Alaska Criminal Justice Commission

# Sex Offenses Workgroup

**Meeting Summary**

**Thursday February 7, 2019, 9:30 a.m.**

Denali Commission Conference Room, 510 L Street, 4th floor, Anchorage
And teleconference

Commissioners present: Brenda Stanfill, Quinlan Steiner

Participants: Diane Casto, Katie TePas, Ed Webster, Paul Miovas, Bob Churchill, Tom Amos, Chanta Bullock, Shannon Cross-Azbill, Cynthia Erickson, Mike Matthews, Randi Braeger

Staff: Susanne DiPietro, Staci Corey, Barbara Dunham

**Updated Report to Legislature – Registry**

Commission Staff Attorney Barbara Dunham explained that the agenda was first to discuss the sections that the workgroup did not get to at the last meeting, then to circle back to changes made in response to the previous meeting's discussion.

Barbara explained that language in the registry section had been edited to reflect that studies have not shown any causation established between the sex offender registry and sex offense rates or recidivism. She walked the group through this section; it started with an overview of the current registry requirements in Alaska, the history of sex offender registries, and the available research on this topic. Katie TePas from DPS asked whether there were any Alaska-specific studies. Barbara said there weren't.

Commissioner Brenda Stanfill observed that the registry tends to paint all sex offenders with a broad brush, and noted that the same information was available on CourtView. Executive Director of the Alaska Judicial Council Susanne DiPietro relayed that she and Barbara had attended a conference last August where the Connecticut Sentencing Commission presented its proposed revisions to Connecticut's sex offender registry. The proposed registry would be risk-based and move low-risk individuals to a police-only registry, while high-risk individuals would be on a public registry.

Brenda said that the workgroup and Commission had heard a lot of testimony about the impact the registry has on family members, but there had not been testimony from victims or people who might live in the same neighborhood as someone on the registry. She thought it was worth looking into more and suggested that language could be added to the report noting that this warrants further study.

Brenda also noted that a popular topic of discussion recently related to people who are required to register in other states but not required to register in Alaska if the crime requiring registry in the other state is not similar to a crime in Alaska. Commissioner Quinlan Steiner said this pertains to things that would be legal in Alaska; a classic example would be if the age of consent was higher elsewhere.

Paul Miovas from the Department of Law observed that the fear regarding this was that people who have to register in other states are encouraged to move to Alaska so they don't have to register; he was not

sure if this fear was borne out by data. Katie noted that people do call up DPS to check whether they would have to register in Alaska.

Paul recalled there had been some discussion that high sentences for sex offenders might be a barrier to some people in accepting a plea deal, but he thought that the registry might be an even greater barrier. Judges and prosecutors have no leeway on registry requirements if a person is convicted of a sex offense. Quinlan noted this was a reason sex offenses were often reduced to the non-sex offense of coercion. In some cases, defendants regard registration requirements as worse than the applicable sentence. Brenda thought this was another reason this warranted further study.

Katie suggested the sentence about the public's expectation that registries keep them safe was too strong a statement and suggested deleting it. She also saw that the report mentioned that transient sex offenders were more likely to recidivate than non-transient offenders and wondered what the numbers were behind that. Brenda suggested adding that information to the text, being clear that it did not reference an Alaska-specific study.

**Updated Report to Legislature – Victim Services**

Brenda asked whether the edits suggested by Carmen Lowry, director of ANDVSA, had been added to this section. Barbara said they hadn't but that she would walk the group through some of those suggestions and add them later. Brenda said one important change Carmen suggestion was to clarify that ANDVSA is not an umbrella organization but member-linking organization, and also to clarify that the programs talked about are those funded by the state—there are other organizations that are non-grantees Diane Casto of the CDVSA agreed. Katie also agreed and noted there were many federally-funded tribal grantees, and suggested rewording the report to reflect that. Diane noted that there was new VOCA funding for tribal grantees. Katie asked whether there was a count of all tribal grantees in the state and Diane said there wasn't.

Barbara explained that Carmen Lowry had suggested modifying or deleting the paragraph reporting that Sitka and Seward having difficulty retaining nurses to perform the SART exam, as this problem was not unique to those communities. They were included as examples but might have the effect of singling them out. Diane agreed with this suggestion and also suggested saying that these communities were among numerous communities struggling with this issue. Whether there were nurses available to be part of the local SART in any given community was constantly changing because of the workforce or funding. Brenda said that it did help to give examples of the impact of not having a nurse. Susanne suggested using the generic "Southeast community" and "Southcentral community."

Katie verified that the list of locations with a SART was accurate as of this meeting, as was the number of trooper vacancies.

Paul suggested adding descriptions of the roles of the victim advocate and law enforcement in the SART. The group agreed and Katie said she would send Barbara a blurb on the role of the law enforcement officer. She also noted that staff at the Alaska Children's Alliance was working on edits to the CAC section.

Barbara explained that the advocate statements from advocates in Fairbanks, Anchorage, and Juneau were moved to appendix F.

Barbara noted that DPS had suggested adding wording that policymakers should find ways to make victims safe pretrial; this was technically a recommendation though she did not think it would be objectionable. Brenda suggested that it could be worded to say that more study is warranted on ways to

make victims safer, or to enhance victim safety and healing. Quinlan noted the problem was not just pretrial but also pre-charge and pre-arrest.

Barbara explained that Carmen had suggested getting more information from SAFESTAR from representatives from Saint Paul, where they were piloting this program. Katie said that related to this, she had had had long conversation with ANTHC about this and the role of the community health aides, and had suggested edits to that effect. Health aides are not allowed to perform full pelvic exams, but can talk to an on-call physician to get non-invasive evidence. She noted that there is a push for SAFESTAR but the program was started in the lower 48 and may not be adaptable to Alaska.

Diane noted that there had been a statewide meeting on SAFESTAR with VAWA representatives. Currently Saint Paul was the only one to take on this model. The report she heard from meeting was that there was general agreement that SAFESTAR didn't necessarily align with the state system (e.g. evidence standards). Randi Braeger from DPS said that was correct, and that Saint Paul's agreement was that they would use a state-specific kit. The state crime lab hasn't gotten any of those kits yet. Randi also said there was a federal position in Anchorage to set up this program but state agencies haven't heard from that person. Diane thought SAFESTAR was worth mentioning with the caveat that it needs more investigation. Brenda and Katie agreed, citing the need for accuracy.

Paul said he was nervous about implying that SAFESTAR was viable. He noted the only reason evidence is collected is for prosecution, and didn't want to recommend an evidence collection method that couldn't be used. Brenda said the report should make clear there are still a lot of questions about this method.

Katie also suggested including language to note that existing health aides can fill some of these gaps but not all of them.

Susanne suggested splitting the rural Alaska subsection into two sections, one with data and one with advocate perspectives.

Brenda also suggested listing existing strengths in both the rural Alaska and Alaska Native sections. She had recently met with the Alaska Native Women's Coalition, and wanted to be sure that the report included their perspectives. Barbara explained that either the group had heard from or staff member Staci Corey had spoken to Lynn Hootch from the Yupik Women's Coalition, Eileen Arnold and Chim Morris from the Tundra Womens' Coalition, Tami Jerue from the Alaska Native Women's Resource Center and Shirley Moses from the Healing Native Hearts Coalition. She also noted that she had spoken to Cynthia Erickson from My Grandma's House based in Tanana.

Brenda asked whether Cynthia wanted to speak to the group. Cynthia said she needed to sign off but would write up some ideas and email them to the group.

Barbara noted that in the Alaska Native Perspective section, she had added some language from the Indian Law and Order Commission report.

Quinlan observed that one thing not addressed in the report was that one factor that suppresses reporting was the severity of sanctions. Not all victims want those consequences to occur and will not report on that basis. In the past, the state has taken an aggressive approach and that hasn't produced anything except longer sentences and suppressed reporting. The criminal justice process involves removing a person from the community, and then the community doesn't know what happened with that person. The community is severed from the process of justice.

Brenda said that advocates often hear from victims that not wanting offenders to suffer consequences comes more from societal pressure, not the victim's actual wishes.

Quinlan said PDs hear from victims that they often just wanted the conduct to stop, and didn't want the person removed from the community. Often victims will as the PDs for help in reducing someone's bail. He believed this was prevalent; people say they don't want to report because they don't want the consequences to occur. He thought this spoke to a need to shift to actually helping victims—prosecution is only a partial response to addressing victim needs.

Katie asked whether there was any data on reasons why victims don't report. Diane said that the AVS (Alaska Victimization Survey) asks whether people report but not why. Susanne said she thought Ingrid Johnson from UAA was doing a study on this topic. Katie said that was true, Ingrid was working with DPS on a study looking at victims' perception of justice (as part of the SAKI grant). The completed study was probably a year out.

Brenda suggested making a note in the report that there is a question about why people don't report and refer to the study in the works. Paul said he also had experience with victims who say "I want him to go away for the rest of his life." Susanne suggested using language such as "stakeholder perspectives are in conflict."

Susanne asked where this language should be added, and whether it would fit under the data section on reports to law enforcement. Quinlan said the issue was exacerbated in rural areas especially because the defendant leaves the community, but that it was a broader issue than just reporting; it was about access to justice for the victims. Victims who are not served at time a crime is committed against them and offered a chance to heal later become clients of the public defender's office because their unaddressed trauma causes them to act out criminally.

Katie noted that there were contradictions in the report that don't add up; the section on the Alaska Nations Reentry Group states that the reentrants want to return to their villages while the victims' section states that victims in villages feel unsafe when the person who attacked them is not arrested. Susanne said that was the natural product of a public stakeholder process; the commission meetings are open to all comers and the report includes all perspectives.

Brenda thought the issue about reporting should go in the reporting section and also be included in the rural section, noting that the Commission has heard that barriers to reporting are for various reasons. She thought it spoke to the culture of silence not just for Alaska natives, but also anyone in a small community who may have concerns about consequences of reporting.

Paul said he understood the dynamic Quinlan was talking about, but it was important to note that this issue can be figured out and studied. Katie said there were national studies she could send staff for inclusion on this topic.

Barbara noted there was a proposal from DPS in the "new approach" section to recommend reviewing VCCB policies and propose that anonymous victim cases (victims who have reported and had a kit collected anonymously) can be eligible for compensation. This was also technically a recommendation and she wanted to know the will of the group.

Brenda said she and other advocate have been collecting data about this and that not being able to report anonymously was a barrier for victims. She suggested changing the language slightly to reflect that.

Quinlan wondered whether OVR was able to represent all victims. His understanding was that typically they don't take cases where the victim wants to argue for bail release possibly because the defendant is already represented by PD. This was another gap in victim needs. Susanne noted that there wasn't anything on OVR in the report and suggested including something on OVR and what services they provide. Katie suggested asking OVR if they have data on the number of requests they have vis-à-vis the number of cases they are able to take.

**Public comment**

Chanta Bullock wanted to reiterate comments she previously made regarding the registry; there is a lots of data about how the registry affects families and children, and finding work. You just have to go downtown; near the jail, half the homeless are registrants. Just because someone makes a mistake doesn't mean they should be punished for the rest of their lives, and a 20-year-plus registry is rest of life. She hadn't met one person on registry who can provide for their family, anyone who is not homeless just happens to have someone to support them. Being on the registry is itself a punishment.

Regarding the polygraph, Chanta said that if it can't be used in court, why should a PO be able to use it to put someone back in jail? She regularly attends the Alaska Nations Reentry Group (ANRG) meeting at Partners for Progress; one group member said he took the polygraph and was marked wrong when he gave his name and address. Chanta said that people giving the test are not always qualified, sometimes it's just a PO. She thought there were a lot of things happening that policymakers were not aware of. She thought it was important to listen to people who have actually taken the test. If they fail, they have to take the whole 24-month course all over again. And POs tell them that if they fail, they'll go back to jail, so they are worried about going back to jail, and are going to give a false positive because the test measures emotional response. She noted that she had sent Barbara a lot of links to articles on theses issues. Brenda asked Barbara to forward the links to the group.

Tom Amos from Mekoryuk explained that he had been convicted of SAM 2. He was nervous about being at the meeting and saying that. He was very sorry and very regretful that made that choice. Even today, he is uneasy being on the street and if someone says hi to him, he wonders if they would say hi if they knew what he was convicted of. He was grateful to the state trooper who investigated his case, and had him write a letter of apology to his victim. He was not allowed contact with the victim so that was the only way to apologize, though he knew she probably wouldn't forgive him. After being released from prison, he was going to go to Brother Francis, but heard that he could only stay for one month, and wanted to find something else. If not for Social Security he would be homeless; it allows him to pay rent and buy food.

Tom explained that the ANRG group has been working on getting access to teletreatment, which can be provided in villages even for sex offenders. One person he knew is using teletreatment and is helping his community with subsistence. Coming from a village and living a subsistence life, it has been hard for him waiting in Anchorage for two years. He could have been helping his family prepare for winter. In the village he never had education or opportunity to get a career. It was hard for him to find even a menial job in Anchorage, his lack of education compounded by businesses not hiring sex offenders. He noted that English was his second language, and he didn't always understand everything in his treatment classes. The ANRG group supported him through his depression. He recognized that he put himself into this situation and he would have to deal with it, but he was grateful for help.

William Olson Sr. told the group he was from Goodnews Bay, then Dillingham, and went to high school in Palmer, where he lived in a childrens' home for 6 years. He was a commercial fishermen for nearly 50 years, and had own boat and crew. He was also a former pilot, and had been to many villages and met many great people. He got himself in "a bad predicament" and then had to go to prison., where he had

time to think. He kept himself active in prison to keep himself in shape. At age 72 he took part in a Navy Seal training in Colorado. When he came back he eventually found ANRG, where he felt at home and felt a positive feeling of belonging. He had heard they might get shut down, and hoped not, because it was a tremendous help post-incarceration, mentally, physically, and spiritually.

Bob Churchill explained he was the volunteer liaison for AKNRG. The group had members from all over the state. He noted that the U.S. spends billions incarcerating people each year, more than any other country. In his view, the problem in Alaska was the under-funding of prosecutors and defense attorneys. In rural areas, these attorneys will have a caseload of 40-50- files and the cases don't get looked at closely. As a result, the wrong people get into prison. If everyone charged at the maximum, those with the least effective attorneys will be those who end up in prison. He suggested fully funding and staffing DAs and PDs, and putting a Native cultural liaison in prison, which would have a restorative justice aspect. Over 95% of cases in Alaska are settled. In his view, we have a legal system, but not a justice system. That was not meant to be a shot, just saying what it was.

Bob said he had been a volunteer with ANRG for 2.5 years. Group members were touched that their perspectives were included in the report. The stereotypes and stigma they will face for the rest of their lives doesn't help anyone. Teletreatment is better, cheaper, and easier. The ANRG's mission statement was: "We meet to preserve our culture and traditions and to strengthen our people's spirit. We succeed by helping one another, advocating for each other, and maintaining positivity and respect. Together we are finding our way home."

Barbara Dunham informed the group that Cynthia Erickson had sent an email with her thoughts and she would forward the email to the group.

[*Note this comment was made at the end of the day's meeting*.] Barbara Johnson said she appreciated that this was an open meeting. She was a victim of sexual assault and most of her friends have experienced sexual assault as well. She thought the meeting had been very informative and thought it was a pity more of this information was not publicly available. She thought there was a disconnect between victim services and victim needs; she had had to advocate for herself, and considered herself lucky to be able to do that. Advocates do a great job and try to help, but it is not enough. She encouraged including input from victims and advocates in the report, and she thought there was a need to have data on effective programming for victims.

**In-Custody and Out-of-Custody Treatment**

Brenda said that the group had heard reports that treatment spots in prison are not filled and then people are waiting for two years to do treatment when they get out. Bob said that in the ANRG they are consistently hearing that treatment inside is not adequate and that they have to do treatment when they get out.

Ed Webster from DOC noted that telehealth was now open in every probation office and there were 30 people now enrolled in teletreatment. DOC can't set it up in some small villages because the Native Corporations operating the local clinics didn't want this population to mingle with patients at the clinic. So they are only able to do teletreatment in probation offices now. As for in-custody treatment programs, there are no empty spots, and in fact there is a waitlist. DOC is trying to people get into treatment while in custody, and they might also have to do aftercare. DOC would never make them do whole program twice. Some will have to do tune-ups, but not the whole 24 months. In-custody treatment and out-of-custody treatment have now been made the same program.

Bob said that didn't reflect what he was seeing. A lot of folks in Anchorage have been waiting for years. He also thought DOC should look into whether there is a disparate effect of polygraphs on Alaska Natives.

Susanne said that the group had heard that people don't want to do treatment while in prison because of stigma. Ed said that was true, if they go to treatment while in custody that then IDs them as a sex offender, and that impacts their safety. In some cases they will opt to do treatment when they get out. DOC can't make them go into treatment when in prison. Quinlan said that was only if treatment was a condition of probation—it could be a condition of the sentence. Paul added that it could also be made a parole restriction.

Chanta said that some people were not motivated to do treatment in custody because their sentence was on the order of 30 years and they would not qualify for discretionary parole.

**Updated Report to Legislature – Prevention Programming**

Brenda said that the statewide steering committee for prevention run by ANDVSA should be in the report. The report should also note that CDVSA is funded by the recidivism reduction fund.

**Updated Report to Legislature – Conclusion**

Brenda suggested that the conclusion pull together the items the report had referred to that need more study.

Barbara noted that the victim listening sessions (mentioned in the conclusion) were already being planned/held, the first one having been in Juneau and the next one planned for Fairbanks. The one in Juneau did not have many victims attend although there was attendance from the general public.

Brenda thought that there was some good feedback including from Emily Wright, a prosecutor in Juneau, who noted that paralegals are overworked and not able to perform their roles as victim liaisons. Quinlan said he had heard similar things. Brenda said she thought there were areas for growth there. Paul noted that Law had lost a lot of parlegals, but there were paralegals in his office who worked solely as victim witness liaisons. He also noted it was hard to retain experienced paralegals.

**Updated Report to Legislature – New Appendices**

Barbara said she had updated the appendices, which were now Methodology, Alaska Victimization Survey, Additional Data, Alaska Statutes, Presumptive Sentencing, Perspectives of Victim Advocates, and a Selected Bibliography.

Regarding the Presumptive Sentencing appendix, Quinlan suggested amending the language about judges not being able to apply an aggravator without it being presented to a jury to something like "in general judge may not apply an aggravator" and suggested dropping a paragraph.

**Updated Report to Legislature – SAKs**

Barbara explained that this section had been revised per Katie's suggestions.

**Updated Report to Legislature – SAM cases**

Barbara explained that Staci had updated the numbers to reflect limiting discussion of defendant age in this section to those under 21 and had created a table comparing victim and defendant age.

Paul asked about the discussion at the last meeting about how there had been an idea floating in some quarters of the legislature about extending the age range for SAM cases. Quinlan explained that this section had been included in the report in response to the legislature's queries because someone wanted to change the law on SAM and include it in SB 91. Brenda said there had been discussion on record as to whether Alaska was putting 19-year-olds in jail for 25 years for having a relationship with a 14-year-old. She thought this section as edited helped answer that question and could be used in future dialog.

Quinlan noted the paragraph stating that "legislature has determined that those under age 16 can't consent"; he didn't think that was the history, and thought it was more of an issue of exploitation rather than consent. The laws were meant to avoid discussion of consent entirely. He thought this section should just say what the law is. The group agreed to take out that language.

Paul thought that was a good idea because consent was not an element for SAM though there is mistake of age defense (the group thought that information about the defense should be added to this section). Paul said it would be rare to have a 19-year-old sentenced for an unclassified felony sex offense if the victim was 14. Quinlan noted that 19-year-old could still be sentenced to a lower offense and required to register.

Brenda asked what would happen in a case with 19-year-old and a 14-year-old where the 19-year-old does something stupid at a party? Paul said it would involve the appropriate use of prosecutorial discretion; if the conduct was not predatory, prosecutors will not charge cases with the consequences Quinlan was talking about. Quinlan said that discretion could also be influenced by angry parents and that PDs had heard of angry parents interceding.

Paul also noted there was an initial screening by law enforcement; which is reflected by the low numbers reported in this section which only represent those cases actually referred to law enforcement.

Shannon Cross-Azbill from DJJ noted that when she lived in Missouri, that state required registry for life, which was difficult for developing programming because there was such a variety of offenders, and they shouldn't all get the same treatment. People like the 19-year-olds who make a mistake were not differentiated legally and therefore not differentiated clinically.

Brenda asked whether there was any data on ethnicity for this section. Barbara said there wasn't.

Susanne said she wanted to make sure that the report explained the "non-consensual" and "statutory" categories correctly, and regarding the latter, noted she had pulled the "subjectively perceived him or herself to be consenting" language from case law. Paul said he thought it was correct but that John Skidmore had made those determinations when the data was pulled. He thought John's designations were trying to get at the pathology of sexual assault; "non-consensual" cases were those that could be charged as sexual assault but because of the age of the victim, DAs would rather charge as a SAM case because they don't have to prove lack of consent.

Quinlan said it sounded like these cases were assigned these labels based on the police report, and thought that another person could review the same files and come up with different labels.

Susanne suggested getting rid of the statutory/nonconsensual labels, thinking they might be too confusing for busy legislators. Quinlan said that made sense, because all the cases in this section would

have been referred because there was some element of the pathology Paul had been talking about; he was not necessarily comfortable with the statutory/nonconsensual distinction.

Paul agreed and said he would try to take a stab at writing a paragraph explaining the complexities of these cases. He thought this section could generally look at how many cases there were, and explain the factors that go into screening them. Susanne thought that got to the crux of the questions the legislature wanted answered. Quinlan agreed but thought the language concluding that these cases were not often prosecuted should be left out, as he thought that was debatable.

Brenda agreed with removing the labels because so many of the cases were labelled "unknown," so it made sense not to make a distinction. She also thought that would answer the legislators' questions.

Quinlan said it also raises question of whether there should be a half step for these cases between no charges or 25 years and registry for life.

**Updated Report to Legislature – Recidivism**

Barbara explained that she updated the language in this section to reflect the discussion from the previous meeting and she also added a new chart describing the re-arrest offenses. Part of the new language included a paragraph on the number of post-release arrests for homicide, which used the words "exceedingly tragic." Quinlan thought this language was inappropriate and suggested removing the paragraph.

Paul thought that 11 people in 400 was a strange number wand wanted to know more. Quinlan agreed it would be nice to know what those cases were. Barbara said the data came from the UAA recidivism study headed by Brad Myrstol and she believed the data on which the study was based had been destroyed.

Brenda thought might be better not to include that paragraph without knowing the whole story. Quinlan said it raised more questions than answers. Brenda said she was not sure what purpose it would serve.

Brenda wanted to know whether the new arrest offenses could be separated into felonies or misdemeanors. Barbara said that wasn't in the report and therefore might not be possible to get. Brenda was also interested in what offenses happened when post-release. Quinlan said he would wager most first offenses are PTRs that occur early on.

Mike Matthews pointed out that in the general population (felonies), of those who return to prison within first 6 months, 58% are PTRs. He also noted that the re-arrest offenses in the UAA study might not include PTRs.

Mike had also provided the workgroup with recidivism data from DOC. The data looked at the three-year return-to-prison rate for general offenders and sex offenders released every year starting in 2001. The recidivism rate, (the rate at those released in a given year returned to prison for a new conviction or an adjudicated petition to revoke probation or parole (PTR)), ranged from 61.3% in 2015 to 69.7% in 2002 for general offenders and 38.6% to 68% for sex offenders. The sex offense recidivism rate for sex offenders ranged from 1.5% to 13.1%.

Mike's data also included a look at the 10-year recidivism rate for sex offenders released in 2007. Of the people in that cohort who returned to prison, 82% did so within the first three years of release.

Brenda asked whether Mike's data showed that sex offender recidivism rates aren't far off from general offenders. Susanne noted that Mike's data included returns to prison for PTRs, and she wasn't sure but thought that the UAA study might not include PTRs. Paul said if that were the case it would be hard to compare. He also noted that there was no data for what happens outside the containment model, and thought this should be studied.

Ed noted that Mike's data on the 2007 cohort showed a slight increase in recidivism at around the 10-year mark, which would comport with national data showing a slight bump up in recidivism after supervision ends.

Brenda said she was wary of painting a picture that sex offenders were not dangerous. She also noted that these data were looking at reconviction rates within 3 years, and sometimes cases don't get resolved within three years. Susanne asked Mike when the return to prison was counted. Mike said it was counted upon remand. Ed added that it was counted from ACOMS. If a person was remanded on a PTR and a new offense, DOC will wait to see if that person is convicted of the new offense and then it will count as a conviction as of the date of remand.

Paul noted that this area was where he had been pushing back the most. The UAA was one study, and there were other studies in conflict. He agreed that sex offender recidivism was probably lower than the general population but on the other hand, there was not any number that was acceptable. It was hard to compare sex offenders to other offenders. He agreed with Brenda that he didn't want to sanitize the report and make it look like there was no problem. The UAA study itself even had cautionary language.

Quinlan thought the report should just be clear as to what data says. He doubted much will change based on this report.

Paul asked what the group wanted to do with Mike's information, and said it seemed to suggest that the report's declaration that sex offenders recidivate at a "markedly lower rate" was not correct.

Mike said that if his data were going to be shared publicly, he would like chance to clean it up, and get approval from leadership.

Quinlan said there should also be a conversation about why the data from the UAA were so different. He didn't want to inject a new issue into the report without clearing that up. Mike said that the UAA study was only looking at arrests and convictions, whereas his data were looking only at incarceration and PTRs. He could only speculate, but thought the UAA rates excluded probation violations. Quinlan said it sounded like the two data sources were looking at different things, and pointed out that a PTR was typically not a new crime.

Susanne asked whether a person on supervision who got a PTR for a failed drug test, and was remanded directly by a PO counted as recidivism in Mike's data. Mike said that it did.

Brenda asked staff to clarify this issue and suggested going with the UAA study for now, as that was a published study. The group could reevaluate or add additional information later.

Paul maintained his objection and thought the report was saying that the UAA study was a gold standard but the study itself said it was not. He thought this study was a very small piece of the pie. Other studies have come to different conclusions. He was concerned that this will be used in cases by PDs to argue for lighter sentences.

The group agreed to take out the "markedly lower rate" sentence. Paul noted he had suggested language from one of the other studies about how there is "a lot of work to do in this field" and suggested including it in the report. The group agreed.

Susanne wondered whether the Alaska Judicial Council study also mentioned in this section should be included. Brenda thought it should not be included, as it was too confusing. The group agreed. Brenda suggested taking out any subjective language and then the group could take another look at this section when the next draft went out.

**Updated Report to Legislature – Updating the research**

Barbara said she had pared down this section in response to the discussion at the last meeting, and had tried to take out everything objectionable. Brenda suggested also removing the text box and changing some of the language regarding recidivism to reflect today's discussion.

**Updated Report to Legislature – Out of Custody Programming and the containment model**

Barbara reminded the group that before the last meeting, DOC had provided some feedback for this section regarding the earned compliance credit (ECC) and staff had needed clarification. Ed said that he had spoken with the Deputy Commissioner, who said that he didn't agree that sex offenders should be allowed to earn ECC, and that it was never intended for sex offenders.

Brenda asked whether that had been fixed by SB 54. Barbara said that the fix was that sex offenders can't be discharged from supervision, even if they have earned their way off through ECC, unless they have also completed all court-ordered treatment. She said she could add this information to the report.

Susanne asked whether DOC's concern was that sex offenders were not completing treatment because of ECCs. Ed said that was not the case; if a sex offender has not finished their treatment, DOC so can revoke the ECC administratively. However, if a sex offender gets to the original end date of their supervision period, DOC has to petition the court to keep them on, and the court will not always grant the petition.

**Updated Report to Legislature – Loose ends**

Regarding gaps in the sex offense laws, Brenda said she got some new suggestions from Keely Olson at STAR and would forward them. Out of state registry matching was one, and the requirement of proof of use of force for first- degree sex assault was another—it gets into the old problem of "forcible rape" and advocates would like to see the language revised. Paul said that threats can also be force in this context; it was included in the legal definition of "without consent." Brenda suggested just leaving the list in the report as is, and the group can talk more about it in future meetings.

Regarding the sex offender registry, Ed also noted that clock for the 15-year registry period starts once an offender is off paper (they still have to register but don't get credit until they are off paper). Barbara said she would add that information to the report.

Regarding the data and case processing section, Brenda said she felt like the report had lost the picture somewhat - it start talking in actual numbers, then goes to percentages, and the narrative thread is somewhat lost. Barbara said she struggled with that aspect of the report because it was the nature of the data that the various data sources don't align. Brenda suggested noting that this gap in the data existed and was an area that could warrant further study.

Paul noted that Law now has a program that is tracking data going forward, but this tracking has not always been consistent.

Susanne noted that AFN had requested that the AJC do this study, which they were now trying to do. She noted that the legislature could make this reporting mandatory, and that it could be possible to follow the data from report to conviction with APSIN.

Brenda said she also wanted to make sure the report made clear there was room for here. The same applied to the advocacy section– there were strengths in victim services but there was room to expand to wraparaound care for victims. She suggested including something about that in the introduction. She said she would send a blurb about wraparound services.

**Plan for Report**

Barbara agreed to send a new draft with changes tracked to the group by February 11; the group would get comments back by February 13, and Barbara would send the next draft to the full Commission by February 15.

**Future Meetings and Tasks**

Brenda wanted to take a deep dive into the statutes – and wondered whether it would be better to wait until session is over. Susanne said the laws will probably change this session. Brenda also said the human trafficking working group was polishing up their comments, and this group should get them soon. Her sense in general was that they didn't like the suggestions.

The group agreed to meet next in May.

Alaska Criminal Justice Commission

# Sex Offenses Workgroup

## Meeting Summary

**Wednesday, January 9, 2019, 9:30 a.m.**

Denali Commission Conference Room, 510 L Street, 4th floor, Anchorage
And teleconference

Commissioners Present: Brenda Stanfill, Trevor Stephens, Amanda Price, Greg Razo

Participants: Ed Webster, Brad Myrstol, John Skidmore, Katie TePas, Lizzie Kubitz, Triada Stampas, Diane Casto, Carol Nordin, Chanta Bullock, Diane Casto

Staff: Susanne DiPietro, Staci Corey, Barbara Dunham

**Updated Report to Legislature- Introduction**

Barbara Dunham, project attorney for the Commission, explained that the Department of Corrections (DOC) had submitted a comment suggesting that the introduction state that the addition of polygraph testing recidivism rates were lowered by the. She was not convinced the report should make this claim as there was no evidence that the polygraph program caused recidivism rates to be lower, and there was no baseline data on recidivism rates in Alaska from before implementation of the polygraph program.

Ed Webster from DOC said he thought it was not just the polygraph but all of the elements of the containment model that keep recidivism rates low. He noted that other states had had conducted studies showing that their containment programs reduced recidivism. Susanne DiPietro, executive director of the Judicial Council, wondered whether in-custody treatment could also contribute to low recidivism rates. Brad Myrstol, director of the Justice Center at UAA, said that the Results First project used national data showing that those programs reduced recidivism, and, assuming the same effect applies in Alaska, were cost-effective programs.

Brad also noted that the sample in UAA's recidivism study was from people released from prison following conviction for a sex offense in 2008-2011. Ed noted that the containment model and in-custody sex offender treatment programs were both implemented in 2006. It was difficult to know how many of the cohort released between 2008-2011 would have completed sex offender treatment or engaged in the containment model, but safe to say that many were.

Brad noted that the study followed the cohort post-release for 8 years. Sex offenders usually have probation for at least 5 years, and up to 15 years, so it would be reasonable to assume that many in the cohort were under supervision for most of the follow-up period. UAA didn't have any information on the conditions of probation for those in the cohort. John Skidmore from the Department of Law said that was one of the concerns he had with recidivism data on sex offenders, because recidivism follow-up periods seem to overlap with supervision periods. He would be interested to know what the recidivism rates were once people are off supervision. Katie TePas from DPS said that assuming most in the cohort would have been subjected to the post-2006 containment model, the recidivism rates did seem to indicate that the containment model was working.

The group agreed that the substance of the above discussion should be incorporated into the body of the report but the introduction should be left as is.

**Updated Report to Legislature- Data, From Charge to Conviction**

Barbara explained that she had updated this section pursuant to the feedback from the previous meeting. She had added a table that compared felony sex offenses to felony assault cases disposed in 2017. The table looked at how many cases in each category went to trial, and how many resulted in a conviction, acquittal, or all charges being dismissed. This information was also reflected in pie charts.

**Updated Report to Legislature– Evidence in Sexual Offense Cases**

Barbara explained that both Law and DPS had extensive edits to a previous draft of this section; they were not substantively different and she was hoping the two departments could reconcile their edits. John said he thought DPS' edits should be adopted into the report.

Katie explained the gist of her edits to this section. First, she explained that the report should use terminology such as "forensic sexual assault kit" to ensure that the report accurately refers to the type of evidence collected. She noted that law enforcement pays for exams for all victims ages 16 and over, though other partners will sometimes finance the exams (and CACs finance the exams for children). She also noted that forensic analysis has improved and data collected 20 years ago might yield new information from the new analysis.

Katie also explained that there are different types of "backlogs" that should be differentiated in the report. First, there are kits that have been submitted and are in the queue to be tested. Second there are previously unsubmitted and untested kits, some from AST and some from municipal law enforcement. The state received a federal SAKI grant to test the kits in this category held by AST. The legislature has allocated funding to test the kits in this category held by the municipalities. The state does not currently have the capacity to test all the kits in the second category; those must be sent to labs outside the state. The best estimate is that it will take 3 to 4 years to address all the unsubmitted kits.

**Updated Report to Legislature– SAM Cases**

Barbara and Susanne explained that they continued to receive feedback about this section. Barbara had changed the heading of this section from "same peer group" to "SAM Cases Involving Defendants Under 21." Susanne said that she had the idea to lower the age of the defendants in this analysis to age 21, as that was less objectionable and closer to what the Legislature was interested in knowing. Katie also suggested reworking this section to include child/teen emotional and cognitive development. She encouraged staff to reach out to the Alaska Children's Alliance to ask for a review and comment.

John said that attorneys at Law had also struggled with this section, including with the wording. They labeled cases as "statutory" or "nonconsensual" by looking at whether the victim and defendant were just outside the 4-year gap or whether there were drugs/alcohol or manipulation involved. Despite their difficulty in labeling the cases, John had concluded that the department was appropriately screening out cases that needed to be screened out and screening in cases that needed to be screened in.

Diane Casto from the CDVSA agreed that this was a very complicated issue and said that CDVSA has had these same conversations. She wanted to make sure that policymakers gave serious consideration to protecting children from predators.

John noted that the report has a chart explaining age differentials but not the age of victims. He believed that cases involving 13 and 14-year-old victims were not the ones getting screened out. Judge Stephens said that lowering the age of defendants discussed in this section to age 21 made sense. He also didn't think the legislature was concerned that cases involving 13-year-olds were being over-prosecuted John said on the contrary that he remembered discussions in some quarters about broadening the 4-year age gap to include 13-year-olds and 21-year-olds, though he didn't think the idea was necessarily popular enough to become the subject of a bill.

Susanne explained that the report now had language stating that the cases currently labeled "statutory" were those in which a victim subjectively perceived him or herself to be consenting; this language was taken from case law. Barbara also noted that she had included a footnote with the NIBRS definition of "statutory rape" and that Alaska would have to move to NIBRS reporting in the future. John said he appreciated the case law definition.

**Updated Report to Legislature – Recidivism**

Barbara explained that she had revised the language throughout this section pursuant to suggestions from Law and DPS. She had tried to be as specific as possible. She had also added some of the charts from Brad's presentation to the workgroup last year. John said he thought the inclusion of the charts was a good idea because charts were less prone to subjective interpretation.

John also thought this section should include the information discussed above that most of the people in the recidivism study were on probation, suggesting the need for a study of those who are off probation. He also said he had some suggestions on language for this section. Katie wondered whether the information on the conditions of probation for the recidivism study cohort could be obtained. Ed said it would probably have to be a file review, but anyone on probation for a sex offense after 2006 would be subject to the containment model.

Susanne also suggested adding language about the known characteristics of those in the cohort. Brad said he appreciated the inclusion of the information on different trajectories of reoffending as those trends are more informative than the base rate and more informative for policymakers.

Katie wondered whether the report was going to make policy recommendations. Commissioner Brenda Stanfill said she was hesitant to go that route and preferred that the report be more informative. Susanne said that the "recommendation" language should be taken off the front page.

**Updated Report to Legislature- Revisiting the Research**

Barbara said she added a new paragraph to this section to make clear that it was not advocating for a repeal of the 2006 sentencing law. Brenda said she was struggling with this section of the report as it still read to her like it was advocating for a repeal. Barbara said that at previous meetings other Commissioners had stated they thought it was important to note that previous legislation had been based on research that was outdated or misunderstood. Susanne said she thought it was important to include the updated information.

Brenda said she was uncomfortable with the section as written; by stating that the research upon which the law was based was no longer valid, it was like saying the law itself was no longer valid—despite any language to the contrary. Barbara said that she thought that the legislature's reaction to this report might be to make changes to the law and that it was important to give the legislature accurate information.

John said that Law's reading of this section was also that it advocated for changing the law, though he thought it was appropriate that the study that had been misunderstood was given greater context. Susanne said she and Barbara would work on this section. Brenda agreed it should be revised and thought the report should be very careful about wording here. John said it was also important to note that there were many reasons why the legislature passed SB 218.

**Updated Report to Legislature - Gaps**

Barbara noted that Paul Miovas had pointed out an inaccuracy in this section at the last meeting which she had neglected to fix.

**Updated Report to Legislature – Out of Custody Programming and the Containment Model**

Barbara explained that DOC had offered a comment to these sections about how earned compliance credits made it difficult for probationers to complete treatment before being discharged from probation with these credits. She said that SB 54 had changed the law to make it so that people convicted of sex offenses could not be discharged from probation early with these credits unless they had completed treatment, which should have addressed DOC's concern. Ed said he wasn't familiar with why that was suggested and said he would check.

**Next Steps**

The group agreed getting a final draft to the full Commission by January 24 was too ambitious. Barbara offered to get a new draft out to the workgroup by January 23 and the workgroup set the next meeting for February 7.

**Public Comment**

Chanta Bullock said that the 2006 sentencing laws were based on emotion; senators at the time stated that all sex offenders will reoffend. The laws need a second look because first time offenses can essentially carry a life sentence especially if you include mandatory probation and a lifetime registration. There are almost a million people on the registry, and she thought that the Commission should take a careful look at the registry itself. She believed the current registry was unconstitutional. Someone who spent a lot of time on the registry without doing anything wrong would still not be able to find housing or a job. The registry also affects the family members of those on the registry. Sex offenders should not all be lumped into the same category.

Tammy Lawson said she wasn't sure what the laws were in Alaska but in some places all sex offenders are considered violent offenders. She thought there should be a special panel to review everyone on the registry. If a person spends 15 to 20 years on the registry and has not committed a new crime, she thought that person should be granted relief. The registry has horrific consequences for the registrant and the family of the registrant. She herself was a registered sex offender from Virginia because her 14-year-old son, who was not living with her at the time, had sex with a 26-year-old woman. She tried to resolve the problem without reporting to the police but eventually she did report it. She was convicted of failing to report a sex offense committed against a family member, and was now required to register as a violent sex offender in Virginia.

Carol Nordin said that she had great empathy for the victims of sex crimes. But she believed there was a tendency to pile on the bandwagon against sex offenders in the name of deterring future offenders. She believed the registry itself created victims. She thought there should be consequences for crime but she didn't agree with the registry. She wanted her comments to be considered in the report; she didn't see

anyone in her position reflected in it. She also noted that she had sent in a written comment and she read aloud from that comment. In the written comment she explained that she had suffered from PTSD and other emotional, physical, and financial consequences as a result of her husband being placed on the sex offender registry. She said the research showed that the registry does not prevent sexual abuse as the most common offender was not a stranger but an acquaintance or family member. By masking the real threat it makes people more vulnerable.

Barbara explained that she had circulated the written comments from Carol, Chanta, and Bob Churchill (volunteer organizer of the Alaska Nations Reentry Group) to the workgroup.

Alaska Criminal Justice Commission

# Sex Offenses Workgroup

## Meeting Summary

**Tuesday December 18, 2018, 9:30 a.m.**

Denali Commission Conference Room, 510 L Street, 4th floor, Anchorage
Teleconference number: 1-800-768-2983, access code 513 6755

Commissioners Present: Brenda Stanfill

Participants: Kelly Howell, Natasha McClanahan, Paul Miovas, Jenna Gruenstein, Lei Tupou, Cynthia Erickson, Laura Russell

Staff: Staci Corey, Susanne DiPietro, Barbara Dunham

**Updated Report to Legislature**

Project Attorney Barbara Dunham walked the group through the changes to the report. She noted that she had added call out boxes to highlight details for readers who would just be flipping through.

One section that changed was the section describing the difference between charges at filing and charges at resolution for Sexual Assault 1, Sexual Abuse of a Minor 1, Sexual Assault 2, and Sexual Abuse of a Minor 2. Barbara explained that she and Susanne DiPietro had discussed ways to make this section clearer and had decided to remove the data in the charts from 1999, as the charts were somewhat cluttered and the data from 2017 was more pertinent. Brenda Stanfill wondered if the information from 1999 could still be included in some way. Susanne suggested adding the link to the 1999 study from the Judicial Council (which contained the 1999 data previously represented in the charts) in a footnote.

Paul Miovas asked whether it was possible to parse this data by cases that went to trial versus cases that had not gone to trial. Barbara explained that the charts were based on the court system data, which had around 50 different codes for dispositions, all of which would have to be sorted into a "trial" or "not trial" category, which would be rather complicated and would take time and some judgment calls to work through.

Paul and Jenna Gruenstein explained that more sex offense cases went to trial more often than other cases, and it was their sense that when the sentences changed in 2006, it became more difficult for prosecutors to secure plea deals. This was perhaps because there was no sentence they could legally offer that a defendant would find palatable, and defendants would therefore prefer to take their chances on a trial. Sex offense trials were more likely than other trials to result in an acquittal. Jenna said that court data she had reviewed a few years ago showed that around half the criminal trials in Alaska had been sex offense cases, showing that those cases went to trial at a disproportionate rate.

Brenda thought that offering more context was helpful, but largely the data was what it was, and should be presented as a snapshot of what is happening in Alaska, whether there was a ready explanation or not. She noted that some of the data might also reflect the effect of cuts to the prosecution budget.

Paul said he was concerned that some people might look at the data and decide that Law was trying to many cases, while at the same time they would receive the same kind of pushback they'd normally receive, that they are not trying enough cases. He thought it would be good to have more resources to take on more cases, but widening that net would necessarily result in more acquittals.

Brenda wondered whether it would be helpful to also separate the acquittals from the dismissals in this data. Barbara explained that staff had also looked into that and it would be tricky to parse because there were some cases where some charges were dismissed and some ended in acquittal—which would require a policy call prioritizing one or the other when determining how to categorize those cases. Paul and Jenna said that from Law's perspective, any case where a jury acquitted a defendant and no charges remained (even if there were other charges that had been dismissed earlier in the case) should count as an acquittal. Barbara said staff would look into parsing this data out by trial and no trial and by separating acquittals from dismissals.

Barbara said that other new additions to the report included an appendix listing the dispositions for DJJ case (moved from the body of the report) and an appendix summarizing all the sex offenses and related offenses in statute. She had reworded the recidivism section to reflect the discussion from the previous meeting, and expanded the victim safety section thanks to feedback from Diane Casto at CDVSA and Cynthia Erickson of My Grandma's House. She had also added language in the "new approach" section reflecting the discussion on the correlation between the trauma of experiencing sexual violence and future crime.

Barbara also pointed out a new section discussing potential gaps in the sex offense statutes. This section was included after the Commission, at the last plenary meeting, directed the workgroup to look into these issues and make a note of this upcoming project in the report. Brenda explained that the gaps identified in the report were those identified by affiliates of the Alaska Network on Domestic Violence and Sexual Assault. They may identify more in the future.

Paul noted that one of the identified gaps should be corrected to more accurately reflect the statute—the marriage defense to sexual assault was not a defense in all cases, and this should be fully explained in the report. He was not defending the defense, but was concerned that it was not accurately described.

Natasha McLanahan said that ANDVSA had noted their concern with this defense with particular regard to a case where a woman who was heavily medicated was filmed and assaulted by her partner. Paul said that he had worked on the indictment in that case and that the details were even worse than that. The jury acquitted in that case and most had agreed it was a shocking result. Jenna thought there was likely broad consensus that this defense should be reviewed.

**Department of Law Concerns**

Staff noted that Law had submitted edits to the report on Friday but staff had not had much time to go over them. Brenda asked about the extent of Law's concerns, and whether they would prevent the report from being passed at the Commission level. She wanted to make a concerted effort to get the report done as the workgroup had been working on it for a year and a half. She reminded the group that the report was intended to be an independent assessment of sex offenses. There were things that the Commission had done that made her personally uncomfortable as a victim advocate, but were based on data that was hard to refute. In the end data is data, and the Commission would report the data.

Paul said that Law did have some concerns but they were addressed in the edits that were sent to staff on Friday. He went on to say that his suggested edits were an attempt to make the report more objective. Law would likely want to have a chance for the workgroup to thoroughly review the report once any additional edits are in and ensure that the report accurately reflects the will of the group.

Paul gave a broad overview of the concerns that Law had and how their suggested edits had addressed those concerns. Their first concern was the nomenclature used to describe the victimization survey. They believed that the responses to the survey would not necessarily amount to criminally chargeable offenses so the report should use the term "sexual violence" rather than "sexual assault" to describe the survey responses.

Paul also said he had looked at the recidivism research and thought that additional studies and information should be mentioned, along with a note that recidivism research in this area is a relatively new field that should be studied more. For example there was a footnote explaining that there are different measures of recidivism; Paul thought this should be moved to the main text and expanded.

Paul said that the section on revisiting the research that the legislature looked at in 2006 seemed to be a push to scale back the existing sentencing laws. Barbara and Susanne explained that that was not what they had intended, and would reword that section to make that clear.

Paul also said that the section with reports from victim advocates should make clear that the information is based on their observation, not data. He thought it was important to include these perspectives but Law wanted to make it clear that this was a different kind of information than the quantitative data included earlier in the report.

Natasha noted that some of what the victim advocates reported had also been reported by news organizations and the report could link to those to augment this section.

**Future Meetings and Tasks**

Leitoni Tupou asked whether there was a deadline for this report. Barbara explained that the Legislature had not set a deadline. The full Commission would have to give the okay to send the report to the Legislature, so the question was when the workgroup wanted to forward the report to the full Commission. The next full Commission meeting would be January 24. Leitoni said that the new administration at DOC would like time to review the report, particularly section III, which has a lot to do with DOC. Barbara suggested he consult with Laura Brooks, who had already had an opportunity to review this section.

Paul thought that the Department of Public Safety would also have extensive edits. Kelly Howell said that DPS had prepared edits and they were awaiting review by the Commissioner, who was in Bethel and not able to make it for the meeting. She thought they would be able to send their edits within a day or so. She added that DPS still wanted to have representation on the workgroup and that they were still determining who that would be.

The next meeting was set for January 9 at 9:30. Barbara agreed to send a new draft of the report out by Friday December 21, and any final comments or edits to the report would be due by January 4.

Cynthia Erickson, who had planned to speak at this meeting about My Grandma's House and some ideas she had to combat sexual violence, offered to speak at the next meeting when more people could attend.

**Public Comment**

There was an opportunity for public comment but none was offered.

Alaska Criminal Justice Commission

# Sex Offenses Workgroup

**Meeting Summary**

**Friday, November 16, 2018, 9:30 a.m.**

Denali Commission Conference Room, 510 L Street, Anchorage
And Teleconference

Commissioners present: Karen Cann (designee of Commissioner Dean Williams and workgroup chair), Brenda Stanfill, Quinlan Steiner, Trevor Stephens,

Participants: Natasha McClanahan, Brian Barlow, John Skidmore, Doug Miller, Amber Nickerson, Shanta Bullock, Laura Russel, Ingrid Johnston, Brad Myrstol, Jenelle Moore, Rose Foley, Allison Hansawa, Suki Miller

Staff: Staci Corey, Barbara Dunham

**Updated Report to Legislature - Data**

Commission project attorney Barbara Dunham explained that at the last meeting, group members had expressed interest in knowing more about the racial makeup of those in prison who have been convicted of sex offenses. Since that meeting, Commission data analyst Staci Corey had provided an analysis of DOC's offender profile data concerning those in prison for sex offenses. This data is based on yearly one-day snapshots. Among other things, the data showed that while the total number of people convicted of sex offenses has increased over the last 10 years, in recent years the share of Alaska Natives within that population has decreased.

Brenda Stanfill noted that data showed that the total number of people in prison for a sex offense declined significantly from 2002 to 2003 and wondered why that was. John Skidmore said he did not know the reason offhand, and that while this data was interesting, it was hard to draw any conclusions from it about the criminal justice system.

Brenda said that it seemed to show that the disparity between the percentage of Alaska Natives in the sex offender population and the percentage of Alaska Natives in the state's general population has decreased, and might provide evidence to counter the narrative that only Alaska Native men are prosecuted for sex crimes, something she hears frequently. John said he had also noted that DPS's supplemental felony sex offenses report for 2017 showed that for about 60% of reported offenses, the suspect and the victim were of the same race, and that the proportion of both victims and suspects who were Alaska Native was higher than the proportion of Alaska Natives in the general population. John said he thought this information was worth including in the report but wasn't quite sure where.

Barbara walked the group through the latest draft of the report. In the data section, John wondered whether the Alaska Victimization Survey would be repeated in 2020, and if so, whether it was worth noting this in the report. Brenda said that the CDVSA planned to request funding for the survey and that it couldn't hurt to include that request in the report as well. Natasha McClanahan noted that she might want to provide some edits to the section about the survey because ANDVSA had some concerns about the reach of the survey. Suki Miller asked whether John was suggesting that the report make a recommendation. John said

he thought that the CDVSA request should be reported in the data section, and if the full Commission chose to make a recommendation, that could be added in later.

John also thought it was important to note that there was a difference between the data reported by the FBI as part of the universal crime reporting (UCR) program and the data published by DPS. He suggested describing how each report is done and making the differences between the two clear. He also suggested breaking out the dismissal and acquittals in the section discussing case resolutions.

Regarding the same peer group cases, John said that the Department of Law was still working on suggestions for the language used in that section.

Barbara explained that she had reworked the section on sex offender recidivism to make it clear what recidivism measured. Quinlan Steiner suggested that the phrase "repeat offending" as used in this section was misleading as it typically referred to sentence aggravation. Barbara asked the group to review this section and make any suggestions for word choice and clarity that might come to mind.

Regarding the section on sex offender registry, John said he would like to see the studies cited. Barbara said she would send them to him.

**Updated Report to Legislature – Victim's section**

Suki noted that the report mentioned the speeches by the Tanana 4-H club members in 2013. She wondered why there was mention that the speeches were "not universally well-received." Barbara explained that it was noted in some news reports that not everyone in the Tanana area approved of their making public speeches about sexual abuse and other problems in the villages. Brenda thought the report could be reworded mention how the village was uprooted by those speeches and how the state stepping in after hearing them caused additional chaos. She also thought the movement borne of those speeches was growing; it is no longer a 4H club but the leader of that group, Cynthia Erickson, was supporting youth talking circles around the state with a program called "Our Grandma's House." Brenda said she could put Barbara in touch with Cynthia.

Quinlan thought there was a place between subsections D and E to discuss the correlation between victims of sexual abuse and future offending. He thought there was a real need to develop a more robust response to the trauma of sexual abuse both as an end in itself and as a means of reducing future offending. Doug Miller had previously brought this idea up as a mitigator but Quinlan thought the idea had broader implications than just for sentencing. In some respects it is the system itself that compounds the trauma and this should be addressed.

Karen Cann thought that was a good idea and suggested it could go under the "new approach" section. Brenda agreed, and said that youth who were abused need long term services, which Medicaid won't cover. Sustained victim services could prevent future perpetrating of sex offenses. Quinlan said it went beyond sex offenses as many clients of the Public Defender Agency have experience sexual violence and deal with it by engaging in behavior such as alcohol or substance abuse that can lead to a variety of criminal activities. Brenda thought this could also be tied back to the Annual Report's recommendation that state funds be invested in providing increased services for child victims and witnesses. Barbara said she would add some language to this effect and said she welcomed any suggestions.

Brenda said she thought there was more to add about prevention programming and the safe schools act. She said she would get some information on that curriculum and also talk to Diane Casto, director of the CDVSA.

Doug Miller noted that other states had been testing the waters on the constitutional limitations to victim protection during trials—things like testifying behind a screen or on closed circuit television. He was not sure whether anything had gone up to the US Supreme Court recently. Much of the Supreme Court's jurisprudence on this topic had been shaped by Justice Scalia, and the outcome of any constitutional challenge to such laws might be different without him. John noted that state rules allowed such practices on a case-by-case basis in limited circumstances. He thought Doug made an interesting point and was also not aware of any pending or recent cases before the US Supreme Court.

**Updated Report to Legislature – Next steps**

Barbara noted that the conclusion of the draft report made mention of items still on the workgroup agenda, including revisions to the sex trafficking statutes and addressing loopholes in the sex offense statutes.

Amber Nickerson noted that CUSP had tried reaching out to the Human Trafficking Working Group numerous times to try to join their discussions but to date they have not received a response. Karen said she was not sure of where that group was at but wanted to keep the report moving ahead without losing sight of the sex trafficking proposals.

The group discussed the timeline for completing the report. Brian Barlow said that he had some thoughts on the report and wanted to confer with John about them, and thought they could perhaps come up with some joint edits to the report. Brenda noted that the racial representation data could be included in the data section, and also mentioned that she was confused by the flow of what data sets were being discussed on pages 12 and 13 of the report. John said he also had some comments about that section.

The group agreed to get any and all final comments on the report to Barbara by December 7th, and to hold the next meeting December 18th at 9:30.

**Sex Offense Statutes: Harassment, Defenses, and Other Loopholes**

Barbara explained that at the last meeting of the full Commission, the Commissioners had discussed the sex crimes loophole brought to light by the Justin Schneider case. The Commission referred that issue and a general review of the Title 11 statutes for loopholes or other problems to this workgroup. Brenda said that loopholes had come up in other areas and that she also wanted to revisit the "marriage defense" to sexual assault. She suggested that a subgroup could meet and sit down with the CDVSA and go through Title 11.

John said the Dept. of Law would be putting forward legislation to close the loophole from the Schneider case as well as other issues such as having the offense of third-degree sexual abuse of a minor fall under the sex offense sentencing scheme and not the regular felony sentencing scheme. He was happy to talk with anyone about Law's plans or any other proposed ideas on this topic.

Quinlan thought the workgroup should decline to weigh in on this issue. He was not sure of the utility of examining the issue when the Dept. of Law was already going to do so and thought that it would just result in the workgroup spinning its wheels.

Brenda reminded the group of the scope of the Commission's work and the variety of groups it represented. Often the victim's perspective is lost and the Commission's makeup ensures that victim advocates have a voice. She didn't feel comfortable rejecting the referral from the full Commission. Natasha added that the Commission also offers an opportunity for public input. Quinlan countered that the

Commission's votes were driven by the political appointees and the next administration would likely take up this issue anyway.

Brenda suggested keeping this item on the agenda for the next meeting, because at that point the group would know what would be in the works for the next legislative session. Karen agreed.

Natasha noted that ANDVSA had also proposed a fix to the marriage defense. Quinlan said that issue had been taken up previously by the legislature and everyone had agreed to do away with it in theory, but when it came to drafting the actual details the consensus broke down and it was never passed.

**Reporting Requirements for Children Abused at School**

Barbara explained that Natasha had raised this issue following the story about a man who recently confessed to being a pedophile but had been the subject of previous reports that had not resulted in any action or notification of parents. Natasha said that ANDVSA would like the perspective of this group. She had been researching the issue and there are some approaches to this issue in other jurisdictions. She saw this as a systems-level problem involving communications between agencies. For example in this case a report to OCS did not result in any action from OCS because the child was safe with his or her parents and they referred the case to the police; since no charges were filed, nothing was ever done to address the allegations.

Suki mentioned that there are SESAME laws in other jurisdictions that address this issue; among other things these laws protect people who come forward to report possible abusive behavior and provide guidelines for action. She said she would forward this information to Natasha.

**Victim Roundtables**

Barbara explained that the Commission had also discussed hosting victim roundtables in various locations around the state, similar to the roundtables the Commission hosted in 2015. Brenda thought that the locations might be different this time around, for example, Nome or the Mat-Su. She also suggested including victims of property as well as violent crime. John suggested Bethel, Kotzebue and Anchorage as areas where people are also concerned about crime. Natasha suggested Southeast Alaska, and Quinlan noted that caseloads in Southeast Alaska have increased.

Barbara encouraged anyone with other ideas on how to conduct the roundtables to contact her.

**Public Comment**

There was an opportunity for public comment but none was offered.

Alaska Criminal Justice Commission

# Sex Offenses Workgroup

## Meeting Summary

**Friday, September 14, 2018, 9:30 a.m.**

Denali Commission Conference Room, 510 L Street, 4th floor, Anchorage
And teleconference

Commissioners Present: Quinlan Steiner, Brenda Stanfill, Walt Monegan

Participants: Karen Cann (chair), Suki Miller, Anna Taylor, Paul Miovas, Keeley Olson, Doug Miller, Brad Myrstol, Shannon Cross-Azbill

Staff: Susanne DiPietro, Staci Corey, Barbara Dunham

**Update on Sex Trafficking**

Commission project attorney Barbara Dunham reminded the group that the workgroup had considered a proposal to change the sex trafficking laws, and had sent that proposal to the Anchorage Trafficking Working Group (a state-municipal task force) to solicit their feedback.

Anna Taylor, attorney for the Alaska Institute for Justice, which chairs the service provider sub-group for the Task Force, explained that the proposal had been distributed to several of the Working Group's sub-groups, including their legislative, law enforcement, and service provider sub-groups. The groups have been circulating comments, and representatives from Covenant House have been working on a draft response; they will meet soon to discuss the draft response.

Deputy DOC Commissioner Karen Cann said that the report to the legislature could just note that the workgroup was engaged in this process. Barbara said she could provide a brief explanation of the issue for the report and add any available data.

Commissioner Brenda Stanfill agreed that it was important to wait to see what the Working Group had to say about the proposal and not to move forward without their input.

**Updated report to legislature –data**

Barbara explained that she had updated the report to the legislature based on the feedback from the last meeting. She noted that the data section would need to be updated because the annual Uniform Crime Reporting (UCR) data had come out along with DPS's annual Felony Level Sex Offenses in Alaska. Much of the data section included last year's data so those data would need to be updated.

Suki Miller from the Governor's office noted that the Alaska Victimization survey was scheduled to be repeated in 2020 and she thought that there would need to be a funding request for next year's budget, and this could be something to note in the report. Brad Myrstol, head of the Justice Department at UAA said Andre Rosay, who led the previous surveys, was still working with CDVSA on this project but he

wasn't sure where the program was at now. DPS Commissioner Walt Monegan said that DPS has a request in, and CDVSA still wanted to do the survey. He was planning to talk to the legislature about it next session.

Barbara noted that at the last meeting, the group had wanted an update on felony sex offense case resolutions. The Alaska Judicial Council had done a study in 1999, and the report now showed the resolutions in 1999 compared with 2017. The group noted that particularly for first-degree sexual assault, many cases resolved as a felony other than first-degree sexual assault, attempted first-degree sexual assault, or second-degree sexual assault. The group wondered which felonies they were, and Barbara said she thought she could get the list. The "other felony" category in this case could include attempted second-degree sexual assault. Suki suggested putting the full list of case dispositions in an appendix.

Susanne DiPietro, executive director of the Judicial Council, said it was also interesting to see the relatively large proportion of cases where all charges were dismissed or the defendant was acquitted on all charges. This was commensurate with other studies. Barbara noted that while the data reflected the cases with all charges dismissed, they do not reflect situations in which an entire case is dismissed as part of a global plea agreement and the defendant is convicted a separate case.

Barbara next explained that the chart showing the breakdown of a snapshot the incarcerated population by offense class had been updated with 2017 data. Brenda noted that people often say that there is a disparity in sentencing Alaska Natives for sex offenses and wondered if there was a way to show whether that was true with the data. Susanne asked whether she thought snapshots or sentence lengths would be better. Brenda said that anything that showed a potential changing trend could be useful. Susanne thought that the DOC offender profile reports might contain helpful information.

Paul Miovas from the Department of Law cautioned that that could pose a loaded question and that there are a lot of dynamics at play. Susanne suggested ensuring that proportions were represented in relation to overall demographics of the Alaska population. Brenda said she thought the legislature would want to know about this—she recalled this question coming up repeatedly from legislators.

Walt asked if Brad Myrstol, director of the Justice Center at UAA, had any such data. Brad said he would take a look at what he had. Walt said that in his experience in working in rural areas, and noting that it is part of Alaska Native culture to highly value honesty, that often Alaska Native defendants will accept plea deals. He could remember only a handful of trials. Doug Miller, private attorney, said that if numbers are available to report, they could be put in context. Keeley Olson from STAR suggested that if there is data on race in relation to defendants that similar data be included regarding race in relation to victims.

**Updated report to legislature –SAKs**

Keeley pointed out that that the report should be updated to reflect that Sexual Assault Kits (SAKs) can now be collected up to seven days after an assault rather than 96 hours. Suki noted that there had been another allocation to fund testing of the backlogged SAKs (all kits) and APD should also be hearing soon about a similar grant.

**Updated report to legislature – Sex offenses involving minor defendants, same peer group cases**

Barbara noted that she and Staci Corey, the Commission's research analyst, had worked to provide a more detailed explanation of what the dispositions were for the FY16 sample of DJJ cases involving sex offenses.

Staci had also done a lot of work to update the same peer group cases (cases where the defendant and victim are close in age enough to be in the same peer group). Barbara explained that she and the Dept

of Law had gone back and forth about how best to word this section. Paul noted that the point was to determine how often these kinds of cases were prosecuted in which, but for the age of the defendant and the victim, the conduct would have been legal. Barbara would continue to work with the Department of Law on this. Susanne reminded the group that the legislature had asked the Commission to look into this.

Suki wondered if there was any available data on teens and young adults and social media cases involving sex offenses—things such as sexting, posting pictures on sites without permission, etc. She thought that the legislature was also interested in such cases. Keeley said she didn't think such cases were often prosecuted, and Paul agreed.

Barbara asked Shannon Cross-Azbill with DJJ whether she thought DJJ often saw social media or similar cases. Shannon said she would have to ask DJJ's probation officers. She hadn't heard much about it and didn't think it was prevalent, but would ask around.

**Updated report to legislature- recidivism**

The next data section concerned recidivism. Keeley wondered why the recidivism rate was so low for sex offender when two-thirds of offenders in one study had prior convictions. Barbara explained that 80% of offenders in the sample had no conviction for a prior sex offense. Once a person is convicted of a sex offense, their recidivism rate is comparatively low, perhaps because people convicted of sex offenses are subject to more intensive supervision and probation requirements upon release.

Keeley thought it was important to explain in the report that often people charged with sex crimes have those charges reduced to non-sex crimes or are acquitted. Paul agreed and thought it was important to tie the recidivism information to the data above regarding the number of cases resulting in dismissal or acquittal, and the number of cases resolved as a non-sex felony. In his experience, cases with sex crime charges often result in a conviction for coercion, which is not a sex crime.

Doug asked what the typical process was for plea deals are made with a defendant pleading guilty to a non-sex crime such as coercion. Paul said in his experience such defendants would have to admit to sexual conduct and perhaps agree to complete sex offender treatment, depending on the circumstances of the case. He thought it was worth looking into how many cases were resolved as coercion.

**Updated report to legislature- circles of support/talking circles**

Barbara said she had researched circles of support and talking circles in advance of the meeting but did not have time to write up a memo. In her research she had encountered references to Alaska using a "circles" model that sounded like a circle of support, but she had not found any official reference to this model in DOCs literature. She wondered if local communities were offering circles of support independently or if there were state efforts that were not publicized. Karen said she would look into it and confirm.

**Updated report to legislature- sex offender treatment**

Brenda said that she had heard from DOC Commissioner Dean Williams that DOC had increased treatment capacity in prisons (and teletreatment for those in the community), but that the in-custody programs were not full because judges had not been ordering people convicted of sex offenses to complete treatment in custody. Karen said that capacity had expanded but she was not sure of the participation numbers, which she could get.

Barbara noted that the report mentioned the issue of offenders not completing treatment in prison. Keeley suggested that it should be made clearer that the offenders were essentially opting not to do treatment. Karen said that the issue stemmed from a number of factors. Capacity used to be one of them, but is less of a problem now. It also has to do with the timing of an offender's release, and whether they will have enough time to complete treatment.

Paul said it was a vicious cycle, because a lot of times prosecutors will file PTRPs because an offender hasn't done treatment in the community, but the time imposed for the PTRP won't be enough to complete treatment, and this is especially frustrating when an offender had an opportunity to complete treatment in prison and didn't take it.

Karen said that some offenders were ashamed to be seen doing sex offender treatment in prison. Others might get frustrated with the program because they don't have the literacy skills to understand the treatment materials. This is why DOC was trying to make it easier to do the teletreatment. In some cases it might make more sense to have the offender complete the program in the community if that was the best chance of getting the offender to complete treatment.

Keeley noted there was a 12-month waiting list for trauma therapy for victims of sexual assault in Anchorage. She thought it was a shame if there was a treatment program for offenders that was not operating at full capacity.

Karen said she could get more information on the programs and how full they were.

Barbara said there was also the problem of judges ordering treatment but not specifying that treatment be completed in prison, which allowed offender to do treatment after prison. But judges have no way of knowing at sentencing what specific programs will be most appropriate for treatment or what capacity will be available when an offender gets nearer to the end of their active sentence (when treatment would start)—especially with sentences that are sometimes decades long. Paul said that judges could require in custody treatment, but that might run into legal issues if a program doen't have capacity and the offender is due to be released on parole before a spot opens up.

Susanne noted that research shows people respond much better to incentives than sanctions, and wondered whether there was any way to incentivize in-custody treatment. She wondered if there was some sort of in-custody benefit that could be used as a reward for completing treatment. Sanctions such as the threat of a PTRP after release did not seem to be working.

Brenda wondered why judges couldn't order the offender to treatment in custody. Public Defender Quinlan Steiner said that they could, but then if the offender doesn't complete it the sanction is to just anticipatorily revoke good time. Brenda asked if this meant that the offender would be released without being on parole. Quinlan said it did. He thought that incentives might work but if a program doesn't have capacity, people can't just be held until they complete treatment and can't be sentenced for the purpose of having enough time to complete treatment in custody. He thought there was a need to do a really deep dive to find the root cause of the problem. He also noted that the incentives for people convicted of sex offenses who were on supervision were stripped out of the law.

Brenda suggested noting how complicated this issue is for the report. Quinlan said that the report should also include any available data, and not just rely on anecdotes.

**Public Comment**

Doug recalled that he had proposed to the group the idea of a sentencing mitigator that would reflect the cycle of abuse, allowing a downward sentencing departure for offenders who were also victims. He has done a lot of research and there appears to be a lot of dispute about whether the correlation between being sexually victimized and later offending is strong enough to warrant any kind of mitigated sentence. He was happy to get more ideas about how to approach this topic from the group and also thought it might be an appropriate topic for the sentencing workgroup.

Keeley suggested that if there was a correlation, there might be more female sex offenders. There is research to suggest that being subjected to or witnessing physical violence or domestic violence as a child can lead to sexual offending. Doug said that there is a correlation between past child abuse and future sexual offending, the question is how strong the correlation is and whether there should be any policy decisions based on it.

**Next Meeting**

The group did not finish discussing the draft of the report. Barbara requested that group participants read the rest of the draft on their own and try to get any and all comments back to her by the end of September. She will incorporate those comments and get another draft out shortly thereafter. She will set the next meeting when she gets a better picture of when she will be finished with the draft and when she hears back from the Trafficking Working Group.

Alaska Criminal Justice Commission

# Sex Offenses Workgroup

**Meeting Summary**

**Friday, June 22, 2018, 9:30 a.m.**

Denali Commission Conference Room, 510 L Street, 4th floor, Anchorage
And teleconference

Commissioners present: Karen Cann for Dean Williams, Walt Monegan, Trevor Stephens, Brenda Stanfill

Other participants: Shannon Cross-Azbill, Keeley Olson, Suki Miller, Kaci Schroeder, Clare Sullivan, Paul Miovas

Staff: Susanne DiPietro, Staci Corey, Barbara Dunham

**Terminology**

Barbara Dunham explained that at the last plenary meeting of the Commission, the Commission had agreed to adopt people-first language and avoid using the term "offender" where possible. She said that she would like some direction from the group on how to approach terminology in the report, noting that the term "sex offender" had previously been used throughout.

Susanne DiPietro said that some labels explain a person's legal status; she wondered what the group thought about using the word "defendant." She noted that the report's title was "Sex Offenses" and thought a starting point would be to refer to crimes where possible.

Barbara also noted that the word "victim" was often used in the report and she understood that not everyone would like that label either. Brenda Stanfill said that advocates often use the term "survivor." Barbara said that in an effort to use people-first language, she had used "people who have experienced sexual violence" in the new sections of the report. Keeley Olson pointed out that "victims" and "people who have experienced sexual violence" have some overlap but may be different groups.

Keeley said she had done some research and found that proponents of person-first language thought that people should not be judged based on the worst thing they had done; she didn't necessarily agree. Judge Stephens observed that the report was focused on the worst thing that some people have done, i.e. sex offenses. He also noted that the term "sex offender" is the term used by the legislature and is used in statute. He was more concerned about the term "victim" if there was a better word to use.

Suki Miller suggested just making a note about the terminology issue in the report, explaining that person-first language is used where possible, but some terms such as "victim" would be used in the context of a criminal legal case. Susanne said that "victim" was like "defendant" in that it describe a role in the criminal justice system—she didn't think they carried any stigma in that sense. Paul Miovas said that as a prosecutor, he often sees motions not to use the word "victim" in front of a jury. But the legislature has given a definition for "victim" in statute and he didn't see a need to deviate from the legislature's usage in the report.

The group agreed on making a note at the beginning of the report about using "person-first" language where possible.

**Updated report to legislature – Juvenile cases**

Barbara said that she had gotten information from DJJ about juvenile sex offense cases, and that Staci Corey had analyzed the information and provided the charts included in the new draft of the report. Barbara said that she could add or remove information depending on what the group thought was appropriate. Karen Cann said she liked more data.

Judge Stephens noted that of the FY16 cases, 61% had been dismissed, and depending on the reasons for the dismissals, that might be a concern. Susanne wondered if there was any information on whether the juveniles were going to treatment instead of being adjudicated. Shannon Cross-Azbill said that she wasn't sure but could try to find the information. She knew that cases might involve multiple charges and could resolve with a plea wherein one charge is dropped. Barbara said she would follow up with Shannon and others at DJJ after the meeting to get more information on the dismissed cases.

Paul asked whether the cases included in the dataset for FY16 included cases referred by OCS. Shannon said the referrals only came from law enforcement.

**Updated report to the legislature - Same peer group cases**

Keeley said she hadn't been at the last meeting and had been confused by the meeting summary and the result of the conversation about these cases. She wondered why some of these cases were labeled as "consensual." Judge Stephens noted that the cases discussed in this section of the report were SAM cases, for which lack of consent is not an element of the crime.

Paul said he was also concerned about how "consensual" is defined in this section. Though the information (including the "consensual" label) came from his department, he was not sure what definition was used. Staci explained that Department of Law staff had conducted a file review of the cases and used the label based on what they read in the file.

Judge Stephens recalled that this information is what the legislature wanted to know—whether there were frequent prosecutions of 18-year-old seniors in a relationship with 14-year-old freshmen. He agreed it would be better to know what the label "consensual" means in this context. He said that this data seemed to suggest it was not happening frequently. Barbara said that comported with national studies on the same issue. Keeley said that often those accused of sexual crimes claim consent as a defense; she thought it was something of a myth that these cases are prosecuted frequently.

Paul said that such relationships happen frequently, and are reported to law enforcement, but those cases are not often referred to Law. He would prefer these cases be referred so they can be addressed in a more systematic fashion to avoid disparate treatment. He didn't necessarily want to prosecute every case but thought Law should be the gatekeeper here.

Karen suggested going back to Law to get more information on how cases were designated "consensual." Barbara said staff would follow up and noted that this section could be reworked to include more context.

**Report to legislature - Case resolutions**

Suki asked whether there was information about how cases resolved and wondered what the data showed about sex offense cases resolving with a conviction for something other than a sex offense. Barbara explained that there was a section starting on page 8 on a study from the Judicial Council on how charges for the most serious sex offenses resolved in 1999. Suki wondered if it was possible to update the study. Paul noted that charging may have changed since the changes to sentencing in 2006.

Staff will look into updating the 1999 study.

**Report to legislature - Revisiting old research in legislative history**

Barbara explained that one study cited by the legislature for the proposition that offenders average over 100 offenses before being caught was actually a polygraph study from Colorado with a small sample size of limited scope. While the offenders in that study disclosed a mean of 110 prior offenses, the median number of prior disclosed offenses was 11. It would be difficult to draw any universal conclusions from that study. Victimization surveys in Alaska and nationwide do show that sex offenses are vastly underreported, but it cannot be said that all sex offenders average 110 offenses before being caught. Susanne said it was challenging to develop a nuanced approach to sex offenses so as not to either over or underestimate the scale of offending. Keeley said that the polygraph study reflected cases like that of Harvey Weinstein or Bill Cosby, who are now known to have assaulted many people. She said that these are the worst offenders, also seen in the Washington study of offenders sent to McNeil Island.

Judge Stephens said it was interesting to note that the sentencing laws from 2006 appeared to be based on statistics about the worst offenders and seemed to be a reason the sentences were lengthy, though there was also the three-judge panel and mitigators that could be used.

Suki wondered if the lengthy sentences might have resulted in the unintended consequence of having more sex offense charges plea down to non-sex crimes. Paul said that he didn't think that was happening; the problem would usually be the proof for the crime wasn't there to charge it in the first place. Prosecutors were not giving anyone a pass; reducing a sex offense charge to a non-sex offense charge required approval from someone much higher up the chain of command.

Paul wondered how many first- time offenders there were who were sentenced to 20 years who truly had no criminal history. Judge Stephens said he sees a lot of offenders who score a low risk on the Static risk assessment tool. Keeley said that a lot of offenders have prior bad acts that aren't charged. Paul agreed and said the Static doesn't always capture those. Barbara said that it would be hard to find data unreported prior history because it isn't collected anywhere- it might pop up in a pre-sentence report but more likely would not.

Judge Stephens said that statistically someone charged with a sex offense probably has prior history but there's no way of knowing for certain. Paul said he thought the first-time offenders who are sentenced to 20 years probably committed an offense that was particularly violent, had significant prior history of other offenses, or the DA possesses knowledge of prior sexual offending. Judge Stephens said there were also cases where someone got 20 years because they wanted to take a case to trial rather than benefit from a plea bargain.

Staci noted that the Colorado study also revealed that the offenders in that sample had disclosed offending at an earlier age after being subjected to polygraph tests. Keeley said that made sense as a lot of offending stems from intergenerational trauma, particularly experiencing or witnessing domestic violence. Judge Stephens said that was another reason the dismissed DJJ cases [discussed above] concerned him.

Barbara said she would add language to the end of this section explaining what information is or is not available on unreported prior history and suggesting a future study looking into intergenerational trauma and its effect on sexual offending in Alaska.

**Updated report to legislature – Treatment and reentry**

Barbara explained that she had added data about the Results First results and had reworked the polygraph section. She explained that polygraph testing is controversial in the research with very little agreement among experts. It would be safe to say that polygraph exams increase the number of disclosures made by those to take the exams, however the literature is divided on whether these disclosures are truthful and whether polygraph testing is effective considering that there are those who can outfox the test and the test can also give false positives.

Staci added that some of the studies on polygraph testing showed that offenders disclosed a greater variety of past offenses which can have an effect on the course of the offender's treatment. Karen said she thought that polygraphs were good about getting past data and helpful at the beginning of treatment, but wondered whether an offender who has "clean" polygraphs for several years and is low risk needs to continue on polygraph testing for the full 15 years. Barbara noted that the statute just called for "regular" polygraph testing so she thought DOC might be able to be flexible on this. Karen said she would find the official DOC policy on polygraph testing.

Barbara noted that at the last meeting the group had discussed restorative justice, talking circles, and circles of support and wondered whether any information on those things should be put in the report. Karen said she was interested in knowing more about it, particularly if having those options would be better for Alaska Natives and those in small communities. Judge Stephens noted there used to be a circle sentencing program in Kake but the judge running it retired.

Staci noted that circles of support are different from talking circles; the idea of circles of support is to have a safety net of people surround the person convicted of a sex offense to ensure they don't reoffend. Judge Stephens said that DOC used to do something like that and thought it should be revived if not being done now. Karen said she could check on that. Keeley recalled that CNN did a story on that in a village in rural Alaska. Karen said that it is done to some extent, because POs will check in with the victim and the family of anyone convicted of a sex offense before that person is allowed to go back to a village.

**Updated report to the legislature – Victim safety section**

Barbara explained she had filled in these sections reflecting the discussion at the last few meetings. Keeley suggested adding information about the Safestar program, which is a new program the CDVSA is looking to roll out. It is a nationwide program that helps laypersons train to complete SART exams and provide first aid in sexual assault cases.

Keeley also suggested adding information about the recent ADN article about the VPO with a criminal record who sexually assaulted and cause the death of a teenage girl. She said it was indicative of a trust problem in rural Alaska: if people there can't trust their local law enforcement officer, they won't trust any law enforcement officer. Barbara noted that recruiting and retaining quality officers to serve in rural communities was a pervasive problem. Karen said that DPS was working on a plan to do what they could to improve the situation.

Keeley also suggested add the frontline documentary The Silence as a citation, and adding the Darkness to Light and Stewards to Children programs to the list of prevention programs. Staci said there was similar programming from rural coalitions.

**Recommendations**

The Commissioners present did not have any suggestions as to recommendations to add to the report, but noted that if there was any research available about evidence-based restorative justice approaches to sex offender containment and treatment they might be interested. They noted the report would be reviewed by the full Commission which might have recommendations to offer.

**Public Comment**

There was an opportunity for public comment but no one offered.

**Next Meeting**

The next meeting was set for August 24 at 1:30.

Alaska Criminal Justice Commission

# Sex Offenses Workgroup

## Meeting Summary

**Wednesday May 2, 2018, 9:30 a.m.**

Denali Commission Conference Room, 510 L Street, 4th floor, Anchorage
And Teleconference

Commissioners present: Karen Cann for Dean Williams, Brenda Stanfill, Joel Bolger, Walt Monegan

Participants: Chanta Bullock, Paul Miovas, Laura Hill, Karen Gonne-Harrell, Laura Brooks, Alison Hanzawa, Kaci Schroeder

Staff: Staci Corey, Susanne DiPietro, Barbara Dunham

**SAM data recap**

Staff research analyst Staci Corey walked the group through a memo she had drafted on cases of Sexual Abuse of a Minor (SAM) involving victims and defendants who were close in age. She had analyzed all SAM cases referred to the Department of Law in 2016 in which the defendant was age 25 or younger. There was a total of 62 cases, 44 of which had victims age 13 or older. Those 44 cases involved 47 encounters.

Barbara Dunham explained that this research was intended to address the legislature's interest in these cases. In particular, the legislature was most interested in learning whether there were a lot of criminal cases involving a consensual relationship between a defendant and victim in the same peer/age group. The analysis therefore focused on SAM cases with younger defendants. The analysis excluded sexual assault cases, even though there a sexual assault case can involve defendants and victims in the same peer/age group. But lack of consent is a necessary element of sexual assault, but is not an element of SAM. Therefore Staci only looked at SAM cases, as those were the only cases that could possibly involve the consent of the victim.

Staci had categorized the 47 encounters by consent type, as described in the case file: 20 were consensual, 15 were nonconsensual, and 12 were unknown. The most frequent age difference between victims and defendants in the consensual encounters was 5 years and the most frequent age difference in the nonconsensual encounters was 7 years.

Staci also looked at case outcomes; i.e. whether the case was prosecuted, refused by the Department of Law, or dismissed by the court. Consensual cases were more likely to be refused or dismissed. Whether the victim consented was determined by a file review performed by the Department of Law. (Note these cases don't include cases that may have been referred to DJJ.)

Staci noted that only two cases in the "consensual" column resulted in a guilty conviction. One involved a 19-year-old defendant and 15-year-old victim; there was alcohol involved in the encounter and the victim later regretted it. The other case involved a 19-year-old defendant and a 14-year-old victim, and no other details were available. It was not clear what the final charge of conviction was but the cases started out as SAM 2.

**Updated report to legislature**

*Data and recidivism*

Barbara walked the group through the latest draft of the report to the legislature. She explained that she had addressed many of the comments made in the last meeting about the data section. She had added a subsection on cases involving children to the data section, including the information from Staci's analysis. That section also included information on SAM cases generally (not just the same peer group cases). She also said that she had asked DJJ for additional information on juvenile offenders.

Commissioner Walt Monegan wondered whether the data showed how many offenders were repeat offenders. Noting that the prevalence of sexual assault and abuse is very high, he wondered if the rate was high because people were reoffending or a new batch of attackers was doing the offending. Susanne DiPietro said that was reflected to some extent in the recidivism data, which showed that the recidivism rate was quite low; she suspected that it was a new batch.

Paul Miovas asked how long the follow-up period was for the recidivism study. Susanne and Barbara explained that the study followed a cohort of offenders who were released between 2008-2011, and followed them for 5 years. Paul wondered if the recidivism rates were low for this cohort were low because they were still being supervised. Susanne said that was the working theory.

Paul said he would be interested in knowing the number of people convicted of a sex felony for a second time. He knew the third-time cases were rare, but thought the second-time cases might be more common, and thought it might be higher than what the recidivism rate shows. He noted there were three trials in the last week where there was "404b" evidence and the defendants were not convicted.

Susanne said the recidivism study looked at both re-arrest and reconviction rates, but there were things the study couldn't get at-like incidents in which the person is not caught. Commissioner Monegan noted that some people come out of prison smarter than when they went in, so they're better at not getting caught. He thought the polygraph was a good deterrent in that way. He noted we will be able to understand these offenses better when the state moves to the NIBRS reporting system. He also suggested that the length of stay data depicted in a chart in the report could be broken down into first and second-time offenders.

Barbara explained that the next section of the report detailed the changes to the sentencing laws in 2006 through the enactment of SB 218. Once subsection was entitled "Impact of SB 218" and Justice Bolger suggested retitling this as it suggests a cause-and-effect which might not actually exist. Barbara explained that SB 218 was accompanied by a letter of intent that cited studies whose conclusions may be out of date or superseded by more recent research. She said she thought about revisiting each study but was concerned about readability.

*Polygraphs*

Karen Cann said that DOC was also looking at updating research in this area. For example, more recent research on polygraph testing indicates it works better in some contexts than in others. Susanne said it would be great to include data on why the polygraph is effective. Laura Brooks said that polygraphs are good for when sex offenders "start to go sideways" –i.e. reveal problematic thoughts or behaviors—and the PO can adjust supervision accordingly.

Susanne asked whether adding the polygraph component was better than just having the PO talk to the sex offender. Laura Brooks said it was. She said she agreed with Karen Cann that the model could be improved, but the conversations that POs have with offenders are very different when they are facing a

polygraph than when they are not. Laura Brooks thought it was worth looking at who should get polygraphs and how often, and thought there would be away to focus on the high-risk sex offenders more intensively. Karen Cann said she also thought that there was a difference between sex offenders who have been out for 1-3 years and those who have been out for 7 or 10 years. Susanne suggested this sounded a lot like the Risk-Needs-Responsivity principle, about which the Commission has done a lot of research.

*Reentry and teletreatment*

Barbara explained that the next section was about sex offender reentry and the containment model. She had been talking to Commissioner Dean Williams about this section of the report and had begun to redraft this section based on that conversation, but it was not yet finished. Susanne suggested adding the results of the Results First analysis to this section.

Commissioner Monegan said that he would like to know more about returning sex offenders to their communities and the logistics of arranging teletreatment. Laura Brooks said that teletreatment is almost ready to go, and DOC will do a trial run in the next week or so. They are looking at a capacity of 12 to 15 for the trial run. The teletreatment program will be for released offenders from rural communities who would need to live in a hub community for treatment. Laura Brooks also explained that two new in-custody treatment programs for medium-risk offenders will start this summer: one at Anvil Mountain CC in Nome and one at Wildwood CC in Kenai.

Paul asked what program the teletreatment model would use. Law is interested in learning more about this. They view the current model as very effective and are hesitant to move away from it.

Karen Cann said she respected Law's position. What DOC keeps hearing is that people from rural communities are waiting in Anchorage to complete treatment, and while they are waiting become homeless and apt to reoffend, typically petty crime. DOC wants to reduce the number of potential victims on that front. She noted that there was one person who was able to fly in and out of Anchorage for the day on a weekly basis, but for most others they must stay in Anchorage and risk homelessness. DOC is also talking with tribal clinics to get additional supports for reentrants returning home.

Commissioner Monegan asked whether there would be an evaluation of the pilot program, perhaps conducted by UAA. Karen Cann said that the pilot program was part of the statewide recidivism reduction initiative, which has a data component. Brad Myrstol from UAA is part of that data team. Laura Brooks said that DOC will track the pilot program to make sure they are going with the right approach, and noted that telepsychiatry has been used for a while in other areas.

Paul wondered whether DOC could prioritize the in-custody programs for offenders from rural areas. Laura Brooks said they prioritize based on risk first, then whether the offender is from a rural community. The issue, however, was that the offenders themselves are resistant to in-custody programming because they don't want to be labelled as sex offenders, and because the treatment in custody is more intensive and time-consuming. Often when a judge orders a sex offender to treatment, the judgment is not specific as to whether the treatment must be completed in or out of custody.

Paul thought the option for out-of-custody treatment should be removed to ensure rural offenders will complete treatment before release. Justice Bolger said the obvious place to address that would be in the PSR; the PSR writer could flag sex offenders from rural areas. Susanne asked whether PSRs are completed in every case. Paul said they were completed for every sex offense case. Commissioner Monegan said it was also important to ensure engagement – the treatment will not be effective if they don't engage in it.

Karen Cann said it was important to keep in mind the capacity of the treatment programs. Such a step might result in warehousing offenders if release was conditioned on completing treatment in custody. There was also some benefit to community treatment as the reentrants are exposed to triggers in the community and treatment can help them process that. Most of them will be going back to the community eventually. Susanne added that risk assessments aren't performed at sentencing.

Justice Bolger said that the language in the order could be adjusted so that the offender would be ordered to in-custody treatment if recommended. Susanne wondered if there could be a provision about restricting eligibility for discretionary parole if treatment is not completed. Paul said that would have to be very carefully worded because it is hard to get a de fact parole restriction added to a sentence.

Karen Cann suggested getting data to understand the issue.

**Victim/victim advocate perspectives**

Laura Hill from STAR asked what the process was to allow a sex offender from a rural area to return to their community. Karen Cann said that the parole officers will check in with the community, and if new conditions of parole/probation were necessary to keep the community safe, the parole officer would ask for those conditions to be imposed. It depends on the case, but in some cases if there is no treatment available in the community and the offender is untreated, the PO will not allow the offender to return home.

Commissioner Monegan recalled a juvenile case in which a village did not want a juvenile offender to return home. He arranged a talking circle, and the members of the community were able to confront the offender and come to an agreement. He thought there were ways to address sex offender reentry properly. Susanne said that sounded like a restorative justice model. Staci noted that she had looked into the circles model before and could do more research if the group wanted.

Laura Hill and Karen Gonne-Harrell, also from STAR said that if a restorative justice model restores the victim and community and stops the offender from reoffending they were supportive. They noted that the victim could avoid participation in any talking circle if they wanted to. The difficulty is when an offender has a lifetime no contact order- it would be impossible to comply in a village that is so small that there is only one general store, etc.

Justice Bolger noted that the effectiveness of a restorative justice model would depend on the community. Some are very strong while others might be too dysfunctional.

Barbara asked Laura Hill and Karen Gonne-Harrell if there was anything they wanted to share about being victim advocates in Anchorage. Laura noted that AWAIC was the only safe shelter for victims but routinely has capacity issues. STAR has an agreement with them to take their clients but their clients are regularly turned away because the shelter is full. Transportation is an issue and their clients don't feel safe taking cabs. There are also no safe places for men; they often end up going to Brother Francis and while there may be re-victimized. Some of their clients would rather sleep out in the open than go to an unsafe shelter. Part of the issue is that the cost of living is too high.

Commissioner Monegan said that when he was on patrol with APD he remembered encountering a group of people sleeping in their cars in a well-lit parking lot. They explained that they parked and slept there in a group, where it was well-lit, for safety. Karen Gonne-Harrell noted other cities have built tiny houses for the homeless—people really just need a safe place where they can lock the door.

Karen Gonne-Harrell said the real barrier was money and the lack of affordable housing. Many of STAR's clients have been given an eviction notice. Often they are on the waitlist for public housing—right

now there is a three-month wait for someone who has a DV/SA voucher. Even if they get public housing, many victims are part of a marginal population that struggles to maintain employment, meaning the affordable housing may not be sustainable if they fall behind on rent. Laura Hill said that lack of transportation also played a role. STAR clients have been fired because the bus system schedule changed or could not get people to work when they needed to go. The bus system now stops running at 8 or 9 at night. This all contributes to the cycle of poverty plaguing this vulnerable population.

Paul said he would like to see data on homeless victims and offenders, as that would help the legislature understand some of the dynamics at play. He thought that people don't understand how prevalent homelessness is in cases of sexual assault. Laura Hill noted that many homeless clients at STAR are victims of repeat offenders who are not convicted. She also thought there were more homeless men assaulted than is generally known, but that these men are not coming forward.

Paul said that it might be possible to get data from Law's database on the rate of victim homelessness using the information gleaned from the ATN sheet, which has a field for the victim's contact information including residence. It might not always get entered into their database, however, so the data might be incomplete.

Karen Gonne-Harrell said that STAR asks clients at intake if they are homeless, and include it (along with data on other primary risk factors such as use of drugs and alcohol) in a report to the mayor on a regular basis. Laura Hill said they could pull that data for the group. It would include people who seek out STAR for services but don't report their assault to the police- about 140 people per year.

Susanne said it would be good to get this data from both Law and STAR if possible. She noted that if the data was in a raw form Staci could provide the analysis.

**Public Comment**

There was an opportunity for public comment but none was offered.

**Next Meeting**

The next meeting was set for June 22 at 9:30.

Alaska Criminal Justice Commission

# Sex Offenses Workgroup

**Meeting Summary**

**Thursday April 12, 2018, 9:30 a.m.**

Denali Commission Conference Room, 510 L Street, 4th floor, Anchorage
And teleconference

Workgroup chair: Karen Cann

Commissioners present: Dean Williams, Quinlan Steiner, Trevor Stephens

Participants: John Skidmore, Chanta Bullock, Shannon Cross-Azbill, Eileen Arnold, Chim Morris, Aliza Kazmi, Taylor Winston, Keeley Olson, Paul Miovas, Suki Miller

Staff: Staci Corey, Susanne DiPietro, Barbara Dunham

**Updated report to legislature**

Project attorney Barbara Dunham explained that she had circulated another draft of the report to the legislature and would walk the group through it. She said she welcomed comments and suggestions at any time. She was mindful of creating a report that would be detailed and accurate but would also be accessible enough to read and absorb by people with busy schedules.

John Skidmore from the Department of Law asked what the timeline was and what sort of comments would be helpful at this point. Barbara said that June 1 was probably not doable at this point as the final draft would need to be approved by this workgroup and then approved by the full Commission, and the full Commission would meet in June. At this point she was looking for feedback on the substance of the report, and would save a thorough style/typo check for later. Footnotes would also be cleaned up later.

Barbara said the report began with a data section; she noted that the data was contained in existing studies. For some things, the Commission could get additional data if the group thought it was warranted, but the data would always be limited by what data is being collected. It can't be reported if it is not being tracked. In parts of the report where the subject matter warranted more detail, she could add an appendix.

Barbara said the data section began by talking about victimization to give a scope of how prevalent sex offenses were in Alaska. Taylor Winston from the Office of Victim's Rights had a suggestion for the report generally, that the terminology should be used carefully and precisely—so that sexual assault is not used in place of the broader term sex offenses and vice versa. She noted that clarifying the offenses referred to in the box on page 5 would be an example where it would be better to use a broader term.

Paul Miovas explained that he was an attorney with the Department of Law, and worked in the sex offenses unit in Anchorage. He thought it was important to note the victimization survey was self-reporting, and might not accurately reflect what actually happened. Keeley Olson of STAR said that the questions in the survey were behaviorally-based, so that the survey could get past the hurdle of people not wanting to consider themselves victims of sexual assault. She thought the report could clarify this by including the

questions asked so that readers would know exactly what the data showed. The questions could also be put in an appendix. John thought it would be a good idea to clarify exactly what the survey did, and the report should not unintentionally mislead legislators who won't have time to read the survey themselves.

John also wondered whether the Alaska victimization rate should be compared directly to the nationwide victimization rate. It was possible the two sources used were comparable, but the Alaska study was from 2015 and the national study was from 2007. He thought it was worth looking into. Staci Corey, research analyst for the Commission, said she could look into it.

Barbara explained that the next data section looked at uniform crime reporting to law enforcement. Keeley noted that the rate of 142 reports per every 100,000 people was an average for Alaska (compared to the national average of 40); the rates are much higher in Anchorage and Western Alaska.

Barbara also explained that she had reworked the case processing section to address some of the group's previous concerns. Suki Miller from the Governor's office said that a report on VPSO involvement in sex offense cases had just been released and that could be added to this section. Barbara said that report had been noted in the section on rural Alaska but could be included in this section too.

Barbara explained there were two different case processing studies. One tracked reports to troopers (therefore excluding local law enforcement such as the Anchorage PD) through the referral stage, and also included a study of how trooper reports to the Department of Law were resolved. The other study looked at all arrests in Alaska—this included local law enforcement, but did not begin with reports. John said he was interested in looking at the study of AST reports to Law. He noted that he could probably get this data for referrals from all law enforcement agencies but that it would take quite some time to gather the information, though it is information he thought Law should be tracking.

Karen Cann, workgroup chair and Deputy DOC Commissioner, noted that the data in this report could be augmented and updated for future reporting.

Barbara explained that the Judicial Council had an older study of how charges changed between charging and conviction in felony sex offense cases. John noted that for second-degree sexual assault, it would be good to note what conduct is covered under that statute, as that affects how those cases are resolved. Paul added that the subsections of the second-degree sexual assault statute cover very different conduct and one of them (the incapacitation subsection) could not be resolved as a third-degree assault, so that would affect how the charges are resolved in these cases.

Karen said that updating this information would be a good idea for a future report, and the group agreed. Barbara noted that this study had been the result of a file pull and would probably take a while to update the study.

Barbara explained that the report next looked at incarceration. Susanne DiPietro, executive director of the Judicial Council, noted that sentence length and length of stay were two different things; page 11 looked at sentence length. The group agreed this should be cleared up in the report.

Barbara next explained that she had included a section on sexual assault examination kits, as there was a lot of activity and legislative interest on this topic. Suki said that she had been sitting in on the grant-funded initiative meetings and there would be a forthcoming report, and she offered to send this report to that group to get their feedback. Keely said that the kits are only collected within 96 hours of the assault, so when looking at the percentage of cases in which kits are collected, it might also be helpful to note the percentage of cases that are reported within that timeframe. John also suggested being clear on the time period of the data source for footnote 25 in this section.

Barbara explained that she had a placeholder for the next section, which would discuss sexual abuse of a minor (SAM) cases. She explained that the legislature had been interested in same peer group cases (sometimes known as "Romeo and Juliet" cases) and that the group had discussed Staci's report on Department of Law data at the last meeting. John said he would review Staci's report and thought that the information should go in the report to the legislature. Keeley asked for a summary of those cases. John said that broadly speaking cases where the victim and defendant were close in age were rarely prosecuted and if they were, there were circumstances making

Barbara also noted the group had been interested in case processing specifically for SAM cases and that staff had been discussing getting that data from DPS. Karen thought this was a good idea because it would be good to compare the total number of SAM cases to the same peer group cases. John agreed but also noted that the report should be sent out in a timely fashion, and this was also something that could be flagged for a later follow-up report. Susanne noted that the Commission should be getting recent but not 10-year data on all cases which would include SAM cases.

The next part of the data section discussed recidivism, and Barbara explained that the group had heard from Brad Myrstol on his research about this last year. Keeley noted that the definition of recidivism in his study didn't include supervision violations and this should probably be added in a footnote. John agreed that was important to clarify.

**Victim perspectives from Alaska Natives and rural Alaska**

Barbara explained that Staci had talked to victim advocates representing rural and Native Alaskans, and had compiled their observations in a summary sheet which had been distributed to the group.

Eileen Arnold, executive director at the Tundra Women's Coalition in Bethel, which serves Bethel and the entire Yukon-Kuskokwim delta. That area is about the size of Oregon with a population of about 25,000 people. People who have been sexually assaulted or abused in the villages in the Y-K delta must come to Bethel to get a SART exam.

Eileen said she thought the summary covered what she had discussed with Staci. She wanted to emphasize the problem of ensuring victim safety, both physical and emotional safety. Often women will come to TWC from the villages and their village will be an unsafe place to go back to because the person who assaulted them is still there. They have sent people home with locks and bear spray (in lieu of pepper spray) which are difficult to find funding for as grant funding doesn't usually provide for items like that.

Chim Morris, a victim advocate, spoke about her own experiences. She was victimized as a child, and remembers not reporting because she felt shame and she was scared. After she did report, she and other girls had to testify before the grand jury. The person who assaulted her was not prosecuted for several years, and she would see him around town, and she was scared to play outside. Once she saw him at the store and he approached her. She would advocate for faster prosecution of offenders, because she started thinking no one believed her. Her mother, who was also an advocate at TWC, had to repeatedly write letters to the DA to ask for prosecution.

Eileen added that Chim's story was very common, and pointed out that this occurred in Bethel and Chim's mother knew the system as an advocate. These problems were five times worse in the villages. The man who assaulted Chim had 12 victims, and could have had more in the time he was not prosecuted. If law enforcement takes a long time, it puts the community at risk as offenders may keep offending.

Eileen explained that more resources and better training for the villages would help. The VPSOs and the VPOs in the villages are not well trained in responding to sexual assault and abuse cases. Alaska

used to have federal funding to train village health aides, which the health aides reported was very helpful. That funding dried up.

Eileen also wanted to reiterate the idea that from a victim's perspective, the criminal justice response always happened elsewhere, and that they felt removed from the process and were not sure what was going on. There was also a lot of social pressure on victims not to report.

Keeley explained that at a previous meeting, several convicted sex offenders had spoken to the group that they faced difficulties getting treatment in the hub communities, and in some cases had been invited back to their villages. She wondered if Eileen had any thoughts on that.

Eileen said that there was a small sex offender treatment program in Bethel for which she was on the board; it had received cuts over the last couple of years. The point of the treatment program is to reintegrate offenders, and she had sympathy for those who wanted to go back to their villages. But not all treatment elements can be completed in villages, and one of the recent cuts was to the "safety net" component. So if an offender returns to his village, it may not be safe if he doesn't have that safety net set up and there is no law enforcement. She wouldn't necessarily support a blanket approval for all offenders to go back to their villages. She understood that housing and employment were hardships for offenders who were not in their home communities but thought that community safety was the priority.

Susanne asked Eileen and Chim if sexual assault protective orders were useful to have pre-report. Shim said that if a client wasn't ready to report, the protective order would not help because it requires the offender to be served, which would alert the offender. It would depend on the situation. Sometimes law enforcement will want to get a Glass warrant and not want to alert the offender.

Eileen added that there was also no meat to the protective order if there was no law enforcement presence in a village to enforce the order. At TWC they will always ask clients if they can trust law enforcement. In some villages it is likely the offender is related to law enforcement. The troopers are also overwhelmed and can't always hop on a plan to enforce a protective order. If a victim does want to get one, TWC has to be very heavy-handed to force the process along. They don't do nearly as many sexual assault protective orders as domestic violence protective orders.

Keeley said it was the same in Anchorage, and victims there were also worried about tipping their hand too soon. They will try to get a domestic violence protective order if they can. The sexual assault protective order can turn into a mini trial and the victim might run into prior inconsistent statement issues at a later criminal trial.

Barbara asked Eileen what changes she would make if she could wave a magic wand and make them happen. Eileen said she would like well-trained law enforcement in every community, and an in-village option for SART exams. Generally it would be better to have communities own their response to this problem.

Eileen explained that right now, the SART process for someone in a village would be to go to the health clinic, which generally would get law enforcement involved. They arrange for a flight to Bethel, and the exam process takes about 5 to 6 hours. Typically they will have to stay at TWC overnight at their shelter. Some decide to stay longer if they feel unsafe going back. Once a victim is back in their community, they don't know what happens with the rest of the criminal justice process. It can sometimes take years.

John asked how often someone would complete an anonymous SART exam. Eileen said it was infrequent; people don't often know they can report anonymously, and not all village health aides know this. Typically if a victim does not report an offense to law enforcement they are not going to report at all.

Keeley added that in Anchorage, few victims completed the kits anonymously and the victims who did were typically not Alaska Native. John noted that in the DPS report on untested sexual assault kits, the percentage of anonymous kits was very small.

Eileen said it was not often that a victim would want to stay at the TWC shelter, but if they did, they might already have wanted to leave, and would be concerned about their safety. It doesn't happen often because people from the villages are very connected to their community. Sometimes thy have to make a terrible choice between their ensuring their own safety and maintaining their connection to their community.

**Public Comment**

There was an opportunity for public comment but none was offered.

**Next Meeting**

The next meeting was sent for Wednesday May 2 at 9:30. Dean Williams and Karen Cann agreed to sit down with Barbara before then to talk about the reentry section of the report. Dean said that he wanted to note that there were issues with supervision that result in the unintentional displacement of Alaska Natives.

Alaska Criminal Justice Commission

# Sex Offenses Workgroup

**Meeting Summary**

**Thursday February 15, 2018, 9:30 a.m.**

Denali Commission Conference Room, 510 L Street, 4th floor, Anchorage
And Teleconference

Commissioners present: Joel Bolger, Brenda Stanfill, Quinlan Steiner, Trevor Stephens

Participants: John Skidmore, Suki Miller, Terra Burns, Renee McFarland, Amber Nickerson, Keely Olson

Staff: Susanne DiPietro, Barbara Dunham

**Introductions**

Barbara Dunham explained that since the last meeting, Commissioner Dean Williams had delegated the chairmanship of the Workgroup to Deputy DOC Commissioner Karen Cann. They had also recognized that the sex trafficking proposals and the report to the legislature were really two diverging issues so they decided to devote separate meetings to them. Barbara needed more time to work on the draft report to the legislature, so this meeting would just be devoted to the sex trafficking proposals.

**Sex trafficking proposals**

Barbara explained that at the last meeting, representatives from the Public Defender's office planned to meet with representatives from CUSP to see if their proposals could be merged.

Quinlan Steiner confirmed that he and Renee McFarland had met with the CUSP folks and they were able to incorporate some of their ideas, but they were not in total agreement. He explained that essentially, the idea behind the PD's proposal was to separate sex trafficking from promoting prostitution. The Alaska's promoting prostitution statutes were relabeled as sex trafficking statutes, but did not change any of the elements of the crime. In most jurisdictions, however, the crime of sex trafficking typically involves an element of force, fraud, or coercion while the crime of promoting prostitution does not. They are two different concepts requiring different policy responses and separating the two will help people be clear about policy directives.

Quinlan said that under the current sex trafficking statutes, the penalties seemed to unfairly target measures sex workers take for their safety, so the proposal was also intended to change that. If sex workers were less likely to be penalized with a felony, they would be more likely to take safety measures to protect themselves.

Renee walked the group through the proposal. The first statute was first-degree sex trafficking (AS 11.66.110); the current version of that statute prohibits "induc[ing] or caus[ing] another person to engage in prostitution through the use of force." The proposal added "or coercion" after force.

The current first-degree sex trafficking statute also prohibits "induc[ing] or caus[ing] another person" who is under 20 or in the defendant's legal custody "to engage in prostitution." The proposal lowers the age cutoff to 18, as that was the age cutoff before the laws were changed.

The proposal also added "or an act of prostitution" after "engage in prostitution" in each place that phrase is used. The "act of prostitution" phrase was added to capture victims who may have previously

engaged in prostitution of their own consent but were then forced or coerced into a particular act of prostitution.

The proposed second-degree sex trafficking would prohibit "induc[ing] or caus[ing] another person to engage in prostitution or an act of prostitution through the use of fraud or deception." The current version of that statute prohibits thinks like managing a place of prostitution, procuring a patron for a prostitute, or facilitating travel in return for commercial sexual conduct. The current statute classifies this crime as a class B felony and the proposed statute would retain that classification.

Under the proposal, the conduct currently prohibited under second-degree sex trafficking (as described above) would be relabeled as first-degree promoting prostitution and classified as a Class C felony. Similarly, third-degree sex trafficking would become second-degree promoting prostitution, classified as a Class A misdemeanor; fourth-degree sex trafficking would become third-degree promoting prostitution, classified as a Class B misdemeanor.

For the second- and third-degree promoting prostitution proposals, there were alternate versions; the first uses the language of the statutes as they existed after the passage of SB 91 and the second uses the language of the statutes as they existed after the passage of SB 54.

The second-degree promoting prostitution proposal also contained a provision (in both versions) that prohibits inducing or causing someone, with the intent to promote prostitution, to do something that person has a legal right to abstain from. This language reflected reports from the CUSP representatives that sex workers were being asked to do things that didn't involve sex work.

Renee explained that the alternate versions were drafted when SB 54 was in the legislature and not yet enacted. Susanne DiPietro asked if the group's focus should then be on the second versions. Quinlan said yes.

Quinlan added that the proposed statutes also collapsed the ideas of a "place of prostitution" and a "prostitution enterprise" because the current statutes treat the two differently based on what he thought were anachronistic ideas about sex work. He thought there was no reason to differentiate between the two and so they are treated the same under this proposal.

Justice Bolger noted the addition of coercion to the first-degree sex trafficking statute, and asked if it would also protect against the threat of force against a third party. Terra Burns said she thought that should be added. Renee said that it might already be included in the definition of coercion but she could also redraft it to make it explicit. Quinlan said it was not their intent to exclude that scenario and Justice Bolger suggested it should be made more explicit.

John Skidmore said that he had reviewed the proposals but thought that for the most part, there were reasons why the statutes were the way they were, and did not see a reason to change them. He was also not sure what problem this proposal was solving. He understood the desire to separate the ideas of sex trafficking and promoting prostitution but he was not so sure that the ideas were in fact that separate. His research showed they were part and parcel of the same thing.

Brenda Stanfill asked John how he would classify a situation where three people were living together and one of them posts an ad on the internet for another—would that be promoting prostitution or sex trafficking? John said he was not sure, but without other details would venture to say that was promoting prostitution.

John said he thought this proposal would make sex trafficking more difficult to prosecute, especially in cases where a victim is refusing to self-identify as a sex trafficking victim despite evidence of coercion. Quinlan said the issue was in cases that don't involve coercion, right now, that conduct is labelled sex trafficking. The proposal aligned with the more common definitions used nationally, which typically label sex trafficking as prostitution that is induced through force or coercion.

Keely Olson noted there was a statewide task force on sex trafficking, and suggested sharing this proposal with that group. It consists of many stakeholders such as state and local prosecutors and social service workers. The task force also has a legislative subcommittee. Terra said that she had been part of the group but she didn't think it had met for over 3 years. Keely said that the task force had just met the day before and the subcommittee meets regularly as well.

Susanne asked what kinds of things the legislative subcommittee was looking at. Keely said she wasn't sure, but thought it was looking at extending safe harbor laws. Terra said that Alaska already had a law that was much stronger than a safe harbor law.

Quinlan said one of the PDs attended the meeting the day before and said that they were looking at massage parlor licensing. He got the sense that the group was not very active. He preferred to just forward the proposal to the Commission, and thought that if the task force wanted to weigh in they could do so at or before the next Commission meeting.

Brenda asked whether anyone from the Dept. of Law had discussed the proposal with the PDs; it sounded to her as if Law was not in agreement with the proposal. John said they had not sat down to talk about it, and agreed that they did not support a majority of it, with the exception of adding fraud and coercion to the statutes. Law would continue to oppose the proposal at the plenary meeting.

Quinlan thought it was worth debating the principles behind the proposal:

1) Separating the concepts of sex trafficking and promoting prostitution
2) Aligning the penalties for operating a place of prostitution and a prostitution enterprise
3) Penalizing measures that sex workers take for safety reason as misdemeanors rather than felonies.

Quinlan said it sounded like Law disagreed with that and John said that was true. Quinlan said he didn't think there was any way to resolve this impasse with a compromise, and thought that the workgroup should just vote on whether to forward the proposal on to the full Commission. The workgroup could forward either the proposal on the table or just the principles.

Terra suggested adding another principle, that fraud and coercion should be added to the statutes.

Brenda said she was struggling with the idea of forwarding a non-consensus proposal, because she didn't really want to do the kind of detailed work at the full Commission meeting that was better suited to the workgroup. It seemed to go against the Commission's usual practice of negotiating details at the workgroup level. Quinlan thought this was a slightly different situation because it didn't sound like there was anything negotiation could accomplish.

Susanne said it sounded like there were four concepts on the table, with the Department of Law in favor of only one of them. She thought that the workgroup could drop them or forward them.

Justice Bolger said he thought there was another option—to share the proposal with the statewide task force to get their feedback. It sounded to him like the task force had members with direct experience in these issues. Keely looked up the group membership and noted that it was comprised of law enforcement groups, religious groups, and representatives from the departments of Labor and Law.

Terra said that she had participated in the group in the past and that the group rarely met, and if it did, rarely came to any agreement.

Brenda said she didn't think the workgroup should forward nonconsensus proposals to the full Commission. She thought the workgroup could forward the fraud/coercion idea and send the rest of the ideas to the task force. Judge Stephens also thought the workgroup could forward just the idea that had consensus.

Terra said she thought the workgroup had already agreed on idea 1, that the concepts of sex trafficking and promoting prostitution should be separated. John said he didn't think that was the case, and

that he agreed with Justice Bolger that it made sense to get the input of the task force. He didn't want to forward an academic concept that was not informed by direct experience.

Susanne noted that the Commission typically gets input from other groups and individuals two ways—one is in workgroup meetings, where people can comment on ideas more informally, and the other was in the plenary meetings, where people can provide a public comment in the more formal public comment period. She wondered if the thought was to have someone from the task force attend a workgroup meeting or a plenary meeting, or if the thought was to send the proposal to the task force to have them review it.

Justice Bolger said his thought was the latter approach. He didn't necessarily doubt what Terra was saying about the task force's productivity, but he thought it was worth a try to ask for their feedback. John agreed.

Quinlan disagreed and said he would rather just vote on whether to forward it to the Commission.

Brenda said that the group had already spent a lot of time on this and also had not seen any data on what impact this would have. She didn't see the point in investing more resources on this issue and would rather have the task force take the idea and run with it.

Amber Nickerson said she tried to participate in the task force but was not informed of meetings. She said that this workgroup had the membership of CUSP which represents sex trafficking victims and sex workers. She suggested that if the workgroup was going to forward the proposal to the task force, that the workgroup also ask the task force to reach out and include CUSP in their discussions.

Quinlan noted that CUSP also raised the issue of exploitation of sex workers which was not penalized in the current statute and merited a penalty of some sort. He agreed that if the issue were referred to the task force that the workgroup should also recommend that the task force consult CUSP.

Susanne said it sounded like the exploitation issue was a fifth concept on the table. She wondered if the workgroup should forward the concepts or the proposed statutes. Barbara suggested sending both, noting that the proposed statutes were intended to address the five concepts.

Susanne wondered what the timeline should be. Keely noted that the task force would next meet in May.

Brenda asked if there was any data on what impact this proposal would have, or how many cases it might affect. John said he estimated there were perhaps 30 cases in the last 5 or so years. He explained there are studies that indicate sex trafficking is a big problem, but those cases aren't getting to law enforcement.

Brenda said she wanted to make sure those cases were actually sex trafficking and not prostitution. She was concerned that consensual prostitution was being charged as a felony. John said there were no cases where that happened and it resulted in a conviction. There was one case where CUSP lodged a complaint and the charges against that individual were dismissed. He noted there were some cases, such as the Amber Batts case, where CUSP would argue that the conduct was promoting prostitution, not sex trafficking, but the Department of Law would disagree.

Amber said that she was Amber Batts (she has since changed her name) and she did think that her conduct was not sex trafficking. She said that in her case, force or coercion were not proved; she was a sex worker working with other sex workers, and that conduct would have been promoting prostitution before the law changed.

Terra said she also disagreed that conduct that would be considered ordinary prostitution was not being charged as sex trafficking, and offered to forward charging documents.

Brenda said that she was more concerned with the resolution of those cases as she was aware that sometimes cases get overcharged. She wanted to find a balance here, and wanted to make sure that ordinary

prostitution remains a misdemeanor, and that the proposal on the table accomplishes that. She suggested breaking the proposal into two parts, forwarding the idea of adding fraud and coercion to the existing statutes to the Commission and sending the rest to the task force.

Quinlan said he wasn't sure that piecemealing was a good idea, and also noted that in the proposal, fraud was included in the second degree sex trafficking statute and coercion was in the first degree statute.

The group agreed to send the proposed statutes and the concepts behind them to the task force. Keely noted that the next task force meeting was in May, so if the task force got the proposal well before then, its legislative subcommittee could take a look at it first. Brenda said that she wanted to make sure folks from the Network (ANDVSA) were included, so that it wasn't just Anchorage representatives at the meeting.

Barbara said she would circulate what she prepared to the workgroup before sending it to the taskforce.

**Public Comment**

Suki Miller said she agreed with the course taken as she thought it was important to get broad-based support for such changes, especially from people with more of a "boots on the ground" perspective.

Terra said she wanted to be clear that people on the task force are people who benefit from the penalization of sex work and the task force does not include actual victims or sex workers. Quinlan asked whether inclusion of CUSP should be included in the workgroup's request to the task force. Susanne said that the request could also include a request on what the policy is on including different groups—she was not sure how they operate. John said that the workgroup could also request that the task force explain with whom they consulted. Brenda said that if the task force comes up with a totally different idea, it would be an indication that not everyone had a voice in the process.

**Next Meeting**

The group agreed the next meeting on sex trafficking would take place after the task force met and had a chance to respond to the workgroup's request for comment. In the meantime, the group would meet again once Barbara had prepared the next draft of the report to the legislature.

Alaska Criminal Justice Commission

# Sex Offenses Workgroup

## Meeting Summary

**November 30, 2017, 9:30 a.m.**

Denali Commission Conference Room, 510 L Street, 4th floor, Anchorage
And teleconference

Commissioners: Walt Monegan, Brenda Stanfill, Quinlan Steiner

Participants: Doug Miller, Laura Hill, Emily Starr, Brad Myrstol, Amber Nickerson, Terra Burns, Chanta Bullock, Maxine Doogan

Staff: Staci Corey, Barbara Dunham

**SAM/Same peer group cases: Data review**

ACJC research analyst Staci Corey outlined her research on statutory rape cases where the victim and the defendant are close in age, and ostensibly in the same peer group (these cases are sometimes referred to as "Romeo and Juliet" cases). She had provided the group with a memo summarizing her research. ACJC staff attorney Barbara Dunham reminded the group that the legislature had expressed interest in getting more information on these cases.

Staci first explained that she found several national studies on these cases using data from NIBRS (National Incident-Based Reporting System, a database maintained by the FBI). One study found that of the 1.1 million sex crimes reported to police between 1991 and 2013, cases of statutory rape were rare (5%) and same peer group cases were even rarer (less than one half of 1%). The arrest rate in these cases decreased as the parties' age increased and the age differential decreased.

The same study found that over the 20 year time period of data for this study, there were 805 cases of an arrest for statutory rape in which there was a two-year or less age difference and 2,648 cases with a four-year or less age difference. According to the author, these cases would account for less than 1% of the sex offender registry.

A 2013 FBI study found that in that year, there were 4,716 incidents of statutory rape reported, which amounted to 0.1% of total incidents and 6.7% of sex offenses. Of the 4,716 statutory rape incidents, 38% (1,791) were cleared by arrest. Of all the statutory rape cases, victims were most commonly around 15 years old and female and defendants were most commonly around 18 years old and male.

Staci went on to explain that she had also analyzed data from the Department of Law comprised of all cases referred to the department as SAM 2 or 3 cases involving a defendant aged 25 or younger and a victim aged 13 or older—44 total . The most frequent age differential was five years. 46% of the cases involved consensual contact. As the age differential increased, the likelihood of consensual contact decreased.

The Department refused 22% of all of these cases referred in 2016 and refused 50% of the cases involving consent. Of the cases involving consent, 3 cases resulted in a guilty plea, 10 cases were refused,

5 were pending, 2 were dismissed, and 1 was under review. Of the cases not involving consent, 4 cases resulted in a guilty plea, no cases were refused, 6 cases were pending, one case was dismissed, and one was under review.

Of the pending cases, Taylor Winston of the Office of Victims' Rights wondered what the charges were. Staci said she could look into that. Brad Myrstol from the UAA Justice Center asked what the total number of SAM referrals was. Staci said she had only gotten the cases from the Department of Law where the defendant was under 25 and the charges would not necessarily involve nonconsensual contact. Brad said it would be good to know the total number of referrals, but from this data it looked like Alaska was on par with the rest of the country.

Commissioner Brenda Stanfill said that she was not sure there was enough information to go on here with just one years' worth of referrals. She said she would like more longitudinal data to get a better idea of how these cases resolve—perhaps going back 25 years or more. Taylor agreed that it would be helpful to have more historical cases to look at and noted that very few cases that begin with a SAM charge resolve as a SAM 2 conviction. Public Defender Quinlan Steiner said that he agreed that it would be best to get data from many years back, and also get sentencing information. Taylor said it would be helpful to get information at least back to 2006 when the sentencing laws changed, and perhaps to look into things like whether the defendant was supplying the victim with drugs or alcohol.

The group discussed the difficulty of getting data from the Department of Law with limited resources, and it was noted that the Department of Public Safety would have a good deal of the information the group was interested in even though it would not have certain qualitative data about consent or victim ages. Brad pointed out that a lot can be gleaned about the defendant and victim ages according to the statute and subsection charged. Quinlan suggested getting a large data set and leaving open the possibility of drilling down for more information on certain offenders. Taylor said that in most cases the charging document should have the victim's age or birth date. It was decided that staff would try to get information on all SAM cases from 2006 to 2016, including the charge, result, sentence and defendant information. DPS Commissioner Walt Monegan said he would ask his staff to compile the information.

**Sex trafficking law revisions**

Barbara gave the group a recap of the group's discussion on this topic at previous meetings; the group had expressed an interest in looking at separating sex trafficking and promoting prostitution in statute. Barbara noted that there were two proposals sent to the group, one from the public defender's office and one from Community United for Safety and Protection (CUSP). Barbara noted that the Department of Law had yet to weigh in on either proposal and there was no one from Law there present.

Quinlan suggested continuing this topic to the next meeting. He thought there might be a way to combine the two proposals but hadn't had enough time to look into it closely. Brenda said it would be helpful to start just from one draft. Terra Burns from CUSP suggested sitting down with the public defender's office to reconcile the two proposals. Quinlan agreed that would be helpful though he said he could not guarantee a compromise. He said he would talk to the staffer who drafted the PD proposal and get back to Terra. Barbara asked that if they did come up with a new proposal, that they send it to her in advance of the next meeting.

Terra said she believed this was the 2nd time discussion of this topic had been postponed due to Law not being able to give an opinion. Brenda said that from a victim's perspective, it would be good to have a draft that was "moveable" and she was comfortable holding off on discussion.

**PTSD related to sexual abuse/assault as a sentencing mitigator**

Anchorage attorney Doug Miller explained that he was thinking about this issue but that it was more of an idea at this point rather than a proposal. The question was whether the sentencing of sex offenders should account for the offender's own abuse as a child. He had an appellate case a few years ago where his client was sentenced to 99 years flat for a sex offense (the client was convicted of a C felony but it was his 4th felony conviction). The offender had been abused for years as a child, a fact not in dispute. Doug attempted to ask for consideration by the three-judge panel but ultimately the sentencing judge did not sent the case to the panel. The question in his mind was whether the offender's past sexual abuse should be a mitigating factor.

Doug continued that he was reminded of this when looking at a recent opinion from the Court of Appeals [*Brown v. State*, 404 P.3d 191 (Alaska App. 2017)]. The case concerned the sentence of a defendant convicted of possessing child pornography; the defendant had experienced a sexual assault while serving in the military in Kuwait. The main opinion found that the mitigator for combat-related PTSD (AS 12.55.155(d)(20)(B)) included PTSD stemming from a sexual assault while posted on active duty in a combat zone. In a concurring opinion, Judge Mannheimer questioned whether the mitigator should be limited only to combat-related PTSD. Doug wondered whether a mitigator for PTSD stemming from sexual abuse might be a way to recognize that in some instances offenders may be less morally culpable because of the effects of trauma stemming from past sexual abuse.

Commissioner Monegan said he appreciated the motivation behind the idea and noted that studies on ACEs (adverse childhood experiences) reflect the same principles. But he was concerned that making a mitigator might be too complicated and spark a flood of hearings on mitigators. He suggested instead a requirement that DOC account for past sexual abuse in treatment and housing of offenders.

Vicki Henry from Women Against Registry said that she had just returned from a national conference on sex crimes and said their national president had noted that regarding sex offenses, states seem to be stuck in "punishment mode" from the 90s; he advocated for a focus on treatment and mitigating factors. Vicki thought this was an important topic and noted that many child victims of sexual abuse don't get the help they need.

Quinlan agreed this was an important topic to consider. If someone has suffered as a child, and the state has failed to get that person the help they need, that should be accounted for in sentencing. He thought the scope of a mitigator could be narrowed if there was a requirement of a nexus between the past trauma and the crime. If the scope were narrowed there wouldn't be a flood of people asking for the mitigator.

Commissioner Monegan said he was certainly supportive of rehabilitation, and wondered if there was a way to enable early release in cases where the offender suffered from PTSD and went through treatment in prison. Quinlan said that there were provisions like that in SB 91 but they were stripped out with SB 54. Chanta Bullock noted that many of these offenders are also not eligible for parole.

Doug said he wasn't thinking of letting people off the hook, just looking at a mitigator that would allow a sentence to be lowered from 25 to 20 years. He thought it would be possible to address the problem of cluttering up the system. The standard to find the supporting facts for a mitigator is clear and convincing evidence, and adding a nexus requirement would set the bar even higher. He also noted that medical and social science research suggests that the trauma from sexual abuse is different from other abuse.

Chanta said that many people who are abused go into the military and therefore are both veterans and victims of sexual abuse, and she thought this should be accounted for.

Laura Hill from Standing Together Against Rape asked if the mitigator would apply to all sex offenses including SAM and sexual assault. Doug said he wasn't sure, and noted that some offenses weren't eligible to be mitigated now. If it was going to require a nexus he wouldn't want to limit it so that there wouldn't be any eligible offenses. Quinlan noted that the current PTSD mitigator only applies to non-assaultive offenses, so it won't apply to a lot of PTSD-related conduct. Chanta said that most veterans with PTSD commit violent crimes, but without the PTSD, they wouldn't commit the crime.

Quinlan proposed coming up with a draft mitigator as he thought it was an issue worth looking at. Doug said he had some social science research related to the nexus issue and also offered to look at what's done in other jurisdictions.

Brenda said she was concerned this was a slippery slope; she agreed with Commissioner Monegan and was not sure this was the direction to go in. Taylor agreed.

Brad noted that there had been a lot of developments in research into the neuroscience on sexual trauma in the last decade, which has spurred movements towards trauma-informed care and trauma-informed interviewing in the criminal justice context. It's challenging when the victim becomes the offender, as it forces advocates to consider at what point advocacy should stop. He didn't think there was a good answer for that question. But he did know of neuroscience research supporting the idea that the brain gets completely rewired when exposed to trauma, especially sex abuse. Linking that trauma to PTSD would require further steps; PTSD is a DSM diagnosis and requiring a nexus between trauma from sexual abuse, PTSD, and the offender's crime would require a complex chain of proof.

Quinlan thought Brad had articulated the issue—that people have been harmed in the past, don't get the help they need, and then behave predictably.

Brenda said that advocates have been talking about these issues for years. She didn't think the neuroscience was advanced enough to warrant creating a mitigator. Essentially every offender will have sexual abuse in their past. Proving that for the purposes of a mitigator could create a mini-trial at every sentencing where the mitigator applies. She was also wary of labelling people as victims for life—at some point there is individual accountability.

Chanta said the idea was not to let people off free, but just to account for people's experiences in mitigating their sentence.

Barbara asked whether Doug had a sense of how many people this would apply to. Doug said that his research showed that approximately 18% of sex offenders have past sexual abuse. He didn't have the research on him however so he was not certain. But, he said, even if it were more like 40%, would that preclude giving the judge discretion to use the mitigator? He thought there were ways of getting around the slippery slope. He was happy to do more research on this.

Laura said that childhood trauma related to domestic violence was actually more of a predictor for sex crimes. She said she could see both sides here and thought it would be helpful to see some research on where to draw the line. Doug agreed and noted that he was not proposing to open up the mitigator to all ACEs factors. Brad said that if the link was specifically going to be PTSD related to sexual trauma, that distinction would have to be clear—that is a smaller subset than just offenders who have a history of being sexually abused. Doug said that he thought of the PTSD link only after reading the Court of Appeals case mentioned earlier.

Barbara said she would check in with DOC Commissioner Dean Williams (who was the chair of this group but not able to attend that day) to see what the next steps should be on this.

**Report to legislature- Rough draft**

Barbara walked the group through the latest draft of the report, noting that only the data section was updated. She said she had information to report in most of the rest of the outline of the report, except she would like to get more input from rural and Alaska Native voices, particularly victim voices.

Brenda said she would like to see the data section become more of a narrative, to get a sense of the small number of cases that are reported, charged, and prosecuted. Barbara said she struggled with writing that section of the report for that reason because the existing data sources aren't necessarily comparable and it is hard to convey that concept both precisely and concisely.

Brad noted that the case processing study he did may help with some of that, but it only started with the arrest and charge filing. There was an additional study from UAA looking at offenses from 2008-2011 that starts with reports that would give a better sense of the prosecutorial triage process, though it was for AST reports only.

Barbara said she would rework that section and include the studies Brad was referencing.

**Public Comment**

There was an opportunity for additional public comment but none was offered.

**Next Meeting**

The next meeting was set for January 12 at 9:30.

Alaska Criminal Justice Commission

# Sex Offenses Workgroup

**Meeting Summary**

**August 10, 2017, 9:30 a.m.**

Denali Commission Conference Room, 510 L Street, Anchorage
And Teleconference

Commissioners: Joel Bolger, Walt Monegan, Brenda Stanfill, Quinlan Steiner, Trevor Stephens, Dean Williams

Participants: John Skidmore, Taylor Winston, Terra Burns, Tara Rich, Melody Vidmar, Chanta Bullock, Reese [?], Amber Nickerson, Maxine Doogan, Crystal Godby, Grace Harrington, Vicky Henry, Amory Lelake, Carol Nordin, Leonard Olrun, Eddie Tocktoo, Marlin Sookiayak, Grace Herrington, Laura Brooks

Staff: Susanne DiPietro, Barbara Dunham

**Updates on standing items**

Barbara Dunham informed the group that she was still working on the legislative history and research behind the 2006 and 1994 laws. The Department of Law had just provided some data on SAM cases, so staff will get to work on analyzing the prevalence of consensual cases involving peers. Staff are also still soliciting ideas for membership inclusion, particularly representatives from rural Alaska and Alaska Native groups.

**Sex trafficking law revisions**

There were two proposals for revising the sex trafficking laws, one from the Public Defender Agency and one from CUSP.

Quinlan Steiner explained that the idea behind the PD's proposal was to separate out offenses involving fraud and coercion. If those elements were lacking, the offense should be promoting prostitution, not sex trafficking. The unclassified, A felony and B felony would be sex trafficking in the first or second degree. The C felony, A misdemeanor and B misdemeanor would be promoting prostitution in the first, second, or third degree.

The proposal also included some alternate language to reflect what is in the current version of SB 54 for the misdemeanor offenses. The first-degree sex trafficking offense lowered the age on the person induced into prostitution to 18 from 20 as there is no other offense with a similar age cutoff. The proposal used the word "enterprise" in places where the statute refers to enterprises or places—there is no reason to distinguish between the two.

Brenda Stanfill asked what the effect of lowering the age for the first-degree offense was. Barbara clarified that the effect of lowering the age would mean that if a defendant induced a person aged 18 or older into prostitution, there would have to be proof of fraud or coercion to convict the defendant of first-degree sex trafficking. If a defendant induces a person under 18 into prostitution, no proof of fraud or coercion would be needed to convict the defendant of sex trafficking.

Quinlan explained that the age had been raised when the offense was relabeled; he was not sure why it was done. It might have been politically popular but there seemed to be no principled reason behind it. John Skidmore said he thought the rationale of raising the age to 20 was that 18- and 19-year-olds are still more vulnerable and the statute was meant to be protective of people that age. Terra Burns said that if that was the case, there shouldn't be people under 21 charged with sex trafficking or prostitution crimes.

Susanne DiPietro asked whether the group needed research on the rationale of raising the cutoff age to 20. Quinlan said he didn't want to lose focus on the large issue, which is distinguishing sex trafficking from prostitution. There was no need to focus on the 18 vs 20 issue.

Brenda said she was in favor of distinguishing sex trafficking from promoting prostitution, and had no opinion on the 18 vs 20 issue. John said the Department of Law did not yet have a position on the PD's proposal.

Terra Burns said that CUSP was concerned that the force or coercion language did not clearly state that threats to a third party were included. She said they were also concerned that the "facilitates travel" language might engatively affect sex worker safety.

Terra also explained the details of CUSP's separate proposal. The CUSP version clarified that the first-degree sex trafficking offense applied to inducing another person to engage in "an act" of prostitution through force or coercion, rather than just engage in prostitution – this has been confusing for juries in the past when the victim is a sex worker. This way the statute will cover victims who are sex workers who have been exploited.

CUSP's proposal also changed the title of the B felony, the C felony, and the A misdemeanor to "Sexual Exploitation." They felt this was a more accurate title as it would encompass mistreatment of sex workers—taking too much of their earnings, not giving them a right to refuse customers, or changing agreements. Quinlan proposed thinking about which of these constitutes coercion.

Brenda noted that the group just got CUSP's draft; she would like to hear Law's take on both proposals. John said that Law could prepare its response in a couple of weeks. Quinlan said he would also like some time to go over CUSP's proposal to see if there were points of agreement. Terra said that CUSP was also looking at a way to distinguish behavior of abusive boyfriend types from commercial exploitation.

Walt Monegan noted that what CUSP was proposing was similar to labor laws, though the activity they were looking to regulate is illegal, making that a thorny approach. Susanne questioned whether the state could regulate illegal activity.

Brenda (who was telephonic and did not have a copy of CUSP's proposal) asked whether promoting prostitution was not part of the proposal. Barbara explained that it was part of the PD

proposal but not the CUSP proposal. Quinlan said that CUSP's approach was to look at exploitation as a separate issue. Brenda asked which proposal would address something like a 16-year-old engaging in "survival sex" with a 50-year-old man. Terra said that particular situation was more appropriately addressed by the SAM laws. For people over 18, CUSP views that activity as non-criminal. Their proposal is addressing the commercial sex industry.

**Workgroup timing/next steps**

Barbara asked the group how it wanted to proceed, reminding the group that the Commission's annual report would be sent out on November 1st, and the workgroup had discussed sending the sex offenses report out early next year.

Brenda wondered whether the group should set a date for the sex offenses report so the annual report could inform the legislature of that timing. Quinlan suggested the annual report could inform the legislature that the group was looking at data on SAM cases, revisions to the sex trafficking laws, and expected to get a report done by the next legislative session (2019). He did not want to rush things.

Dean Williams agreed that these issues should not be rushed—they cover a sensitive subject area. Walt Monegan, Judge Stephens, and Justice Bolger agreed.

Barbara offered to identify what data on sex offenses was readily available and what gaps there were for the next meeting.

**Alaska Nations Reentry Group**

Melody Vidmar from the ACLU explained that the Alaska Nations Reentry Group was a group comprised mostly of Alaska Native and American Indian men who were formerly incarcerated, many of whom had been convicted of a sex offense. They are all trying to return home to their villages, and have been working with the ACLU. The first chief of the group was Leonard Olrun, the current chief is Eddie Tocktoo, and Marlin Sookiayak was a group member who had returned home. All three men were participating in the meeting. Melody said that they would like to talk about the disparate impact some DOC policies can have on Alaska Natives. Tara Rich added that the ACLU has noticed there are two systems of treatment: one for people who are from Anchorage, and one for people who are not from Anchorage but must be in Anchorage for treatment.

Eddie Tocktoo explained that he was from Brevik Mission. He completed MRT at Wildwood CC in 2014, and after completing his sentence he was sent to a halfway house in Anchorage. He failed his first polygraph, so his PO asked him to take MRT again. The MRT course in Anchorage was identical to the one at Wildwood—it had the same workbook. His second polygraph resulted in a "dirty pass"- it was not a pass, nor a fail.

Chanta Bullock asked Eddie how often he was required to polygraph and what questions they ask. He said he wasn't sure how often he is supposed to do them; his last one was canceled. They ask about what he has been doing, who he has been meeting with, and whether he has had sex with anyone – things like that. They give him the questions ahead of time. To finish the treatment program, he must do the last polygraph, but the person who conducts it has been out sick. After that he must complete 24 weeks of aftercare for his drug and alcohol treatment, for which he will have to pay $46 per class. There is no treatment available in his village.

Eddie went home once after being released. He got permission from his PO to visit his mother for two weeks. His mother is in her late 70s and she broke her hip and her leg while he has been away. There is no one in the village to take care of her. Her health improved when he went to visit her. He calls her daily and she asks when he is coming home. His victim is also still in his village, and his PO contacted the victim and the victim's family—they are okay with Eddie returning to the village.

Marlin Sookiayak from Shaktoolik explained that he was released from prison in 2014 and finally completed his treatment and returned home in May of 2017. Now that he is home, his morale has improved greatly, because he is surrounded by his family, his culture, and community support. In Anchorage it was very different; there were many things he didn't understand about living in Anchorage because the culture is so different.

Marlin said he supported the idea of teletreatment because it could bring a lot of people back to their villages and their morale would skyrocket. Teletreatment could reach a lot of behavioral health issues in the villages, and people would not have to leave their village for treatment, so they could still access their culture, their family, and the environment. Many people wait in Anchorage to get a spot in a treatment program with little to show for it—they are not working. If they could wait at home, they would be able to support their community.

He noted that his victim is also in his village and also is okay with him being there. His community appreciates that he works to support the community. Grace Herrington from Partners for Progress, which hosts the Alaska Nations Reentry Group, noted that there was a restorative justice aspect to Marlin returning home; it allows the community to move forward.

Eddie added that life in the villages is very different because you grow up with people who care for you. There is forgiveness. He noted that like Marlin, he also had difficulty adjusting to life in Anchorage and once got sent back to jail because he got lost in Anchorage and returned late to the halfway house.

Leonard Olrun explained that he got out of jail in December 2015 and started a talking circle for other ex-offenders, which became the Alaska Nations Reentry Group. He agreed with the idea of treatment, but not the polygraph component. He echoed the points made by Marlin and Eddie: teletreatment would be a boon; the forgiveness offenders have seen returning to their villages is real; and there is a great deal of culture shock to adjust to when you live in Anchorage. Ex-offenders living in Anchorage have to deal with depression and hopelessness while they wait to complete (or get into) treatment. Three ex-offenders died while waiting in Anchorage to get into treatment.

Leonard said the Alaska Nations Reentry Group supported policies based on community safety, accountability, and respect. They believe an offender should get letters from their community and their victim before returning to their village.

Melody said that the Alaska Nations Reentry Group meets every Friday at 9:30 at Partners for Progress, and anyone is welcome to attend the group. Walt Monegan said that he and Dean Williams had both attended the group and he commended the work they were doing. He recommended attending.

Dean Williams said that this was a hot-button issue for him. He understood why things are the way they are, and is aware of the situation the men from the group are facing, and he is bothered by it.

There are many stories like the ones the men had shared, all of which point out problems in the system. He was not satisfied with the current situation but wanted to proceed carefully. He is trying to push for more teletreatment, but it's also important to approach village reentry differently, starting with better communication. He hoped to begin a dialogue in future meetings on how to change things.

Amber said that she had been convicted of sex trafficking and there was no treatment for people convicted of sex trafficking. She said the idea of polygraphs scared her. She devised her own treatment plan at the CRC where she was placed, and did MRT on her own. She has experienced stigma in looking for work.

Brenda Stanfill asked why offenders were doing the same treatment program twice. Leonard said that the POs do an assessment and assign it if they think it's relevant. There is sometimes a fast track option. Laura Brooks explained that not everyone has to complete the treatment twice; there are a number of factors including whether there was a court order to complete treatment in custody and in the community, whether the offender was program complete the first time around, and whether aftercare is recommended. The in custody and community programs are different.

Grace suggested that there might be a quality control issue; if someone has a PTRP they have to restart the program from the beginning and they get burned out. Laura said that sometimes people will be required to repeat the program if they don't finish it. Terra Burns said she knew of people who have completed MRT four times; their POs ask them to keep doing the program. Melody noted that sometimes offenders will have to complete treatment twice because aftercare is required; if the offender completes treatment in custody, aftercare is not available in custody. If more than six months have elapsed since treatment, they will not be able to do aftercare once they are released and they will have to start treatment over in the community. Laura said she wasn't sure that was actually the policy. Grace invited Laura to come talk to the group about potential differences in policy and practice, and discuss solutions.

Laura also said that DOC has a plan for providing more teletreatment. The problem is still that there are not enough providers. They are training one provider now and have one additional provider in DOC who can already provide teletreatment; the program should be ready within the year. Susanne DiPietro asked whether it would be possible to have providers from outside Alaska. Laura said yes, and that is one of the things they are looking at, but the provider would need to be licensed in Alaska. Grace said that she had heard there were many barriers to getting licensed here. Laura replied that there is a workgroup within DOC working on that issue right now.

Chanta Bullock asked what would happen if an offender could not pay for treatment. Laura said that arrangements can be made; they don't revoke people. Eddie said that he paid for his aftercare out of pocket and that it was hard to afford. His aftercare program was put on hold while he couldn't pay for it. Chanta also asked who determined when someone was treatment complete. Laura said it was the treatment team, including the PO and the treatment provider. They review many criteria.

Leonard Olrun echoed the call to anyone interested to sit in on the Alaska Nations Reentry Group meetings—you just have to show up.

**Public Comment**

Carol Nordin from Fairbanks said that her husband was required to register for 15 years. He didn't serve any time, just got probation. The sex offender registry is punitive not just for the offender but for the entire family. People need to stop thinking that all sex offenders are monsters—they are people who need help. She thought there should be more of a focus on restorative justice.

**Next Meeting**

The next meeting was set for November 9 at 9:30.

Alaska Criminal Justice Commission

# Sex Offenses Workgroup

**Meeting Summary**

**June 21, 2017, 9:30 a.m.**

Snowden Prow Conf. Room, 820 W. 4th Avenue, Anchorage and Teleconference

Commissioners present: Quinlan Steiner, Walt Monegan, Trevor Stephens

Participants: John Skidmore, Laura Brooks, Taylor Winston, Tara Rich, Melody Vidmar, Shannon Cross-Azbill, Karen Cann, Maxine Doogan, Vicky Henry, Chanta Bullock

Staff: Barbara Dunham

**Sex Offender Management Programming at DOC**

Laura Brooks, Deputy Director of Health and Rehabilitation Services at the Department of Corrections, spoke to the group about sex offender management programming (SOMP) within DOC. She provided the group with a copy of her presentation and a white paper, which contained detailed information and statistics on the program. [Anyone interested in obtaining a copy of the white paper or Laura's presentation handout should email bdunham@ajc.state.ak.us.]

Laura explained that despite Alaska having the highest rate of sexual assault in the country, DOC's containment model for sex offenders reduces the risk of recidivism to 3%, compared to a 5% recidivism rate nationally. DOC studies show that even if an offender did not complete treatment, spending some time in the program was correlated with a decrease in recidivism. Approximately 250 sex offenders are released in Alaska per year.

Treatment within DOC is tailored to the individual offender and the offender's criminal history. The containment model used by DOC is the best evidence-based program for supervising sex offenders. Its success lies in its intensity and the length of supervison. Offenders are given cognitive-behavioral therapy, combined with polygraph testing, based on national best practices. On probation/parole, offenders are assigned to specially trained probation/parole officers.

The length of time an offender goes without reoffending is a positive indicator of success. Offenders who do not commit new violent offenses for eight years see a 50% drop in recidivism. Moderate risk offenders who do not commit new violent offenses for 14 years are no more likely to commit a new sexual offense than anyone else in the community. The same goes for high risk offenders who do not commit new violent offenses for 17 years.

DOC has a waitlist for treatment, which is prioritized according to risk level and time remaining on the offender's sentence. Offenders complete an application, and IPOs perform the STATIC and BARR risk assessment tests. A psychologist will then perform a full psycho-sexual test, taking into account the risk assessment and offender's criminal history, along with an interview of the offender. Once a spot becomes available, high-risk offenders are referred to the Lemon Creek CC program, while

medium-risk offenders are sent to the Goose Creek CC program. There are no programs for low-risk offenders. (Group members were interested in how many offenders were high-, medium-, and low-risk; Laura said she could follow up with those numbers and offender profiles.)

Once an offender is on probation/parole, they will likely go on a waitlist for community treatment. (This waitlist is also prioritized according to risk level and time remaining on supervision. Community treatment programs are offered in Fairbanks, Bethel, Anchorage, Kenai, and Juneau—most choose Anchorage. Between release and beginning community treatment, offenders may return home if allowed by their PO (who will look at victim safety issues, the availability of probation officers, etc.). Many do return home in this time, but those who are homeless will remain in the hub community. Offenders waiting for treatment are polygraphed. DOC struggles to find community providers for sex offender management programming, which is the reason for the waitlist.

Cognitive-Behavioral therapy for sex offenders is designed to promote pro-social behavior in offenders and offers a number of cognitive restructuring interventions to combat criminogenic thinking. At Lemon Creek, the high-risk offenders spend 24-36 months in the program and are all housed in one therapeutic community. They engage in group therapy four times per week and intensive individual therapy two times per week, along with regular polygraph testing. At Goose Creek, medium-risk offenders spend 18-24 months in the program and are housed in the general population. They engage in group therapy once per week and intensive individual therapy once per month. They are also subject to regular polygraph testing. Women are treated at Hiland Mountain, which typically has very few, if any, offenders in the sex offender management program.

The Bethel Tundra Center serves the Y-K delta, which has the highest concentration of sex offenses in the country. The Bethel program uses a culturally appropriate restorative justice model that is built on a program from Canada designed for First Nations offenders. The Tundra Center offers a 24-36 month program with group therapy twice per week, intensive homework and classes, and polygraph testing.

Community treatment involves one on one therapy. Offenders will have to pay for this if they are able, but treatment will still continue if they aren't able to pay. Community programs last 18-24 months and typically have a 90-120-day waitlist. Offenders participate in group therapy once per week and intensive individual therapy once per month. They must identify a "safety net" person who can be relied upon to report triggering behaviors to the offender's PO. They also have regular polygraph testing.

Laura said it was important to note that the community treatment programs were originally designed to be aftercare. However, it is used as primary treatment. The offender will opt for community treatment if sentenced to "sex offender treatment" and the judgment order does not specify in-custody or residential treatment, because the requirements are less onerous. Taylor Winston asked whether Presentence Report (PSR) writers are trained to identify people who need in-custody treatment. Laura said she wasn't sure, but noted that it was also an issue of capacity, not just offender preference. It is difficult to find providers. Taylor noted that prosecutors probably rely on PSR writers in making their treatment recommendations.

Commissioner Monegan said that at the very least, community treatment would help prevent offenders from escalating their behavior. Laura agreed and said that community treatment was still a good program, using cognitive-behavioral therapy (CBT)—it just wasn't as intensive. The polygraph and the CBT were most effective in combination. Laura said that the polygraph was a very important tool to keep offenders on track.

Laura explained that looking to the future, DOC was planning to look into telemedicine (or "teletherapy") to try to reach offenders in rural communities so they don't have to move to a hub. Finding providers for this was rare before but they are starting to see more. Theoretically they could use providers and other states with this method, so long as they were licensed in Alaska. Tara Rich asked what the biggest obstacle to telemedicine was. Laura said bandwidth was a big issue. They are thinking of asking public health to partner with them to make use of their telemedicine system.

DOC would also like to streamline treatment statewide to align with the national trend of shortening programs (to 18-24 months), which should help with the waitlist and resource issues.

Chanta Bullock asked what happens if probationers/parolees want to move to another state. Laura said this was not her area of expertise, but she did know that it was governed by an interstate compact and that the transfer and its conditions would have to be approved by both states. Chanta also asked whether it was normal for victims of sex offenses to later become offenders. Laura said that was a difficult question to answer; many victims do become offenders, but many don't. Commissioner Monegan noted that it seemed to be a question of resiliency.

Tara asked what the procedures were for offenders with developmental and cognitive disabilities. Laura said that the initial psycho-sexual assessment by the psychologist will determine where the offender would be best placed. For some offenders with such disabilities, there is a psychosexual treatment center in Anchorage. Tara also said she heard rumors of offenders needing to complete repeat classes in and out of prison. Laura wasn't sure about this and thought it might be related to substance abuse treatment. Sex offender management programming is very different in and out of custody. Also offenders might need to go through classes more than once if they are still dealing with the same issues.

Chanta asked whether being high-, medium-, or low-risk impacted an offender's eligibility for discretionary parole. Karen Cann noted that this was a question for the parole board, but she could ask them. The parole board will have a whole range of information available to them in making their decision. Taylor noted that certain crimes weren't eligible for discretionary parole.

Vicky Henry asked whether offenders pay for their own polygraph and what it costs. Laura explained that offenders do not pay the cost of polygraphs, which cost around $400 per test. DOC has a contract with a polygraph provider, which DOC audits regularly. Vicky asked whether there was a report on the pass/fail rate. Laura said that DOC keeps this information.

Barbara Dunham asked if there was anything Laura thought the legislature should know. Laura said that often what legislators want to know is whether the programming works; people often have beliefs from studies done in the 80s which said treatment was ineffective. The containment model is very different from previous models and is shown to be effective. Commissioner Monegan thought

that it works because it's individualized treatment. Laura added that it also has wraparound services. Taylor observed that the same programming principles could be applied to other offenders.

**Workgroup membership**

Barbara explained that at the last meeting the group had discussed diversifying the membership to include more representatives of rural and native communities. Staff efforts at outreach thus far have not been successful; group members were encouraged to email Barbara with suggestions and contacts.

**Sex trafficking law revisions**

Quinlan Steiner explained that the Public Defender Agency had worked on a draft and had circulated it to the Department of Law but had not yet heard their thoughts on it. Barbara said she would send the draft out for the group to review and set it on the agenda for the next meeting.

**Data collection for "Romeo and Juliet" cases**

Barbara circulated a memo with a proposal to get data from the Department of Law on the age differentials in SAM cases. There was no objection to proceeding according to the memo.

Barbara also noted that Terra Burns, who could not be at this meeting, had alerted her to the issue of child marriage. John Skidmore wondered whether there was any data or evidence of this happening. Taylor noted that she could recall one case of a cultural marriage. Commissioner Monegan noted that it was a practice among certain religious groups. Judge Stephens said that there had recently been an article on NPR regarding child marriage which had garnered a lot of attention. Barbara agreed to look in to whether this was prevalent in Alaska.

**Legislative history of 2006 laws and research**

Barbara explained that she had circulated a memo explaining the recent history of sex offense sentencing, which included the letter of intent accompanying the 2006 laws. Some of the information contained in the letter was obviously outdated, such as the assertion that sex offender programming was ineffective and the finding that sex offenders had high rates of recidivism. [The group had just heard that sex offender management programming was in fact effective, and at its January meeting, heard from UAA prof. Brad Myrstol that his research showed the recidivism rate for sex offenders was quite low.]

Judge Stephens explained that many of the findings the legislature made in 2006 were based on findings made in 1994, when the sex offender registry law was enacted. The US Supreme Court held up this law in the *Smith v. Doe* case, which included similar findings. (Barbara offered to provide the group with an article debunking some of the findings in that case.) Quinlan agreed and suggested that every finding in the 2006 letter of intent should be investigated and verified. The likelihood of consensus on any action was low but the information was worth including in the report.

Commissioner Monegan noted that in 2006, there were no programs for prisoners of any kind; Gov. Murkowski had ended all programming at DOC. Thus some of the findings in 2006 could have been valid then if they weren't now. Tara suggested looking into whether sentence length had any

effect on deterrence. Taylor thought that the long sentence lengths created in 2006 combined with the containment model may have acted as a specific deterrent which drove down the recidivism rate. Quinlan cautioned against coming to any conclusions or ending the discussion on a theory, and suggested looking to see if this theory was supported by any data.

Commissioner Monegan said that when someone is about to commit a crime, they don't typically dwell on the penalties—they act on impulse, not logic. He agreed with Taylor that the containment model is an ideal approach to justice. He thought that the best course of action would be to push more efforts into preventative education.

Chanta asked whether the group had discussed the sex offender registry. Barbara said that it hadn't. Vicky said that registry requirement was not always just for sever offenders, and that some low-risk offenders would be included. Her group, Women Against Registry, supports focusing on prevention programs rather than expanding the registry. She noted that some victims' advocacy groups support easing off on using the registry. She said that recidivism rates started dropping before the registries went into effect.

Barbara asked whether there was any interest in revisiting the 1994 legislation that created the registry and the findings behind it, similar to the research on the 2006 legislation. Quinlan thought it was worth looking at. John cautioned that expanding the focus of the report may be taking on too much with the annual report coming up. Barbara explained that the sex offenses report had no deadline and right now she was contemplating finishing the report early next year. John suggested making sure that recidivism was defined in 1994 and 2006 in the same way it is now defined in current research, so as to make accurate comparisons.

Commissioner Monegan said that work needed to be done to create more trust in the system; right now there is a reluctance to report sex crimes because of practices like showing explicit investigative photographs in the courtroom.

Taylor suggested getting data from the polygraphs used for the containment model to see if there is any repeat offending that isn't being prosecuted or captured by the recidivism rate.

**Public Comment**

Time was made available for additional public comment but none was offered.

**Next meeting**

The next meeting was set for August 10 at 9:30 a.m.

Alaska Criminal Justice Commission

# Sex Offenses Workgroup

**Meeting Summary**

**April 28, 2017, 9:00 a.m.**

Denali Commission Conference Room
510 L Street, Anchorage
And Teleconference

Commissioners present: Alex Bryner, Quinlan Steiner, Walt Monegan, Brenda Stanfill, Trevor Stephens. Karen Cann acted as proxy for Dean Williams.

Participants: Aliza Kazmi, Keely Olson, Shannon Cross-Azbill, Taylor Winston, Renee McFarland, Terra Burns, Crystal Godby

Staff: Staci Corey, Susanne DiPietro, Barbara Dunham

**Report from Rural Safety and Justice Conference, April 12-14**

ACJC project attorney Barbara Dunham attended the Rural Safety and Justice Conference in Anchorage, which brought in service providers and victim advocates working the in DV/SA field from all over the state. She reported back on several items of discussion at the conference. Two broad themes stood out: (1) the legacy of historical and inherited trauma in Alaska Native communities, and (2) issues relating to lack of resources in the state.

With regard to the first theme, Barbara explained that conference participants had discussed the legacy of traumatic historical events in Alaska Native communities, particularly the legacy of violence from the boarding school era. These traumatic events have impacted subsequent generations by affecting family dynamics, negating cultural identity, and normalizing violence. Participants stated that opening up lines of communication within families and communities, reinvesting efforts into preserving Alaska Native Culture, and fostering community dialogue about the culture of acceptance surrounding domestic violence and sexual assault were all steps that would help to address the legacy of trauma.

With regard to the second theme, Barbara explained that participants also bemoaned the lack of shelters for victims of domestic violence and sexual assault, particularly LGBT victims, and the lack of shelters with an anonymous location. Shelters that exist are typically over capacity. Many villages lack a VPSO, and sometimes the VPSO can be too close to the situation to handle it well (or even be a perpetrator).

Regarding the resource issue, AJD Executive Director Susanne DiPietro noted that the Commission is tasked with making recommendations for further reinvestment.

Commissioner Monegan said that more could be done in education, starting early, to foster communication and dialogue about trauma (ACES) in health classes and to make history lessons more inclusive, to reflect a broader concept of history.

Susanne wondered whether there were any evidence-based education programs that Alaska school districts could offer. Commissioner Stanfill said there were, although generally it was hard to measure the efficacy of the programs. It's hard to talk about consent with kids because it's hard to talk about sex—there are strict guidelines in place. CDVSA and DHSS have some funding for this.

Keely Olson, executive director of STAR, noted that there are programs developed by a company called the "Great Body Shop" designed for kids K-6. Also, the Alaska Safe Children's Act (Erin's Law & Bree's Law) goes into effect in June, which will require more education about sexual abuse and dating violence. The Anchorage school district is prepared for this effort. Commissioner Stanfill noted that it was rolling out more slowly in the rural areas. It is an unfunded mandate and rural schools in particular deal with high turnover rates, which can make training a challenge. Keely added that the training component was a big lift. Commissioner Stanfill explained that this was why the SB 91 prevention funding was so important.

Taylor Winston, executive director of the Office of Victim's Rights, suggested developing a program to work with prominent women in the villages. In her experience as a prosecutor in rural Alaska, she found that community culture was key. It can either help victims come forward or pressure victims into remaining silent. She thought it was important to foster that dialogue.

Commissioner Monegan noted that Alaska Native culture strongly values harmony. In some communities, reporting sexual assault and abuse can be seen as being disruptive to the community's harmony. It's about changing the conversation to be about how the assault itself is what causes the disharmony.

The group discussed the work AFN and First Alaskans were already doing in this area, and finding a way to unify and strengthen those efforts. Keely noted that the Alaska Native Tribal Health Consortium has DV/SA trainers who can go out to villages to help with these conversations. They have some funding but must be invited. Susanne suggested inviting a representative from ANTHC to participate in the workgroup, and per the next agenda item, asked for other suggestions of who to invite to participate. Commissioner Stanfill explained there was a rural services roundtable last year and suggested revisiting some of the work done there. Aliza Kazmi, policy specialist for the Alaska Network on Domestic Violence and Sexual Assault, mentioned the Alaska Native Women's Resource Center and the Yupik Women's Coalitions.

Susanne suggested highlighting any evidence-based programming as a way to retain funding in the current budgetary climate. Terra Burns from CUSP (Community United for Safety and Protection) noted there has been research on the effectiveness of programs that focus on fostering resilience versus programs that focus on damage. Eve Tuck and Howard Luke were two such researchers. Susanne noted that Diane Hirschberg at UAA might be another resource in that area.

**Workgroup membership**

Group members discussed having more representation from Alaska Native and rural organizations. Susanne mentioned that she had reached out to First Alaskans and was waiting to hear back. Commissioner Monegan also suggested reaching out to AVCP, though they have had some turnover lately, and SouthCentral Foundation, which has the Wellness Warriors program that they present all over the state. Keely suggested Debbie Demientieff at ANTHC.

Commissioner Stanfill also suggested that it would be good to hear from folks providing treatment. Barbara explained that Laura Brooks from DOC will hopefully join the next meeting to talk about treatment within DOC, but would also be helpful to get a representative who does treatment in the community. Renee McFarland of the Public Defender's office suggested Moreen Fried, a therapist in Fairbanks.

Commissioner Monegan suggested that everybody in the group could use their connections to reach out for membership. It was agreed this would be assigned as homework; group members can forward names to or put folks in touch with Barbara or Susanne.

**Sex trafficking**

Barbara explained the memo she had circulated to the group. At the last meeting, the Commissioners had asked for more information on national and international policies and laws on sex trafficking. Barbara summarized her research by informing the group that Alaska appeared to deviate from typical statutory approaches in two ways. First, the offense of first-degree sex trafficking has the use of force as a necessary element; most US and international definitions of sex trafficking include fraud or coercion as well as force.

Second, research indicates that conflating the crime of sex trafficking with prostitution can lead to unintended outcomes. Victims of sex trafficking may be convicted of prostitution if they are too scared to tell the truth or unaware of how they are being manipulated. Also, the threat of being prosecuted for sex trafficking hinders sex workers from taking safety precautions to work together and hinders them coming forward to report any trafficking they have witnessed in the sex trade.

Terra Burns explained that a recent study by researchers at Loyola—concerning the prevalence of sex trafficking victimization among homeless youth in Anchorage—may have overstated the incidence of sex trafficking and captured youth who are just working with other youth.

Susanne noted that the memo had included the conclusions of an Alaska Task Force and an Ad-Hoc Working Group, both devoted to the subject of sex trafficking, and wondered about what they were doing in this area. Commissioner Stanfill informed the group that both the Task Force and Ad-Hoc Working Group had been disbanded.

Group members discussed the issue of victim mistrust of the justice system. Commissioner Stanfill said that part of the problem was the difficulty in obtaining convictions. Victims can be repeat victims and can be reluctant to participate in the system again when the previous prosecution was unsuccessful or unhelpful or the trafficker was never charged to begin with. Terra said that CUSP had been working with a victim of trafficking who risked her family's safety to report the crime and had to leave Alaska. Taylor noted that victims of Class A or Unclassified felonies can go to OVR for help.

Commissioner Stanfill said she would be interested in getting data on sex trafficking prosecutions. Terra noted that there had been one recent case, and none prior to that since 2008. There is a task force of 3 state troopers dedicated to these cases. Commissioner Monegan explained that was the only unit in the state and said there was need for more. Taylor said that few cases were referred to her when she was a prosecutor, and many were screened out for evidentiary issues.

Commissioner Stanfill asked what the next steps should be. Commissioner Steiner suggested the first step would be to take up the issue of differentiating between sex trafficking and promoting prostitution.

The focus of the sex trafficking statute should be on criminalizing acts of force and coercion. The rest is promoting prostitution, and the remaining task is to differentiate between safety measures and criminal conduct, whether felony- or misdemeanor-level.

Susanne reminded the group that SB 91 did not deal with sex crimes, and that during last year's legislative session, many lawmakers wanted more information on sex crimes, which is why SB 91 mandates a report on this issue. Commissioner Steiner noted that the legislators also raised the question of age differentials in sex crimes. He thought that including sex trafficking in the report was timely because SB 54 addresses those statutes. Commissioner Stanfill said she would not want to broaden the scope of the report too much but that it would be good to address the issue of conflating sex trafficking and prostitution.

Commissioner Steiner said it would also be beneficial to highlight the failure of juvenile services in preventing sex trafficking among juveniles. Commissioner Stanfill said that substance abuse was also a contributing factor. Keely Olson noted that there is evidence of youth coming to Anchorage for services, either for mental health or substance abuse treatment, and then being trafficked once they don't return home or aren't welcome there. Kids are being recruited at the shelter, sometimes by peers who are working with traffickers behind the scenes. A majority of kids who are trafficked are LGBTQ.

Renee McFarland agreed to draft some proposed statutory language to start the discussion on a potential recommendation. Barbara noted that the workgroup can also forward recommendations to the full Commission separately from the report if the workgroup would like to forward something on sex trafficking before the report can be completed.

**Age differentials in sex crimes**

Commissioner Steiner said he also thought the workgroup should discuss the issue of age differentials in statutory rape cases. He thought it was worth looking at what other states do in this regard, particularly with ways to deal with defendants who are in the same peer group as the victim and whose actions may not be considered predatory.

Taylor Winston suggested getting statistics from the Department of Law first. She strongly believes there is a line between ages 12 and 13 and that any discussion about changing the law should focus on 13, 14, and 15-year-olds. She wanted to know how many of these cases were actually charged as SAM 2 or 3. In her experience, cases that were actually resolved as SAM 2 or 3 involved a much older defendant. Similar cases involving a young defendant close in age to the victim were often resolved with a Contributing to the Delinquency of a Minor conviction. She thought that we should distinguish between 18 or 19-year-old defendants and 40 or 50-year-old defendants, but she would like to see statistics on the ages of people being charged.

Commissioner Steiner said that if a case was resolved with a Contributing conviction, that begs the question of whether the defendant was charged appropriately to begin with. Charges of SA or SAM can still wreck someone's life even with a conviction on a lesser charge. He thought there was a way to distinguish these defendants at the point of charging.

Keely Olson said that in her experience of working with survivors, who often include pregnant youth, that parents were very concerned about the cases where the defendant and victim are closer in age. It is hard to get youth to testify, and often the youth are being groomed by the defendant. She has heard an outcry from parents who would like to see the age of consent raised to 18. She thought that the age

differential issue wasn't really a problem, and that only a few legislators were concerned about it. She thought charging a 20-year-old with SA 1 or SAM 1 was appropriate.

Susanne said there were really two problems to deal with here: evidentiary issues versus the statutory scheme and how things should be prosecuted.

Commissioner Stanfill said that this was why the group needed to look at statistics to see if there really is a problem. She recalled that Ginger Baim, a victim's rights advocate from Dillingham, had testified before the legislature when the sex offender sentencing laws were changed that she was worried that large numbers of young men would be sent away from the villages. Keely replied that she just hasn't seen that happening. Commissioner Stanfill said that was why she wanted to look at data, to see if Ginger had been proved right or wrong. She would like to hear from Ginger and other rural representatives about this issue as well.

Susanne asked whether data from Public Safety was needed as well as data from Law. Commissioner Monegan said that DPS has reporting data. The reports are categorized by statute according to what evidence there is. There is also a problem of underreporting, and there is a backlog of cases. The crux of the matter is to make the system work for victims to resolve cases for victims in a timely way.

Keely noted that if a case involves consensual contact, the case will be suspended and the outcome will be reported as such. Commissioner Stanfill asked whether that would appear in background checks. Commissioner Steiner said that as of this year, if the case is suspended or dismissed it will not appear on Courtview.

Commissioner Stanfill said that the UAA study did not include local jurisdictions and she would like to see that data. Susanne mentioned that there is also a charge disposition study in the works, but that project will take two years to finish.

Staff will follow up with Law and UAA to try and get the necessary data.

**Rough draft of report to legislature**

Barbara explained that the rough draft would be updated for each meeting and that group members were welcome to comment on it and provide suggestions at any time. Group members suggested adding sections for data on the profiles of offenders, whether they were strangers or not, and adding a section on evidence-based prevention programs.

**Public Comment**

There was an opportunity for public comment but none was offered.

**Next meeting**

The next meeting was set for June 21 at 9:30 a.m.

Alaska Criminal Justice Commission

# Sex Offenses Workgroup

## Meeting Summary for February 23, 2017

2:00 pm in the Jury Assembly Room, 3rd Floor Dimond Courthouse,
123 4th St, Juneau AK
And teleconference

Commissioners attending: Quinlan Steiner, Alex Bryner, Dean Williams, Trevor Stephens, Brenda Stanfill

Participants: Jordan Schilling, Terra Burns, John Skidmore, Tara Rich, Aliza Kazmi, Shannon Cross-Azbill, Natasha McLanahan

Staff: Susanne DiPietro, Staci Corey, Barbara Dunham

**Workgroup chair**

Commissioner Williams agreed to chair the workgroup.

**Presentation by Brad Myrstol, Alaska Justice Information Center**

Brad walked the group through slides he had provided to the group, which were a summary of the report on sex offender recidivism that he and other researchers at UAA prepared last fall. He noted the report was not an evaluation of DOC programs or treatment. The offenses included in the report as qualifying offenses are registrable sex offenses.

The first slide showed the cumulative recidivism rate for the cohort (sex offenders released from 2006 to 2008) over a 7-year period. The rates were cumulative, so they showed the percentage of offenders who had either been rearrested or reconvicted by a given year. By year 7, for example, 55.4% of offenders had been re-arrested at least once in that 7-year period. Susanne noted that this was consistent with a previous AJC study, but that study had only looked at a 3-year period.

The next slide showed that, compared to other offenders, the recidivism rate is significantly lower for sex offenders. Quinlan noted that there has been legislative testimony in the past that the recidivism rates are low because of low reporting rates. Does this address that? Brad said that victim research does indicate that sex crimes are underreported. On the other hand, no other class of offenders is as closely supervised. Sex offenders have probation officers, must submit polygraphs, and have to be on registries. This intense scrutiny lasts almost in perpetuity. So these offenders are more likely to be caught than other offenders once released from prison. Susanne said it also helps to remember that this is the class of offenders who have been caught, charged, convicted, and served time. The problem of underreporting may be more pronounced in regard to offenders who have not been caught.

Quinlan asked if Brad's team had compared recidivism rates for different offenses? Brad said they had not. John noted that this might not be a meaningful statistic as these crimes are often bargained down.

The data also showed the relative risk of reoffending over time. Slide 4 shows that the risk of an individual doing any new reoffending (i.e. being rearrested for any offense) nears zero over time. Susanne said this was consistent with data on the general offender population; if they're going to mess up, they will typically do so within 6 months to a year. Brenda wondered if the containment model loosened its restrictions over time. Commissioner Williams was not sure. Terra said it does; the colors [dictating requirements] are reduced. Commissioner Williams said that treatment is typically required within the first 18 months after an offender is released, and this treatment often has to be done outside of their home environment—usually in Anchorage.

The study also had information on what sex offenders were rearrested for, if they were rearrested. If they were rearrested for a sex offense, it was most often most often SAM. The most rearrests came from public administration offenses (a large chunk of which were failure to register as a sex offender), followed by non-sex assault and property offenses.

One of the aims of the study was to find out if there were differing trajectories for different offenders. This analysis compared an individual's behavior over time compared to everyone else. They found that there are four specific qualitatively different offender patterns. The groups each had different patterns of recidivism risk over time (the model predicted recidivism risk controlling for the length of time the offender had been outside of prison).

One group – Group 4, which accounted for 6.7% of the cohort – had a distinctly different recidivism risk curve than the other three groups. This group had an increasing risk of recidivism over time, peaking at 4.5 years after release. Groups 1-3 followed trajectories that were very different from Group 4 but similar to each other, though they are distinct groups. This analysis shows that people don't recidivate at the same rate, and that there is variety in rates of reoffending over time.

Quinlan asked what characteristics distinguish the groups. Brad said he didn't have a lot of extra data to dig into that. It wouldn't work to look at the underlying conviction because the sample size would be small, and he would be wary of the difference between the offense of conviction and the actual offense. He would be curious to know the charging information. He did link offenders in each trajectory group with basic demographic information. Brenda wanted to know what the recidivism offenses were—the higher risk group's crimes of recidivism could be all property.

Aliza noted that some of the legislative interest in learning more about sex offenses/offenders was focused on the age factor and the age differential. Brad said that age is definitely correlated with risk; the group that did not have any new offenses/arrests was older.

Brenda wondered if Table 1.2 in the report [which lists the distribution of post-release arrest offenses and convictions] could be broken down into trajectory groups. Brad said that it could in theory but his time is limited. Susanne suggested that AJC staff might be able to work on this.

**Work plan**

Barbara explained that the proposed work plan was to have meetings in April, June, and August to discuss the content of the report to send to the legislature, then to prepare a draft report in advance of the

December Commission meeting and get Commission approval of the report then. She noted this was not set in stone, as there was no due date for the report. She also provided the group with a list of topics to include in the report based on the discussion at the previous meeting.

John suggested focusing on the topics that were more global and pertained to the wide spectrum of sex offenses and sex offenders: (1) The effectiveness of sex offender treatment; (2) Offender reentry issues; (3) An historical look at previous sex offense laws and data and a comparison with current law.

Brenda asked whether the group should look at the age differential issue, namely, are the laws regarding age differentials appropriate? John said that was a smaller topic. Brenda said it was something that the legislature kept talking about and might be expecting a report on. Quinlan agreed that the report would need to deal with it. John noted that the concern voiced in some parts of the legislature was based on just one particular case. Quinlan said that was true, but in terms of the Commission's report, age differentials can be part of a more global discussion and the report can avoid basing any commentary on just one case. This issue brings up a more global question of which offenses should be labeled as a predatory sex offense, and whether the charges or convictions reflect actual culpability/risk.

Barbara noted that it will be hard to compare recidivism rates from before and after 2006—as Teri's memo explained, there won't be much recidivism data from offenders convicted after 2006 because they will be serving lengthy sentences. She has started on a legislative history of the 2006 laws, and noted that they seem to be based on data that may not be accurate and certainly contradicted by the report from Brad's team. The group was interested in looking at this more and exploring the sources of the data used in 2006.

Justice Bryner said the three topics seem appropriate, and wondered if it would it be useful to look at risk assessments. John said yes, that could be included in the reentry section. Commissioner Williams said he also wanted to know what's happening there.

Terra asked whether it was possible to get a report on charging broken down by region—this had been discussed at the last meeting. John said he could theoretically do that but his reporting tool is broken and he was not sure when it would be fixed.

For the next meeting, the group agreed it would like to have presentation from DOC on reentry issues for sex offenders and treatment programs. The group would like to know how many sex offenders are on probation/parole, and where they live. They would also like to know how many sex offenders are treated in house and how many are treated outpatient. Barbara will contact DOC about this, ccing Commissioner Williams.

Barbara will also prepare a draft outline of the sex offenses report so the group can have an idea of what it would look like.

Brad said he could follow up with some of the data requests mentioned but he has mined his data as far as it will go. He could link up to data from Law to get charges and convictions but would need Commissioner Williams' permission to share DOC's data with Law. Accordingly, Commissioner Williams gave him permission. Brad will send John APSIN and ACOMS numbers from the cohort.

**Sex trafficking**

Terra informed the group of her background. Her father pimped her out as a teenager and prosecutors declined to prosecute him. As an adult she worked as a sex worker and then got her master's degree at UAA; her work centers on documenting the lived experiences of sex workers and she also serves as an advocate for CUSP (Community United for Safety and Protection), which has been lobbying the legislature to revise the sex trafficking laws.

In 2012, the sex trafficking laws were broadly redefined. She has the case numbers of every case prosecuted under the new laws since their enactment and has looked into the cases. In the first full year the new laws were in place, two people were convicted of sex trafficking themselves. She provided the group with a handout summarizing the other cases. This has stifled sex workers' ability to report crimes to law enforcement because they don't want to get charged with sex trafficking if they witness a crime while working. For example, two sex workers carpooled from Anchorage to Fairbanks, and shared a hotel room which was rented in one person's name. The other person was the victim of a violent robbery, and she did not want to report the crime because she was worried that her friend, who had rented the room, would be charged with trafficking her. CUSP believes Alaska should bring its definition of sex trafficking in line with the federal definition, which requires proof of force, fraud, or coercion.

Brenda asked if there was a reason the legislature didn't use the force, fraud, or coercion language. Quinlan explained that they just changed the name of the crime of promoting prostitution to sex trafficking, otherwise it was not a substantive change. He thought there was a need to distinguish consensual forms of promoting prostitution from coercive sex trafficking. The Commission's recent recommendation addressed narrow statutory change, but he thought the Commission should take a broader look at this issue. Terra said that the other problem with the change 2012 change in the law is that misdemeanor promoting prostitution was changed to felony sex trafficking.

Quinlan said it was important to distinguish between crimes involving force and coercion and those that do not. John thought this distinction was made in the degree (e.g. Sex Trafficking in the First vs Sex Trafficking in the Fourth). Commissioner Williams said that he would guess that most people would assume that all sex trafficking involves force and coercion just going on the name alone. Brenda thought that prostitution should be called prostitution, and sex trafficking called sex trafficking. There was a difference between marginalized women working together and actual trafficking.

Commissioner Williams asked how the group should bring itself up to speed on comparing Alaska's law to the rest of the US? He thought this was a gnarly subject, and wanted to know more about the history of these laws. In theory distinguishing between consensual prostitution and coercive sex trafficking aligns with the goal of SB 91, which was to concentrate resources on the highest risk or most dangerous offenders. He suggested having staff prepare a report on practices in other jurisdictions. Terra said there were plenty of studies available, including those from the UN and Amnesty International. Justice Bryner said that he would be interested in knowing more about federal prosecutions for sex trafficking, particularly those occurring in Alaska.

Judge Stephens said that he agreed with Quinlan that there was a substantive difference between promoting prostitution and sex trafficking. Quinlan said that the focus of the law should be on reducing violence.

**Public Comment**

Public comment was called for and there was none.

The next meeting was set for April with the date left open pending Judge Stephen's ability to get to Anchorage.

Alaska Criminal Justice Commission

# Sex Offenses Workgroup

Meeting Summary for December 8, 2016

9:00 a.m. at CIRI
725 E Fireweed Ln #800
Anchorage, AK 99503

Commissioners present: Trevor Stephens, Brenda Stanfill, Greg Razo.

Meeting Participants: Taylor Winston, OVR; John Skidmore, Kaci Schroeder, Law; Aliza Kazmi, ANDVSA; Terra Burns, CUSP; Shannon Cross-Azbill, DJJ; Laura Brooks, DOC.

Staff: Staci Corey, Barbara Dunham.

**Focus areas and data collection**

The group began with a general discussion of what the group should focus on in coming meetings. John Skidmore asked what specific offenses the group should look at—there are the sex offenses listed in article 4 of AS 11.41, but there are other offenses that could be classified as sex offenses in other areas of the statutes.

Barbara Dunham suggested a focus on rural areas of the state. Taylor Winston said she would be surprised if there were any legislative solutions there. As a prosecutor in the Y-K delta region she saw that these problems tended to exacerbate themselves. Victim safety was a huge problem because victims tended to be intimidated. She mentioned an example where a mother, who had been sexually abused as a child, reported her daughter's sexual abuse and was then shunned in her village.

Aliza Kazmi said she was also aware of these problems, and thought there was room for improvement in the education of DAs—in how to be trauma-informed and not exacerbate the trauma of victim-witnesses. She suggested there could be better use of the executive directors of organizations that work with victims of sex assault as expert witnesses.

Aliza also noted that data collection was important. Much of the law enforcement data is voluntary, and so could be improved. The CDVSA has been collecting data as well. She would like to see data on the effectiveness of sex offender treatment programs, and the correlation of sex assault with substance abuse. She also would like to seek explanations for the results of a recent UAA survey which showed that sex assault had been going down on campus—she would like to know why that is.

Brenda Stanfill said that some of the legislative interest in having a report from this workgroup stemmed in looking at convictions of younger offenders and the age differential between the offender and victim.

John said that he has data on what cases are referred for prosecution, what cases are accepted, and the outcome of those cases. Law is working on a better data management system. He thought that any discussions of SB91 in the legislature prior to enactment wouldn't necessarily dictate what this group does, and that the legislature would likely want a "big picture" report.

Judge Stephens observed that the recent UAA study [on recidivism] had data that broke down into classifications. Brenda noted that the study didn't narrow down to specific offenses. Taylor said there was

a large variance in severity in offenses within a specific offense or classification, though in practice the prosecutor would deal with these cases differently. She would be interested in seeing if there were any correlations with offender ages. John thought he might be able to get data on ages. Laura Brooks concurred in gathering the most accurate data possible. She has heard about anecdotal evidence of offenders in their 50s tending to be repeat offenders, but the group could benefit from knowing what's really going on.

Terra Burns asked whether it would be possible to look at the data by location or village, noting the differences in jurisdictions. John replied that venue-specific data would be available going forward, though the data was not categorized this way in the past.

**Juvenile offenders**

Shannon Cross-Azbill informed the group that DJJ can't take young kids who are sexually acting out; they are not found competent and so not in the DJJ system. This is especially hard to deal with in rural Alaska, where it is a struggle to get OCS involved in such cases. She also thought that it might be helpful to have more guidance on which cases to refer to the adult system, and noted that there are some older boys in DJJ custody who refuse treatment.

Taylor observed that juvenile sex offenders a bit of a "third rail" but probably something the group should talk about. There are some very sophisticated teenagers out there.

Brenda asked for clarification on which juveniles would be waived into adult court. Group members noted that those 16 and older are auto-waived if they are charged with an A or unclassified felony. Brenda then wondered who the 16-and-older offenders were who were still in DJJ custody and refusing treatment. Shannon said that often they were offenses varied but were sometimes juveniles charged with SAM (not an A or unclassified) where the victim was a family member. Some of these cases can be serious and she was worried about offenders who age out of the system and are released untreated.

Barbara asked whether the Dept of Law had numbers on juveniles charged with sex offenses. John explained that he had some data but did not have it all- they would only have records when a juvenile adjudication was contested or a juvenile was waived into adult court. Shannon said that DJJ would probably be able to get numbers on initial charges and their outcomes- she will look into what data is tracked at DJJ. John volunteered to talk with DJJ representatives about what kind of data would be helpful.

**Treatment**

Barbara asked whether the group would be interested in looking at treatment, and there was general assent. Brenda said she was interested in looking at whether there was any difference in treatment in DOC custody versus treatment in the community. She noted there were wait times to get into treatment. Laura noted that when judgments are written in sex offense cases, the order to complete treatment doesn't usually specify that it must be done in custody. Inpatient treatment within DOC is at Lemon Creek, in a separate unit with very intensive programming. Some offenders don't want to do this, and complete their treatment requirement in the community, which requires less work.

John wondered whether there was data on where offenders were getting treatment, and whether there was any data on treatment capacity, which will be needed for recommendations. Laura said there was such data, and noted that any recommendations to change in-custody treatment would have to come with a

fiscal note. The in-custody program could be built up with the appropriate resources. The wait lists for in-custody treatment actually aren't that long because there aren't that many offenders signing up. Treatment in the community is contracted with outside vendors, but there are not many providers who want to offer sex offender treatment.

Judge Stephens said that he always orders treatment if the sentence is long enough, and makes it clear in his orders that treatment is a condition of probation, and the offender can be violated for not getting treatment, even if the offender is still in custody. He clearly states in the order that the offender must do treatment both in and out of custody- they are two separate conditions. It could be a judicial or prosecutorial education issue. John agreed, and said that was why collecting data was important.

Greg Razo wondered whether there were any existing reports on sex offender treatment. Laura said she had a white paper on the topic which she can circulate to the group. Barbara noted that the Results First Initiative will soon have data on the cost-effectiveness of state-run treatment programs. John observed that many outpatient programs are not state-run. Terra said she thought it would be helpful to have data on non-state-run programs, as some offenders might be more likely to comply with treatment orders if the state was not the provider.

**Sex trafficking**

Terra asked whether the group would be interested in looking at sex trafficking laws. The sex trafficking law was changed in 2012 to broadly redefine sex trafficking in a way that doesn't follow the federal definition. Women who are working together for safety can now be charged with sex trafficking. She would rather see the law focus on victims of fraud and coercion. The current law discourages sex workers from reporting crimes because they don't want to get their friends in trouble. She has draft language of a potential fix that she can send to the group.

Staci Corey noted that the recent DPS report has data on sex trafficking reports, and the yearly DPS Crime in Alaska report has data on arrests for sex trafficking. Terra said that John has also provided her with similar data from Law which she has compiled into a database.

**Other issues**

Greg said he would be interested in discussing reentry issues. The problem of sex offenders being displaced as a result of treatment obligations is pervasive. Offenders from villages are trapped in the city without resources or prosocial connections. Brenda suggested getting data on this, perhaps from Partners.

Staci recently sat in on a webinar on the circles of support model for sex offender treatment—it might be something that could work in rural areas.

Judge Stephens noted that there used to be more emphasis on safety planning in PSRs.

Brenda wondered whether it would be worth looking at historical data when there were shorter sentences. Judge Stephens said it would be interesting to look at recidivism rates. Brenda thought that the longer sentence lengths might deter reporting in some cases. Barbara offered to provide the group with a legislative history of the 2006 laws and why they were enacted. Greg thought the group could get national numbers from Pew, and Staci said she had some national data as well.

Next Steps

- John will get data from Law on sex offenders generally
- Shannon will get data on juvenile offenders from DJJ
- Laura will get data on treatment rates from DOC
- Terra will get data on sex trafficking numbers
- Barbara will circulate the white paper from DOC, the Circles of Support information, a study on sex assault in rural Alaska, historical data from UAA, and a legislative history of the 2006 laws.

The group agreed to have meetings track with the Commission meetings. Next meeting is February 23, 2016, location TBD.