Alaska Criminal Justice Commission

Youth Justice Workgroup

Meeting Summary

Tuesday, August 5, 2020, 10:00 a.m.

Via Zoom

Commissioners Present: Samantha Cherot, Scotty Barr

Participants: Adam Barger, Renee McFarland, John Bernitz, Patrick McKay, Kelly Goode, Angela Hall, Tracy Dompeling, Chris Provost, Kathy Hansen, Diane Boyd

Staff: Barbara Dunham

Introductions

Commissioner and workgroup chair Samantha Cherot said the plan for the meeting was to go through the proposed recommendations on the table and find out where there might be areas of consensus, then she would take this discussion to the full Commission and report what group members' positions are.

Reverse waiver provision

Automatic waiver: Children who are at least 16 years old will be charged, prosecuted, and sentenced as an adult if they are charged with:

- *an unclassified or A felony and the felony is a crime against a person;*
- *first-degree arson;*
- *a B felony that is a crime against a person where the child is alleged to have used a deadly weapon and the child was previously adjudicated of an offense involving the use of a deadly weapon in commission of a crime against a person; or*
- *first-degree weapons misconduct under AS 11.61.190(a)(1) or AS 11.61.190(a)(2) (when the firearm is discharged under circumstances manifesting a substantial and unjustifiable risk of physical injury to a person);*[1]

This prompted a discussion on a proposal to enact a reverse waiver provision where a child could potentially be waived back to juvenile court despite his/her case falling into one of the above referenced auto waiver categories. There were varying positions on this proposal. In an attempt to build consensus, the working group also discussed a potential recommendation to amend the

[1] AS 47.12.030(a).

auto waiver statute to allow for prosecutorial discretion in charging children aged 16 or older in adult or juvenile court for the listed crimes.

Samantha said that there was some support for the reverse waiver as well as some opposition, and support for giving prosecutors discretion. She noted neither proposal would necessarily eliminate the automatic waiver. For the prosecutorial discretion option, prosecutors would have the option in some cases not to charge a juvenile as an adult in cases where the automatic waiver would otherwise require it.

Patrick McKay from the Department of Law said that the prosecutorial discretion option was at this point a general concept, and he was not sure whether Law was more interested in having that discretion at the initial charge or reducing the charge at a later point. He thought the idea would be that the youth would be charged with an autowaiver offense and auto-waived into adult court, but the prosecutor could move the case back into juvenile court.

John Bernitz from the Public Defender Agency said the key distinction between a reverse waiver and the prosecutorial discretion option was who makes the decision. If a reverse waiver is allowed, the judge makes that decision. The discretion proposal puts that decision in the hands of the prosecutor. He thought that prosecutors essentially have that discretion now.

Samantha said her intention was to explain to the full Commission that this proposal started with talking about reverse waiver and then ended up with a discussion on prosecutorial discretion, and wanted to be able to explain everyone's positions. She asked those present to said what their positions were on this proposal.

Adam Barger said he agreed on the reverse waiver proposal and did not support giving prosecutors more discretion.

Patrick reiterated that Law did not support the reverse waiver. Law was interested in discussing giving prosecutors more discretion to resolve cases as juvenile cases, wherein a child would automatically be charged as an adult but then the prosecutor would have discretion to bring the case back to juvenile court.

Kelly Goode from the Department of Corrections said that DOC's position aligned with Law's.

Angela Hall from Saving Our Loved Ones Group said she was concerned about increasing a prosecutor's discretion, because prosecutors are all different and it might lead to unequal outcomes, but if a prosecutor wanted to use it, she would support it.

Tracy Dompeling from the Division of Juvenile Justice said she supported the reverse waiver, noting that it allows parties to present arguments to a judge. Adding discretion was somewhat concerning because it can lead to intended or unintended bias. As a JPO, she saw discretion allowed for outcomes that varied widely. For that reason she was hesitant about the discretion proposal.

Attorney Chris Provost said he thought a reverse waiver was essential to reform and supported that idea

Commissioner Scotty Barr said he supported the proposals and wondered whether the reverse waiver process would allow a judge to consider mental health issues. Samantha said it would.

Kathy Hansen from the Office of Victims' Rights wanted to echo Patrick's comments from a previous meeting that a reverse waiver would essentially nullify the automatic waiver statute. She was also concerned about the discretion proposal and thought that it would need to include a victim's right to notice.

Minimum age for discretionary waiver

The proposal is for a minimum age for discretionary waiver requests. Currently, prosecutors may request a discretionary waiver to charge, prosecute and sentence a child as an adult with no limit as to age. Based on international guidelines regarding children's development and culpability, the bipartisan organization Human Rights for Kids recommends prohibiting transfer of children younger than 14 years old to adult court, and Alaska's discretionary waiver statute could be amended to include this minimum age.

The group discussed the possibility of an age between 10-14. Is there a minimum age the group can agree on?

Samantha said that prior to the meeting, she had circulated a report from the University of Las Vegas Nevada (UNLV) which was commissioned to perform a comprehensive review of Alaska's mental health statutes in 2016. Part of the report included of this specific recommendations about the age at which a child may have competency to stand trial, including a proposed a specific statute. The report recommended a statute stating that juveniles ages 10 and below were not competent to stand trial; juveniles ages 11-13 had a rebuttable presumption of incompetence, and at age 14 and older, had rebuttable presumption of competence. This related to the group's discussion about a minimum age below which children cannot be waived into adult court. At the previous meeting, the Department of Law would not support a minimum age of 14, and Scotty had suggested something in the range of 10-14. She asked everyone to state their positions.

Patrick said he didn't have the Department of Law's position on a younger age, thought they still didn't support a minimum of 14. Samantha asked if he had any thoughts on the age of competency that the UNLV study proposed. Patrick said it would depend on the wording, but he really couldn't say. Samantha noted that the Commission could get Law's position at the August meeting.

Kelly said that DOC's position was the same as Law's.

Angela said she supported a minimum age of 14.

Tracy said she supported Law's position on this side and hoped that in the waiver process there would also be some consideration for what the group has been talking about at these meetings.

Chris said he supported a minimum age of 14. He hadn't personally seen Law pursue a discretionary waiver for anyone under age 15. He wondered what role DJJ would play in this process. He has experienced DJJ opposing discretionary waivers as well as supporting them. He thought a minimum of 14 would align Alaska with best practices, and said he would forward a publication on each state's position on this.

John said he wanted to be clear that this proposal was talking about discretionary waiver cases, since the autowaiver already only applied to youth ages 16 and up. He has had many contested discretionary waiver hearings for 15-year-olds, and for younger children, the discretionary waiver has been part of negotiations—used as leverage to get the child to go into treatment, for example. He was in favor of a minimum age of 14.

Adam said he was in favor of a minimum of 14; he thought kids any younger than that can't really understand what they've done. Treating them as adults will mean they will be in jail for the rest of their lives, in an environment that won't let them grow into a reasonable logical adult. He also agreed with the UNLV report's suggested statute as written.

Scotty said he agreed with a minimum of 14, but also agreed with the Department of Law— he was new to all this, and might need more information. He thought that having a mental evaluation would be the biggest thing for this topic as well. Samantha noted that a mental evaluation is what the UNLV study contemplated, and suggested group members refer to page 64 of that study.

Kathy said she had concerns about a minimum age. She has seen juvenile cases where there are presumptions to rebut, and the evidentiary hearings can cause delays. In cases involving children there was a need to move quickly. She understood the reasoning behind this, but thought that Alaska needed an adequate mental health infrastructure. From victim advocacy perspective, she was thinking about safety. In Alaska if adults are deemed not competent, they are sometimes just released. It's a problem, and she just didn't think Alaska was ready.

Modify the felony-murder rule for children

The proposal is to amend the felony murder statute as it applies to children. The felony murder rule allows an accomplice to a felony to be held legally responsible for murder if someone dies as a result of the crime, even if the accomplice did not cause the death or intend for it to happen.

The Legislative Blueprint by Human Rights for Kids provides a roadmap for eliminating the felony-murder rule for children. The felony murder statue as applied to children could be amended to allow a child to only be found guilty of felony murder if the child was the actual killer or if the child, although not the actual killer, intended to kill or aided, commanded, requested, or assisted

the actual killer in the commission of the killing. Eliminating felony murder for children who do not actually kill or take an active role in the killing of another reflects the brain science research establishing children's reduced ability to foresee the consequences, both intended and unintended, of their actions; it would not, however, reduce the state's ability to prosecute the child for the underlying felony, either as a principal or an accomplice.

There was some support for and opposition to this proposal.

Patrick said that as he stated at the last meeting, Law didn't support this proposal.

Kelly said that DOC agreed with the Department of Law; discretion was important in cases of this nature.

Angela said she supported this proposal.

Tracy said she supported the proposal, though she wasn't sure if the rule had ever been used to charge a child in recent memory.

Chris said he supported the proposal. Kids tend to commit serious crimes in a group. Many cases he has handled involved multiple kids. The felony murder rule involved a nuanced and difficult analysis for lawyers, which made him think about jurors and whether they are getting those nuances.

John supported the proposal.

Adam said he supported the proposal. He noted the proposal was not talking about getting rid of felony murder altogether, just in cases where the child didn't pull trigger or take steps to cause the death to happen. He thought the bar should be set higher in order to jail a child for life.

Scotty supported this proposal.

Kathy said she didn't support the proposal; she didn't see a need to treat kids differently from adults, and also didn't see this provision used that often.

Second look parole provision

The addition of a retroactive "second look" or "safety valve" provision that grants juveniles sentenced in adult court expanded parole eligibility as recommended by the bipartisan organization Human Rights for Kids. Expanded eligibility allows those juveniles who have demonstrated maturity and rehabilitation a meaningful opportunity for release. Consider recommending a statutory change providing eligibility for parole release no later than the individual's fifteenth year of incarceration with mandatory consideration of the individual's maturity and rehabilitation since being incarcerated.

There seemed to be support for this proposal and a lack of any opposition to bringing it to the full Commission for discussion.

Samantha noted that this proposal also came from the Human Rights for Kids blueprint. As the group discussed at the last meeting, the viability of this proposal does depend on what programming is available in DOC facilities. She didn't think she heard any opposition to this proposal, and recalled that Law was okay with taking this to the full Commission.

Kelly asked whether this would mean this population would be eligible for parole or if parole would be mandatory. Samantha said they would be eligible, and would not automatically get parole, but it would be mandatory for the parole board to consider certain factors. The idea was to ensure it would be a meaningful hearing. Kelly said she was fine with this proposal going forward for discussion.

Patrick clarified that he personally thought this proposal was a good idea but was not aware of Law's position. He suggested asking John Skidmore.

Next steps

Samantha asked the group to review the summary for this meeting, and said she would take it and turn it into a memo for consideration by the full Commission.

Tracy asked if she wanted to note that the group discussed DJJ's proposal for legislation on housing youth in DJJ facilities— she didn't recall a lot of discussion or opposition. Samantha said yes, that there had been discussion about legislation to come into compliance with federal law in terms of housing justice-involved youth. She thought the group had supported that and asked if there were any additional comments. There were none.

Patrick asked if the group would set another meeting date. Barbara said that the full Commission would consider these proposals and may want the group to come back to this, it would be best to wait to see what they say before setting a meeting.

Public Comment

Adam said he appreciated being allowed to participate in this group and share his experiences. After 25 years of incarceration he still felt institutionalized, and the transition has been difficult, but he hoped his perspective helps. He was happy to keep participating if the group met again.

Alaska Criminal Justice Commission

Youth Justice Workgroup

Meeting Summary

Wednesday, July 15, 2020, 10:00 a.m.

Via Zoom

Commissioners present: Sam Cherot, Scotty Barr

Participants: Adam Barger, Angela Hall, Patrick McKay, Tracy Dompeling, Renee McFarland, Chris Provost, John Bernitz, Kathy Hansen, Kaci Schroeder

Staff: Barbara Dunham

Introductions

Samantha Cherot, Commissioner/workgroup chair and Public Defender, explained that at the last meeting, the group discussed proposals that had been previously discussed in 2018, and generally there was not enthusiasm for the proposals that would remove certain offenses from the auto-waiver statute. There was some support expressed for a reverse waiver provision, which was one of the previous proposals, and there was some support for the three new proposals, all of which were on the agenda for today.

Reverse waiver provision

Renee McFarland with the Public Defender Agency explained that a reverse waiver would apply in cases where a child was automatically charged as an adult (i.e. charged under the "autowaiver" statute). A reverse waiver statute would allow the child to petition the court to be returned to the juvenile system. She noted that the previous proposal was drafted so that it worked with the other previous proposals.

Patrick McKay with the Department of Law said that his recollection was that Taylor Winston from the Office of Victims' Rights was not supportive of this concept at the last meeting. Since the last meeting he had spoken with others at Law and they also would not support this proposal. He and his colleagues were opposed to the proposal because it essentially turns the autowaiver into a discretionary waiver.

Kathy Hansen from the Office of Victims' Rights agreed that Taylor would be opposed to this proposal. She agreed that it would render the autowaiver statute meaningless.

Renee observed that the proposal as written was very general and didn't discuss any parameters. If a reverse waiver were to be proposed now, it could be written with a heightened standard. That would be one way to address Law's concerns, because with a heightened standard the reverse waiver might not apply in every case.

John Bernitz with the Public Defender Agency said he believed that Taylor's comments were very broad, and he was not sure she knew specifically what the proposals were. There is an example in the current autowaiver statute of how the reverse waiver could be limited. If a minor is charged with an autowaiver offense (and therefore tried as an adult) but convicted of another offense, the minor may attempt to prove they are amenable to treatment in the juvenile system. The burden is on the minor to prove amenability to treatment. John thought it was possible to draft a carefully written statute that would limit its scope. There could be a limit as to the applicable crimes or age of the minor; the burden of proof could also be higher.

Samantha said the group could loop back to this discussion later in the meeting, or the group could also generally let the full Commission know where support for this proposal and where there is not.

Minimum age for discretionary waiver

Samantha explained that this proposal would set 14 as the minimum age at which a child could be subject to a discretionary waiver into adult court. She recalled that at the last meeting, Patrick had mentioned that he recalled only one case involving a child under 14 in this situation in recent memory (a 12-year-old), so there would not be a lot of impact. She reminded the group that this proposal came from the Human Rights for Kids legislative blueprint.

Patrick said that even in the case of the 12-year-old, a discretionary waiver wasn't sought, it just could have applied in that case. He also spoke with colleagues at Law on this, and Law was also not supportive. Their view was that there was no practical need for this provision, and it would preclude use of the waiver in outlier cases, such as if, for example, a 13-year-old committed a mass shooting—he was not saying that a waiver would necessarily be sought, but Law would want the option to consider it. He didn't think it should be precluded.

Samantha said she appreciated those concerns but did believe there was a practical need for a minimum age. She noted that setting a minimum age also meets international standards for the rights of children.

Attorney Chris Provost said that this proposal related to a bill that was discussed in the legislature last session but was not law yet; the bill was an extensive rewrite of the competency statute. During the legislative session, juvenile competency was also discussed. There was a draft bill that addresses competency for youth, which would render children 11 and under not competent, children ages 12-13 would be presumed not competent, and competency for children older than that would be determined according to the case. Chris said he supported the idea of a minimum age, and thought it related to the competency to proceed.

Patrick asked whether that was a bill before the Alaska legislature. Chris said it was, and could forward it to the group. Patrick said he would appreciate that; he hadn't seen it. John noted the idea was not new. The court system spent a lot of money to pay consultants from the University of Nevada to review Alaska's competency statutes, and their recommendations comport with what Chris had related; they also met a national standard.

John said he would also like to push back on Law's position on this. The outlier case in his view was the exact argument for not having discretionary waiver in these cases. There have been 11-

and 12-year-olds charged with murder. He didn't want this decision subject to the emotional response at the time, and wanted to limit the discretion in those cases. He thought there had to be some age where a child is young enough that society will not hold that child responsible. He thought that at some point, everyone could agree there should be a limit, and it might just be a question of just what age everyone could agree on.

Adam Barger said that he thought his views on this were made clear from his previous statements on other proposals. He wanted to just note that no one was saying that the child will not be held accountable, but the idea was just to determine the age at which a child will not be sent to jail for life. At a young enough age, they are just not competent enough to have the rest of their life thrown away. Kids at this age aren't even competent to tell us what will happen 10 minutes from now. There should be an age the group can find a consensus on. A 14-year-old can't really understand what's going on, or what will happen to them in 6 months. If the crime is exceedingly horrific, perhaps there could be an exception.

Scotty Barr, Commissioner, explained he was new to the Commission and that this was his first meeting. He agreed with what Adam said. This decision should involve considering a child's personal history, mental health history, and what's going on with the child's parents. Kids change their moods and attitudes frequently, and can be happy one minute, and sad the next. He thought the authorities should look at the child's situation. The child could be influenced by peers, or video games. He thought setting a minimum age would be tough, but would probably be somewhere in the range of 10 to 14.

Samantha wondered whether there was an age or range that Law would support. Patrick wasn't sure. The proposal he discussed with his colleagues was age 14, which they weren't supportive of. H could go back to see if they had any thoughts on a different age. Samantha thought that would help.

Eliminate felony-murder rule for children

Samantha noted that the proposed change would not fully eliminate the felony murder rule for children; it could still apply in situations where the child shared the requisite intent.

Patrick said that Law would also not support this change because it was too broad.

Chris said that this is where a reverse waiver would really come in handy. Accomplice liability can be really tragic; often juveniles are charged under this rule when they were present for the homicide but didn't participate.

Patrick thought that situation could be addressed by a provision that would allow a prosecutor to refer those cases to the juvenile court. The statute now requires that a juvenile in that situation be charged as an adult. He would be more open to discussing provision that would add that discretion for juveniles who have less culpability.

Scotty wondered whether there was any data from other states on children who have been convicted of these crimes. Samantha thought that was a great question. Information on how other states have changed their law was included in the materials that had been provided by Human Rights for Kids. She was not sure whether there was any hard data but it does cover what other states have done. Barbara noted that data on this specific situation was not part of the data that the Commission had.

Adam asked whether, if the felony murder rule for these kinds of cases was taken off the autowaiver list, prosecutors would still be able to use the discretionary waiver. Patrick said they would. Adam wondered whether in that instance removing this offense would really affect things. Patrick said there was a big difference in process between the autowaiver and the discretionary waiver. Discretionary waivers can take years to litigate; it is a process that is significantly longer than just filing a petition. It takes years of litigation regarding whether the juvenile is amenable to treatment.

Samantha said that as drafted, a child could still be tried for murder if they were the actual killer or had that intention. It would not be a wholesale elimination of the felony murder rule for children, it just would prohibit certain children from being tried for murder if they were not the killer and did not have that intention.

Scotty wondered whether the proposed rule would be for any age. Samantha said that as written, it would cover any age but welcomed further thoughts on that.

John said that regarding Patrick's remarks on the lengthy process for discretionary waivers, it was much easier to obtain before the autowaiver statute was enacted. Since the statute was passed, there has only been one discretionary waiver case. Before that, there were many cases in which 16- and 17-year-olds were subject to discretionary waiver. Also regarding having the discretion to opt out of the autowaiver, Law is currently settling cases by not charging autowaiver offenses, so essentially Law has that discretion right now.

Patrick said that his point was that there would be a safety valve that would allow charging those offenses but would not require going through the autowaiver process. The problem is that for the offenses in the autowaiver statute, the statute says they "shall" be subject to autowaiver.

John wondered whether law could agree to a minimum age for discretionary waiver if it was coupled with that safety valve provision. Samantha suggested just removing the word "shall" from the statute. Patrick said that would also essentially render the autowaiver meaningless because the waiver would no longer be automatic.

Renee noted that the statute is written such that if child is charged with one of the listed crimes, that child must be charged as an adult. Other states have statutes that give authorities the discretion to charge juveniles in these cases in either the juvenile or adult system; perhaps 10 states did so. She was not sure whether that would be the best approach, but if there was a group consensus on that, she could research those other states.

Samantha noted that discussing a provision like that might be a reason for having an additional meeting.

Second look parole provision

This proposal would create a parole provision making children who are tried as adults eligible to apply for parole after serving 15 years of incarceration.

Patrick said that Law was not prepared to take a position on this proposal, but didn't oppose its consideration by the full Commission. Law might want more information before taking a position.

Samantha noted that there were already some comments on this proposal from the last meeting which had been noted. It was her intent to take the proposal to the full Commission.

Chris noted that providing evidence of rehabilitation to the parole board depends to some extent on the offerings of the Department of Corrections. He wondered what would happen with someone who was incarcerated since they were teenager but never had programming available.

Samantha noted that this group had also discussed and voiced support for more robust programming for this population. There was also consensus that children under 18 should not be held in adult facilities. The federal law would soon prohibit this and DJJ was submitting legislation to comply with it.

Tracy Dompeling from DJJ said that was correct. The only thing she was concerned about with the federal law is that a judge can override the placement provision and place a juvenile in an adult facility. She thought it would have to be included in Alaska's conforming statutory change, but thought it could have the adverse consequence of having only one such child held in an adult facility. But the general philosophy is to keep them out of adult jails until age 18.

Angela Hall from Saving Our Loved Ones Group asked what the measure of rehabilitation would be. Recently she has seen people go before the parole board, and the focus seems to be on the seriousness of the person's crime, rather than on anything they've done since. Samantha said that was a good question. The blueprint from Human Rights for Kids outlines standards that states could set for provision like this. Chris was also right evidence of rehabilitation might be limited by what DOC has to offer in terms of programming.

Patrick said he recalled that DOC did not have position on this at the last hearing, as with Law; Law would wait and see what other agencies thought, but the proposal was worth looking at. Samantha said that there should be a DOC representative at the next full commission meeting. Chris said that if you look at the legislative history of the juvenile justice laws, DOC has taken the position that it does not want kids in its facilities.

Tracy recalled that Kelly Howell was stepping in for DC Kelly Goode at the last minute for the last meeting, so she just wasn't able to take a position at the time. Tracy has been in discussions with DOC about DJJs proposed legislation and she had a meeting scheduled with them this afternoon. She noted she had also talked with Deputy AG John Skidmore who brought DJJ's proposal up, and said Law was supportive of DJJ's work.

Patrick said he was hopeful that Law will be able to offer a position at the next full Commission meeting.

Barbara noted that the issue with programming in DOC facilities relates to what another Commission workgroup is doing. The Rehabilitation, Reentry, and Recidivism Reduction Workgroup is looking at, among other things, behind the walls treatment. The issue of having too much time left to serve to be eligible for programming has come up in that group. She noted that Adam had also explained in the comments that in order to be eligible for parole, a person needs to have completed their Offender Management Plan (OMP). Completing an OMP in many cases is also dependent on whether the person is able to engage in programming.

Public Comment

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

Future Meetings and Tasks

Samantha encouraged the group to look at Barbara's meeting summaries, and to make sure to read them thoroughly to determine whether each person's position was well-represented. She would summarize these discussions at the Commission meeting in August. She also encouraged the group to let her know whether anyone had thoughts on a possible range of minimum ages for a discretionary waiver, and whether any parameters for a reverse waiver might be acceptable.

Patrick said he didn't know whether there were parameters within which Law would favor reverse waiver, but did think there would be support for the prosecutorial discretion to reduce an autowaiver offense to a juvenile offense, or to opt out of the autowaiver process. Something similar to what Renee was talking about from other jurisdictions.

Samantha said she and Renee might take a look at the other states' laws to see what they find. Chris noted that there has been a lot of research in this area, and about 24 states have reverse waivers. Samantha wondered whether the group should meet again to discuss research about what other states have done.

Adam said he thought it was worth doing to see if there were any areas of consensus. He would like to see consensus around any proposals coming from the group.

Tracy said she also thought it would be helpful to have one more meeting. She wanted to have a more concrete idea of what the proposals are, and maybe look at written recommendations in the next meeting to refer to.

Samantha said she could pull out specific language from the memo that had been previously circulated about what exactly was proposed. She also thought there was more work to do on the possibility of a reverse waiver provision.

The next meeting was set for Wednesday August 5 at 10:00am.

Alaska Criminal Justice Commission

Youth Justice Workgroup

Meeting Summary

Tuesday, June 30 2020, 10:00 a.m.

Via Zoom

Commissioners Present: Samantha Cherot, Alex Cleghorn

Participants: Tracy Dompeling, John Bernitz, Patrick McKay, Renee McFarland, Adam Barger, Angela Hall, Kelly Howell, Diane Boyd, Colette Cook, Chris Provost, Karl Clark, Taylor Winston

Staff: Barbara Dunham

Data

Barbara Dunham, project attorney for the Commission, explained that she had circulated a one-page document with data on youth in DOC custody. One chart showed the number of 16- and 17- year olds in DOC facilities at noon on the first day of every quarter since July 2014. The number ranged from 0 to 11 and the average was 4.3. The other chart showed the number of people in DOC facilities who were age 26 or younger and who had been admitted to DOC custody at age 16 or 17, using the same snapshot days and timeframe. The number ranged from 8 to 18 and the average was 12.5. Barbara said that there were relatively few people in the population this group was discussing.

Barbara noted that the Commission has a lot more data from DOC as well as the court system, and if the group is interested, she could ask the Commission's data analyst to pull more queries. CJ Bolger had also pulled some data from the court system for the previous iteration of the workgroup, which Barbara hadn't been able to find.

Tracy Dompeling of the Division of Juvenile Justice (DJJ) said that she still had that data and had compared it to DJJ's database; the data is a bit old at this point.

Patrick McKay of the Department of Law asked how long people in this population were staying in prison, and whether it was comparable to the length of stay for older people. Barbara said that staff could look into that.

Tracy suggested also looking into the some of the unintended consequences of the auto waiver, such as whether auto-waived youth would be more likely to be released on bail because a judge might deem it inappropriate for them to be in DOC custody, whereas if they would be in DJJ custody a judge might want them held. She was just thinking about numbers and how things might change.

Previous Proposals

Samantha Cherot, Public Defender, Commissioner, and workgroup chair, explained that Barbara had circulated the draft recommendation that was under discussion when the previous iteration of this group met in 2018. She had also circulated a chart explaining the auto-waiver statute, which had been updated to reflect the fact that sentencing laws have changed since 2018. She had also circulated a memo from assistant public defender Renee McFarland which explained the history of the auto-waiver statute, national trends in

youth justice, and recent research on the development of the young brain. The memo also summarized the previous proposals and included new proposals.

Samantha reviewed the three previous proposals, noting that each was drafted with the understanding that a) discretionary waiver would still apply in each case, and b) that youth placed in DJJ custody would have better outcomes than if housed with adults in DOC facilities. In short, the previous proposals were:

a) Removal of certain Class B felonies from autowaiver statute,

b) Removal of certain Class A and B felonies from autowaiver statute with extended juvenile jurisdiction, and

c) Enact a reverse waiver provision.

Samantha also explained that the Commission's process for recommendations was to discuss recommendations within a workgroup, which would then forward the workgroup-vetted recommendation to the full commission, which would then vote on whether to send the recommendation to the legislature. She encouraged discussion of the previous proposals.

Regarding the first proposal, Patrick said he had looked at the legislative history of the autowaiver statute, and had not found a lot of discussion, but the legislature seemed pretty clear that it wanted to include recidivist B felonies, referring to youth who fall under that category as "incorrigible offenders". He was not sure whether the Department of Law would support removing those offenses.

Samantha asked whether this proposal had unanimous support when the previous iteration of this workgroup was discussing it. Tracy said she didn't think so, and noted that this idea had also been proposed in other venues before, and had not gained traction.

Samantha said that she hoped that the information Renee included in her memo on the developing research on the adolescent brain was helpful, and noted that the autowaiver laws were passed before this new understanding came to light. She wondered if there was anyone who thought this recommendation should be forwarded to the Commission.

Assistant public defender John Bernitz said he would like the group to forward the recommendation. He believed the laws were outdated, and noted that there is no oversight of the autowaiver, i.e. no way for a judge to review whether a child should be legally treated as an adult. The worst part about the B felonies is that those are the cases that have the best possibility for rehabilitation. For truly bad actors, prosecutors could use the discretionary waiver. Autowaiver takes the kids who have the best chance of doing well and eliminates their day in court. This law dates to the 90s-era discussions of "superpredators"—theories that have now been disproven. He thought the country was moving away from treating children this way, and if Alaska does not change its laws, it could risk becoming an outlier.

Taylor Winston of the Office of Victims' Rights (OVR) said that OVR would be opposed to these changes. There has been new research, but there is also a lot of inconsistency in social policy when comes to youth. A lot of juveniles are much more sophisticated now. In order to qualify for the autowaiver statute, kids charged with B felonies have to have been previously charged, which doesn't mean they necessarily have the best chance of being rehabilitated. A lot of these are serious offenses. All children can understand that they're not supposed to kill. She understood the research on the juvenile brain, but didn't want to go in the direction of not being able to convict anyone under 26. By the same rationale, people should not be able to smoke, drink, or drive until age 26. Taylor also noted that there have not been any discretionary cases in the last 20 years, which to her put the issue of having a judicial discretion into question.

John said that there was only one discretionary waiver case since the autowaiver statute was enacted in 1996. Before that, there were a lot. Regarding rehabilitation, John noted that a person's ability to be rehabilitated has more to do with the person than crime. He wanted to be clear that he was not saying that all murderers should be let off. He was saying that someone other than a prosecutor should make the decision, that the decision to try a child as an adult should go through judge. John also noted that there has been varying policy from the DA's office on this; for example, recently the policy has been that if there is probable cause, an autowaiver case is always started.

Patrick said that as he had explained at the last meeting, he was not aware of any policy set up in Department of Law. He observed that it almost sounded like John was advocating for more prosecutorial discretion. Autowaiver actually takes discretion away from the prosecutor in terms of charging someone as an adult. He understood that prosecutors have discretion as to the offense charged. But sometimes their hands are tied as to charges. If there was increased use of the discretionary waiver, there would be more discretion for prosecutors.

John said he had noticed practice change from the Department of Law recently. Previously, a prosecutor would come to the PDs and use the autowaiver as bargaining chip. In recent months, if there is probable cause for an autowaiver crime, the DA will automatically file the case in adult court. He added that his larger point was that whatever happens, this decision should go before a judge.

Adam Barger asked whether, when it comes to autowaiver, it was the case that there is no due process protection. He understood that in case of discretionary waivers, the waiver decision goes in front of the court, and there is due process involving a hearing with briefs filed. He wondered if he was understanding correctly that that didn't happen for autowaiver cases.

Patrick said that juveniles charged as adults have the same due process rights as adults. He said he would disagree that juveniles subject to autowaiver have no due process.

John said it was true that there is no hearing before a case is charged in adult court under the autowaiver statute. There can be a hearing if the adult case is dismissed. There is a hearing if the case involves a discretionary waiver. It's true that when they are in adult court, kids are given same due process rights as adults.

Adam asked whether a child waived into adult court faced a sentence that was more substantial than the child would face in juvenile court. John said definitely. Adam asked whether there wasn't a liberty issue in being treated as an adult that requires due process. John said he would agree with that notion, but the Alaska Court of Appeals has held that there is no constitutional right to be treated as a juvenile, and that that decision is up to legislature. He also thought that case law could change based on the recent US Supreme Court cases.

Chris Provost said that in response to Patrick's statement, attorneys, himself included, keep hearing on the defense side that the Department of Law's position is that the statute says "shall" which ties their hands. But in practice they see a wide variety in the application of autowaiver by different prosecutors around the state, and he had seen a lot of discretion used depending on the venue. It was inconsistent. He has represented kids who have been "reverse waived" even though there is no reverse waiver statute. He would like to see individualized assessment based on who the kid is, not based on the offense. Before a kid is charged as an adult he would like to see a 30-day period to do an assessment, and social history so that there could be an individualized determination as to whether charging the persona as an adult would be appropriate.

In response to Taylor's comments, Chris also agreed that no one was saying that kids should not be charged or held accountable. Ultimately 18 is 18. These cases can take 4-5 years to resolve. If a child is charged at 16 and convicted 4-5 years later, that child has likely spent much of that time in solitary confinement. The research just says that the human brain is just not fully developed in adolescents and young adults, but is not saying that they should not be held accountable for their actions. It was saying there is a spectrum of maturity; people who are 18 are more mature than people who are 16.

Chris added that it was also clear that people who are charged at age 16 as adults and released 10 years later at age 26 will have higher recidivism than if adjudicated in the juvenile system. It is counterproductive to public safety to charge all kids in this situation as an adult. One reason is that the adut facility is inappropriate for an adolescent. If a child is pretrial, they should not be kept in adult prison for 3-4 years. These are people who will likely be released at some point, so do we want them to be more of a threat? He would therefore would support a reverse waiver. It would be a relief valve especially for younger kids. At this point half or more of the states have enacted something like a reverse waiver.

Tracy noted that regarding the class B felonies with one prior, she didn't think there were a lot of those cases. From DJJ's perspective, they had no opinion on removing offenses from the autowaiver, but would note that the reverse waiver process might prolong getting kids into services. DJJ is preparing legislation to hold autowaived youth pre- and post-conviction at DJJ until age 18. The federal law that was updated in 2018 gave the state three years to make this change. DJJ has been working with DOC to get a sense of the numbers involved. Right now, the numbers are manageable. The youth in this population would not all go to one facility so they will be spread out.

Tracy added that DJJ would not necessarily support holding people in DJJ facilities until age 26. It is challenging to provide youth programming after graduation, like vocational programming. DJJ wants to meet their criminogenic needs. She felt that the programming was a reason that DJJ's recidivism rates were low. An alternative idea is whether a person is held at DJJ or DOC, up to a certain age they should get that same programming.

Patrick said he would personally be supportive of that. He did not support having 16 and 17 years olds held in ad-seg (administrative segregation) at the Anchorage Correctional Center (ACC). He couldn't bind the Department of Law on that, but would hope they would be supportive of those kids spending that time at DJJ.

John said he thought the change in the federal law was indicative of a national change in thinking about these cases. He didn't want to be an outlier. He has seen kids held in ad-seg, and it is just cruel to deprive them of socialization. DJJ does really well in terms of programming. They say they don't provide treatment but it is a treatment-like setting. Putting any young people in that setting would give them tools to survive.

Adam said that ad-seg is one of the worst places to put a kid. And if ad-seg is overflowed, they can be put into punitive segregation, and vice versa, so that puts kids in the company of people who are a high security risk, which can wind up giving kids an education on how to be a criminal. It is dangerous to keep kids there. It does mental damage. He himself did 9 months there.

Kelly Howell from DOC said she appreciated this conversation, and was taking in a lot. She didn't have the department's position on this, but would discuss this meeting with DC Goode, and thought it was a really great conversation.

Samantha said she was not hearing any consensus on removing offenses from the autowaiver statute. She wanted to get the group's thoughts on a reverse waiver.

Chris said that regarding conditions of confinement, the ad-seg issue has been litigated. Cases in 2005 tried to get kids transferred out of solitary. The Court of Appeals said the practice was not good but that it needed a legislative fix. He thought there would need to be more than an memorandum of understanding to get kids out of ad-seg. He has had two clients arrested at age 16 for homicides. They were placed in ad-seg and became incompetent to stand trial within a couple of months. They couldn't even be restored to competency. He thought there could be fixes for that. There is a high school program in ACC but there is a waiting list, and most of his clients have been on that waiting list. He would propose expanding that program.

New Proposals

Samantha said that Renee's memo had also outlined three new proposals:

a) Enact a minimum age for discretionary waiver

b) Eliminate the felony-murder rule for children

c) Enact a second-look parole provision

She explained that these proposals were pulled from the Human Rights for Kids blueprint legislation. The proposed minimum age for discretionary waiver would be age 14. For the felony murder rule proposal, it would only apply where the child is not the actual killer. The second-look proposal involved having the parole board consider parole for a child given a lengthy sentence after 15 years of custody; the board must consider any change in the individual.

Chris said that regarding the felony murder rule, he would note that the spectrum for liability is very broad, and the law doesn't make any exceptions. Some teenagers can be convicted of first degree murder without having an intent to kill, and they just happen to be there. He thought that proposal was warranted. He also thought the second look proposal was warranted, and thought a lot of states were going down that road.

Regarding the minimum age for discretionary waiver, Patrick noted that it was exceedingly rare that kids under that age would be charged under that statute; he knew of one kid age who was so charged at age 12, and was not aware of others. See the point of having such a law but was not sure it would have any practical effect. Regarding felony murder, Patrick note that it was very different from first degree murder. For accomplice liability to apply to a first-degree murder conviction, the person would have to have intent to kill. He didn't think a change in the felony murder statute would have an effect on first-degree murder.

Renee said that was correct, the proposal was not intended to affect first-degree murder.

Patrick said he would like to discuss these proposals with others in his office. He would also propose another change to discretionary waiver. He thought the process was backwards. He didn't see why the system was determining whether a child should be tried as an adult before it determines whether the child committed a crime. Why not find out if the child is guilty at all before determining whether to try them as an adult. Determine guilt first, then decide how the child will be treated. This could provide the privacy protections that all juvenile cases receive during the adjudication process.

John noted that he and Patrick had already talked about this, and he continued to think that Patrick had not really gotten his head around the ramifications of his proposal. Discretionary waiver requires proving a child not amenable to rehabilitation by the age of 20. So if a child comes in at 14 -15, and it takes 2-4 years to convict them, there is no way to prove that amenability to rehabilitation. He thought they also

might have a disagreement as to the goals of the juvenile system. A trial itself is not a therapeutic process; it's actually traumatic. It's better for children to come to terms with their crime in a therapeutic setting. He thought there could be ways to mitigate some of these concerns, and would be interested in seeing something in writing. Samantha agreed, and suggested that Patrick send something in writing for the next meeting.

Adam said that regarding a minimum age, he would hate to see anything less than age 14. The human brain can barely can understand what the person has done if they are younger. If there is no set minimum age, there could theoretically be a 4- or 5-year-old waived into adult court.

Regarding the felony murder rule, Adam noted that in order to be an accomplice, a person has to have taken substantial steps toward completing the crime. He understood that rule for an adult. But a juvenile can be in the wrong place at the wrong time and all of a sudden someone is shot. Kids don't think about that; they may be running scared, and think they will also be shot if they don't go along with something. He knew of kids who shot into a dead body but were charged with first-degree murder. They didn't go into the situation with the intent to kill anybody.

Regarding the second look provision, Adam observed that just because someone might be eligible for parole doesn't mean they are going to get it. The proposal was just saying that if they are convicted at an early age, they will get another look. If they went in at age 15, they will have served half their life in prison after 15 years. If they have an opportunity for a second chance, it's not a guarantee they will get parole, but they will be able to say if have done enough. He himself "fell" at age 18 and was rehabilitated by age 33. This provision would have allowed him to petition the parole board 10 years earlier. They could have said no, but it would have been an opportunity to tell them he was ready. A good friend entered the system at age 17, and will be eligible for parole at 70. That is throwing our children away. He thought people like him should have an opportunity to go before the parole board.

Alex Cleghorn, Commissioner and attorney at the Alaska Native Justice Center, said he thought these three new proposals all made sense. He was also curious as to how often an autowaiver was used to coerce a plea deal.

John noted that he was the only public defender who does juvenile cases full time. He estimated the agency sees autowaiver cases once every 3 to 6 months. He doesn't get waived cases, as those go to PDs who represent adults. Most cases where there could be an autowaiver offense but one is not charged are sex cases, where the facts don't really support charging the child as an adult, as well as robbery cases. Using the autowaiver to bargain was not common, but not rare.

Chris noted that plea bargaining just how this business is done. He has had cases where a prosecutor has come up with a deal, i.e.m, agree to this treatment at DJJ within 10 days or we will go to grand jury. It's not great but better than treating the child as an adult right away. The problem with sex cases is that the attorney has to use experts to assess risk, which takes time. If the defense is presented with only one choice it can eliminate other possibilities that an expert might recommend.

Patrick said he didn't have numbers as how often the autowaiver might be used as a bargaining tactic; by the time a case comes to him, the decision has already been made. Practices were probably different in different jurisdictions, and he would like to see some more uniformity across offices to ensure things are being done the same across the state, although of course every case is different. If there is not parity in how things are being charged, he personally would like to see that change, and would be surprised if his superiors at Law would not agree.

Alex said he would be very concerned if there were disproportionate treatment in these cases. He wondered if anyone was tracking whether Alaska Native youth are disproportionately reflected in autowaiver cases. The numbers are striking in other areas of the criminal justice system. He realized the numbers were small, but would like to know who's being charged and who's not.

Samantha asked whether this was something that was tracked. Tracy said that Alaska Native youth were generally overrepresented in juvenile cases. Barbara said that the Commission would have the race/ethnicity data for have for youth who are in DOC custody- but since those numbers are so small they might not accurately represent rates.

Public Comment

Angela Hall from the Saving Our Loved Ones Group said that she had been participating in discussions like this since 2015. With regard to the second look proposal, she wondered whether that would apply to all juveniles sentenced as adults, not just those admitted under an autowaiver; there are people who were incarcerated under the discretionary waiver and she wanted to make sure those individuals are not lost in this discussion. Samantha said yes, the proposed recommendation was that the second look would apply in that situation.

Adam said he was in full support of the reverse waiver. He was not a fan of anybody being auto waived. He still thought there was a liberty interest in being adjudicated as a child rather than tried as an adult, and thought there should be a finding of fact in support of that. He agreed with Chris and John that the autowaiver statute is outdated. It doesn't make sense to leave someone in prison for so long that when they are released they are old enough to be a burden on society. He thought enacting a reverse waiver was a good first step to taking another look at autowaiver as a whole. Putting kids in custody with career criminals will mean they learn things they never should learn. The outcomes are worse when kids are in ad-seg. Prison is the wrong environment for children.

Barbara noted that there had been two other public comments provided via email, one from Cordell Boyd and one from Collette Cook.

Future Meetings and Tasks

Samantha said she was not hearing support from the group for removing offenses from the autowaiver statute. She was hearing some support for the reverse waiver, and said the group would further consider that for the next meeting along with the three new proposals, as well as any proposal sent by Patrick and perhaps Tracy's data.

Barbara asked whether DJJ would need the Commission's support for DJJ's proposed legislation to bring Alaska into compliance with federal law. Tracy said that DJJ didn't necessarily need support and it would be up to the group. She could share what DJJ and DOC are currently working on with the group but would want to run it by DOC first.

The next meeting was set for July 15 from 10 to noon. Samantha asked participants to let her know their positions on the proposals.

Alaska Criminal Justice Commission

Youth Justice Workgroup

Meeting Summary

Monday, May 11 2020, 10:00 a.m.

Via Zoom

Commissioner Present: Samantha Cherot

Participants: Renee McFarland, John Bernitz, Angela Hall, Suzanne LaPierre, Adam Barger, Tracy Dompeling, Patrick McKay, James Dold, Kathy Hansen, Preston Shipp, Eric Alexander, Kelly Goode, Chris Provost, Chanta Bullock

Staff: Barbara Dunham

Introductions

Samantha Cherot, Public Defender as well as ACJC Commissioner and workgroup chair, explained that a previous iteration of this workgroup had met in the past but she wasn't part of the Commission at the time. The Commission was now returning to some of the issues the workgroup discussed related to youth justice. The group left off looking at the juvenile auto-waiver statute, and had looked at removing certain Class B felonies from the statute as well as certain Class A felonies with conditions, and those offenses would still be subject to discretionary waiver. The group also looked at raising the age up to which juvenile jurisdiction may be waived to 26. This group also needed to discuss compliance with federal law and where to house youth, also keeping in mind what we are learning about the brain development of youth.

Tracy Dompeling, Director of the Division of Juvenile Justice (DJJ) said that DJJ definitely appreciated being part of previous discussion. When this group last met, the group had been talking about housing youth charged as adults at DJJ until conviction, which at that point was a best practice. In December 2018, Congress reauthorized the federal statutes related to juvenile justice (the JJDA), which requires states to house pretrial auto-waiver youth in youth facilities by 2021. DJJ intends to bring Alaska into compliance with the federal law, and this may be through an MOU with DOC first, with legislative changes to follow.

Child Sentencing Reform/Human Rights for Kids

Suzanne LaPierre from Human Rights for Kids (HRK) explained that HRK was formed by James Dold a couple of years ago, and was formally incorporated a year ago. HRK advocates for the rights of children in all kinds of areas; right now, the organization is focused on juvenile justice. They have been a part of introducing dozens of bills before Congress and state legislatures. They also submit amicus briefs to the Supreme Court. HRK has created a legislative blueprint for child justice reforms which was distributed to the group before the meeting; it has a number of model statutes. The main rationale for treating kids involved in the criminal justice system differently from adults was that in children, the prefrontal cortex is not fully developed. This inhibits their executive function making them less able to understand long-term consequences than adults, making them impetuous. Most people understand this intuitively and this is the

basis for restricting children from doing things like getting married, joining the army, signing contracts, etc.

Suzanne explained that case law began to recognize the special status of youth starting in the late 1980s. The latest US Supreme Court case on this topic was decided in 2016; it said prohibited mandatory life sentences without the possibility of parole for youth. The Court's reasoning was that children are less culpable than adults, and because culpability is what underlies the rationale for criminal sanctions, those sanctions shouldn't apply to children to the same degree as they do for adults. The opinion also noted that childhood criminal activity was also a failure of other actors around the child. Additionally, other rationales for criminal sanctions such as the idea of deterrence were not as effective for children. Life without parole also ignores a child's capacity for change. Children who engage in criminal activity often age out of crime, with diminishing recidivism rates as the person ages into adulthood.

State courts have gone further. Some have held that there is no reason to limit the Supreme Court's holding to only the most serious offenses, because the same rationales regarding culpability, deterrence, capacity for change, etc., apply regardless of the type of offense. For example the Washington Supreme Court recently dealt with a case in which two teens convicted of stealing Halloween candy were given 26- and 31-year sentences. The court held that the Eighth Amendment requires treating children differently.

Other considerations for treating youth differently include the high prevalence of ACEs among justice-involved youth and the overrepresentation of youth of color in the juvenile justice system.

Of HRK's slate of recommendations for reform, Ms. LaPierre thought these ideas in particular might be the most relevant for this group:

- Eliminate mandatory minimums for youth, or enact provisions that allow judges to ignore mandatory minimums. Many states have done or are considering this such as Nevada, Washington, Iowa, Virginia, and DC. In Virginia, judges have full discretion to ignore mandatory minimums if they find the child has ACEs. Other laws allow departure from a mandatory minimum if a child is convicted of retaliating against his or her abuser.

- *Miller* hearings. These hearings require judges to consider the special characteristics of youth, per the *Miller* decision, during sentencing for children facing long sentences or life without parole.

- Continued court jurisdiction. This would allow courts monitor youth sentenced as adults and allow the court to revise a sentence or parole eligibility after 15 years.

- Custodial interrogation rights. Children should have a right to an attorney and parents or guardians present, and interviews with law enforcement should be recorded.

James Dold explained that the legislative blueprint was developed with bipartisanship in mind. HRK has a bipartisan board of directors, comprised of six Republicans and five Democrats from around the country. On the organization's website there is a letter from former state representatives, one Republican and one Democrat, urging state legislatures to adopt these model laws. This is a bipartisan way to reform the juvenile justice system, and by highlighting this bipartisan support, HRK has been able to get buy-in

from legislatures around the country. The blueprint can also be foundation of broader criminal justice reforms.

James explained that the blueprint also calls for establishing a minimum age limiting application of the juvenile justice system to very young children. The juvenile justice system should not sweep in children at a young age, as it can lead to adverse outcomes. Even very conservative states such as Louisiana, Arkansas, and Texas have minimum ages for juvenile justice involvement. Younger children with behavior issues should be subject only to parental discipline or treated as children in need of aid as necessary.

Kids under 14 who are accused of serious crimes should, according to the blueprint, never be transferred to or prosecuted in the adult system. In recent years some states have been moving that floor up; for example, California moved the minimum age for adult prosecution up to 16. The higher up that age is moved, the better off the children will be long-term. Obviously there will be public safety situations. In California there are mechanisms extending the age of jurisdiction for the juvenile court as necessary. It's ideal to have the system be as flexible as possible.

James encouraged the Commission to take a look at the automatic transfer provision. Having judges take a look at all potential transfer cases would be best. That may not be politically possible, but if Alaska is going to have an automatic transfer, he suggested it should at least have a reverse waiver hearing automatically at the beginning of the case, so that a judge may determine whether the adult system is appropriate. If kids going are to be tried as adults, judge should also be required to look at ACEs and early childhood trauma.

James explained that many states are also now taking a look at abolishing the felony murder rule for children. (The felony murder rule holds anyone involved in a crime that results in death criminally liable, even if the person did not directly cause the death.) In those cases, courts should look at the intent of the child.

HRK also has recommendations regarding conditions of confinement. The blueprint calls for limiting solitary confinement for children, a recommendation that stems from the federal First Step act. Solitary confinement should not be used for a punitive response for children. It may be needed for other specific circumstances, but its use should be limited to what is provided for in federal regulations. One problem with having kids housed with adults, in addition to being a PREA violation, is that it often means kids are held in solitary confinement for safety reasons.

The most recent authorization of the JJDPA calls for kids to be held in juvenile facilities pretrial regardless of what system they're being tried in, although it also has failsafe considerations for judges so that if necessary, kids can be confined in an adult facility. But the best practice is to move completely away from holding kids in adult jails pretrial. Conservative states such as Kentucky have led the way on this. Often kids housed in adult facilities don't have the same access to programming as the adults do (also for safety reasons).

James encouraged using the model law as a reference, and said he was also happy to provide examples of this legislation from other states. Samantha said the group would appreciate that.

Campaign for the Fair Sentencing for Youth/ Saving Our Loved Ones Group

Preston Shipp with the Campaign for the Fair Sentencing of Youth (CFSY) explained that CFSY was founded in 2009. Its focus is on eliminating extreme sentences, specifically life without parole and de facto life without parole. In recent years the US has seen a remarkable trend away from extreme sentences for youth, with 26 states having abolished life without parole and 6 more not doing so in practice. These states have been influenced by the Supreme Court cases Suzanne mentioned, and not just the mandates of the opinions but their accompanying reasoning. CFSY also focuses on putting in place age-appropriate alternatives. Children, even those who commit violent crimes, have a profound capacity to make positive changes. We simply don't know who a 15-year-old is going to be in 25 years.

Preston explained that he did not start as a reformer and in fact attended law school in order to be a prosecutor. He believed in tough sentences, and thought that if someone was old enough to commit a crime, they were old enough to go to jail for it. He worked for the Tennessee Attorney General's office, and did his fair share of prosecuting 16-year-olds. He did not hesitate to advocate for sentences amounting to de facto life without parole.

That changed when Preston started teaching a law class in a women's prison in Tennessee. Interacting with the students expanded his understanding. One of his students was a woman who received a life sentence as 16-year-old due to the felony murder rule. He started to understand that who she became as a person was more than the girl who had been convicted of that crime. He wanted her to succeed.

Similarly, Preston also prosecuted Cyntoia Brown, who was convicted at age 16 of killing a man who had hired her as a prostitute and caused her to fear for her life. She later showed up in one of Preston's classes, and she had made amazing strides. At the time of her prosecution, he couldn't tell that 16-year-old Cyntoia would become 30-year-old Cyntoia. He became convinced that there needed to be a way to give second chances to those who won't be a threat. He was not advocating that the prison doors should automatically swing open after 20 years, but there should be an opportunity to revisit a person's case at that point, similar to what Virginia has done.

Eric Alexander, also with CFSY, said that he liked to think that his own story shows that incarcerated children can be redeemed. As a teenager, he stood outside as a lookout for a friend who was robbing a store, without realizing his friend had a gun. His friend killed a store employee, and Eric, charged with murder on the felony murder rule, agreed to plead guilty and receive two 25-year sentences with the possibility of parole to avoid a life without parole sentence. He finished high school in prison. His early life had a lot of trauma; he experienced domestic violence and joined a gang at age 14. He was an intelligent child and was never violent, but his home life led him to join a gang, to be part of a group of other kids going through the same things he was. As a teen, he felt like adults would talk at him rather than talk to him.

While Eric was incarcerated he began to focus on what happened in his life that led to his incarceration, and he began to draft a youth program. He encouraged his peers to start talking about what they would have wanted to do if they hadn't been incarcerated. Many had big dreams. They began to form healing circles. The prison administration saw these efforts, and lowered the security level of those who took classes. After spending 10 years in prison, Eric came home, and began to implement the programs he developed in prison. He became a household name in the Tennessee school system, speaking at schools and working with families. He founded a national network of people who had been incarcerated as children, the

Incarcerated Children's Advocacy Network (ICAN). Out of the 600 members of ICAN who have been released from prison, many are active in the same way he has been, and none have committed new crimes. Over the course of the last 16 years he has been investing himself in his community. He made a promise to the victim in his case that he would spend rest of life trying to prevent other children from going down his path.

Eric said it was possible to bring incarcerated children home who will be able to transform their communities. However, some who are coming home now have spent decades in prison and are now senior citizens—they will need additional help, and they are now not able to serve in perhaps the way they want to. Eric observed that he had so much to offer society coming home as a 28-year-old, much more so than a 58-year-old. Spending 10 years in prison was enough time for him to make a change. He has been able to prove to Tennessee that they made the right choice in letting him come home.

Angela Hall said she was part of the Alaska-based Supporting Our Loved Ones (SOLO) group for family members of people sentenced as youth to de facto life sentences. Right now there is no mechanism in Alaska for youth given long sentences to go before the parole board until they reach mandatory parole. Of those who do receive discretionary parole, their parole is deferred for 7 years or 10 years, or they are told to reapply in that time. These determinations are based on the crime the person committed, not on the person they have become.

Angela also said that for people handed lengthy sentences at a young age, there is little for them to do in prison, because if they have so much time left to serve, they are not eligible for a lot of the prison programming. Her husband was able to participate in a dog training program which has been very beneficial for him, but he is not eligible for other classes. He will be eligible for mandatory parole in his 70s. SOLO was not advocating to automatically let people out, but just a way to give people a second look.

Presentation Wrap-Up

Adam Barger said that he was convicted with a group of four teenagers at age 18. He and his co-defendants had killed someone who became a police informant. It was not something he was proud of. He spent 25 years in prison, and while in prison he read The Deepest Well and learned about the impact of early childhood trauma. He discovered he had an ACEs of seven (out of ten). He realized through his own experience that it was so easy for kids with high ACEs scores to turn left instead of right. Estimating the scores for everyone convicted with him, he didn't think any of them would score less than a 6. He wondered what Eric's score was. Eric said he scored a seven.

Adam said that when he was caught he gave a 3.5-hour confession as a way to brag about what he had done. He was sentenced by Judge Elaine Andrews who said that she had read the transcript of his confession, and that while she had read many such confessions before, his made her blood run cold. Adam said that that was person he was when he was locked up at 18, but then he spent 25 years trying to become a better person. Programs were often not available to him because of the length of his sentence but tried to find what programming he could. Educational opportunities were very narrow. He got his barber's license, which was a great opportunity for him once he was out of prison. People now care about how well he can cut hair, not about what crime he committed.

Adam believed he was blessed to get parole the first time he went before the parole board. Many people who are similar to him are going to die in prison. But the changes they have made in their lives make them no less worthy than he was. The changes he has seen in people incarcerated as youth are so stark, it is amazing. He watched Angela's husband become a totally different person while in prison, and he's not the only one. He wondered what the Department of Law would be able to do on this issue, and what the sticking points would be for reform.

Assistant DA Patrick McKay said that while he was asked to participate in this group on behalf of the Department of Law he couldn't commit to anything on behalf of the Department at the moment. He imagined that there would be a number of sticking points to changing the law. He thought one concern about the reverse waiver proposal was that it would turn every case into a discretionary waiver case. He personally agreed that there are issues relating to juvenile justice that should be addressed. He understood the reasons for wanting reform. He said he would like to do more research on this topic, for example looking at the legislative history of the automatic waiver—why did the legislature want to put that in place? He did think that Law recognizes that change is needed, although they might not agree with other participants on what exactly that would be. But Law is still willing to look at the juvenile justice system.

Samantha thanked everyone for sharing their expertise and perspectives. The agenda for today's meeting reflected where the previous iteration of this workgroup left off, but these presentations and the accompanying materials have given the group a lot more to work with. She thought the participants needed a chance to read and digest the materials and think about the ideas raised today. It might make sense for each agency to think about its priorities. She wondered whether the group had received the old draft recommendation. Barbara said they had not but she could send it out. Samantha said that would help as a starting point.

Adam wondered whether there was a way to return children to juvenile jurisdition after serving time as an adult—it could be one of most beneficial things to do for youth. *JRN v. State* was the case that instigated the autowaiver statute; JRN was actually a close friend of his, and he sat with him during sentencing. He didn't know anyone who is the same person they were 20 years ago. Right now that kind of change can't be taken into account at sentencing. You can count the number of seeds in an apple but not the number of apples in a seed. But that's what we ask judges to do when sentencing children. When he was sentenced, he had no concept of what 75 years was and what 25 years was. At that point he could only remember maybe 12 years of his own life. People will start to reform when that time becomes real to them.

John Bernitz with the Public Defender Agency agreed the group should take time to think about these things. Alaska's auto-waiver law is a brutal law. There is no way back from it. He thought it was created by one legislator, whose brother was killed. John has been collecting information on every case of waiver since 1996. Adam added that that legislator was now on the clemency board.

Kelly Goode, Deputy Commissioner with the Department of Corrections, said she wanted to clarify—there was someone whose son was killed on the parole board but it was not the person who Adam referred to. Adam said he was not referring to the person on the parole board but rather the person on the Executive Clemency Advisory Committee.

Chris Provost, an attorney in private practice, said he has spent a lot of time with auto-waiver cases. He noted that Edie Grunwald was the head of the parole board whose son was killed. The Grunwald case was prosecuted on a theory of accomplice liability. All four people were charged as accomplices. Chris thought the auto-waiver and felony murder rule were together very problematic. He was also a big supporter of a reverse waiver, and thought a judge should be able to make the decision. He believed Alaska has a strong bench, and it is a good venue for judges to be able to make these decisions. He added that since this group last met he has seen more kids involved in "#metoo" cases, reflecting a better understanding of consent among teens. He now has more clients waived into adult court for sex offenses.

John said that he recalled that in the '90s Law had a policy that prosecutors had discretion regarding internal decisions about charging auto-waiver offenses. It seemed to him that Law had recently decided to automatically always charge auto-waiver offenses. He was also seeing a lot of sex offense cases.

Patrick said there was no specific Department of Law policy on that. Former Anchorage DA John Novak, who just left his position, did have a policy for the Anchorage office interpreting that the statute did not allow for discretion. But there was no statewide policy; he was also not aware of any policy in the '90s. Nor was he aware of an increase in sex cases but those would not typically be in his unit.

Chris said he was seeing a lot of cases out of Palmer, as well as Kenai. He has had cases that started in the juvenile justice system that were seemingly arbitrarily charged as adult cases.

Future Meetings and Tasks

Samantha said she was hearing some specific topics for a potential recommendation. Barbara will send out the previous proposal, and they will reach out to everyone about their ideas for the group.

Renee McFarland with the Public Defender Agency wondered whether there is data on the number of auto-waived cases. Barbara said that would be difficult to get at precisely but she recalled that Justice Bolger had come up with an approximation for the previous workgroup. Staff had also looked at the number of people in prison who entered as 16- or 17-year-olds. She said she would circulate that information.

The next meeting was set for June 15, from 10:00-12:00.

Public Comment

Angela said that on behalf of the family members in SOLO, she just wanted to say thank you, and hoped that this would lead to a positive outcome. Adam agreed, and said he appreciated the group's willingness to listen.