal consequences for failure did not appear to undercut retention or graduation rates. This evaluation again demonstrates the difficulty of attracting misdemeanor offenders to a drug court program, but also demonstrates that the difficulty can be overcome. It suggests that high-risk misdemeanor offenders facing sufficient legal exposure can be persuaded to try a drug court program through shorter alternative sentences. A shorter alternative sentence may be effective to induce addicted misdemeanor offenders to attempt a program because participants are not penalized if they fail by having to serve significant amounts of time in jail, in addition to "time served" in the program.

Wolfe, E. L., Guydish, J. R., Woods, W. & Tajima, B. (2004). Perspectives on the drug court model across systems: A process evaluation. *Journal of Psychoactive Drugs 36* (3) 379-386.

This article presented a rarity: a drug court process evaluation that was published in a peer-reviewed journal. This was a court with pre-plea and post-plea tracks and was geared towards first-time drug offenders. The authors presented findings on the court's history and development, description of the program, perceived strengths of the drug court components, areas of improvement for drug court components, comments on collaboration and views of the effects of the drug court. It presented almost a classic model of a drug court in which court staff and participants were grateful

for the opportunities that the drug court provided, several disciplines worked together in an effective collaboration, and the judge was viewed as crucial to the success of the drug court. It also presented some opportunities for improvement, including: a review of eligibility requirements and screening processes to serve more and a more balanced make-up of potential defendants, and a need to stress the importance of communication and cross-agency education efforts so that team members could understand each others' perspectives. The authors stressed the need to publish program evaluation findings so that the information was accessible to inform future research, build a basis for interventions, and facilitate the development of drug courts in other settings. This evaluation, with the Porter and Labriola evaluations, stress the importance of screening processes and their effect on participation numbers. Incentives for misdemeanor offender must, apparently, be paired with appropriate screening measures to ensure that offenders will want to, and be able to, participate.

Porter, R. (2002). *Supervised treatment in the criminal court: A process evaluation of the Manhattan Misdemeanor Drug Court*. New York: Vera Institute of Justice.

This implementation evaluation presented findings from a misdemeanor drug court that accepted low-level drug possession offenders. The court was a post-plea court that required only a two-day treatment intervention for many offenders; subsequent treatment was voluntary. Participants faced a 30-60 day alternative jail sentence. Incentives included reduced and dismissed charges. The evaluation's most relevant finding to the transferability of misdemeanor DUI courts was (again) the court's failure to meet its target intake numbers. The author reported that court staff endeavored to increase intake by increasing screening efforts, and broadening eligibility criteria. The prosecutor's office, however, resisted attempts to include offenders who they deemed were public safety risks, including shoplifters, and resisted easing restrictions on prior criminal history. This evaluation again demonstrates the difficulty of attracting misdemeanor offenders to a treatment and supervision program with little alternative jail time to induce them. It also suggests that the reluctance of prosecutors to widen eligibility criteria in response to low intake can exacerbate the problem.

Substance Abuse Treatment Alternatives

Taxman, F. S., Pattavina, A., & Bouffard, J. (2005). *Treatment in drug courts in Maine: An examination of the impact.* Prepared for the State of Maine.

The authors evaluated the treatment program used in the Maine drug courts. The treatment was comprised of a standardized "manualized" program with three phases: motivational enhancement, intensive cognitive-behavioral skills-building, and maintenance. Treatment providers were given the manuals, trained to deliver treatment services, and monitored for quality control. The authors found that participation in the program resulted in reductions in participant depression, hostility, and risk-taking behaviors and increases in social conformity and therapeutic involvement. The authors also found that the drug courts had no standardized way to determine clinical risk-level, which was often determined only by legal charge and the prosecutor's office; the programs did not use a formal set of graduated sanctions and incentives; and the program did not address often-needed ancillary services such as criminality, housing, and transportation. Implications for DWI court transferability include the potential for purchasing a treatment protocol that is known to be effective and training willing providers. This presents one way in which quality treatment could be delivered by providers who lack knowledge and experience in treating addicted offenders. It also demonstrates the propensity for prosecutors, instead of clinical staff, to determine "risk."

Little, G. L. (2005) Meta-analysis of moral reconation therapy recidivism results from probation and parole implementations. *Cognitive-Behavioral Treatment Review 14* (½), 14-16.

This article presented findings from a meta-analysis conducted by a researcher with ties to the proprietary MRT program. The author analyzed nine studies, only one of which was affiliated with the developers of MRT. He concluded that MRT treatment of probationers and parolees appeared to cut expected recidivism by nearly two-thirds from six months to two years post-program. The findings of this meta-analysis must be viewed cautiously. First, the MRT treatment is likely confounded with other services that they received. For example, all MRT treated individuals in one "study" on Anchorage Wellness Court, would have received many other services including substance abuse treatment, social services, housing assistance, and employment assistance. Second, at least one of the underlying reports that the author used for this analysis (DeLong, 2003) has been regarded with suspicion by practitioners, as it did not use a strong research design. Although other studies (see below) of MRT show promise, this meta-analysis does not present strong evidence. Other primary research by this author, however, was used in the meta-analysis discussed below and was found there to be strongly designed. The positive findings on MRT here were echoed by Wilson, Bouffard and MacKenzie, below, and included in Aos's positive consideration of cognitive-behavioral programs for offenders. Because many jurisdictions lack adequate treatment resources, MRT may provide an alternative, or supplemental service, to traditional substance abuse treatment for those wishing to implement a misdemeanor DWI court program.

Wilson, D. B., Bouffard, L. A., & MacKenzie, D. L. (2005). A quantitative review of structured, group-oriented, cognitive-behavioral programs for offenders. *Criminal Justice and Behavior* 32:2.

This article presented a meta-analysis of literature on cognitive-behavioral programs directed at criminal offenders in group settings. The authors concluded that studies of such programs found positive effects that favored the programs' use. When effect size was translated into recidivism measures, the authors found that the high-quality studies on MRT resulted in a 16% difference in recidivism rate between treated and untreated offenders. Effect size, however, varied greatly among studies. But, the authors noted, even small recidivism reductions could translate into meaningful reductions in crime when broadly implemented. The authors also concluded that the evidence supporting the use of cognitive-behavioral programs was stronger than that supporting other easily implemented correctional programs, such as education, vocation, and work programs. This article presents strong support for the use of structured group cognitive-behavioral treatments (like MRT) in misdemeanor DWI courts because they appear to be effective, are easily implemented, and cost relatively little.

Anton, R. F., O'Malley, S. S., Ciraulo, D. A., Cisler, R. A., et al. (2006). Combined pharmacotherapies and behavioral interventions for alcohol dependence. *Journal of the American Medical Association 295* (17) 2003-2017.

The authors presented findings from a large, multi-site study on the efficacy of using medical management with naltrexone, acamprosate, and behavioral interventions to alleviate alcohol dependence. Medical management was delivered by physicians, nurses, physician assistants and clinical pharmacists. They found that naltrexone with medical management, behavioral interventions with medical management, or all three together were equally effective in increasing days-abstinent and reducing the risk of a heaving-drinking day during the sixteen week study period. They also found that acamprosate and acamprosate with naltrexone were not efficacious, contrary to previous studies. They concluded that naltrexone with medical management could be delivered in health care settings to patients who might not otherwise be served. The lack of lasting effect troubled the authors who recommended further study to determine whether continued or intermittent care would be useful. Using naltrexone in conjunction with medical management may be a strategy for remote locations that wish to implement DWI courts but which do not have substance abuse treatment resources.

Transferability of Problem-Solving Courts: "Going to Scale," "Mainstreaming," and "Institutionalization"

Fox, A. & Berman, G. (2002). Going to Scale: A conversation about the future of drug courts. *Court Review*, Fall 2002, 4-13.

Here the authors, researchers and drug court advocates from the Center of Court Innovation in New York, asserted that the next step in the drug court movement was to build statewide systems to support the innovation. They conducted a roundtable conversation with drug court leaders to determine how to "institutionalize" and "go to scale" with drug court concepts. They reported the findings from that discussion. Participants agreed that "going to scale" was more than merely replicating drug courts but could not come to a consensus about what it did mean. Participants were able to identify both assets and obstacles to institutionalization. The participants in this roundtable demonstrated the difficulties of institutionalizing an innovation that they could not quite define. The authors' advice that more work needed to be done to determine which elements of drug courts were crucial before "mainstreaming" drug court practices seemed entirely warranted.

Marlowe, D. B. (2003). A sober assessment of drug courts. *Federal Sentencing Reporter 16* (1), 1-5.

In this article Douglas Marlowe argued that drug courts, although not perfect, "outperform" other strategies for drug-addicted offenders such as standard probation or intensive supervision. He measured performance by (1) treatment retention, reporting a sixfold improvement over community treatment and (2) recidivism, reporting a 20-30% reduction during programs and a 10-20% reduction post-program. He asserted that drug courts are merely one intervention that improves outcomes for some offenders but that they are not appropriate for all. He also maintained that the "10 Key Components" are not evidence-based, although some have proved to be supported by empirical research, but that it was still not clear whether all ingredients are essential for all clients. Marlowe's vision of drug courts as a targeted intervention for certain addicted offenders, and his research to determine which offenders and which components are "key" stands in stark contrast to the researchers and advocates at the Center for Court Innovation, who have explored and promoted concepts of "going to scale" and applying drug court principles and methods in conventional case proceedings. Marlowe's article suggests that he would not support broad, uniform application of drug court practices in the conventional courtroom.

Fox, A. & Wolf, R. V. (2004). *The future of drug courts: How states are mainstreaming the drug court model.* New York: Center for Court Innovation.

The authors, again from the Center for Court Innovation in New York, examined how several states moved from an ad hoc, patchwork network of drug courts to statewide administration. Three basic models were described: the judicial-branch model, the executive branch model, and the collaborative model. The authors identified five areas of concern in all three models: centralizing

authority for policy decisions, building support, establishing "best practices," creating infrastructure (such as management information systems and staff protocols) and increasing capacity. The authors here displayed a significant bias towards their own system in New York, which they helped to mold. Notwithstanding their apparent bias, the model did seem to be an effective one for states with unified court systems. This piece provides a framework for institutionalizing drug courts in different state systems. Its framework might also be useful when attempting to "institutionalize" other novel justice initiatives.

Farole, D., Puffett, N. & Rempel, M. (2004). *Collaborative justice in conventional courts: opportunities and barriers*. New York: Center for Court Innovation.

The authors explored whether, and how, collaborative justice could be used in conventional courts by conducting a series of focus groups and interviews of judges with experience in collaborative courts. Judges identified five principles and practices that could be transferred to conventional court settings: problem-solving judicial orientation; direct judicial interaction with the defendant/litigant; ongoing judicial supervision; social service integration; and a team-based, non-adversarial approach. Judges believed cases appropriate for application in included juvenile cases, family law cases, and California's Proposition 36 (drug treatment) cases. The main barriers to applying problem-solving in conventional cases included limited resources, and adverse judicial philosophy and lack of experience. Judges identified both short-term ways to apply problem-solving, through identifying the most appropriate cases, and long-term solutions to overcoming barriers, through education, word of mouth, assignment, and judicial leadership. The difficulties in applying problem-solving in conventional cases seem to be the same ones that prevent the implementation of therapeutic courts: namely the lack of resources. Also, judges in the Anchorage Wellness Court study believed that most judges would implement these practices without the drug court "inspiration" if they had the time in the courtroom to do so.

Dorf, M. C. & Fagan, J. A. (2004). Problem-solving courts: From innovation to institutionalization. *American Criminal Law Review 40*, 1501-1511.

The authors, two professors at Columbia University, described the conditions that gave rise to the diffusion of drug courts, and the conditions surrounding their institutionalization. They explained that drug courts arose due to docket pressures created by the "war on drugs," a perception of crushing caseloads, and judges' unease with reduced sentencing discretion in drug cases. They elaborated that institutionalization has been characterized by the replacement of original grassroots innovators with people concerned with professionalization and standardization. The authors identified a series of problems which plagued the therapeutic courts in 2003: poorly designed studies that undermined attempts at determining the courts' efficacy, the need to identify which components were efficacious, the need to identify the appropriate limits of problem-solving courts, whether holistic "community" courts or specialized "problem" courts should be preferred, whether attorneys could act ethically in the interests of their clients in a problem-solving court, and whether therapeutic

courts deprive defendants of due process by denying them a detached and neutral judge. As of the end of 2007 many of these issues have been resolved, at least to the satisfaction of most who study problem-solving courts. Some questions, however, including which components are efficacious and what limits should be imposed on the types of problems to be solved through such a process, persist. It would be useful to have more information about the answers to those questions before applying drug court practices broadly.

Roman, J. (2004). ***Accreditation key to creating the next generation of drug courts.*** **Washington, D.C.: Urban Institute. Retrieved October 16, 2007, from http://www.urban.org/ url.cfm?ID=900735&renderforprint=1.**

In this essay, John Roman of the Urban Institute proposed another method of "institutionalizing" drug courts. He argued that an accrediting entity could (1) identify drug court practices; (2) determine whether evidence supported including the practice; (3) recommend further study if necessary; (4) accredit drug courts that included the recommended evidence-based practices. Accreditation, he reasoned, would alleviate the need for individual drug courts to perform their own research to justify themselves, would encourage rigorous research, and would reduce drug court self-promotion. It would be a dynamic process through which new research would inform approved protocols. His studied, scientific approach differs substantially from the researchers from the Center for Court Innovation, whose work seems to promote a more action-oriented approach.

Farole, D. Jr., Puffett, N. K., & Rempel, M. (2005). ***Collaborative justice in conventional courts: Stakeholder perspectives in California*****. New York: Center for Court Innovation.**

This is a companion piece to their 2004 study. The authors explored whether, and how, collaborative justice could be used in conventional courts by conducting a series of four focus groups of *non-judicial* collaborative court stakeholders including attorneys, probation, treatment and service providers, and statewide organization representatives. They found that most stakeholders supported using collaborative justice practices, at least in some contexts, such as in juvenile and family law cases, but not in violent criminal cases. They also stressed that collaborative justice practices needed to be limited to cases in which the defendant exhibited some "problem" such as addiction or mental illness. The authors also reported a number of barriers to transferability, including limitations on time and resources, the need to preserve the adversarial process, and stakeholder opposition. Last, participants identified ways in which those barriers might be overcome, namely through education and addressing resources constraints. This focus-group study, along with the one involving judges above, shows that stakeholders are interested in "solving" the problems that face offenders, but that they don't know quite how to go about it. The participants advocated a slow and incremental process to establishing the use of the practices, and which practices should be used. This slow and incremental process has been observed in the dissemination of problem-solving practices in non-therapeutic court settings in Alaska.

Farole, D. Jr. (2006). ***The challenges of going to scale: Lessons from other disciplines for problem-solving courts.*** **New York: Center for Court Innovation.**

The author here explored the challenges of taking problems-solving courts from small localized efforts that affect only a few and "going to scale." He first described "scale" as involving four dimensions: spread, depth, sustainability, and shift in ownership. Farole examined the three ways in which problem-solving courts have gone to scale: systemwide expansion; quasi-specialized courts, and applying problem-solving practices in conventional courts. Last, he argued that chances for successful scale-up may be increased through: flexibility in approach; incentives to encourage judges to experience problem-solving courts and methods; education and training for judges and legal professionals; data collection and evaluation so that success and areas of improvement can be seen; and by addressing social services treatment capacity issues. This article provided a useful framework for exploring transferability issues. This piece continued the line of Court Innovation work that focused on how to apply the results of the drug court to more people – through replication, adaptation, and application. Underlying Farole's work, however, is an underlying bias towards the drug court model. He proposed to dramatically expand the reach of the model and therapeutic philosophy without explaining or further exploring how or why the drug courts work; that they work, at least for some, seemed to be sufficient.

Berman, G., Bowen, P., & Mansky, A. (2007). ***Trial and error: Failure and innovation in criminal justice reform.*** **New York: Center for Court Innovation.**

This paper was the result of interviews with criminal justice experts, researchers and practitioners, and a literature review on failure. The authors presented four reasons for failure of criminal justice initiatives: bad ideas, bad implementation, failure to manage power dynamics, and failure to self-reflect, any one of which can derail a project. The authors then elaborated on these four basic reasons and provided examples. Drug courts have been prone to many of reasons for failure that the authors cited (poor understanding of targets, creating unrealistic expectations, failure to manage power dynamics, interagency differences, inability to self-adjust, etc.). Most, however, have persisted despite these vulnerabilities. Jurisdictions seeking to implement a DWI or other drug court model should be mindful of these reasons for failure and implement and manage projects in such a way as to avoid these pitfalls. That the drug court models – including misdemeanor DWI courts – have persisted despite their vulnerability to many of these problems indicates a high degree of resilience.

Wolf, R. V. (2007). ***Breaking with tradition: Introducing problem solving in conventional courts.*** **New York: Center for Court Innovation.**

Here the author presented similar arguments for problem-solving practices in conventional courtroom as previously discussed, but added some real-life examples of how to implement this process. His examples were refreshing, if not earth-shattering, because much of The Center for Court Innovation's advocacy has been vague about how to do this in actual practice. But he comes to what

seems a surprising conclusion: “Additional research is under way to determine exactly which components of drug court and other problem-solving principles are most effective. In the meantime, practitioners, based on what is known so far through research and personal experience, continue to test problem-solving principles wherever resources and collaboration allow.” His conclusion suggests, contrary to much of what The Center for Court Innovation has published, that applying problem-solving practices is not a goal in and of itself. Instead, he suggests that applying problem-solving practices and principles can be used where resources prevent full-scale therapeutic courts, and as a bridge while the essential components of the drug court process are being determined. This approach seems to tie together the “scientific” targeted approach of researchers like Marlowe and Roman, and the “action-oriented” research and advocacy of The Center for Court Innovation. This integrated view may point the way towards the future application of the “drug court” model, whether in drug cases or DWI cases, or whether in specialized or conventional court settings.

Appendix C

Impact and Cost-Benefit Analysis: Executive Summary

RESEARCH REPORT JULY 2008

Impact and Cost-Benefit Analysis of the Anchorage Wellness Court

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research for safer communities

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Justice Policy Center

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Despite their guidance, all remaining errors are our own.

EXECUTIVE SUMMARY

The primary goal of this research is to estimate the costs and benefits of serving misdemeanor DUI offenders in the Anchorage Wellness Court (AWC), a specialized court employing principles of therapeutic jurisprudence. The Urban Institute, as the subcontractor to the University of Alaska-Anchorage, conducted an impact and a cost-benefit analysis (CBA) to estimate the effectiveness of the AWC. The study focused on the impact of the program on reducing the prevalence and incidence of new criminal justice system contact. Costs were collected to estimate the opportunity cost of the AWC. Recidivism variables were monetized to estimate the benefits from crime reductions. Outcomes were observed at 24, 30, 36, and 48 months.

The Anchorage Wellness Court began serving misdemeanor DUI offenders in Anchorage, AK in August, 1999, with the goal of reducing alcohol-related offending through treatment and increased individual accountability. The Anchorage Wellness Court began as a bail and sentencing option. Arrestees with an identified alcohol problem were released into the community where they received substance abuse treatment and regular judicial supervision. Over time, the AWC expanded operations to include more components of therapeutic jurisprudence, eventually evolving into a mature therapeutic court. Program components included substance abuse treatment, moral reconation therapy (MRT), recovery meetings (such as Alcoholics Anonymous), employment and financial responsibility, case management and substance abuse monitoring, judicial supervision, and complex criminal justice collaborations.[1] Participant eligibility was determined by clinical staff and prosecutors. Defendants voluntarily enrolled into the program and received reductions in jail terms and fines if they successfully completed the program, which usually required about 18 months.

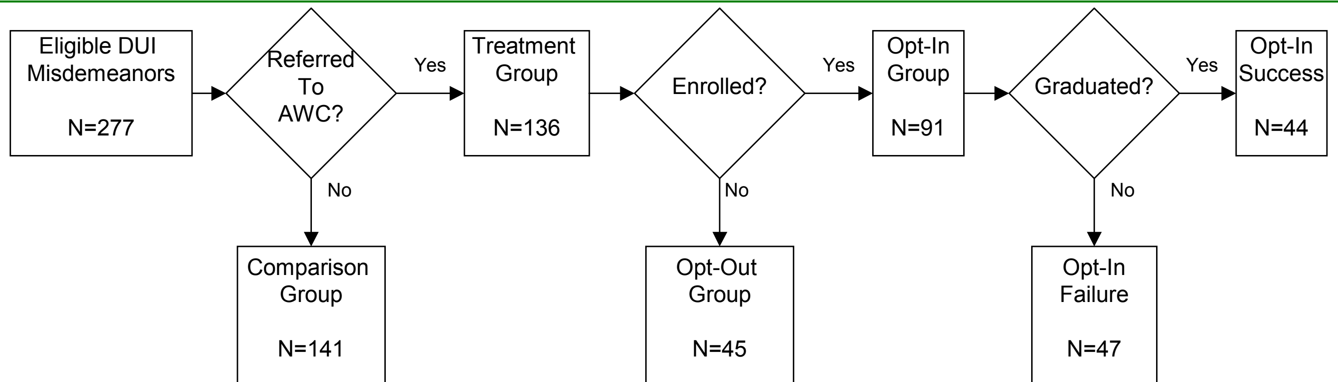
In this study we make two sets of comparisons to estimate the effect of AWC on participant behavior. First, we compare the outcomes for 277 individuals who were eligible for the Anchorage Wellness Court (AWC)—141 individuals who had no contact with the program (the Comparison Group), and 136 who were referred to the program (the Treatment Group). Although not everyone who was referred to the program formally enrolled, all who were referred received at least some exposure to AWC[2]. We refer to those who formally opt-in to the program as the Opt-In Group, and those who were referred but did not formally enroll as the Opt-Out Group. To account for the

[1] For a complete description of the program and operations of the Anchorage Wellness Court and a discussion of the transferability of the model, please see Susie Mason Dosik. (2008). Transferability of the Anchorage Wellness Court Model. Anchorage, AK: Alaska Judicial Council. 1-232.

[2] Dosik notes that "[a]significant lag time—sometimes months" might elapse between referral and formal enrollment, and "the defendant was receiving substance abuse treatment and program services during that time" (2008:4).

presence of two distinct groups within the Treatment Group, we then compare outcomes for the Opt-In Group (91, including those who ultimately graduate (44) and those who fail (47)), the Opt-Out Group (45), and the Comparison Group (141).[3]

Figure 1. Flow of Cases into the Anchorage Wellness Court



Source: urban Institute Analysis of program data.

Given the complicated enrollment process, both tests are necessary to understand the effectiveness of AWC. Those who eventually opt-out of AWC may receive considerable services from AWC before exiting the program. In effect, the decision to enroll is an intermediate outcome where those who are doing well (or are expected to do well) formally enroll and those who are not, exit. If this initial success or failure is used to determine group composition, final outcomes are confounded. Those who are on a positive path and opt-in include individuals who would be expected to do better than the average person referred to AWC, since the Comparison Group includes both those who would have opted-in and also those who would have opted-out. If such a decision rule is used to determine who is in the Treatment Group, the results are likely to be biased. As a result, the impact of AWC on all who are referred must be tested.[4] However, it is also important to determine whether those who received the full program had better outcomes, and thus we include a second set of tests where the outcomes of the Opt-In and Opt-Out Groups are estimated separately.

RESULTS

Overall we find that AWC reduced recidivism and reconviction for the Treatment Group. Despite the decrease in the prevalence of recidivism, the Treatment Group returned negative benefits in the form of significantly higher costs to the criminal justice system and victims that result from their

[3] A complete explanation of this graphic can be found on page 7 of this report.

[4] There is an additional reason to evaluate the effectiveness of AWC on all who are referred to the program. That is, one critical measure of program effectiveness is how successful the program was in getting referred individuals to enroll and receive services. If those who are treated do well, but few who are eligible ultimately enroll, it is prudent to ask whether that program should be deemed successful. Including all those who were assigned to AWC within the Treatment Group allows for this type of comparison.

new offending. However, when the Treatment Group is divided into the Opt-in and Opt-Out Groups, a much different pattern emerges. We find that the Opt-In Group had significantly lower likelihood of any rearrest and reconviction and significantly fewer Opt-In Group members were rearrested and reconvicted in all four follow-up periods. Those in the Opt-In Group had large and significant benefits to the criminal justice system and crime victims, returning over three dollars in benefits for each dollar in program costs. By contrast the Opt-Out Group has worse outcomes than the Comparison Group on almost all measures.

RESULTS OF THE EVALUATION OF THE TREATMENT AND COMPARISON GROUPS

Bivariate Results

The general pattern of results is that the Treatment Group had better outcomes on most indicators of success, including the likelihood of a new arrest and the number of new arrests, but that the program was more costly to administer than the comparison, and the harms from new offending were greater. In the bivariate analysis, we find that at 24 months, 37 percent of the Treatment Group had been rearrested, compared to 53 percent of the Comparison Group. These significant differences ($p<0.01$) persist through 48 months where 47 percent of the Treatment Group had been rearrested compared to 66 percent of the Comparison Group. Those in the Treatment Group were less likely to be re-convicted as well, although the difference is only significant at 24 months. There were no significant differences in the number of rearrests or reconvictions. While the arrest and conviction prevalence were lower for the Treatment Group, we find negative benefits to the criminal justice system and the public from new offending – that is, the harms from new offending were higher for the Treatment Group than the Comparison Group. Overall, we estimate that the cost of the program was about $3,300 per participant. When the cost of AWC and the costs of new offending are combined, we find that AWC was not cost-beneficial.

Multivariate Results

There are differences between the Treatment and Comparison Groups in terms of the attributes of each group's membership. To control for any bias this may introduce, we ran multivariate analyses to confirm the bivariate findings. In general, the same results are returned. The odds of a Treatment Group member being rearrested are lower than the Comparison Group in all four periods, as are the odds of a reconviction (but again the differences are only statistically significant at 24 months). We again find no statistically significant differences in the number of re-arrests and the number of re-convictions. We also find no significant differences in the time to rearrest, though there is a significantly longer time to reconviction for the Treatment Group. In the multivariate models, we again find large negative benefits (additional costs) associated with the new offending of the Treatment Group. These differences are significant in the first three follow-up periods and average about $7,800 per participant (and these costs are in addition to the $3,300 in new costs associated with AWC programming.

RESULTS OF THE EVALUATION OF THE OPT-IN, OPT-OUT AND COMPARISON GROUPS

Bivariate Results—Opt-In Group vs. Comparison Group

The Opt-In Group had better outcomes than the Comparison Group on virtually all indicators of success. In the bivariate analysis, we find that at 24 months, 26 percent of the Opt-In Group had been rearrested, compared to 53 percent of the Comparison Group. These significant differences ($p<0.01$) persist through 48 months where 42 percent of the Opt-In Group had been rearrested compared to 66 percent of the Comparison Group. Those in the Opt-In Group were less likely to be re-convicted as well in all four follow-up periods. The Opt-In Group had fewer reconvictions in all four periods and fewer rearrests at 36 and 48 months. We find no difference in the bivariate comparisons of benefits to the criminal justice system and the public from new offending – although costs to police from new offending by the Opt-In Group were significantly lower, costs to supervision agencies were significantly higher. Overall, we estimate that the cost of the program was higher for the Opt-In Group then the Comparison Group, averaging about $3,900 per participant.

Bivariate Results—Opt-Out Group vs. Comparison Group

For the Opt-Out Group, we largely find no effect or negative effects. In the bivariate analysis, we find that at 24 months, 55 percent of the Opt-Out Group had been rearrested, compared to 53 percent of the Comparison Group, and there were no differences at any of the follow-up periods. At 48 months 55 percent of the Opt-Out Group had been rearrested compared to 66 percent of the Comparison Group, but the difference is not statistically significant[5]. There are no differences between the Opt-Out Group and the Comparison Group on measures of the likelihood of a reconviction or the number of rearrests and reconviction. However, in the bivariate comparisons of benefits to the criminal justice system and the public from new offending, the Opt-Out Group had large and significant negative benefits. That is, at 48 months, the costs of new offending by the Comparison Group were about $25,300, while the costs associated with new offending by the Opt-Out Group were about $37,500. We estimate that the program expenditures were much lower for the Opt-Out Group then the Treatment Group, averaging about $700 per participant.

Multivariate Results—Opt-In Group vs. Comparison Group

Because there are differences between the Opt-In Group and Comparison Groups in terms of the attributes of their membership, we ran multivariate analyses to confirm the bivariate findings. In general, the same results are returned. The odds of an Opt-In Group member being rearrested are significantly lower for the Opt-In Group in the first three periods, as are the odds of a reconviction (but the differences are only significant at 24 and 30 months). We find significant reductions in the number of re-arrests and re-convictions (at 24 and 36 months). In the multivariate models, we again find large positive benefits (a reduction in costs) associated with the new offending of the Opt-In Group at 24 months (a savings of about $13,400) and 30 months (a savings of about $11,900). These

[5] Unless otherwise noted in the text, throughout this paper, results are considered to be statistically significant if $p<0.05$.

differences are significant and more than offset the additional cost of about $3,900 of treating this group. In addition, there is a significantly longer time to re-arrest for the Opt-In Group.

Multivariate Results—Opt-Out Group vs. Comparison Group

Multivariate models were run to control for baseline differences in attributes between the Opt-Out Group and Comparison Groups. Again, similar results are returned. The odds of an Opt-Out Group member being rearrested are higher than the Comparison Group in the first two follow-up periods and lower in the last two follow-up periods, although none of the differences are significant. Interestingly, by 48 months, the odds of re-arrest for the Opt-In Group and the Opt-Out Group are almost identical. Odds of a reconviction are higher for the Opt-Out Group than the Comparison Group in all four periods, but none of the differences are significant. An identical pattern for the odds of any reconviction and the number of reconvictions is observed. In the multivariate models, we again find large and significant negative benefits (an increase in harms associated with new offending) for the Opt-In Group at all four periods, and the Opt-Out Group had average negative benefits of $15,900-$17,400. These differences are significant and add to the additional cost of about $700 of treating each member of the Opt-Out Group.

SUMMARY

In general, we find that the AWC was effective in reducing recidivism and associated harms for the Opt-In Group. Among those who were referred to the program, but who did not enter the program (the Opt-Out Group), there was no effect on some outcomes and negative effects on other outcomes including a finding that this group contributed substantial additional harms to society. Thus, if the AWC is evaluated only on the effectiveness of serving those who were sufficiently motivated to formally enroll in the program, the results are an unqualified success. If a more expansive lens is used, and the effectiveness of the program considers whether the program was effective in serving all who were referred, which is surely a goal of the program, then the effectiveness of the program is modest.