Sentencing Alternatives Workgroup
Meeting Summary and Workgroup Assignments
September 10, 2015, 3:00- 4:30 PM
Atwood Building, 550 W. 7th Avenue, 1st floor conference room, Anchorage

Commissioners present:	Trevor Stephens, Wes Keller, Brenda Stanfill, Kris Sell (phone), Quinlan Steiner, Stephanie Rhoades (phone)
Commissioners Absent[1]:	Jeff Jessee, Greg Razo
Participants present:	Doreen Schenkenberger, Leslie Hiebert, Ken Truitt (phone)
Staff Present:	Susanne DiPietro, Mary Geddes, Giulia Kaufman, Emily Levett
Next Meeting:	**Tuesday, September 29, 3:00-5:00 PM, location to be determined**

Relevant ino previously circulated:	--MG list of exclusions from SIS from 7-15 --Workgroup Meeting Summary from 8-3 --MG memo to Skidmore on KY law sent 8-10 --Skidmore statute draft distributed 8-25 --Rhoades email re draft sent 8-27
Materials provided at or close to mtg:	--Rhoades' suggestion for retroactive effect (incorporated into 2nd draft) --L. Hiebert's written comments on the 1st draft (attached to email)
Provided here for review:	2nd draft amended as a result of meeting and SR submission (attached to email)

The group discussed Law's 1st draft allowing for an amendment to the existing SIS statute so as to provide for a suspended imposition of conviction ("SIC"[2]).

After some discussion, the group agreed on three points:

- that the SIC should be available to all defendants who are not excluded for an SIS so the phrase "in any case" could be added in line 6 to clarify that legislative intention;
- that any defendant subject to the SIC should not be made subject to conditions of release (bail) but to conditions of supervision.
- that the proposed statute should refer to the relevant term of supervision as "pre-conviction probation."

Mary G will make such changes in the draft.

Term of misdemeanor pre-conviction probation. Currently, only a 1-year term of probation is authorized for misdemeanor defendants who receive an SIS. The group discussed whether a longer term for SIC would be a good idea. This would permit lengthier periods for completion of conditions such as restitution, treatment, etc., as well as a longer time for the case to be open. The 18-month term often required for completion of treatment by therapeutic court was mentioned. Also mentioned was the fact that any statutory maximum for misdemeanor or felony would not have to be the term actually imposed. There

[1] The current Workgroup roster lists Commissioners Brenda Stanfill, Jeff Jessee, Wes Keller, Stephanie Rhoades, Kris Sell, Trevor Stephens, and Quinlan Steiner. Clint Campion is listed as the DOL representative.
[2] Yes, it is an unfortunate acronym.

were thoughtful comments made by Leslie Hiebert opposing this change, but staff's impression was that there was stronger support for the longer misdemeanor term.

Public comment on the imposition of probationary conditions. The group briefly discussed the concern and research – as referenced in Leslie Hiebert's written remarks – that imposing a large number of probation-type conditions on the individual could be counter-productive.

Stated statutory goals of SIC. The group also discussed what sentencing goals are appropriately referenced in AS 12.55.085(b)(1), given that an SIC is not a sentencing, per se. Cmr. Rhoades suggested that the focus is not so much on 'rehabilitating' a problem such as chronic alcoholism, but on preventing criminal recidivism. Members asked for additional time to consider what language is appropriate to include in this section. Prisoners' constitutional right to rehabilitation was mentioned.

Costs and Fees. The group also acknowledged that some fees and costs may not be collectable if they are tied to conviction. There was further discussion of the language related to the costs of treatment. Currently the language requires payment of any costs. The lack of treatment services and the inability of many people to afford such services was discussed.

Status hearings, and court's power to reduce charges. Cmr. Rhoades asked that the language of the statute allow for courts to hold status hearings on the defendant's progress. Cmr. Rhoades also asked that a section be added to allow courts to reduce and not merely dismiss charges. These proposals reference existing practice in some specialty courts, e.g. a reduction in charge can be approved with consent of the parties. Susanne DiPietro suggested that there be language specific to therapeutic courts practice, and proposed that she and Mary Geddes will draft language to this effect that the group can consider next time.

Next steps. Time ran out for the meeting. The group wants to reconvene as soon as possible to finalize the statutory proposal, but it was also urged that all members take time between meetings to carefully review the following and submit written comments to Mary G. She will do her best to compile comments BUT ONLY IF THEY ARE SUBMITTED IN A TIMELY MANNER.

The goal remains: getting consensus among members at the next meeting so the proposal can be put forward to the Commission for a vote in October. Members will be contacted with a Doodle to confirm their availability for September 29.

Sentencing Alternatives Workgroup[1]
Meeting Summary and Workgroup Assignments
July 8, 2015, 10:00 AM to 11:30 AM
Atwood Building, 550 W. 7th Avenue, 1st floor conference rooms, Anchorage

Commissioners present:	Stephanie Rhoades, Trevor Stephens, Quinlan Steiner, Wes Keller, Brenda Stanfill, Kris Sell, John Coghill
Participants present:	John Skidmore, Dunnington Babb, Ken Truitt, Gail Sorenson (?), Tony Piper, Alysa Wooden, Phil Cole, Al Wall, Billy Houser, Doreen Schenkenberger, Cathleen McLaughlin, Jordan Shilling, Leslie Hiebert
Pew/JRI Staff present:	Terry Schuster, Rachel Brushett, Leonard Engel, Emily Levett, Melissa Threadgill, Zoe Townes
AJC Staff Present:	Susanne DiPietro, Mary Geddes, Giulia Kaufman, Susie Dosik, Brian Brossmer (new staff member)
Future Meetings:	**Monday, August 3 at 2:30 PM**

The meeting began at 10:06 a.m. Unfortunately, this and other ACJC meetings on July 8 were plagued by technical difficulties with video and audio conferencing. Our apologies to remote attendees who were unable to hear or participate.

Staff attorney Mary Geddes introduced the Commissioners and members present, and then gave the background for the meeting.

Previously, this Workgroup had formulated proposals, for the Commission, concerning (1) the substitution of a deferred disposition (DIS) statute for the current suspended imposition of sentence (SIS) statute, and (2) pretrial diversion. At the last Commission meeting, Attorney General Craig Richards[2] requested additional time for the Department of Law to discuss the proposals and offer input. Consequently, the Commission asked that the Workgroup reconvene for the purpose of getting the DOL input. John Skidmore, the Criminal Division Director, attended this meeting and related Law's questions and concerns.

Deferred Disposition proposal

Skidmore said that the Department of Law agrees the SIS statute is 'not working' when it comes to avoiding a permanent record of conviction and that DOL also 'has no problem' with the idea of judges dismissing a case upon completion of conditions. However, he was concerned: (1) that although the Workgroup had proposed statutory language for an SIS substitute, such language did not include the list

[1] The current Workgroup roster lists Commissioners Brenda Stanfill, Jeff Jessee, Wes Keller, Stephanie Rhoades, Kris Sell, Trevor Stephens, and Quinlan Steiner. Clint Campion is listed as the DOL representative. Others on the email list are: Fred Dyson, Jeff May, Janet McCabe, Barbara Armstrong, Amanda Price, Sarah Heath, Leslie Hiebert, John Skidmore, Natasha Pineda, Ken Truitt, Steve Williams, Natasha Pineda, and Trina Bailey.
[2] AG Richards has replaced Deputy AG Svobodny on the Commission.

of crimes currently excluded from eligibility for an SIS disposition; any proposal should address why such exclusions were not included in the DIS, if that is what is intended, and in any event, any inconsistencies in the current list of SIS exclusions should be reviewed; (2) that the DIS proposal should state what burden of proof would be required to establish the defendant's compliance and eligibility for dismissal; (3) whether DIS could or should be restricted to plea-only scenarios given that denying DIS might amount to an impermissible burden on defendant's rights (AKA a trial penalty), (4) whether a judge's deferred disposition that reduces a charge e.g. from a felony to a misdemeanor (ref. page 2, last line) would constitute interference with the prosecutorial function, and (5) whether a DIS outcome could be ordered in spite of an existing Rule 11 agreement between the parties.

With respect to the matter of exclusions (#1), Commissioner Stephens explained that the Workgroup had reached no conclusion and therefore had decided to take no position on excluded crimes, leaving the question of any exclusions up to the Commission or up to the Legislature. Commissioner Rhoades referred Skidmore to Workgroup statement on page 3 which documented that decision. Commission Bryner agreed with Skidmore that the Workgroup's decision – not to decide on exclusions – had gotten lost in the weeds. Commissioner Steiner further explained that since the Legislature would be ultimately considering the proposal, it was thought that it was unnecessary for the Workgroup to go through this process. Commissioners Coghill and Keller urged the Workgroup to 'go as far as you can' to address potential exclusions because the Legislature would be hard-pressed to give the same level of attention to the proposal. Even if consensus could not be reached on the exclusions, then the Commission would have ensured that everyone's opinion had been heard.

Some discussion followed whether there should be hearings held, either by the Workgroup or the Commmission itself. Commissioner Bryner noted that all the ACJC meetings – including workgroup meetings – are public hearings as members of the public can ask to be heard. Members agreed to do outreach to their own constituencies on the matter of exclusions.

With respect to the burden of proof question (#2), Susanne DiPietro noted that the standard under Rule 43(c) was "in furtherance of justice" and wondered why that wouldn't also apply. Commissioner Stephens indicated that he assumed that the decision is entrusted to the exercise of judicial discretion.

With respect to whether DIS should be extended to those defendants who contest their charges, (see #3), it was noted that a SIS is allowed for defendants who go to trial. Commissioner Rhoades expressed the view that it should be the same with the DIS.

With respect to the remaining concern (#4) that there might be a possible separation of powers problem if a court can reduce (as opposed to dismiss) a charge brought by a prosecutor, staff agreed to research the question, as did Commissioner Stephens.

Commissioner Bryner also suggested that the group read the LRS opinion on the somewhat related matter of expungement which had been distributed to the Barriers Workgroup. That opinion had expressed the view that judicially-ordered expungement of convictions could be unconstitutional because it would infringe on the Governor's pardon power in a strong executive-model state like Alaska. However, the article did distinguish (as legal) pre-conviction type dispositions such as the existing SIS.

With respect to concern #5, Skidmore said that he would not want a Rule 11 agreement for resolution of a case to be upended or undermined by a DIS. It was agreed that the Workgroup's proposal would need to address this question.

As a result of this discussion, it was finally agreed that:

- Mary will immediately provide a list of the crimes which are currently excluded from the SIS treatment. **[**It is attached.] She will also review other states' deferred disposition statutes with respect to excluded crimes and report ASAP on her research.
- Commissioner Stephens will forward to staff any research concerning the separation of powers questions suggested by our discussion. Staff will distribute.
- John Skidmore will identify inconsistencies in the current SIS statute. "Inconsistencies" includes identifying very recent statutes that would be arguably appropriate for exclusion. He will provide that information ASAP to staff.
- Workgroup members will
    - Review a look at each of the current SIS exceptions and any information timely provided by DOL with respect to "inconsistencies";
    - Contact any constituencies or interested persons to learn their views on the SIS/DIS proposal and on possible categorical exclusions; and
    - Be prepared by our next meeting to express a view as to whether conviction under the various statutes should preclude all convicted individuals from DIS relief.

Pretrial Diversion

At the prior Commission meeting, AG Richards had reported that the Criminal Division was revising its policies with respect to pretrial diversion. In this meeting, Skidmore confirmed that the Division has officially changed its policy. The Criminal Division now encourages its office chiefs (the district attorneys) to offer pretrial diversions. There remains interest in a statewide program.

PTD will be principally used for property and drug crimes. If the crime is a misdemeanor or a class B or C felony, no central office oversight or involvement is required. If the crime is a class A or unclassified crime, central office must approve. If the crime is a DUI or a DV offense, then central office wants to be advised of it.

By pretrial diversion, DOL expects that the person involved will have to satisfy some condition or conditions - such as community work service, restitution, participation in a rehabilitation program,- in order to gain the benefit of diversion

Commissioner Rhoades expressed her strong support for the change in DOL policy. She also asked the Workgroup to discuss whether it should proceed with its proposal to recommend a statute that expressly authorizes the DOL to offer pretrial diversion. Skidmore asked what would be gained from such a statute given that the exercise of pretrial diversion is ultimately a prosecutor's choice. Commissioner Bryner said that PTD could only be authorized as an option because of separation of powers issue. Dunnington Babb noted that a statute expressly authorizing the option is an expression of public policy not a directive. Skidmore said he could not agree that it would be beneficial.

It was agreed that the Workgroup would return to this specific question , i.e. should it recommend the passage of a statute recognizing the option of pretrial diversion, given that the Department of Law has already indicated that it had changed its policy and was now encouraging local office chiefs to offer it?

The meeting ended at 11:35 AM.

Sentencing Alternatives

Staff Notes April 24, 2015, 3:00 PM to 4:30 PM

Atwood Building, 550 W. 7th Avenue, 12th floor conference room, Anchorage

Commissioners attending: Stephanie Rhoades, Trevor Stephens, Quinlan Steiner, Brenda Stanfill, Kris Sell, Steve Williams

Staff Present: Mary Geddes (note taker), Susanne DiPietro, Giulia Kaufman

Participants: Leslie Hiebert

Future Meetings: **(not set)**

FYI: The currrent Workgroup email list shows: Commissioners Brenda Stanfill, Jeff Jessee, Wes Keller, Stephanie Rhoades, Kris Sell, Trevor Stephens, and Quinlan Steiner, and Participants Clint Campion, Jeff May, Janet McCabe, Fred Dyson, and Barbara Armstrong. As of 4/27 three more persons were added to the list, at their request: Amanda Price, Sarah Heath, and Leslie Hiebert.

The meeting began quite late because of problems with videoconferencing and a late running Pre- and Post-trial Workgroup meeting. Mary Geddes reported that Clint Campion had contacted her to say he would be late because of a court hearing beginning at 1:30 PM.

The group reviewed the two proposed recommendations on pretrial diversion and deferred sentencing. The persons who had concerns indicated they were very satisfied with the staff's written discussion of their concerns. The Workgroup agreed to:

- Leave any further discussion of exclusions to either the Commission or the Legislature
- Condense and combine the two proposals (pretrial diversion and deferred disposition) into one document
- Have the proposal ready for the next Commission meeting for its approval
- Have staff do the condensing and circulate it
- Have Commission Rhoades add language which would show how the proposals are related

The meeting ended around 4:30 PM. No May meeting was planned.

Sentencing Alternatives
Staff Notes March 31, 2015, 10:00 AM to 12:00 PM
Atwood Building, 550 W. 7th Avenue, Suite 102, Anchorage

Commissioners attending: Stephanie Rhoades, Trevor Stephens

Absent: Ron Taylor, Brenda Stanfill

Staff Present: Mary Geddes, Susie Dosik, Giulia Kaufman

Participants: Dunnington Babb (for Steiner), Billy Houser, Jeff May (phone),

Future Meetings: Friday, April 24th, 2015, 3:00 PM to 5:00 PM

The meeting opened at 10:09 a.m.

EM Presentation (Billy Houser):

Billy Houser is the VPSO Coordinator and also has operational oversight of community detention centers and community and regional jails.

He stated that there are established criteria for people who are on EM. People on EM get four hours of personal time a week to errands; otherwise they are restricted to the parameters of their daily routines, such as work, treatment, and church. Most people are not allowed to drive, but there are exceptions, such as when a person is a commercial driver. In addition, everybody on EM is monitored for drug and alcohol use. Houser stated that they are currently trying to expand the program to more rural locations, but one of the major challenges is the lack of infrastructure (e.g., cell phone providers).

He stated that people on EM are encouraged to get treatment. In addition, he pointed out that people who have substance abuse problems often live with a household member who also has substance abuse issues. If this the case, it is a condition of treatment that the household member also gets an assessment and seeks treatment; if one fails, both fail. Houser stated that the underlying issue in various offenses, including property offenses (e.g., Theft 2), is often a substance abuse problem; if this is not addressed people are more likely to recidivate. He stated that the EM program only has a recidivism rate of 18% over three years. (He did not state how this measure is defined.)

Houser stated that he does not agree with shock incarceration; in his opinion the shock occurs from the arrest and the court, not from incarceration. Instead, he said that studies have shown that sending low risk offenders to jail increases their risk to reoffend and commit more serious offenses. One of the reasons this occurs, is that prisons and jails are not designed for rehabilitations. It can especially be problematic, if different levels of security are housed in one facility. Houser also said that he sees the same problem in halfway houses. Often, unsentenced offenders who are in halfway houses are disruptive and limit the progress of people in the furlough program. He suspects that this may be one of the reasons why there no reduction in recidivism.

He informed the group that people who are placed on furlough have already served the majority of their sentence and completed treatment while in jail. As part of their reentry, they are transferred to a CRC and after an orientation period they are allowed more freedom. He said that people on furlough are doing well because once they start earning money, they are allowed to get their own place. He stated that they are trying to separate the people on furlough from the other people in the facilities because they want them to succeed. Drugs and other contraband are a huge issue in halfway houses because the officers are not allowed to conduct strip searches.

Another issue are misdemeanants, who are not allowed to work. He said that misdemeanants are currently taking up a lot of beds and are not allowed work because they are either unsentenced, their sentence is too short, or they are in confinement. With regards to the unsentenced misdemeanants, Rhoades asked what the biggest deterrent is to put them on bail instead. Houser replied that the current draft of SB91 is on the right track. He stated that the biggest hurdle are the DV cases, as DV offenders are not allowed to be in EM by statute; although, the current draft of SB91 narrows the definition of DV. He also said that he personally would allow sentenced as well as unsentenced DV offenders to work. In addition, he stated that people who work and live in halfway houses are required to pay sth out of their paycheck; these funds help support the program. Last year, those funds were about $750,000. He stated that these funds could be increased, if more people were allowed to work. In addition, Houser pointed out that the costs of running a halfway house are not significantly cheaper than running a prison.

Rhoades commented that these people who are currently not allowed to work, need an alternative. Stephens added that it would seem like a good idea to expand the program and separate the people on furlough from the unsentenced or confined people. In addition, he believes that people who are unsentenced or confined should also have option to work. Rhoades pointed out that regardless of whether the Commission would come forward with a proposal recommending EM as a condition of bail, most defendants are indigent and cannot afford to pay for EM. Stephens posed the question of why people have to pay for EM anyway, since they do not pay for their own incarceration. Houser explained that EM normally costs $14 per day plus $10 a week for drug tests. He said that if people are indigent, they usually waive the fee. In addition, if defendants are ordered to pay restitution, they ask them to pay $100 to $200 per month, so they can pay back their restitution and get into the habit of doing so. In addition, Houser pointed out that if people are on probation or parole and on EM and cannot afford to pay the fees, DOC has to pay the fees because it is unconstitutional to leave people in jail simply because they cannot afford to pay for EM. Further, Houser explained that the operational costs to run a prison vs. a halfway house are also most the same. He said that also the cost of EM per day has not changed much over the last few years, the number of people in the program has increased (from 67 to 450) and the cost of technology has increased.

Rhoades asked what the success rate is for people who are convicted of MICS 4. Houser explained that they are not violent offenders, but they will often steal in order to sustain their addition. In addition, they will often do very well for a month or two but then they will run into somebody they used to use with at the bus center and relapse. He said that they often put them back into jail for two to three days. He said, after they have been back in jail a couple of times, they come around. Rhoades pointed out that there is currently nothing in statute that prevents DOC from putting pretrial detainees on EM and let them work, but the question is, if DOC comfortable in doing so.

Proposal to Replace SIS with DIS

DiPietro followed up on Stanfill's concern that the DIS proposal would impact the State's ability to secure certain grants and reported that the language of the proposal does not affect the State's ability to secure grants. She suggested that the language with regards to exclusions be kept general. Different suggestions on how to phrase the exclusions were discussed: Proposals included to either have a blanket exclusion and exclude all Class A and Unclassified felonies; or have presumptive exclusions and exclude certain types of crimes, such as felony assaults and sex offenses; or to exclude cases on a case by case basis based on aggravating and mitigating factors, circumstances of the offense, and characteristics of the offender (e.g., mental health). In the interest of time, it was decided to revise the draft based on those suggestions and continue the discussion at the next meeting.

Proposal for Pre-Trial Diversion

With regards to pretrial diversion, it was again debated whether to recommend a change in statute or to recommend a change in DOL's policy. Bryner and Geddes reported that John Skidmore had said that DOL wants to do pretrial diversion, but were unsure how it would impact the state. (This was referencing a discussion on classification of drug offenses, during the Classification Workgroup meeting.) Rhoades suggested not to worry about the potential implications for DOL but to just put the recommendation forward. In the interest of time it was decided to pick up this discussion at the next meeting.

Workplan:

It was agreed that the drafts for the DIS and the PTD would be revised and discussed at the next meeting, which is on Friday, April 24th, 2015 from 3:00 P.M. to 5:00 P.M.

The meeting adjourned at 11:55 a.m.

Sentencing Alternatives
Staff Notes March 13, 2015, 3:00 PM to 4:30 PM
Attorney General's Office, 1031 W. 4th Avenue, 5th floor, Room 502, Anchorage

Commissioners attending: Stephanie Rhoades, Quinlan Steiner (phone; part of mtg), Brenda Stanfill (phone), Kris Sell (web), Trevor Stephens (web),

Absent: Ron Taylor

Staff Present: Susanne DiPietro, Giulia Kaufman

Participants: Clint Campion, Steve Williams (phone), Jeff May (phone), Ken Truitt (web)

Future Meetings: Friday, March 31, 2015, 10:00 AM to 12:00 PM

The meeting opened at 3:08 p.m.; Clint Campion chaired the meeting.

Community Work Service to Fine:

Judge Rhoades stated that last year 1,343 PTRPs were filed in Anchorage District Court; out of those 494 were filed due to failure to complete a CWS requirement. Offenders who are found to have violated their probation by failing to complete their CWS requirement may receive a sanction of jail time (at the rate of one day of jail per eight hours of uncompleted CWS). The processing of these petitions and the additional jail time are a cost to the system.

Judge Rhoades' proposal would eliminate the option of imposing CWS as a condition of probation and streamline the processing of CWS failures (see Judge Rhoades proposal for details). CWS still could still be imposed as a part of a direct sentence. An offender who fails to perform the CWS will be given notice by the court and an opportunity to cure the failure. If the offender does not respond, the court will convert the CWS to a fine and issue a judgment against the offender. The judgment would be collectible by the state in the same manner as other money judgments.

Commissioners generally were favorable to the proposal, although there was some concern about entirely eliminating the option to impose CWS as a condition of probation. It was agreed that the Commissioners on the working group will think more about the possible ramifications of eliminating CWS as a condition of probation and get back to Judge Rhoades no later than March 20 with suggestions.

DiPietro pointed out that it may be helpful to extend the statistics to the state level; the group concurred and it was agreed that DiPietro would contact Nancy Meade at ACS to obtain those statistics.

It was agreed that if Judge Rhoades receives no comments by 3/20/15, the proposal will be forwarded to the full Commission.

Replace SIS with Deferred Sentencing

Judge Rhoades gave an overview of a proposal to replace the current SIS sentencing option with a procedure for plea withdrawal and dismissal that does not leave a judgment of conviction on the person's record (please see draft for details).

The Commissioners discussed whether the proposed deferred sentencing option should be available for all offenses and all offenders. SIS is currently available for violent offenders; however, Sell said that she felt uncomfortable to give sex offenders and violent offenders the option of deferred sentencing. She said that she would feel more comfortable to give this option only to offenders who are not a serious ongoing threat to the community, which would have to be established in some way. The discussion revolved about possible other options and Judge Rhoades suggested that suggestions be sent to her by 3/20/15; she would incorporate those suggestions in the revised draft.

Stanfill raised concerns about Alaska's eligibility for grant funds under the Violence Against Women Act (VAWA), since VAWA grant eligibility depends in part on a state's certification that it does not allow domestic violence offenders to participate in certain kinds of diversion programs. She stated that she had asked Lauree Morton at the Council on Domestic Violence and Sexual Assault (CDVSA) to look into this issue; DiPietro and Campion agreed to look into the requirements of the VAWA grant as well. Stanfill stated that if the proposal does not jeopardize Alaska's VAWA grant funds, she would be ok with it.

May asked about whether it would be possible for a person to withdraw the plea, if found guilty by a jury. Judge Rhoades said that the current draft captures how she decided to address the issue but she is open to suggestions.

Pre-Trial Diversion

Clint reported that there has been no change to DOL's policy regarding pre-trial diversion (PTD). Currently, PTD has to be authorized by the Deputy Attorney General.

Judge Rhoades reviewed her recommendation with the group (please see draft for details). She stated that this is a general recommendation rather than specific statute language. Campion pointed out that at the moment, 42 states have PTD programs and most of the time cases are going forward based on an individual agreement with the prosecutor; an example of this is the PTD with the Municipality of Anchorage (for more information on the PTD program in Anchorage please refer to previous meeting notes). During the discussion it was suggested that the DOL could have some sort of guidelines authorizing PTD for certain offenses.

DiPietro pointed out that PTD could also be done at the law enforcement level; especially in rural communities. She referred to Sitka as an example, where MCA are referred to the tribal courts. Sell pointed out that that would be a good idea but law enforcement agencies have limited options. Campion stated that the issue of victim input cannot be overlooked.

DiPietro also pointed out that in some areas of the country, PTD programs had led to "net widening" in which defendants whose cases otherwise would have been dismissed or not

charged were sent to PTD. Also, imprecise guidelines for some program have led to minorities not being offered the PTD while similarly situated non-minorities were offered the PTD program. She pointed out that this was not the case with the PTD program in Alaska because it was very well structured.

Workplan:

The group decided that the proposal of the CWS would be forwarded to the full Commission. Comments and suggestions regarding PTD and deferred sentencing should be send to Judge Rhoades by 3/20/15. The group agreed to continue the discussion on PTD and deferred sentencing at the next meeting. In addition, it was suggested that the issue of probation and restorative justice be put on the agenda for the next meeting.

For their May meeting, the group eyeballed May 1st, 2015 from 9 a.m. to 11 a.m., but the meeting time was not finalized. Judge Rhoades suggested that Mary could send out possible meeting dates and then everybody could indicate what times would work best for them.

Alaska Criminal Justice Commission
Sentencing Alternatives Workgroup
Staff Notes February 13, 2015, 3:00 PM to 4:30 PM
Attorney General's Office, 1031 W. 4th Avenue, 5th floor, Room 502, Anchorage

Commissioners attending:	Trevor Stephens, Stephanie Rhoades, Quinlan Steiner (part of mtg), Brenda Stanfill (video)
Commissioners Absent:	Ron Taylor, Wes Keller
Staff Present:	Mary Geddes, Giulia Kaufman (notetaker)
Participants:	Clint Campion, Tony Piper, Steve Williams (part of mtg; phone), Jeff May (phone), Ken Truitt (staff to Rep. Keller) (video)

Future Meetings: **Friday, March 13, 2015, 3:00 PM to 4:30 PM**

Materials Provided:

- See Mary's emails sent out 2/12/15 and 2/13/15

The meeting opened at 3:04 PM.

1. **Review of Recidivism Reduction Plan and its recommendations**

   Commissioners agreed that the plan was very thorough and contained some good recommendations. Stephens said that he liked the fact that all of the statistics were compiled in one place. Rhoades pointed out that that the workgroups and the commission should unbundle it and utilize it and ultimately incorporate it in their work plan.

2. **Pretrial Diversion: see MG's draft discussion of Pretrial Diversion**

   The group discussed Geddes's draft paper. Commissioners agreed that it provided a helpful overview regarding the issue. Geddes stated that she found out that the program was initially grant funded and then grew from there. Rhoades asked Campion if he had been able to find out more about the history of the program; he stated that he wasn't able to find anybody who had knowledge about it. May stated that he approached the DA's office in Fairbanks. He was told that the program was terminated because of a funding crisis. The decision was also influenced by a Supreme Court's decision [presumably, in Stobaugh vs. State of Alaska (1980)].

   Rhoades asked Campion if he was able to follow up on the DOL's attitude towards pre-trial diversion. He replied that he raised the issue but there has been no further discussion or movement. However, he stated that line prosecutors feel strongly about the issue and would prefer if there was an option of deferred sentencing. Rhoades asked Campion what sense he had about DOL's position; Campion stated that he does not believe that there is a favorable attitude within the department. Rhoades suggested that, given DOL's attitude on pre-trial diversion, the group should shelve the issue for now and reneew the discussion after the session. She stated that she still hopes that the ACJC could offer recommendations this session, although it is already late in the game. She stated for the moment the group should redirect its efforts towards issues which have more

support by the DOL; Stanfill agreed. Geddes noted that there has been interest from the legislature, particularly Sen. Coghill's office and the Alaska Task Force on the Crimes of Human Trafficking, Promoting Prostitution and Sex Trafficking on the issue of pre-trial diversion. Stephens stated that although he likes the ideas of pre-trial diversion, deferred sentencing, and deferred prosecution, he does not think that anything is going to happen this session because it is already so late in the game. He also stated that he thinks these changes should be in statute rather than part of policy. She also stated that ACJC Chair Bryner said that workgroup recommendations to do not have to be completely finished before they are presented to the full commission. Truitt said that this sounds like a good idea and stated that he does not think it is fruitful to be prematurely concerned about DOL's support. Geddes stated that she received and an email from Mr. Svobodny stating that he was going to comment on DOL's policies and practices next week. Rhoades asked Truitt if Keller had read up on the issue and was ready to proceed and discuss it next meeting.

The group agreed to take up the discussion next time. Geddes will finish her draft.

3. Deferred Sentencing: (see email attachments)

Review of SIS statute—should it be amended/appended/replaced by deferred sentencing statute?

Next, the group reviewed Rhoades's changes to the SIS statute. Rhoades stated that the current SIS statute AS 12.55.085 is an unusual mechanism. Most SIS agreements involve a probationary disposition. If the defendant successfully completes probation conditions within the specified time frame, the conviction is set aside. While state law does not count the SIS/DIS as a prior conviction, the information as to a conviction remains on Court View, When the defendant applies for employment, he/she has to disclose this information. Hence, an SIS disposition creates a barrier to re-entry.

In her draft, Rhoades proposes a post-plea deferred disposition model. The model suggests that the individual enters a plea and then is released on bail status with certain conditions. After the specified timeframe, another hearing would be scheduled and the defendant would have to present proof that he/she has completed the conditions. If this is the case, the defendant would be allowed to withdraw their plea and the case would be dismissed. If successful, the defendant would not be convicted of a felony. If the defendant does not complete the conditions, the court would proceed to sentence the defendant on the charge. Rhoades pointed out that that would resolve the prosecutors' concern about holding witnesses.

A discussion regarding the details and the implications of the statute change followed. The group agreed that Rhoades would work on a second draft incorporating the suggestions; she would circulate it to the group by Thursday February 19th. The group is asked to give feedback on the second draft by March 1st. She will then revise the draft and incorporate the second round of feedback.

4. Community Work Service – proposal for statutory change (see attachment for existing statute)

Next, the group turned its attention to Rhoades' proposed changes to the Community Work Service statute (AS 12.55.055). Rhoades stated that the statute is supposed to be an alternative to jail but it instead evolved into a conversion to jail. She stated that defendants are ordered to CWS, however, the often do not complete it and are then sent to jail for not fulfilling their conditions.

She suggested that a change converting CWS might avoid a number of PTRPs. The group discussed possible implications of the proposed statute change. Stephens noted that he is often asked to convert a jail term to CWS, and that he imagines that the Public Defender would want to preserve that option.

With the groups' concerns in mind, Rhoades will tweak the language of draft amendment by March 1 and bring it back to the group for its next meeting on March 13.

5. Workgroup Game Plan

With regards on how to proceed, the group decided to present the proposed statutory changes to the CWS and SIS statutes to the Commission in March.

Mary stated that the group should look at the next three months and then the next six to nine months, the group should establish a work plan for a set period of time and determine its priorities.

Other topics for future investigation:

- The functioning of the therapeutic, wellness and mental health courts (i.e. their current utilization and capacity, admitting criteria) and the barriers to their efficacy
- The existing technoligies for sobriety and other monitoring (EM, SCRAM)
- Residential treatment: locations and capacities
- Community Residential Centers: how utilized
- Expansion and utilization of Restorative Justice models
- Medicaid – understanding the relationship of funding source to services

Judge Rhoades also pointed out that it would be helpful to have designee from DOC on the workgroups, at least during the session.

ACJC Workgroup on Sentencing Alternatives
Staff Notes of December 18, 2014 Meeting 1:00 - 3:15 PM
At the Snowden Conference Center

Commissioners Attending: Fred Dyson, Stephanie Rhoades, Quinlan Steiner, Wes Keller (part of the meeting), Trevor Stephens (phone), Kris Sell (phone; part of the meeting)
Staff Present: Mary Geddes, Giulia Kaufman
Participants: Clinton Campion (DOL), Seneca Theno (Muni), Jeff May (UAF; phone),

Future Meetings[1]: **Friday, February 13, 2015, 1:00 – 3:00 PM**
Friday, March 13, 2015, 1:00 – 3:00 PM
Tuesday, March 31, 2015, 10:00 – 12:00 PM

Materials Provided (attached) :
- Copy of Anchorage Municipal Code 8.05.060
- Sample of MOA of Pretrial Diversion Program of the Municipality of Anchorage (attachment)
- Sample of deferred sentencing agreement of the Municipality of Anchorage (attachment)

Presentations:

Seneca Theno, Municipal Prosecutor (Municipality of Anchorage):

- Pretrial Diversion Program (PTDP)

Seneca Theno, Municipal Prosecutor at the Municipality of Anchorage (MOA), gave a presentation about the city's pretrial diversion program. She provided commissioners with a copy of the MOA Code 8.05.060, a sample Pretrial Diversion Program (PTDP) agreement, and a sample Deferred Sentencing Agreement (DSA).

She stated that the PTDP is an alternative program which aims to weed out low level offenses, such as theft and some driving offenses. Municipal code states that the municipal department of law may, in its discretion, offer pre-trial diversion for any misdemeanor offense in Title 8, Penal Code, and Title 9, Vehicles and Traffic, except for the following offenses: crimes against persons, weapon crimes, crimes harmful to minors, gambling, prostitution, and offenses related to driving under the influence. However, the municipality recently stopped offering the PTDP for license offenses because a lot of people were more successful in the OWL program.

PTDP agreements are usually presented before or at the time of arraignment, and before counsel is appointed. The agreement states that, if the defendant completes the requirements within the specified time frame his/her case will be dismissed. However, if the defendant fails to comply with the conditions listed in the agreement, the case will proceed through the system. If a defendant fails to complete the requirements by the time of the arraignment but has made some progress, the municipality can extend the time frame during which the defendant may complete his/her requirements.

Defendants are usually asked to pay a fine or do community work service (CWS). CWS is usually not offered for thefts of values above $100, since one hour of CWS equates to $6.25. It generally takes between two to four weeks to complete the PTDP. Defendants are offered the PTDP option independent of whether they are in custody or not. Whether a defendant is offered PTDP depends on multiple factors, such as criminal history.

[1] Locations TBD.

According to Theno, the program has been going on as long as she can remember and Mary stated that it was already in place in 1983. Theno stated that in during the calendar year of 2012, 498 people participated in the program, in 2013, 468 people participated in the program, and in 2014, 250 people participated in the program. These numbers only reflect how many cases were open or completed and do not reflect how many cases were pulled. She stated that the decline in 2014 can be explained by the fact that the municipality's legal department was and currently is still short staffed and the attorney who was dedicated to PTDP cases now has to fulfil other duties. When asked what other administrative structures are in place for the program, she stated that they have a case management system and a staff member who provides support and audits payments. Theno also said that she is not familiar with the ordinance's history and does not know on which basis specific cases are excluded from PTDP. When asked how many people a) agree to enter the program and b) complete the program she estimated that about 70% of people who are offered pretrial diersion accept it and about 70% of people complete the program. The municipality has also been collecting financial data. The municipality was able to obtain the following fines for their PTDP, pre-charging settlement program (PSP), and deferred prosecution: 2006 – $331,000; 2011 – $381,000 (10,400 cases); 2014 – $133,600 (8,500 cases). The decline in cases in 2014 can be attributed to a reduction in staff at APD. Theno estimates that the municipality on average earns between $250,000 to $260,000 per year through the different diversion programs.

- Pre-charging Settlement Program (PSP)

Another program the city ran between 2012 and 2014 was the Pre-charging Settlement Program (PSP). APD has 20 days to review and screen a case file. If the prosecutor determines that the case qualifies for pretrial diversion he personally called the defendant and presented the option of the PSP. If the defendant accepted the offer, he/she would have to pay a $250 fine and the case was never filed, which also meant that it never showed up on CourtView. Offenses that qualified for this program included citation cases, driving without insurance, driving without a license, and theft. The program was successful; as of February 2014, the city earned around $6,000 through the program. However, despite its success, Theno recently stopped this program because it was not open to all defendants. More specifically, whether or not a defendant could participate was based on his/her having a phone and whether he or she could immediately afford to make a large payment. In addition, the attorney who reviewed the case focused primarily on the type of offense and the defendant's criminal history rather than the case's evidentiary value. Therefore, in some cases, the defendant could benefit if a case was not properly reviewed.

- Deferred Sentencing Agreement (DSA)

Another program the city offers ii its deferred prosecution program. In this program, the case goes to trial and the defendant agrees to a deferred sentencing agreement (DSA). The defendant pleads either guilty or no contest to the crime and agrees to fulfil specific conditions (e.g., such as treatment) and sentencing is deferred. If the defendant complies, there will be a status hearing and the defendant will be allowed to withdraw the plea and the case will be dismissed. If the defendant fails to complete the requirements, the previously agreed upon sentence will be imposed. It usually takes 6 to 12 months to complete a DSA. Theno stated that the DSA provides a way for people to enter treatment programs and the people who enter a DSA are usually interested in obtaining treatment. Theno also informed the group that DSA are very case specific; for example, if there was a victim in a case (e.g. assault) victims are involved in the determination of the punishment but victims do not have right to veto the conditions of the DSA. Offenses excluded from the DSA include serious diving offenses, reckless driving, and DUIs.

- Discussion

During the discussion, the group was interested to learn about the recidivism rates of the different programs. Theno stated that there are no recidivism studies on DSA agreements, but she stated that she believes

that repeat offenders usually do not have previous DSA. Further, she stated that it would be difficult to study, since there is no dedicated field in their database which indicates whether a defendant entered a DSA. Further, she informed the group that the CMS does have field which indicated whether a defendant successfully completed a PTDP. Theno said that "anecdotally" there is a lot of recidivism amongst the group which does enter a PTDP agreement. She believes that this is case because a PTDP agreement focuses on the offense rather than the needs of the offender which a DSA addresses.

Further, the group wanted to know if certain populations are more likely to opt out of the PTDP because they do not understand the process. Theno stated that from her personal experience, she cannot see a pattern. She said that generally people who turn it down want to consult with counsel and if an attorney gets involved the cases are more likely to result in a DSA. That is because attorneys are not as familiar with the PTDP. Campion was also interested to learn about whether the MOA offers translated agreements for ESL defendants. Theno informed the group that the municipality does currently not offer translated agreements.

The committee was also interested to learn how many of the misdemeanor cases the municipality handles. Theno informed the group that during the fiscal year of 2013 the MOA handled about 65% of all the misdemeanor cases in Anchorage. However, since the expansion of the statute in June 2014 the city's caseload has increased by 23%. Theno stated that her goal is to handle 75% of the misdemeanor cases within the municipality. At the same time the PDA and the DOL want to decrease the amount of misdemeanor cases the state handles.

The group was also interested to learn how much money is saved through the pretrial diversion programs. Theno stated that there is no analysis on how much money is saved that way but several costs are saved, such as staff costs, discovery costs, court costs, corrections costs, and social costs. The group is interested to learn if PEW has information from other states with regards to monetary savings and recidivism rates for pretrial diversion programs.

Deferred Sentencing in Alaska:

- Alaska Pre-Trial Intervention Program (PTI):

Mary informed the group about the DOL's statewide Alaska Pre-Trial Intervention Program (PTI) from 1981 to 1988. The following information is obtained from the study Evaluation of the Alaska Pre-Trial Intervention Program (1988) conducted by the UAA Justice Center.

> The objectives of the program were: (1) to provide prosecuting attorneys with a viable alternative to formal processing with defined criteria and guidelines; (2) to provide rehabilitative services to Alaska residents charged with essentially nonserious first offenses; and (3) to provide restitution either to the victim through reimbursement for monetary damages or to society through community service. Both state and municipal prosecutors made referrals to the program. Screening was required by the prosecuting attorney in order to assure that evidence was adequate in each case for a conviction. Program guidelines stipulated that nonprosecutable cases should not be referred to the program. To be eligible for program referral the defendant must be charged as an adult with a single offense and must be a first offender charged with a property crime in which no one was endangered, assaultive behavior in a family setting or possession, sales or distribution of a small quantity of a controlled substance. He could be charged as either a misdemeanant or a felon though the intake process was different in felony and misdemeanor cases […]. Exceptions to the first offender criteria included: a prior conviction under state motor vehicle codes or fish and game regulations; a prior domestic violence charge if the instant offense

was of the same nature; or a prior conviction the nature of which was such that the behavior could not be considered habitual (e.g., it occurred several years previous to the instant offense).

By 1983 PTI services were provided in 13 locations across the state. The evaluation concluded that

> The data show that the Alaska Pretrial Intervention operated successfully on a variety of measurements throughout the period of its existence. It met intake goals and was available to a broad spectrum of Alaska citizens; two-thirds of the clients admitted to the program have no record of any subsequent law violations. […] The Alaska program was successful in providing alternatives to more severe sanctions for nearly 1900 Alaskans throughout the state. The opportunity to avoid a criminal conviction was not directed at specific population groups but was available to a variety of Alaskans of all ages, races and socioeconomic levels as long as their offenses were not violent or, in the case of property crimes, not of a serious or threatening nature.

Further, Mary informed the group that National Association of Pretrial Services Agencies (NAPSA) stated in a report that 45 jurisdictions, including DC and the Virgin Islands, currently provide 298 pretrial diversion programs.

- Discussion

Mary suggested that the workgroup might want to possibly form a subcommittee to specifically examine pretrial diversion and deferred sentencing. Judge Rhoades wanted to know what the DOL's perspective is on pretrial diversion and deferred sentencing. Campion stated that DOL's policy states that pretrial diversion is currently banned, unless approved by the DOL the Deputy Attorney General or the Director of the Criminal Division. However, there is a recognition within DOL that pretrial diversion needs to be an option and part of the justice process.

Overall, the group agreed that there should be some sort of formal regulation. A discussion emerged whether the commission should make a policy or a statute recommendation. Whereas Steiner argued that a policy recommendation would be the quickest and most cost effective way to go about the issue, Judge Rhoades argued that a department's policy depends on the administration and policy is easily changed if the administration changes. Dyson pointed out that the current administration is more open to justice reform than the previous administration.

Jeff May (UAF) Introduction (jdmay@alaska.edu; Cell: 907-750-4986; Home: 907-474-5715)

Jeff May is a faculty member at the UAF Justice Department. He received his Law Degree from the University of Montana. He also holds a Bachelor's Degree in Justice and Master's Degree in Justice Administration from UAF. He has been at UAF for six years and currently teaches courses in Justice Ethics, Criminal Law, Procedural Law, and civil liability concerns in justice administration. His research focuses on sentencing alternatives and restorative justice. Most of his research and service work focuses on working with the Galena Magistrate Judge and aims to achieve greater community involvement in sentencing.

May reached out to the commission and offered his help because the commission's work is of interest to him. He is interested to know more details about why the states PTDP was discontinued and only short-lived. He stated that if it was successful there would be no need to reinvent the wheel. He also informed the group that the department was approached the DA's office in Fairbanks which is interested in establishing a PTDP for non-violent first time felony offenders. He stated that he visited a training conference with the DA and stated that everybody seems to be on board. He also said that the Fairbanks prosecutors as well as the DJJ are interested in sentencing alternatives and restorative justice practices and have approached the department.

He said that the commission work is of interest to him and he would be happy to help and open correspondence with UAA. Judge Rhoades asked if he would be able to research the PTDP of the MOA with

regards to recidivism. He said that he would relay this to the department. Mary said she would explore how the commission could partner with UAA and UAF.

Assignments:

With regards on how to move forward the group agreed that Mary would write up a concise three page document about the current situation of pretrial diversion and deferred sentencing in Alaska and identify questions for the commission to act on. She stated she would send it to Judge Rhoades, Quinlan Steiner, and Clint Campion to verify the information.

The group agreed that they would correspond via email before the next commission meeting on how to proceed. At the moment the group would like to give a presentation on the issue to the full commission addressing the issues of pretrial diversion, deferred sentencing, sentencing agreements and making sentencing alternatives more consistent and available to defendants and encourage them to participate in treatment programs.

Mary will continue discussions with UAA and UAF to promote partnerships with ACJC.

Notes by Giulia Kaufman

MOA v. JOHN DOE Case No. 3AN-14-55555 Cr.

_____ I understand that I am charged with a criminal offense by the Municipality of Anchorage.

_____ I understand that the MOA is offering me a Pre-Trial Diversion option.

_____ I understand that if I choose to proceed with Pre-Trial Diversion I will waive my right to a speedy trial for the time period of the diversion.

_____ I understand that if I fully complete the Pre-Trial Diversion requirements the MOA will dismiss my case.

_____ I understand that if I do not comply with this agreement within the time frame I have chosen, I will forfeit any payments made and the Municipality will proceed with the prosecution of my case.

I am choosing the following Pre-Trial Diversion Options

_____ **1 month to pay a $250.00 fine and provide proof of active Insurance.**

_____ **2 months to complete 40 hours Community Work Service and provide proof of active insurance. (Community Work Service must be completed through the Anchorage Community Work Service Office at 535 E 9th Ave, telephone# 343-4057. A fee of $25 will be required)**

_____ I understand that my case is being rescheduled for an arraignment on _____. I understand that I must appear at that arraignment unless I complete my requirements early, show proof to the MOA and my case is showing as dismissed in Courtview.

_____ I understand that if I fail to appear at a future court date a warrant will be issued for my arrest.

Signed this _____ day of _____, 2014.

_____ Defendant

_____ MOA Prosecution

MOA PRETRIAL DIVERSION Information

You have been offered a chance to complete a Pre-Trial Diversion program and get your criminal charges dismissed. This means that you will take one or two months and pay a fine or do community work service.

PLEASE READ THE FOLLOWING:

1. All community work service hours will convert to a fine if not completed within the chosen time frame. The conversion rate is $6.25 per hour.

2. Community work service hours can be completed through the Anchorage Community Work Service Office. The PTD program has a reduced administration fee of $25.00.

3. The Anchorage Community Work Service Office is located at 535 E 9th Avenue. The telephone number is 343-4057. A form with additional information for community work service is available for those choosing to do it.

4. Proof of completion of community work service hours must be brought to the Municipal Prosecutor's Office on the 2nd floor of City Hall (632 W. 6th, Suite 210)

5. Fines are to be paid at the Municipal Prosecutor's Office on the 2nd floor of City Hall (632 W. 6th, Suite 210).

6. Fines must be paid in cash or money order. Personal checks are not accepted.

Call Assistant Municipal Prosecutor Travers Gee with questions 343-4250

Municipality of Anchorage
Criminal Division
632 W. Sixth Avenue, Suite 210
Anchorage, AK 99501
(907) 343-4250

DEFERRED SENTENCING AGREEMENT

MUNICIPALITY OF ANCHORAGE v. JOHN DOE 3AN-14-55555 Cr.

This agreement entered into this 9th day of January 2015, between the Municipality and the Defendant in the above matter, for a term of 12 months from this date. Defendant agrees to comply with the conditions stated herein and the Municipality agrees to dismiss this matter upon verification of such compliance.

Conditions:

1. **Defendant shall plead no contest or guilty to** Count **1**: **8.10.010(B)(1) ~ ASSAULT.**
2. Defendant shall not commit any new jailable offenses or any acts of violence during the pendency of this agreement.
3. Defendant shall pay to the Municipality of Anchorage a fee of $250.00 within 6 months. Payment shall be made at the Municipal Prosecutor's Office in the form of cash or money order only. Checks or credit cards are not accepted at this time.
4. Defendant agrees to abide by the following additional conditions:
   A. Complete an alcohol assessment through AASAP and complete recommended treatment and pay associated fees. Must report to AASAP within 7 days.
   B. Complete 24 hours of community work service and pay associated fees. Must report to CWS within 7 days.
   C. Have no contact, direct or indirect, with Jane Doe unless signs a written consent with the Municipal Prosecutor's Office.
5. If above conditions are met, Municipality shall agree that Defendant can withdraw plea, and the Municipality will dismiss the above case at a COP hearing to be held on **1/9/2016**.
6. If the above conditions are not met by the time limits prescribed in this agreement, the Defendant will be sentenced on the hearing date listed in section 5 above. The MOA may request an expedited sentencing date at any time if the MOA receives notice that the defendant has violated any term of this agreement.

_____
DAVID M HAMMOND
Assistant Municipal Prosecutor

I have read the foregoing agreement and am aware of and understand the agreement, and I agree to abide by its terms. I understand that if I fail to comply with any of the above conditions, I will be sentenced to the above charges. I understand that if I fully comply with the conditions stated above, the case will be dismissed after the period of time stated above.

_____
Defendant

_____
Defendant's Attorney

ACJC Workgroup on Sentencing Alternatives
Staff Notes of November 18, 2014 Meeting, 1:30-3:00 PM
at the Snowden Conference Center

Commissioners attending: Kris Sell (tel.), Wes Keller (tel), Brenda Stanfill, Trevor Stephens, Quinlan Steiner, Stephanie Rhoades, Fred Dyson (part of the mtg)
Staff present: Mary Geddes, Giulia Kaufman.
Participating: Janet McCabe, Chuck Kopp, (part of the mtg)
Next meeting is Thursday, December 18, 2014, 1:30 to 4:00 PM, at the Snowden Conference Center

This was the first meeting of the Sentencing Alternatives Workgroup.

INFORMATION QUESTIONS

- What are other states doing and what are the best practices for diversion and deferrals? This survey should include bail-stage programs.
- What's the current thinking on pretrial diversion? Is it being utilized? What are the legal mechanisms for deferred treatment that allows courts to dismiss cases,post-plea, if all conditions are satisfied?
- Can we get working definitions of relevant terms (deferrals, diversions, etc)?
- What is the status of tribal court programs?
- Is circle sentencing still in use in Kake and other places?
- What is the status of PACE in terms of its implementation? Will it be extended to Ketchikan?
- Are some 'sentencing' alternatives available at earlier stages in the process?
- Can people get credit against a sentence if they have been in treatment prior to disposition/sentencing?
- At what point in the criminal process is intervention in the form of treatment most effective?
- How about do we go about creating meaningful opportunities for restorative justice? (The imposition of community work service seems so time-attenuated and not often relevant to the offense conduct.) Are there statewide standards for restorative justice?

DISCUSSION OF WORKGROUP PRIORITIES

Brenda and Rep. Keller are interested in restorative justice. ACJC data analyst Giulia Kaufman wrote a great memo on the research concerning restorative justice programming. Giulia's memo is attached to this meeting summary

Trevor Stephens asked whether diversion programs within this workgroup's ambit, or belong to Pre and Post-Trial Laws and Processes.

Members of the group would like to learn about other states' efforts with respect to deferred prosecutions and deferred sentencing.

Judge Stephens asked about the existence and current functioning of tribal courts. The workgroup was informed about the November 24 meeting of the Rural Criminal Justice workgroup in which presentations on tribal courts are planned.

Judge Stephens noted that CJ alternative strategies and resources are very limited in rural areas. Ketchikan doesn't even have a CRC, for example, so supported transitions back to the community are not likely.

Quinlan Steiner stated that the main problem is the lack of programs. "There's just not enough out there." "We are not offering sufficient incentives to treatment."

Judges Rhoades suggested that we should look critically at CJ strategies for dealing with misdemeanor level offenders. She referred to ISER's 2010 report on the Cost of Crime http://www.ajc.state.ak.us/acjc/economics/isercost.pdf and urged others to read it.

Statutory sentencing reform should utilize those Evidence Based strategies which will reduce recidivism. The therapeutic courts do see only a small number of people.

Maybe Anchorage should consider a midtown community court?

RESOLUTION

We should determine how to better share information among the workgroups.

Given that so many misdemeanor offenders have substance abuse and mental health issues, we should consider when and where there are opportunities to effectively intervene. Consider that 65% of of DOC inmates on a given day are Mental Health Trust beneficiaries. . We do need to deal with these underlying issues.

Workgroup members would like to be better informed about other workgroups' plans.

ASSIGNMENTS

Staff should explore videoconferencing for future workgroup meetings. Both the Trust and the LIO were suggested for their videoconferencing capabilities.

Staff will arrange ASAP for a presentation on the nature of addiction and effective treatment strategies for our next meeting. This presentation could be in the course of the Commission meeting.

Staff will determine if UAA professors Polly Hylsop and Brian Jarrett (with reported expertise in Restorative Justice) are interested in presenting to the workgroup.

Staff will contact Seneca Thenos, Anchorage Municipal Prosecutor, to learn more about the Anchorage Municipal experience with diversion.

Staff will try to learn what has happened with the funding related to implementing SB 64. Staff should contact DOC and DHSS/DBH.

Staff was asked to communicate the following concerns to relevant workgroups:

- (PPTLP Workgroup) Is the Title 12.47 study looking at the requirement that the statute requires that 2 qualified psychologists/psychiatrists perform culpability evaluations, but there are no such qualified persons here in AK?
- (Classification/Sentence Workgroup) Can someone please look at the 3 judge panel statute and determine if a legislative amendment is needed?

Attachment A--letter from Giulia Kauman on Restorative Justice literature

Attachment B –meeting summary from Rural Criminal Justice workgroup meeting on November 24.

Attachment A

Memorandum

To: Sentencing Alternatives Committee
From: Giulia Kaufman, Research Analyst
Susanne DiPietro, Executive Director
Date: November 18th, 2014
RE: Restorative Justice

You were interested in learning more about Restorative Justice (RJ). In the following, I provide a general overview over the principles, types, and outcomes of RJ and their implications for public policy.

During the inaugural meeting of the Sentencing Alternatives Committee, you expressed interest in learning more about Restorative Justice (RJ). I am a part-time research analyst hired by the Alaska Judicial Council (AJC) to provide analytic support to the Commission. During my literature review, I located two articles (i.e., Sherman & Strang, 2007; Strang et al., 2013; see hyperlinks below) which were particularly helpful. Based on this information, I will discuss the principles, types, and outcomes of RJ and its policy implications. Finally, Susanne DiPietro, Executive Director at the Alaska Judicial Council, will summarize RJ processes in Alaska.

Principles of RJ

RJ is an alternative to conventional justice (CJ) and views crime as a fundamental violation of people and interpersonal relationships. Violations are viewed as creating obligations and liabilities – for the offender to make things right, and for the community to support victims and help rehabilitate offenders. Therefore, RJ processes aim to repair the harm a crime has caused to the victim or the fabric of the community. While CJ aims to determine what laws were broken, who broke them, and what punishment do they deserve, RJ aims to determine what happened, who was harmed, and how the harm can be repaired. Ultimately, RJ is an integrative justice process which involves the victim, the offender, and other members of the community. One key theory of RJ assumes that all members of a community depend on each other. This interdependence may enable the victim and the offender to form an emotional bond. This bond may promote the emotional healing process of the victim and evoke remorse in the offender. Ultimately, the offender may feel an emotional and moral obligation to the victim which may help him to engage in productive behaviors and contribute to the community. Eventually, the change in the offender's behavior may prevent further crime.

RJ Practices

Since the dimensions of RJ are very broad, RJ practices can take numerous forms which can be applied to different stages of the criminal justice process. RJ can be applied to criminal or non-criminal conflicts, which either involve a personal or a collective victim. Further, it can either supplement or substitute the CJ process. RJ practices can take various forms, such as face-to-face conferences which are led by a facilitator, victim- or offender-absent discussions, or sentencing circles. The outcome can be either restitution or restoration centered. In addition, RJ can be applied at different stages of the criminal justice process, such as pre- or post-sentencing.

Outcomes

The broad definition, dimensions, practices, and applications of RJ make it difficult to determine whether RJ works better than CJ. Measuring the outcomes of RJ is challenging as they are exceedingly difficult to conceptualize and operationalize and there are no controlled tests. Most of the existing research on RJ focuses on face-to-face interactions, since those studies provide the most unbiased evidence. In addition, experts believe that face-to-face RJ proceedings are the most effective form of RJ as they are grounded in the theory that victim and offender will form an emotional bond. In the face-to-face meetings, which are often facilitated by a mediator, the victim, the offender, and their supporters are present. The meetings aim to address the questions of what happened, who was harmed and how, and how can the harm be repaired. In the end, the victim and the offender usually reach a written agreement.

The outcomes of these meetings can vary for offenders and victims. The empirical evidence regarding the benefits of RJ for offenders is conflicting. Although, offenders generally report a greater satisfaction with the criminal justice process itself, face-to-face meetings may not always cause them to change their behavior. However, the literature reports consistent findings with regards to the benefits of RJ for victims. Victims who participate in face-to face proceedings report greater satisfaction with the justice process itself, their urge for revenge is often diminished, and symptoms of post-traumatic stress are reduced.

Research has also addressed the questions of how effective RJ is for different types of crime and how it affects recidivism. The literature suggests that RJ tends to work better for crimes in which there was a victim (i.e., assault, robbery, etc.) rather than "victimless" crimes (e.g., vandalism, drunk driving). Experts believe this is due to the fact that the offender is able to establish an emotional connection with the victim; however if the victim was a community or an institution, the offender cannot establish such a connection. With regards to recidivism, research indicates that RJ generally does not increase recidivism. Generally, empirical findings suggest that RJ significantly decreases recidivism. However, it is important to note that in most of these studies both parties consented to the meeting. In those cases, the offender's disposition to participate in the meeting already demonstrated potential for rehabilitation. Very few studies have indicated adverse effects of RJ, but the reliability and validity of these studies is questionable as there were numerous limitations.

RJ has advantages and disadvantages, which provide a basis for policy decisions. Overall, RJ practices prove to be effective when all parties involved are willing to participate. RJ participants report a greater overall satisfaction with the justice process. RJ practices can also reduce costs in multiple areas of the judicial process, such as court processing and correctional costs. However, in order to systematically administer RJ practices, a separate agency or entity is needed, which increases costs.

Colorado is one of the pioneer states with regards to systematically administering RJ practices. In 2007, the Colorado Restorative Justice Council was established; since then the state has implemented many RJ programs. During the last legislative session a bill was passed which allows juveniles to be diverted to RJ practices rather than CJ. Legislators hope that the bill will save time, reduce costs, and increase public safety.

Past History with RJ Programs in Alaska

Before the development of the state justice system, Alaska Native tribes and groups had traditional law ways, many of which emphasized restitution and restoration. In recent years, Alaska Native groups have expressed interest in renewing or revitalizing traditional ways of resolving disputes, to include circle sentencing and elders' panels. In these programs, offenders generally are required to enter a guilty plea (thus acknowledging responsibility for the wrongful act) before being offered an RJ program.

The magistrate in Kake has been referring offenses to the Kake circle sentencing process for many years. The Kake Circle was evaluated in 2010. The study found that the vast majority who participated in circles did so as a result of alcohol-related offenses (mostly minor consuming alcohol). When 26 Circle cases were compared against 26 non-Circle comparison cases, the offenders from the Kake Circle had a recidivism rate of 48% as opposed to the comparison group's rate of 42%, although the non-Circle group recidivated faster than the Circle group. These findings may be related to the fact that the Kake Circle did not employ any pre-screening for serious alcohol and drug abuse patterns which might have suggested the need for a different program for those offenders. The evaluation further found that the community in Kake overwhelmingly supports the Circle concept. The magistrate in McGrath has referred several cases to Circles in his area over the past few years. Although these efforts have enjoyed positive support among the local communities and much interest from others outside of the local area, no evaluation of the McGrath Circles has been performed.

In the late 1990s, the Emmonak elders' panel was funded through a grant from the State of Alaska. It handled court-referred minors charged non-felony offenses and community-referred youth. The project permitted youth to remain within the community while their offenses were adjudicated through the body of elders – thus avoiding formal justice system processing which usually entails removal from the village. An initial evaluation of the program in early 2001, after the court had been in operation for approximately a year and a half, lacked enough data to draw firm conclusions but noted that referrals to juvenile justice from the village decreased after the panel started operating, and that members of the community perceived its impact as very positive. The panel eventually folded after grant funding ended. Similarly, in the early 2000s the Division of Juvenile Justice (DJJ) entered into agreements with several Native villages and the Department of Law to authorize the DJJ to refer charges against minors to the tribe for resolution. The projects were viewed positively by the local communities but were ultimately not sustainable.

In urban settings, state judges have on occasion experimented with circle sentencing in one or two particular cases. An Anchorage District Court Judge and a Palmer Superior Court judge have experimented with Circles in one or two instances in the past.

In the 1990s, the Anchorage Community Dispute Resolution Center was formed to conduct juvenile victim offender mediation on direct referral from the DJJ. The program, which used volunteer mediators from the community, successfully handled hundreds of cases before folding after grant funding was discontinued.

Although the history of programs in Alaska is illustrative and not comprehensive, it shows fairly clearly that that RJ processes can work and be sustainable only where certain supports are in place. These include strong community support and acceptance, state agency support and acceptance (including a strong case referral system), protocols for case screening (to ensure the proper cases come before the RJ body), and funding to support training and case processing functions for the RJ entity.

Current Opportunities for RJ in Alaska

In 2013, the Alaska Supreme Court adopted rules of court to encourage use of RJ processes in Alaska cases. Specifically, it amended Criminal Rule 11 to allow a judge to refer a criminal case to a restorative justice program with the consent of the parties. The participants in the RJ program may propose a recommended sentence to the court.

At the same time, the Delinquency Rules were amended to allow a juvenile to be referred to a restorative justice program with the consent of the victim(s) and the DJJ. After taking the referral, the RJ program makes recommendations to the court about what sanctions should be imposed on the juvenile, and the court is required to give "due consideration" to the recommendation.

The Sitka Tribe of Alaska currently has a diversion agreement with the Sitka City Police and the City Attorney for minors charged with minor consuming alcohol. Minors who are ticketed for consuming alcohol are offered a diversion program in which the Sitka Tribal Court handles their case and monitors the minors' compliance with their sentence. Failure to comply may result in the City Attorney filing the MCA ticket in state court.

We hope this brief general overview on the principles, types, outcomes, and implications of RJ was helpful and informative. Please let us know if you have any further questions or would like more information on particular aspects of RJ.

Attachments:

Studies:

- Restorative Justice: The Evidence - Sherman & Strang (2007)
- Restorative Justice: A Systematic Review - Strang et al. (2013)

Reports:

- Colorado RJ Legislative Report (2014)

Bills:

- Colorado RJ Bill - HB 13-1254

Helpful Links:

- http://www.restorativejustice.org/
- http://www.restorativejusticecolorado.org/
- DJJ Restorative Justice Page