

ACJC Rural Criminal Justice Work Group
Staff Notes and Member Assignments
March 3, 2015 meeting
Atwood Building, Room 1270, Anchorage

Commissioners: Quinlan Steiner, Alex Bryner, Greg Razo (first hour), and Terry Vrabec (second hour)
Participant: Gregory Olson (Law)
Staff: Mary Geddes and Teri Carns (note taker)
Guest: Billy Houser (Department of Corrections)

Ms. Geddes noted that this was a public meeting, and members of the public would be welcome to comment or ask questions at appropriate times. The meeting was recorded.

Ms. Geddes introduced Billy Houser from the Department of Corrections who supervises the department's electronic monitoring program, the community residential centers, and the fifteen community jails. The meeting focused on Mr. Houser's experience with these systems, particularly electronic monitoring (EM) and community jails.

Electronic monitoring

Mr. Houser said that at this point in time, DOC handles 400 to 500 people on EM at any one time, all of them sentenced. Electronic monitoring serves only sentenced offenders. No one with DV or sexual assault/abuse convictions uses it. DOC screens applicants for housing and employment. Participants must follow strict rules about time away from home, travel to employment, compliance with drug and alcohol testing and conditions, and other requirements.

Mr. Steiner asked about sanctions for violations. Mr. Houser said that the program works with employers and treatment providers to try to assure that offenders don't lose jobs or get discharged from treatment if they are incarcerated for violations. Offenders may also have alcohol or drug monitoring technologies, such as SCRAM monitors. Drug violations are more common than alcohol. The probation officers assigned to the program tend to have caseloads about half the size of regular probation/parole officers because their monitoring of the probationer/parolees is more intensive. That permits them to develop a relationship with the offenders they supervise.

Mr. Houser said that a DOC analysis of recidivism showed that people on EM have a lower recidivism rate, relative to offenders in DOC as a group. However, that may change when they go on probation or parole after finishing time served on EM. He noted that many of the probation officers have a "culture of revocation," while the EM program uses a "restorative"

Mr. Razo asked about the cost of the program. Mr. Houser said that the typical cost is \$13/day, plus a charge of \$10/week. A TA B (?) unit runs \$22/day. Because offenders have a constitutional right to rehabilitation, the department considers their incomes before setting the actual amount that they pay. They may waive the fee entirely for indigent offenders. A GPS unit is a separate cost of \$14/day. Because the department can monitor either alcohol use (through SCRAM or other technologies) or location (through GPS), it usually monitors for alcohol. "We'd rather know if they're drinking than where they are," Mr. Houser said. He would like to expand the program to serve sex offenders, and those charged with/convicted of domestic

violence. A number of other states are doing this successfully

Ms. Geddes asked about credit for time served while on EM. Mr. Houser said that only sentenced offenders are allowed credit. The group discussed possible credit for time served for unsentenced offenders, equivalent to the credit that unsentenced offenders now receive for incarcerated time. Mr. Houser said that the Parole Board may keep high-risk offenders on EM after they have completed serving a sentence on EM.

Mr. Houser said that he would like to expand the EM program to rural areas, but needs to have the cooperation of local police departments to assure that violations can be responded to quickly. Mr. Olson suggested that local probation/parole officers could handle that. Mr. Houser responded that the probation officers in rural areas often travel to see probationers in villages, but police are in the community all of the time. Sometimes local police are reluctant to undergo the training needed to do a successful EM program.

Rural communities must have Verizon or GCI service available in order to put someone on EM. Occasionally, a person will be furloughed to a village for a funeral or other event, and monitored for alcohol use while there. GPS won't be available for villages for another couple of years (2017) because the satellite network isn't dense enough. When it is, it may be possible to put DV offenders in villages on EM. Also the department would like to have devices that can monitor both position and alcohol use at the same time. Mr. Houser said that he has reached out to police and attorneys in a number of communities, including Barrow, Bethel, Sitka, and Juneau.

Community jails

Mr. Houser said that in 2004, Kotzebue said that DOC wasn't paying the city enough for its management of the community jail, and wanted to close the jail. The court agreed that the jails were the state's responsibility, and DOC took over their management. Problems occur for a couple of reasons. The jails are often underutilized, but must be open and maintained any way. Where the jails are part of the local police department building, and the dispatchers or other staff handle bookings and other responsibilities, the costs are more manageable. In some communities, like Kotzebue, where the jail is in a different location, a larger staff dedicated just to the jail must be maintained, at noticeably higher cost. Mr. Houser said that if the state does continue to use community jails, it will need to maintain and upgrade some of the facilities.

Mr. Vrabec said that the Troopers are trying to minimize travel costs, given the state's financial situation. Community jails help to reduce the costs of transporting defendants for hearings and trials. Without community jails, the state will pay an estimated \$500,000 extra each year for Troopers to transport defendants, and probably more for DOC prisoner-transportation costs as well.

Mr. Houser said that the standards for the jails were written in 1994, and should be updated. For example, people should be able to stay in the community jails for longer periods. He noted that Kodiak started its own Community Work Service program. He also said that if EM could be used more often in rural areas, there would be less need to transport prisoners to for trials and hearings.

Electronic monitoring and unsentenced offenders

The group discussed use of electronic monitoring for unsentenced offenders, and other aspects of the

program. Mr. Houser said that some private bail companies are permitted by the court to use EM for people on bail. He added that there's no statutory prohibition against the department monitoring unsentenced offenders. But no program is established to do that. The private programs are not accountable for their EM programs, and do not offer treatment or other opportunities.

He said that he believed that it would be inappropriate to grant time-served credit for unsentenced people on EM with private companies because of the lack of oversight and services. But if DOC were allowed to do EM for unsentenced offenders, those offenders should get credit for time served. Because 48% of the current DOC population is unsentenced (including everyone in CRCs, on probation/parole or in institutions), this could free up a sizable number of beds. He believed that judges and prosecutors were not familiar with the actual practices of private bail companies.

Mr. Houser said that walkaways from the privately-run CRCs were mostly unsentenced defendants with addition problems. They are not receiving substance abuse assessments, or other programs while in the CRCs because they are unsentenced, even though they sometimes stay for a considerable amount of time.

Possible Recommendations

- The group discussed possible recommendations with Commissioners Vrabec and Steiner. Mr. Steiner said that the Commission should recommend that defendants be treated consistently throughout the state with regards to credit for time served. The group suggested three areas for which recommendations could be drafted:
- Sentenced people now on electronic monitoring through DOC should receive good time credit at the same rate as offenders housed in institutions or CRCs.
- Private companies providing electronic monitoring should be held to standards. DOC should expand its program to offer EM for unsentenced offenders.
- Community jails should expand the number of days during which an offender can be housed there, if they can meet appropriate health and other standards. Funds for them should not be used to subsidize local police departments.
- The EM program should be used in more rural communities, for both sentenced and unsentenced offenders.

Ms. Geddes said that she would draft a one-page summary of the recommendations and background to circulate for members to work with. Mr. Vrabec said that he would send information about community jails to assist in the drafting process.

The meeting adjourned at 10:50 a.m.

ACJC Rural Justice Work Group
ACJC Data Work Group
Staff Meeting Notes February 9, 2015
@Attorney General's Office, 1031 4th Avenue, Room 502, Anchorage

Commissioners present in Anchorage: Greg Razo and Quinlan Steiner.

Commissioners absent: Terry Vrabec, Alex Bryner

Staff: Susanne DiPietro, Mary Geddes. Teri Carns (notetaker)

Present on phone: Nicholas Gasca

Participants: Greg Olson (DA's office), Andre Rosay (Director, UAA Justice Center), Helen Sharratt, Chair of MAJIC, Jackie Schaeffer

Next Meeting: **Tuesday, March 3, 9-11 at the Atwood Conference Center**

The first hour of the meeting was a joint meeting with the Data Work Group, to hear from Helen Sharratt, Chair of MAJIC, about data issues of interest to both work groups.

Ms. Geddes noted that this was a public meeting, and members of the public would be welcome to comment or ask questions at appropriate times.

Presentation of MAJIC work

Ms. Sharratt said that MAJIC (Multi-Agency Justice Integration Consortium) was formed about ten years ago so that people involved in creating and managing databases in criminal justice agencies could improve their ability to share and analyze data about the system. Her position as an employee of the court system, designated to manage MAJIC's work, involved writing grants, handling projects, coordinating meetings, and researching best practices for sharing data in other jurisdictions. Members of the group include IT people in state and local agencies, research analysts, and representatives from UAA. Each member agency has signed a memorandum of agreement about the purposes of the group, and the roles of members.

The group meets bimonthly to share information about changes to information systems, learn about national standards for systems, and plan projects. Among the projects have been a demonstration project for GRA standards (Anchorage Municipality exchange of citation information with the court system), electronic bail conditions system in Fairbanks, and support for the use of the APSIN ID number as the identifier used to share data across agencies.

Committee members briefly discussed a MAJIC-sponsored pilot program for electronic exchange of discovery in Juneau. Mr. Olson said that the pilot project will eventually be replaced by the Department of Law's new management system for criminal cases, which is known as PBK (Prosecutor by Karpel). That project appears to be on schedule, and should be fully in place within the next year or so.

Ms. Sharratt said that one MAJIC issue was how to make its recommendations more effective. At one point, the Department of Law was looking into the possible relationship between the Criminal Justice Information Advisory Board that is established by AS 12.62.100 as a result of recommendations made by the Alaska Sentencing Commission in 1992. The CJIAB met for a couple of years in the mid-1990s, and then again for about 18 months in 2012 and 2013. Ms. Sharratt noted that from her perspective, the CJIAB has all of the major stakeholders who should be involved in the governance of MAJIC, but is missing representatives of local law enforcement and other groups who have an interest in the sharing of criminal justice data.

Mr. Razo suggested that the Rural Justice Work Group recommend to the full commission that the CJIAB consider the means of governing the use and sharing of criminal justice data. Ms. Geddes noted that a similar recommendation was made by Governor Walker's transition teams. Ms. Di Pietro proposed wording for the recommendation: "The governor should direct the DPS Commissioner and statutory members of the CJIAB to reactivate the group, and direct it to consider how best to govern criminal justice data exchanges and sharing." Members present agreed to forward the recommendation to the Criminal Justice Commission.

Results First, Pew Trust

Ms. Di Pietro said that the Pew representatives for this program will be coming to Alaska to meet with state officials. She has been working with the Governor's office and key legislators, as well as testifying before the Senate Judiciary Committee about what Pew offers for both the Results First and the Justice Reinvestment programs. Mr. Razo said that he would appreciate having talking points about Results first that he could share with AFN board members. Ms. Di Pietro and Andre Rosay, director of the UAA Justice Center said that they would provide those, along with a PowerPoint presentation and a short video.

Ms. Di Pietro said that some issues will need to be worked out with the current Results First proposal, including who decides about the use of data and the priorities for analysis. She said that agencies would provide their data to the proposed Statistical Center, and would need assurances about its uses and their opportunities for receiving analyses back. Ms. Carns noted that there were two separate issues – sharing and integrating data in real time, and statistical analyses of data for evaluations, cost-benefit analyses, and other research.

Rural Justice Committee topics

Tribal court activities Nicholas Gasca of Tanana Chiefs Conference (TCC), and Jackie Schaeffer from the Department of Law discussed the civil diversion agreement that the Department of Law and the tribes are considering. Mr. Gasca said that it is a civil diversion agreement for some misdemeanor offenses to be diverted to tribes for resolution. The offenses would include Assault 4, domestic violence-related offenses, and others. The tribe or tribal court could order restitution, conduct circle sentencing-style interactions with the defendant, or take other restorative justice actions. Between ten and twenty tribes who are members of TCC are looking at the agreement, and TCC staff are working with them to encourage its adoption. Mr. Razo

said that different tribes will want to include different offenses and remedies, and that diversity is an expected part of the process.

Ms. Schaeffer said that the time frame is uncertain because the current clauses related to tribal sovereignty and limited immunity are issues for the tribes. Mr. Gasca said that TCC hopes for a draft by March. Mr. Razo said that AFN has set development of tribal courts as a priority, and will help in any way possible with the agreement.

Recommendations about rural justice from the governor's transition teams

Ms. Geddes listed rural justice recommendations made by the governor's transition teams, including public safety and corrections. They included:

- More restorative justice;
- Reconvene the Rural Justice and Law Enforcement Commission;
- Pretrial diversion programs;
- Review sentencing provisions to assure that they do not systemically disadvantage minorities or rural residents;
- Provide more data about rural areas;
- Provide more support and training for VPSOS, and improve the VPSO program;
- Improve services in the rural areas, including increasing availability of treatment, jail beds, and other services;
- Increase the number of tribal courts; and
- Try new approaches to resolving rural issues.

Recidivism reduction plan recommendations

Ms. Geddes said that the statutory group that was working on a plan to reduce recidivism also made recommendations related to rural areas:

- Partner with Native organizations to reduce recidivism in rural areas; and
- Create an Alaska Justice Information Center.

She said that other CJC committees are working on bail issues and pretrial diversion. Mr. Razo said that the governor has taken an interest in rural matters, and the attorney general is familiar with the tribal issues.

Ms. Geddes said that a plan to close community jails in rural areas was announced recently. Mr. Olson said that doing so will drive up transportation costs for incarcerated people. Ms. Geddes said that some Kodiak offenders were being put on electronic monitoring. Mr. Steiner said that too many people are held in custody before trial. He added that the percentage of defendants who are found qualified for a public attorney has risen from about 70% to about 85%.

Work Plan

Members agreed that several topics needed to be addressed. These included

- The special problems of Natives detained pretrial in rural areas;
- The need to improve chances for rehabilitation, thus reducing recidivism, by increasing use of the existing Native health care structures already in place in rural areas.
- Consider changing standards for imposing bail in rural areas to assure relevance of conditions imposed. Consult with rural magistrate judges to call on their experiences.
- Review proposals for pre-trial diversion programs.

Members discussed outreach to rural groups to gain perspective on their needs and proposed solutions. Ms. Sharratt offered to provide names of local government specialists with whom she is working to redraft ordinances. Ms. Geddes said that she and Mr. Razo would draft a plan for notifying the public of meetings, and for sharing information about the Commission's activities.

Next meetings

Members agreed to meet again on Tuesday, March 3, and Tuesday, April 7, from 9:00 a.m. to 11:00 a.m.

ACJC Workgroup on Rural Criminal Justice Commission
Staff Notes and Member Assignments, January 12, 2015
Denali Commission, 510 L St., Anchorage

Commissioners attending: Alex Bryner, Greg Razo, Quinlan Steiner, and Terry Vrabec (tel.)
Staff present: Mary Geddes,
Participating: Gregg Olson, Tracy Wollenberg

Future meetings: **February 9, 9 to 11 a.m., Anchorage location TBD**
•March 3, 9 - 11 a.m., Anchorage location, TBD
•April 7, 9 - 11 a.m., Anchorage location, TBD

INFORMATION

Terry Vrabec previously provided information concerning the costs to DPS for arrestee/prisoner transport. See attachment (page 4).

DISCUSSION

DPS Transportation of defendants

Mr. Vrabec discussed data about the costs of prisoner transport that he had provided to the committee. In FY2014, DPS spent \$2,874,800 to move 78,356 prisoners. A slightly smaller amount is budgeted for FY 2015 (July 1, 2014 through June 30, 2015).

Mr. Vrabec said that prisoners are transported to and from their home communities at arrest, as a result of a conviction, and for hearings and trials. DPS uses its own equipment from planes to snowmachines, or pays for transportation on commercial carriers. Sometimes an offender will miss a hearing because he or she can't afford to pay for the plane fare to get to court. The judge issues a warrant and the Troopers will pick the person up on the warrant and bear the cost of getting them to court. Once an offender is in the custody of the Department of Corrections, DOC pays for transportation. He said that with greater use of technology to conduct hearings, the state could save substantial amounts of money now spent transporting prisoners.

Mr. Razo asked whether DPS kept data about how many of the people who were transported then stayed incarcerated while on bail. Mr. Vrabec said that he did not, but DOC might be able to find the information. He also said that DPS has responsibility for all pre-conviction transportation, so that it will reimburse DOC for any transportation expenses incurred. Mr. Razo suggested that in some areas, defendants now check in periodically with the VPO or VPSO, sometimes to take a breathalyzer or drug test, in lieu of having a third-party custodian. With training and the cooperation of the DA, these methods could be tried in a larger number of communities. With the cooperation of the court and available technology, more hearings could be held telephonically, also reducing the need for prisoner transport.

Mr. Olson said that the law mandates arrest in DV cases and a few other types of offenses. He noted that at first arrest, people may not be ready for a safe release because they are still drunk, angry, or otherwise a danger. Other defendants may be continually re-arrested because they don't understand the conditions of release or are unwilling to follow them.

Members discussed situations in which police can issue a citation or summons for arrest, rather than make an actual arrest. Mr. Olson said that the DA can lose up to 30 days of the Rule 45 time available to make a case if a summons is issued, suggesting that was a reason why police might prefer an arrest. Mr. Vrabec said that in misdemeanor cases an officer might issue a citation if the defendant was being cooperative. But if the defendant is not cooperating, there will be an arrest, to avoid any possible public safety problems. Members also discussed omnibus and other types of hearings, and the need for defendants to be transported for those.

Justice Bryner said that people often set up local systems that work for them, and that this knowledge should be shared throughout the state. He added that each area should be required by statute to have a local working group to discuss bail policies and practices, to compile data about them, to evaluate their effectiveness every six months, and make and document changes as needed. The group would include the local law enforcement, judge or judge-magistrate, attorneys, and probation officers (to the extent that they are involved with people on probation committing new offenses). The group would also include other local organizations such treatment programs, health workers, or monitoring organizations, tribal courts and any other group related to setting and monitoring bail performance.

Data Needs

Members discussed data collection and sharing and agreed that it would be helpful to have the coordinator of the state's MAJIC group speak with them at their next meeting. Members also thought it would be helpful to hear from each agency about what data the agency had available. Ms. Geddes suggested that the data group (Justice Bryner, Terry Vrabec, and Quinlan Steiner) might want to take on that investigation. She noted that The Trust's Steve Williams, the Justice Center's Andre Rosay, and Council staff Teri Carns also assist the data group.

Ms. Geddes summarized the meeting consensus as:

- Local officers should have more discretion at arrest for how to manage offenders for public safety and flight risk;
- Statutes that exclude categories of people from citations should be reconsidered to provide broader scope for summonses;
- There should be an organized discussion of the ways that different communities within and outside of the state handle bail releases
- Lisa Fitzpatrick should speak with the group about the magistrate-judges, their resources and practices; and
- The group would like to have more information about the Southeast Conference and its activities and goals.

Bail survey and other methods of outreach and input

Ms. Geddes said that a subcommittee of the Pre-and Post-Trial Law and Processes workgroup was developing a survey for DAs, public attorneys, and judges about bail practices throughout the state. She asked members with thoughts about it to contact Bob Linton directly.

Mr. Razo said that he wanted to hear directly from people affected by court and law enforcement practices in the rural areas. Justice Bryner suggested that local people could inform the commission about areas that the CJC should be paying attention to. He also said that the substantive committees of the CJC were making proposals that would affect people in urban and rural areas differently, and that rural voices should

be heard about those ideas. He used proposed changes to felony drug possession laws and the proposal to reduce many of them to misdemeanors as an example of something that the rural areas believe will have much different consequences for them. Mr. Razo and Justice Bryner agreed that the information was two-way – people also needed to know that the ACJC was functioning, and what its goals were.

AFN Priorities

Mr. Razo said that the Alaska Federation of Natives had decided to consider justice system issues in depth this year, including domestic violence, sexual assaults, and fairness of courts and legal processes. Justice Bryner said that the ACJC also needed to discuss the role of tribal law and tribal courts and entities. Mr. Razo read a resolution that has been pre-filed by Rep. Bryce Edgmon that cites all of the previous reports about Alaska Natives. He said that all of them concur in the recommendation that local governments must be strengthened. He suggested that Rep. Edgmon or his staff could give the CJC insight about the next steps that are planned for the resolution, and ways in which the CJC might play a role.

Mr. Olson noted that even with legislative and executive branch support for stronger local governments many lack the resources to act. Members discussed Justice Reinvestment approaches, and the availability of grants and other funding.

Future Planning

Ms. Geddes summarized the proposed agenda for the next meeting, which would include:

- Presentations and or participation from Tanana Chiefs, possibly from Magistrate Judges McLain (Galena), Jackson (Kake), Lewis (Nome); Lisa Fitzpatrick (Court judge-magistrate coordinator); and Helen Sharratt (MAJIC).
- Review of results of bail survey.
- Further discussion of rural outreach.
- The Rep. Edgmon resolution and CJC response/action.

Members agreed on the next meeting dates. (Listed on page one) The meeting adjourned at 11:00 a.m.

Notes by Teri Carns

ATTACHMENT

MEMO FROM TERRY VRABEC Sun 12/21/2014 5:53 AM

DPS TRANSPORT COSTS

Good Morning Mary,

I am traveling again but since I had some time at the airport I thought I would catch up on some projects. At our meeting this last week I promised to get you info on what DPS spends on prisoner transports. The numbers are huge, our Commission will be amazed! And these numbers don't include some of the DOC costs for transporting even though we do have DOC help us sometimes and cover their costs. Before I give you the numbers keep in mind that everytime someone gets arrested and if they need to go to the jail, or court, we are mandated to provide that transportation. We use our own resources sometimes (airplanes, boats, cars, 4-wheelers) but also use commercial companies often. There is also the issue of when we have to transport a prisoner or fugitive to or from an outside state. (DOC should have those numbers of the prisoners at facilities in the lower 48).

At our meeting the topic of people not being able to afford to make it to the court house for hearings came up at our last meeting. What sometimes happens is that the person is not being disrespectful, but they cannot afford to fly to the hearing. It is very possible that they just stay where they are at, a court will issue a warrant eventually and then we will go and fly to the remote area and arrest them, thus getting them to their hearing.

Our FY2014 actuals for prisoner transportation were \$2,874.8 (\$2.9 million). We have \$2.854.2 budgeted in our FY2015 Management Plan. DPS moved 78,356 prisoners in FY2014.

I do not have the ability to break that down to whether they were moved before, during or after a conviction. The stats we have basically show that a prisoner was transported. Sometimes a transport could be just across town, but sometimes it could involve days of travel with multiple types of transportation.

After you go over this let me know if you have more questions. And of course this can be shared with our group.

Thanks, Terry

ACJC WORKGROUP ON RURAL CRIMINAL JUSTICE
Staff Notes and Member Assignments (TC)
From December 10, 2014 Meeting, 10:00- 11:30 AM @ Denali Commission

Commissioners Attending: Quinlan Steiner, Alex Bryner (tel.), Greg Razo, Terry Vrabec (tel.)
Staff Attending: Teri Carns (TC), Mary Geddes (MG)
Also Participating: Gregg Olson (Law); Jay Hochberg, Public Defender

**The next workgroup meeting is: Wednesday, January 12, 9:00 AM- 11:00 AM
Denali Commission, 510 L Street, 4th floor, Anchorage**

INFORMATION

The meeting opened with a telephonic presentation by Jay Hochberg, Assistant Public Defender, about bail issues in rural areas of the state. Mr. Hochberg said that at Mr. Steiner's request he surveyed Public Defender agency staff about their concerns regarding bail practices. Mr. Hochberg made the following points:

- Third party custodians are used in the majority of rural cases, including misdemeanors. They are often layered on top of secured bail requirements, rather than substituting for money bail as was originally intended.
- Poverty is also keeping people in jail. Mr. Hochberg wondered why isn't the court/DOC allowing credit card payment.
- In rural areas, the issue is not 'flight.' Pretty much everyone knows where a defendant can be found. Other issues can interfere with appearance, i.e. forgetting a hearing or not having airfare to come into town.
- Even when a third party custodian is available, some judges require a signed affidavit, rather than allowing confirmation on the telephonic oral record. Requiring signed paper work from a remote custodian following court often adds one to three days of incarceration before release.
- In a few communities, judges permit lengthy (30 to 60 minute) aggressive cross-examinations of proposed third-party custodians, focusing on relatively minor and remote past incidents.
- In many communities in the past, it has been acceptable to release the defendant and permit him/her to make their way home (typically to a village), and have the third party custodian meet them at the airport. Some prosecutors are objecting to that practice, apparently preferring that the custodian come to the court and leave with the defendant.
- In some communities, judges or magistrate judges are requiring that defendants post the amount of a return ticket to court in advance of release to assure that the defendants are able to get back to the court for further hearings/trial.
- Some judges/magistrate judges will not release a defendant back to a small community because of perceived danger to the victim or others in the community even when there is a third-party to supervise.

- Mr. Hochberg noted that there is substantial support for the 24/7 program. He stated that he is in the minority as he objects to the 24/7 program on several grounds. It is unconstitutional as a warrantless search under Scott (9th Cir. 2006). He is also concerned that it will be used in addition to third-party custodians and secured bonds rather than in lieu of them. The requirements are burdensome and onerous. In larger communities, getting to the center where breath tests are administered can be very difficult because of lack of transportation. He noted that despite his objections many attorneys like and use the program. Many rural communities could use their VPSO for their own kind of 24/7 program.
- Mr. Hochberg said that because defendants are unable to find third party custodians or meet other bail conditions, they often plead guilty at an early opportunity, because the offense was minor and they know that they'll be released with no further time to serve. He said that judges do not perceive this as coercing pleas, but he believes that many defendants, if released, would have a chance to obtain witnesses and evidence to defend themselves against the charges. He suggested that one piece of evidence is that followup bail hearings at which changes in bail conditions are denied are often followed almost immediately by a change of plea that disposes of the case.
- Mr. Hochberg noted that both Alaskan studies (e.g., Judicial Council Alaska Felony Process: 1999) and others show that people who spend time incarcerated before disposition are significantly more likely to have longer sentences, bail conditions that are less likely to obtain release are costing the state substantial amounts of money. He suggested that the commission could review a bail policy in Kentucky that allows the defendant a \$100 credit against a required bail amount for every day of pre-trial incarceration. When the bail amount has been reached, via these credits, the defendant is released until disposition of the case. Mr. Hochberg suggested that the Kentucky arrangement particularly makes sense in terms of 2nd DUI offenders. It is very typical that they will otherwise sit in jail because of a 3rd party requirement. When they have been sitting in jail like this for a while, defendants will typically plead out even though there is no discovery, even though no review for motions is possible, and judges will let them out after they have sat in jail for the minimum mandatory sentence.
- Mr. Hochberg said that he had appeared before Judge Jeffrey early in his practice and that he observed the Judge release a defendant on an installment plan so that he could keep his job. S. Carolina also allows bail on the installment plan, after a down payment.

Members discussed Mr. Hochberg's presentation. Mr. Razo said that he hesitated to limit practitioners' creativity. Mr. Steiner concurred, but said that he favored codifying some changes. He noted that public safety was not enhanced by keeping people, especially many misdemeanants, incarcerated until they plead, and then releasing them immediately with no supervision. He added that evidence shows that even short jail stays increase the likelihood of recidivism among low-risk offenders.

Ms. Geddes said that the federal system uses very few secured bonds, and that Alaska could consider using more unsecured bonds.

Mr. Vrabec said that the Troopers must pay to transport people who they have arrested to court and back (if the person is in the custody of DOC, that department pays). Mr. Steiner said that the cost of transport to trial and court events is being litigated. Apparently some people voluntarily remand themselves in the village so they can get transported back to court in Bethel. Some courts have refused to remand. Mr. Hochberg said they should consider the costs of a airfare versus the costs of daily incarceration.

Mr. Razo said that the new Governor is likely to focus on the cooperative system of rural justice, and there may be a willingness to enter into agreements with more localized justice systems. Perhaps we should have TCC come in for presentation, because there is perhaps as much needs to change policy as statutes. Natasha Singh, general counsel for the TCC may be a good resource, and offer perspective on cooperative agreements.

Quinlan Steiner said that he would like to better understand the barriers to establishing tribal courts, and the realistic prospects of establishing and maintaining the courts. Mr. Razo stated that money has to be spent either on district courts or tribal courts.

Mr. Olson asked if there is an intermediate step to tribal courts, such as an elder council or community group. He noted that back in 1989, the Bethel's DA office did lots of diversions to such groups, resulting in dismissal of cases if there was successful performance by a defendant. In Emmonak, 90% of the young adult cases were handled by diversion, right at arraignment. It also happened in DL cases, too, e.g. charges can be reduced or dismissed if driver gets straightened out in 30 days.

Certainly there has been a history of diversion efforts in Alaska. The Alaska pretrial diversion program was a state-wide program with six offices was shut down in 1986. A 1990 evaluation of the Barrow and Minot diversion efforts showed that the single most important factor contributing to that option was a source of referrals.

Gregg Olson indicated that the Washington State diversion program is run by a non-profit. He wondered about law school resources to study some of the questions raised concerning pretrial diversion. Staff referred him to www.pretrial.org, the website for the Pretrial Institute. MG found a survey of diversion programs at that website. Here is the link. [No Entry A National Survey of Criminal Justice Diversion](#).

The group briefly discussed Criminal Rule 11(i) on Restorative Justice. See [Alaska Criminal Rule 11](#).

RESOLUTIONS/ASSIGNMENTS

Members agreed that they wanted to pursue the following topics:

- Members will explore agreements between executive branch and tribes (including Mike Geraghty's draft agreement). Staff or Mr. Razo will invite Natasha Singh of TCC to speak with

the committee. The workgroup should discuss barriers to creating and sustaining tribal courts. Consider less formal ways for tribes/villages to work with criminal justice process.

- Mr. Steiner and Mr. Olson will collaborate on a paper discussing bail related issues.
- All should review Walker/Mallott Transition team recommendations when they become available.
- Members shall review the ABC Board's recommended changes to Title 4 with respect to criminal provisions, including interdiction.
- The workgroup should further discuss appropriate and available diversion possibilities, including use of non-profit corporations, tribal councils, and so forth for alternative dispute resolution.
- Discuss state's broad definition of domestic violence, and unintended consequences, especially in rural areas. Mr. Steiner said that he would draft a paper covering the issues, to guide discussion.

ACJC WORKGROUP ON RURAL CRIMINAL JUSTICE
Staff Notes and Member Assignments (SDD)
From November 24, 2014 Meeting, 10 AM – 2 PM @ CIRI

Commissioners Attending: Michael Geraghty, Quinlan Steiner, Alex Bryner (tel.), Greg Razo (tel.), Terry Vrabec (tel.)

Staff Attending: Susanne DiPietro (SDD), Mary Geddes (MG)

Also Participating: Bryan Brandenburg* (DOC), Bradley Myrstol (UAA Justice Center), Nikole Nelson* and Holly Handler* from Alaska Legal Services Corp.; Carole Brown* (AVCP General Counsel/AFN); Doreen Schenkenberger (Partners for Progress and Anchorage Reentry Coalition); Hon. Michael Jeffery,* Barrow Superior Court; Jay Hochberg, Public Defender

**The next workgroup meeting is: Wednesday, December 10, 10:00-11:30 AM,
Foraker Room, Denali Commission, 510 L Street, Anchorage**

THIS MEETING INCLUDED INVITED COMMENTARY

Bryan Brandenburg, Director of Facilities at the Department of Corrections:

It is DOC's intention as much as possible to use Goose Creek to house rural defendants sentenced to less than a year of imprisonment. DOC is increasing its use of culturally based programs as much as possible and is emphasizing support for offenders' reentry into the community. Community reentry coalitions exist in Dillingham, Fairbanks, Juneau, Anchorage and Kenai but not Bethel. (Reentry coalitions are groups of nonprofits and other community-based providers who work with prisoners and DOC officials immediately before and after release to provide supports such as housing, employment and treatment with the goal of decreasing recidivism). DOC uses, as much as possible, treatment programs that are evidence-based. An exception might be a culturally based program that has not been validated but seems promising (for example, AVCP's Healthy Families class).

Nikole Nelson and Holly Handler, Alaska Legal Services:

ALSC has been providing civil legal access for 45 years to low-income Alaskans. Goals are to stabilize the lives of low-income Alaskans. ALSC recommends eliminating barrier crimes to work and housing through expungement, sealing of court records, and juvenile diversion programs. Particular jobs that ALSC has noticed are out of reach due to criminal records include home health aide and being licensed as a foster care provider. Although waivers are available, people have a hard time understanding all the requirements and the paperwork to obtaining them. Barriers to housing include a lifetime ban from HUD housing for drug-related felonies. Food stamps also come with federal restrictions against people with certain criminal convictions; however, the legislature can opt out of or modify those restrictions.

ALSC also has established a tribal courts team to implement the *Tanana* decision (recognizing tribal court jurisdiction over child welfare cases). In 2012, ALSC released a statewide survey of tribal courts in Alaska. It found that a majority of courts still operate without paid staff. Barriers to increased use of tribal courts include resources (paid staff and office space), and collaboration with the executive branch (to eliminate legal challenges and uncertainties that potentially prevent state courts from enforcing tribal court orders).

Recent ALSC research has found perceptions and attitudes in the state that also potentially inhibit the effectiveness of local tribal authority, for example, the attitude that villages' needs are a drain on state resources. However, ALSC also has found many examples of tribes successfully addressing local problems,

for example, the Emmonak and Togiak elders' panels. Tribal groups wish to intervene in ways that don't need to have a criminal or a civil "label".

Federal funds to sustain tribal court activities are not readily available in Alaska (Alaska receives only about 9% of tribal court grant funds) because those funds typically are directed at reservation-based tribes. Increasing the scope to PL280 and compacting states such as Alaska would increase costs significantly. Information is being gathered about how much funding Alaska's tribal courts need.

Carol Brown, AVCP:

56 tribes in the YK Delta Region (17 of whom compact with AVCP) operating between 16-20 tribal courts (changes based on funding, etc). AVCP has had overlapping federal grants for six years to support tribal court development and operations but those are now ending. Necessary funding includes office space, salary for one judge and one support staff, equipment, furniture and supplies.

AVCP organizes tribal court trainings. In 2012, the conference included representatives from state and tribal systems.

For many residents of the YK Delta, understanding English and understanding legal proceedings are problems. More trained Yupik interpreters are needed, and attention must be paid to local dialects as well.

One model of a tribal solution to a local problem is the development in Mountain Village of a women's circle which monitors curfew violations, often associated with underage drinking.

AVCP sponsors cultural sensitivity training such as Knowing Who You Are and Undoing Racism. Recommend that state employees working in the YK Delta take this training.

Judge Michael Jeffery:

The North Slope Borough funds a certified police officer in every village served by the Barrow court; these police forces answer to the NSB which is a Native-controlled government. This structure may contribute to higher levels of satisfaction with the state justice system than in other villages.

Fetal Alcohol Spectrum Disorder is a disability experienced by many people who come before the Barrow court, although few are formally diagnosed and the occurrence in the general population is unknown. For FASD defendants, using plain written and spoken English, and stating orders in the positive rather than the negative are effective. Defense counsel do not seem to propose the FASD statutory mitigator as often as might be merited; this may reflect a lack of training and experience on the part of defense counsel.

The villages in the Barrow area have not exhibited much interest in tribal courts. However, in Barrow the Native Village of Barrow Tribal Court has exclusive jurisdiction over child protection cases involving children who are members of the NVB. State social workers handle most of the case investigation functions for the tribal court.

Could local tribal organizations or the village council be authorized to supervise felony probationers in the village? Checking in with the local council could be ordered as a condition of probation, but such an initiative would not be undertaken without advocacy and preparation from defense counsel.

Revisions to the bail statute a few years ago created a number of situations in which there is a rebuttable presumption against bail; by and large, defendants who fit into those categories stay in prison for extended periods before conviction. Use of third party custodians is not as common in Barrow as elsewhere – about 10-15% of cases. Barrow and Kotzebue have contract jails where defendants stay for 30 days or less.

The presumptive sentencing ranges for sex offenses are quite high. With the finding of a mitigator, the judge can sentence below the minimum range, but by no more than half. A floor on the presumptive range might be helpful.

DISCUSSION

The group discussed the Department of Law's proposed delegation of authority agreement (the document allows the Department of Law and a tribe to agree to refer certain criminal offenses to the tribe for consideration of civil remedies in lieu of state criminal prosecution). The agreement has not yet been signed by a tribe. According to the ALSC and AVCP representatives, one potential barrier to acceptance by the tribes is the scope of the waiver of sovereign immunity provision, which may be viewed by tribes as overly broad.

The group discussed the need to consider juvenile justice issues since youth who go through that system (and the CINA system) often appear in the adult criminal system. Addressing the statutory auto-waiver might be helpful.

QUESTIONS

- Bail process in rural areas (are there any regional differences in how courts handle bail)?
- Explore further how cooperative agreements between the executive branch and tribes could be implemented to circumvent jurisdictional uncertainties for tribal courts (including further review of the proposed delegation agreement and possible consideration of statutory authorization)
- Could more aggressive alcohol interdiction in dry villages help decrease crime?

RESOLUTIONS

- Review the recommendations of the Title IV workgroup which will be presented to the Alcohol Beverage Control Board

ASSIGNMENTS:

- Quinlan Steiner volunteered the PD, and specifically Jay Hochberg, to poll the state PD's on the differences in regional bail practices. Jay is in Ketchikan but was previously in Kotzebue.
- Continue to review and report on previously assigned rural studies (all)