

ACJC Workgroup on Classifications of Crimes and Applicable Sentences

Staff Notes and Member Assignments, April 29, 2015

CIRI Conference Room, 2525 C Street, Anchorage, AK

Commissioners attending: Alex Bryner

Commissioners not present: Kris Sell (had emergency), Quinlan Steiner

Staff present: Susie Dosik, Mary Geddes

Participating: Judge John Lohff (ret.), Kristin Bey, Sen. Fred Dyson (ret.), Dunnington Babb and Regan Williams (Public Defender)

Future meetings: Not yet scheduled but emails will be circulated

The meeting convened at 1:00 PM.

DISCUSSIONS

Controlled Substances Advisory Committee (CSAC)

The Governor has appointed members to the CSAC, and the AG is now convening the Committee. It will meet for the first time in mid-May in Anchorage, and must meet twice a year. It will be a public meeting. Geddes and Susanne DiPietro will attend and provide brief background on the ACJC's related mandates to review drug schedules.

MISC 4

Background was provided on SB 56. SB 56 passed in the Senate but died in House Finance at the close of the session. However, it had appeared that – at least at the close of the session - some law enforcement representatives were supportive of the basic premise of the bill, i.e. to reclassify some of the conduct now sanctioned by MISC 4 to a misdemeanor. An earlier unsigned statement from the Department of Public Safety also suggested agreement with the basic premise: that some first-time drug possessions offenses were more appropriately classified as misdemeanors.

There was some discussion of what amounts would constitute personal use, and whether reduction of MISC 4 to MISC 5 would result in 'net widening,' i.e. actually increasing the numbers of cases in which persons are prosecuted for simple possession. Regan Williams, a defense attorney, disagreed with the idea that MISC4 simple possession cases might not be presently prosecuted. He stated that his recent intake of 53 cases included six MISC4 cases, and simple possession is frequently charged as a felony. Both defense attorneys present also noted that quantities possessed by chronic users rarely involve a single 'nifty-fifty,' just because of the economies, and that drug users are often drug sharers. Those present noted that the Commission may or may not choose to ultimately resolve felony threshold quantities.

Those present did agree that staff should work up a proposal for the Commission for changes to MISC 4 and related sentencing statutes to allow for misdemeanor penalties for simple possession of some controlled substances in some circumstances. Staff should reference others states' experiences with: reducing felony possession to misdemeanors, any available relevant cost-benefit analyses, and evidence-based strategies. Staff will circulate her draft via email to Workgroup members for comments and any re-writing before forwarding it to the Commission. It is anticipated that the Pew-JRI will have information on this topic, and that additional relevant data may be forthcoming from Pew and from Corrections.

Review of Presumptive Sentencing

Geddes reported that Workgroup member Skidmore had previously said that he would excerpt and handout relevant sections of the DOL internal manual by the close of this meeting. If Skidmore does not attend, Geddes will contact him to arrange for email distribution to Commission members. This information will greatly aid the members of the Commission in commencing their review of presumptive sentencing law.

Commissioner Bryner noted that the National Conference of Sentencing Commissions should be able to assist the ACJC in getting its efforts underway. NASC will meet in Alaska in August and ACJC members can reach out to NASC members for guidance. Senator Dyson praised the experience of NASC members and suggested that the ACJC seek out the “best of the best” for counsel.

Bryner also noted that the current sentencing structure is a “giant problem” and that the ACJC can either look at what we have and try to fix it or choose another model altogether.

Increasing Felony Theft Thresholds

Because Commission members and participants had indicated that they were still interested in this topic, Geddes had circulated related information. She noted that, even with SB 64 increase of the felony threshold to \$750, there are still 32 states with higher felony threshold amounts. The majority (of the 32) have a \$1000 threshold. Dyson suggested that the Workgroup recommend an increase to \$1000 even though that amount does not provide for any reasonable cost of living adjustments over time. Bryner asked if any states auto-adjust or tie the threshold amount to various factors; staff did not know. Although there is likely to be continuing resistance to changing this amount, the resistance is likely to come from retailers rather than homeowners because the ability to prosecute burglaries would not be impacted by any change to felony threshold amount.

Staff will seek information from DOC and the courts – if they have it – concerning the numbers of theft prosecutions before and after the change in law under SB64.

Staff will also write up and circulate by email a proposal on this issue.

Possible Reclassification of Misdemeanors

Commissioner Steiner had previously circulated a list of misdemeanor crimes which could be reduced to violations in his opinion. Judge Lohff is still willing to take a look at these crimes but had not received the relevant documents in his email. Staff will provide that documentation to him.

Among the questions asked: how many DWLS are charged each year and how many are appropriate for reclassification to a violation? In how many of the DWLS cases is counsel currently provided?

Commissioner Bryner noted that the prosecution of criminal non-support cases may or may not be related to some federal law requirement. Staff will attempt to answer that question.

The discussion today did not encompass reclassification of recidivist misdemeanor conduct.

There was no public comment.

The meeting ended at approximately 3:15 PM. It is noted that Commissioner Sell called in after the meeting had ended and received a summary from staff.

Assignments:

1. Judge Lohff, and hopefully Quinlan Steiner and Seneca Theno, will review list of misdemeanors and consider if appropriate for reclassification.
2. Staff will research criminal non-support law to understand its relationship to federal law.
3. Staff will prepare a proposal on increasing the felony theft threshold and circulate.
4. Staff will prepare a proposal on reclassifying some MISC 4 conduct to MISC 5.
5. Staff will contact John Skidmore re the DOL description of the presumptive sentencing scheme.

ACJC Workgroup on Classifications of Crimes and Applicable Sentences
Staff Notes and Member Assignments, March 24, 2015
Attorney General's Office, 1031 W. Fourth Ave., Room 501, Anchorage, AK

Commissioners attending: Alex Bryner, Kris Sell, Quinlan Steiner
Staff present: Susie Dosik, Mary Geddes, Susanne DiPietro
Participating: Judge John Lohff (ACS), Kristin Bey, Sen. Fred Dyson (ret.), John Skidmore (DOL)

Future meetings: April 29, 1:00 – 4:00 p.m. in Anchorage

RELEVANT INFORMATION DISTRIBUTED TO WORKGOU P MEMBERS

[SB 56 \(2014\) bill text](#)

Proposal for Revision of MISC 4 re simple possession offenses (excerpt from

[Report on Reclassifying Nonviolent, Small Quantity Drug Possession As A Misdemeanor](#))

[“Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment”](#)

Chart of States with Misdemeanor Drug Possession (draft - do not circulate) (Mary Geddes)(attached)

Summary of Delaware Drug Reforms (Mary Geddes)(attached)

Drug Chart (Susie Dosik) (attached)

DISCUSSION:

Resources for Commission's Mandated Review of Presumptive Sentencing Scheme

Future Presentation by Professor Berman

Ms. Geddes reported that she had contacted Professor Berman about providing an overview for the workgroup or the Commission on the different types of state sentencing schemes. He is willing to provide a 'webinar' type presentation with an opportunity for questions. Workgroup members agreed that the full Commission would be interested in his presentation and that it would be ideal if he were available for up to an hour. Participants asked staff to schedule his presentation up to an hour for either the March or April ACJC meeting, depending on other agenda items and Prof. Berman's availability.

Alaska Judicial Council Felony Sentencing Study

Ms. Dosik indicated that the results of the Council's felony sentencing study should be available by the fall of this year, 2015.

Request to Court System for Law Clerk Assistance

Justice Bryner will contact Christine Johnson to see if any law clerk assistance might be available with respect to the Commission's statutorily imposed responsibility for reviewing the presumptive sentencing scheme. (Ms. Geddes will assist with any written proposal for the same.) Justice Bryner noted that it will be important to provide context for the review, i.e. describe the evolution of the sentencing scheme and developments such as [Apprendi/Blakeley](#).

Department of Law

Mr. Skidmore said that the Department of Law has an internal manual, updated every year, which provides an overview of the presumptive sentencing scheme and a discussion of the changes which have been enacted since its inception. The DOL may be willing to share this overview and discussion with the Commission so as to avoid duplication of (great!!) effort, and to aid the Commission in its efforts. He will report back.

Court System Information on 2014 SIS Dispositions and Set-Asides

Ms. Dosik reported that she had requested and received the following data from the court on SIS completions: in calendar year 2014, 566 convictions were set aside after suspended imposition of sentence, 721 were not set aside (1,287 total). The percentage of set aside convictions of the total was 44%.

Reclassification of MISC 4 (felony to misdemeanor)

Background: At its last meeting the Workgroup discussed some members' interest in developing a recommendation for the Commission concerning simple possession offenses. Workgroup members had asked that SB 56 be circulated, and that staff provide information concerning those states which classify simple possession as a misdemeanor. Staff was also asked to provide information as to those states' crime rate trends. Consequently, staff developed materials to aid the Workgroup in its discussions. Ms. Geddes later noted that almost all of the states with misdemeanor classifications for simple possession seem to have provisions of law providing for deferred sentencing.

The workgroup discussed former SB 56 (2014) that had been circulated. Mr. Skidmore stated that the Legislative Research Service had probably overestimated the savings which would result if SB 56 reforms were enacted. Sen. Dyson informed the group that amendments had been suggested for SB 56 with proposed drug quantities which were more agreeable to public safety agencies. Staff agreed to locate the proposed amendments. [MG: They are now attached to this summary] Although Commissioner Steiner felt prepared to proceed with a substantive proposal for the Commission, Commissioners Sell and Bryner did not, and the Workgroup ultimately agreed to wait to review that additional information from Sen. Dyson before considering and advancing a recommendation.

Mr. Skidmore asked about the necessity of reclassification if there are pretrial diversion and deferred prosecution programs implemented. He said that while the DOL does want pretrial diversion there is always a question about the state's ability to finance treatment costs associated with any diversion type program. Mr. Dyson suggested that certain funds could be identified for such purposes, such as the funds intended for victim restitution. Mr. Steiner said it was not the Commission's job to find funding; its job is to evaluate the efficacy of the current system and make recommendations to improve it.

Ms. Dosik said that the criminogenic effect of imprisoning lower level and non-violent offenders also, ultimately, has economic impact. Justice Bryner noted that because of the nature of addiction, experts recognize that drug users will have multiple contacts with criminal justice system, but that 'smart justice' approaches such as incremental sanctions and PACE make more sense than mandatory minimums and lengthy presumptive sentences. Research has shown, he said, that recidivism among drug users much more effectively reduced by community-based programming than by incarceration.

With respect to Mr. Skidmore's additional question as to whether research shows any difference in treatment/compliance results between defendants facing felony sanctions versus misdemeanor sanctions, Ms. Dosik reported that she had looked at that research and it indicated there is no difference.

Workgroup members and Commissioners noted that they may need to request an expert to advise them on what quantities of drugs reasonably reflect personal use rather than an intent to distribute. Mr. Steiner expressed concern that the group not get bogged down with determining quantities for its recommendation concerning simple possession. Lt. Sell suggested that she could provide some anecdotal information, just based on texts they see in Juneau which are directed at drug dealers. Sen. Dyson stated that the proliferation of pain-killer prescriptions suggests that personal-use quantities may need to be updated.

Commissioners also noted that the ACJC legislative mandate requires it review current drug schedules, and that it would certainly need expert advice given the lack of agreement among the states in determining which drugs are the most dangerous. Lt. Sell noted that the drug frontier is constantly changing, e.g. Spice, and it would be easy to get lost in the weeds. The lack of any activity on the part of the [Controlled Substances Advisory Committee](#) was noted. It had been hoped that the Advisory Committee would have convened already and that the ACJC could rely in part on the expertise of that group. [MG: It does appear that [new Committee members have been appointed by Governor Walker](#), but that the Advisory Committee has not yet been met.]

The Workgroup agreed to recommend to the full Commission that the Controlled Substances Advisory Committee meet and begin its work. Mr. Skidmore also said that he would check to see what was happening with that group.

The Workgroup also decided against bringing in an expert at this stage to discuss personal use quantities. Rather the Workgroup agreed to focus on the MISC/simple possession issue to see if it could reach a resolution at its next meeting.

Justice Reinvestment Initiative and Its Impact

Susanne DiPietro reported that the likely invitation by the State of Alaska to the Pew Public Safety Performance Project, known better as the justice Reinvestment Initiative (JRI), means that the Alaska Criminal Justice Commission will be shifting gears in June in order to effectively partner with the Project.

The Classification Workgroup will continue to work on its own agenda in April and May, but Commission members will likely find the Pew partnership a time-absorbing process once it begins in June.

Increasing Felony Theft Thresholds

Commission members and participants indicated that they were still interested in this topic. Ms. Geddes stated that she would circulate some of the submissions related to the 2014 bill that raised felony thresholds before the next meeting so that Workgroup members could determine if they wanted to address this issue.

Reclassification of Misdemeanors

Commission members and participants indicated that they were still interested in this topic. Ms. Theno (who could not attend today's meeting) said she would assist and enlist others to help. Commission Steiner has previously supplied a list of potential misdemeanors for reclassification to another workgroup. Ms. Geddes will circulate that list. Judge Lohff again suggested that VPSO's and rural State Troopers be contacted for their input, so that it could be learned if rural law enforcement would welcome such changes.

Other Matters

Mr. Dyson recommended that the Commission look at offender PFD's that are forfeited to the state, which the Department of Corrections currently uses to fund offender health care services. Justice Bryner urged Mr. Dyson to make that recommendation directly to the Commission.

ACJC Workgroup on Classifications of Crimes and Applicable Sentences
Staff Notes and Member Assignments, February 23, 2015
Attorney General's Office, 1031 W. Fourth Ave., Room 102, Anchorage, AK

Commissioners attending: Alex Bryner, Kris Sell, Quinlan Steiner
Staff present: Susie Dosik, Mary Geddes
Participating: Seneca Theno (MOA), Judge John Lohff (ACS)

Future meetings: Pending scheduling

RELEVANT INFORMATION:

Staff memorandum on "Wobblers."

Staff memorandum on Alaska Native DOC population with Drug offenses.

Staff prepared chart regarding Drug Offense Classification and Sentences.

"What Caused the Crime Decline" (New report from Brennan Center - posted on Resource page)

"Recidivism Reduction Plan" (Report to Alaska Legislature – posted on Resource page)

DISCUSSION

Recidivism Reduction Plan

The plan has been posted to the Resource Page of the ACJC website. The workgroup discussed several findings and was made aware that it would be a major topic of discussion at the forthcoming Senate Judiciary Committee's "Crime Summit" on February 25, 2015. Two aspects of the report were found to be important (1) that a major emphasis was on the policy of using incarceration resources for violent, dangerous offenders, and (2) the report takes a strong position on using "evidence-based" strategies to reduce crime while maintaining or improving public safety. The report also favors utilizing the technical assistance offered by the Pew/MacArthur foundations.

Pew/MacArthur Initiatives

Comm, Bryner reported that he has been working with all three branches of government to determine if they were interested in utilizing the Results First and Public Safety Performance Projects technical assistance from the Pew/MacArthur Foundations. This will also be a topic at the forthcoming Crime Summit.

Reclassification of MISC 4

Comm. Bryner reported that he reviewed a variety of studies that followed the drug reclassification efforts in other states. He recommended that the workgroup continue in the direction it has been headed with the reclassification of drug possession offenses and use information that Pew will be able to provide in coming up with a reform plan. Ms. Dosik presented an explanation of the "wobbler" system used in California. Ms. Geddes reported that the Sentencing Alternatives Workgroup is working on a revision or replacement to Alaska's Suspended Imposition of Sentencing (SIS) statute. Judge Lohff asked whether data exists on SIS completion rates and noted that misdemeanants are not currently supervised. Ms. Dosik noted that according to DOC, many felony offenders are also released without any supervision. Comm. Sell requested information on how to lessen penalties while maintaining the ability to get offenders to change. Comm. Bryner noted that risk

assessment was one effective tool. Comm. Steiner proposed recirculating SB 56 from the 2014 session and reviewing other states' models.

Presumptive Sentencing

This is potentially a large complicated area of research and discussion. Topics could include: history of presumptive sentencing in Alaska, statutory changes, Court of Appeals interpretations, and studies regarding its effectiveness, and the use of aggravators and mitigators. The need for dedicated staff was discussed. Proposals included using Seattle University law students or an Alaska Supreme Court law clerk. Comm. Bryner stated he would request a law clerk from the Supreme Court. Ms. Geddes stated that she could request an overview of sentencing schemes from Doug Berman, a nationally recognized expert on sentencing policy.

Felony Theft Thresholds

It was reported that revising felony theft thresholds is a trend nationally. Last year the Alaska Legislature changed the felony threshold in property crimes from \$500 to \$750 dollars. The need for further review was discussed. If the 1980 figure were adjusted for inflation, the threshold would currently be \$1,200. The need to include retail owners in the discussion was noted.

Reclassification of Misdemeanors

Comm. Steiner and Ms. Theno discussed a variety of misdemeanors that could be considered for reclassification to violations. It was suggested that VPSO's and rural State Troopers be contacted for their input.

ASSIGNMENTS

- Commissioners:**
- All: Review the papers:**
 - 2015 Recidivism Reduction Plan**
 - Fewer Prisoners, Less Crime**
 - Recalibrating Justice, 2013 State Sentencing and Correction Trends**
 - ACLU "Smart Reform is Possible"**
 - 2011 (???)**
 - JRI in Nebraska, January 2015**
 - (And any other materials presented by staff or other commissioners)**
 - Be prepared to make a recommendation to the full commission at the next meeting.**
 - Bryner: Request the services of a law clerk from the Alaska Supreme Court to review Presumptive Sentencing.**
- Staff:**
- Investigate whether ACS data exists on current SIS completion/clearance rates**
 - Provide information on how to effectuate offender change while lessening penalties**
 - Circulate SB 56 from 2014.**
 - Circulate other states' models for reclassifying drug offenses**

ACJC Workgroup on Classifications of Crimes and Applicable Sentences
Staff Notes and Member Assignments, January 6, 2015
Denali Commission, 510 L St., Anchorage

Commissioners attending: Alex Bryner, Kris Sell, Fred Dyson
Staff present: Susie Dosik
Participating: John Skidmore (DOL)

Future meetings: Pending scheduling

RELEVANT INFORMATION:

[Reclassifying Nonviolent, Small Quantity Drug Possession as a Misdemeanor](#)

[Fiscal Impact of Reclassifying MISC IV](#)

Email from Mike Matthews DOC concerning numbers of MISC offenders (attached to this document)

DISCUSSION

The group welcomed Mr. Skidmore. Comm. Bryner reviewed the goals and mandates of SB 64, including the solicitation of a broad range of options and viewpoints. Mr. Skidmore reflected that he understood the goal of the commission to be to (1) keep the crime rate going down, and (2) to reduce criminal justice costs, as the current incarceration practices are fiscally unsustainable. Comm. Bryner added that the focus was to be on evidence-based practices.

Reclassification of MISC 4

The group discussed a paper produced by Forrest Dunbar regarding the potential cost savings and other impacts of reclassifying drug possession to a misdemeanor. Mr. Skidmore expressed that he was skeptical of the amount of any potential cost savings because prosecutors may be resistant to negotiating charges down to misdemeanors for conduct that may have originally been charged as a B felony. He agreed, however, with the premise that simple drug possession shouldn't result in incarceration. Comm. Dyson and Comm. Bryner discussed the "collateral consequences" of a felony conviction and Mr. Skidmore stated that he needed to learn more.

The group discussed how to solicit viewpoints from other constituencies. Suggestions included asking for input from groups which had testified during the hearings on SB 56 in 2014 (legislation which would have reclassified MISC 4) including: criminal defense attorneys, the Alaska Police Officers Association, the Office of Victims' Rights, and former Department of Corrections Deputy Commissioner Carmen Gutierrez.

Mr. Skidmore suggested also looking at other options to deal with MISC 4 including pretrial diversion, which would not need Commission recommendation or legislation, but which could be implemented solely by the Department of Law. It was noted that a downside to that approach would be that implementation would depend on the discretion of those in the department. Comm. Sell noted that the Juneau Police and prosecutors had a standard Rule 11 agreement for minor consuming violations which resulted in dismissal of charges if a person was clean for a year, resulting in a "clean" record. Mr. Skidmore stated that Alaska used to have a robust diversion program but the Court of Appeals had issued a case which led to prosecutors not using that approach as often.

Comm. Bryner remarked that 14 or 15 states treat the offense as a misdemeanor, and always have. Two states have reclassified it to a misdemeanor from a felony. There should be evidence of how that is working. One state may have treated it as a “wobbler,” i.e., as a misdemeanor at sentencing, prior to treatment or rehabilitation, and a felony on the permanent record if the offender was not unsuccessful. Meeting attendees expressed that they would like more information on “wobblers.” Meeting attendees discussed the need for prosecutors to have “leverage” and also the need for offenders to have treatment options, which are currently not available, that could be used for such an approach. They noted that some front-end investment would be needed to obtain large scale cost savings in the long run.

It was noted that Mr. Dunbar had identified many of these issues in his paper and had proposed a scaled approach that would provide relief from the felony conviction for the first or second conviction but not after that, and also included risk assessment and tiered levels of supervision.

Meeting attendees discussed how to reach out to others. Mr. Skidmore stated that he would reach out to prosecutors in other states to see how the approach was working, and that Quinlan Steiner (absent from this meeting) could do the same. Comm. Bryner suggested that everyone should read Mr. Dunbar’s report thoroughly, identify other sources of information promptly and present those to the group through Mary Geddes or Susie Dosik.

Mr. Skidmore reviewed how negotiation decisions are currently made in drug cases. He stated that individual prosecutors decide based on: Drug amounts; the suspect’s criminal history, especially other felonies; whether the offense was driving-related; whether firearms were found; information from police about whether objects indicating distribution were found such as scales, ledgers, or other information known to law enforcement about the suspect’s lifestyle. He stated that the level of review of Assistant District Attorney’s decisions varied by area but could include review from a District Attorney, a supervisor’s review (such as the Drug Unit supervisor in Anchorage) or none. Such review was more likely with other types of offenses, such as sex offenses.

Identification of other potential topics for discussion

Meeting participants discussed this area and identified felony theft thresholds and presumptive sentences as possible areas of discussion.

ASSIGNMENTS

- Commissioners:** Carefully review Forrest Dunbar’s paper
Identify other potential areas of reclassification of offenses or sentencing.
- Staff:** Present information on “wobblers.”
Research and present information on other states which classify drug possession as a misdemeanor.
Find out whether there is a disparate numbers of urban and rural residents incarcerated in drug cases.

ATTACHMENT

----- Forwarded Message

From: "Matthews, Michael T (DOC)" <michael.matthews@alaska.gov>

Date: Mon, 05 Jan 2015 22:50:45 +0000

To: Carmen Gutierrez <ave2cg@gmail.com>

Subject: sentenced vs. unsentenced

Hello Carmen,

I just ran some numbers on MICS-1 thru 6 releases and found something I think is interesting when looking at unsentenced offenders (and subsequent PEW reports that claim our sentenced offender counts are down).

The impact of unsentenced offenders is real and needs to be considered.

For example:

Not only are there more MICS offenders and they are staying longer, but the time they spend as unsentenced is also increasing.

MICS-4, for example –

5 years ago,

- 799 offenders were released,
- they stayed for an average of 192 days,
- of which, 17% of that time was as unsentenced.

In 2014,

- 962 offenders were released,
- they stayed for an average of 214 days,
- and 32% of their time was as unsentenced

So, while it is true that our sentenced offender population is decreasing, that is not the whole picture. The reality is that for a number of our drug offenders, their sentenced time is simply being “transferred” over to unsentenced legal status. This might be going on in other offense types but my current research is limited to just drug-related offenses.

This causes a cascading effect:

1. It makes it appear sentenced counts are decreasing. In truth, more offenders are being convicted of drug offenses, it just takes longer to do so. In most cases, the time spent as unsentenced is applied to their total calculated incarceration time. So even though they are

unsentenced now, in the future it will be considered sentenced time when figuring out how long they are to be incarcerated.

2. When offenders are in unsentenced status, it limits where we can house them. They cannot, for example, be housed in a CRC. This, in turn, drives up the cost of incarceration.

3. When an offender is unsentenced, it decreases their chances to enter into program treatment eligibility. Sentenced offenders are the priority.

4. If an offender stays unsentenced long enough before conviction, it could disqualify them from program eligibility altogether because they end up not having enough time to serve in order to participate in a program 120 days long. If an offender is ordered to take a program by the courts but is discharged before the program can be started or completed, then it is up to the offender to get the treatment. If the offenders fails to do so, they are returned to incarceration for failure to comply with the conditions ordered by the court.

This is but one example of the impact unsentenced offenders are having on reformative programs, recidivism, and offender populations in general.

Mike

----- End of Forwarded

ACJC Workgroup on The Classification of Crimes and Applicable Sentences
Staff Notes and Member Assignments from December 1, 2014, 12:00 -1:30 PM
at the Snowden Conference Center

Commissioners attending: Kris Sell (telephonic); Alex Bryner, Fred Dyson, Quinlan Steiner
Staff: Mary Geddes, Susie Dosik,
Participating: Bob Linton (DOL), Brad Mrystol, Chuck Kopp

Next meeting is: To be scheduled -- awaiting results of Doodle poll !

INFORMATION

Sen. Dyson reported on the Walker Administration transition team which focussed on public safety/police/law issues. This group was chaired by Charlie Cole. The team urged consideration of the current classification of crimes including drug crimes and making adjustments to mandatory sentences, a priority of restitution, a recommendation that the Governor follow the work of the Alaska Criminal Justice Commission, and revisions to CourtView. Additionally, there was lots of discussion concerning rural policies and tribal law. Sen. Dyson noted that the Corrections transition team was chaired by Carmen Gutierrez, and that the Commission should be tracking their work as well.

Chuck Kopp reported that with respect to the execution of [SB 186](#) (requiring the Controlled Substances Advisory Committee to meet), Governor Parnell had just made appointments to the Controlled Substances Advisory Committee. It had never been convened. [Staff: By statute, the Advisory Committee consists of AG, commissioners of health and social services and public safety; someone from the Board of Pharmacy; a peace officer; a physician; a psychiatrist and two public members.] The Advisory Committee is to review drug schedules and the efficacy of treatment. Fred Dyson suggested that at some point the ACJC could/should connect with the Committee.

Prior to this meeting, the workgroup members had been provided with a research paper written by Forrest Dunbar, who was at the time of authorship a Yale Law School Fellow working for the Office of Public Advocacy.

Fred Dyson noted that during the last legislative session a bill (SB 56) sought to declassify certain drug possession offenses. At the time it was considered, there were two estimates of the savings that could be realized: \$5-10 million dollars and, later, \$14 million. Kris Sell noted that she had been opposed SB 56 because there had been legitimate concerns about whether certain quantities in that bill had been dealer level quantities. She noted that many individuals charged with distribution plead out to possession offenses.

Bob Linton said he believes that, in Anchorage, jail terms for a first offender might typically involve a suspended 60 day sentence, and that a first offense for the simple possession of cocaine is often reduced from a C felony to an A misdemeanor. However, he couldn't say what prosecution policies exist outside of Anchorage for felony drug possession.

Fred Dyson wondered if we should rely on ameliorative charging practices that are not transparent versus making changes in the law.

Chuck Kopp referenced the quantities and types of drugs cited in SB 56 as reasonably reflecting possession not dealing conduct.

Kris Sell stated that before considering any specific action or recommendation she wanted enough time and opportunity for study.

Fred Dyson asked if there a 'sweet spot' at which longer incarceration terms have a a negative effect and worsen recidivism?

Alex Bryner noted that it is widely know that there is a negative impact a criminogenic impact, on first offenders who can't make bail. He asked if we consider a presumptive bail release for people charged with some drug offenses.

Bob Linton asked if we can learn from evidence based practices. Let's agree that whatever the changes are made in the statutes, we will include a provision for study of its impact. We could consider recommending pilot projects or sunset provisions.

Alex Bryner agreed that the ACJC mandate includes review of evidence-based and best practices and cost-benefit analysis.

Fred Dyson said that he is also concerned with proportionality analysis as well. He thinks conduct that causes physical harm to others is so much worse than using drugs, and that legislative choices must take that into account.

QUESTIONS

Following the staff's discussion of the changes made in other states to de-classify drug offenses and other crimes, the Commissioners asked staff to get more information about "wobbler statutes," allowing the prosecution of offenses either as felonies or misdemeanors.

Let's find out more about other states' experiences in charging drug offenses as felonies: e.g. as a first-time offense? Second? Third?

Can the Commissioners get a chart or other kind of easy reference tool to expedite their consideration of drug offenses?

Is it possible to find out if other states, having reduced felony drug offenses from felonies to misdemeanors, experience any change in recidivism?

With respect to other states which are making wholesale changes, what is the effect?

Is there a 'sweet spot' at which longer incarceration terms have a a negative effect, and increase recidivism?

Should we consider a presumptive bail release for people charged with some drug offenses?

Can we get more information about what drugs are in use in Alaska? What are the problem drugs in different communities? Can DPS help us in getting this information?

Do first MISC 4 offenders get jail in Alaska? What are the charging practices throughout the State?

Can the staff circulate Doug Marlowe's material on risk-needs assessments of drug offenders?

RESOLUTIONS

At our next meeting, Commissioners will discuss both SB56 and the Dunbar paper as starting places for discussion.

ASSIGNMENTS

- COMMISSIONERS TO REVIEW
 - o Dunbar paper: <http://www.ajc.state.ak.us/acjc/drugs/reclassnonviol.pdf>
 - o SB 56 (text and documents): [SB 56 AK LEG BASIS Directory](#)
 - o [LRS Report on the Fiscal Impact of Reclassifying MISC 4.](#)
- Research "wobbler statutes," allowing the prosecution of offenses either as felonies or misdemeanors. (Mary/Susie)
- Provide a chart or other kind of easy reference tool to expedite their consideration of drug offenses. (Mary/Susie)
- Determine if there is any information on changes in recidivism or crime from states which reduced felony drug offenses from felonies to misdemeanors. (Mary/Susie)
- Find the discussion of the proverbial 'sweet spot' at which longer incarceration terms have a negative effect and increase recidivism. (Susanne)
- Learn about other states practices re presumptive bail release for people charged with some drug offenses. (Mary)
- Get stats about what drugs are in use in Alaska, and other information about the problem drugs in different communities (staff contact DPS' Vrabec)
- Do first MISC 4 offenders get jail in Alaska? What are the charging practices throughout the State? (staff contact DOL Skidmore, Courts' Nancy Meade, DOC's Taylor)
- Circulate material on risk-needs assessments of drug offenders (Mary)